

**IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA**

CA (PHC) 60/2009

PHC Kegalle 2505/Writ

W. Henry Dharmasiri Dissanayake
No: 761, Meepitiya,
Kegalle.

W. Udaya Sriyani Warnasinghe
No: 761, Meepitiya,
Kegalle.

S.H. Jinasena
No: 42, Rock Hill 1st Lane,
Kegalle.

W. Ashoka Dharmakeerthi Warnasinghe
No: 74, Kalugalla Mawatha,
Kegalle.

Petitioner-Appellant

Vs.

Seema Sahitha Kegalle Samupakara Nagara Banku Samithiya,
No: 26,27, Kegalle Main Street Municipality Shopping Complex,
Kegalle.

W.M.G. Bandara
Eththalapitiya, Hingula.
(Arbitrator)

Resident Co-operative Development
Commissioner, Registrar,
Resident Co-operative Development Commissioner's Office
Provincial Council Office Complex, New Town,
Rathnapura.

Respondent-Respondent

IN THE COURT OF APPEAL OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application for a
mandate in the nature of a writ of certiorari
under Article 140 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

C.A. (PHC) 60/2009

PHC Kegalle 2505/Writ

<u>BEFORE</u>	: A.W.A. Salam J. Deepali Wijesundera J.
COUNSEL	: Lal Matarage for the Appellant. : Mahinda Nanayakkara for the 1 st Respondent.
<u>ARGUED ON</u>	: 17 th October, 2012.
<u>DECIDED ON</u>	: 18 th December, 2012

Deepali Wijesundera J.

The petitioner appellants have filed this application seeking an order to quash the order of the High Court Judge of Kegalle dated 11/03/2009 and also for a writ of certiorari to quash the orders marked as P14, P15, P19 and P20 given by the 2nd and 3rd respondents.

The petitioners have taken a loan from the 1st respondent by mortgaging their land after making several payments, the petitioners have made a request to adjust the interest payable. On the ground of default payment the 1st respondent has referred the matter to an arbitrator appointed by the 3rd respondent. After an inquiry an award was made in favour of the 1st respondent. Thereafter an appeal was made to the 3rd respondent. The 3rd respondent has affirmed the order of the 2nd respondent. This was challenged in the High Court. The High Court Judge has dismissed the said application.

Learned Counsel for the petitioner stated that although several legal submissions were made before the High Court, the High Court Judge failed to consider them and therefore the order of the High Court Judge should be set aside.

The learned Counsel for the appellants argued that since it was a monetary transaction between the parties the dispute should have been

referred to the District Court and not to an arbitrator. He further submitted that a party dissatisfied with the findings of the 2nd respondent had to appeal to the 3rd respondent who is also the appointing authority of the 2nd respondent.

The appellants stated that the calculation of interest was done unfairly and that interest should have been calculated at 17% and not at 22% or 26%.

The Counsel for the respondent stated that the appellants while admitting their liability to repay the loan in their submissions in the High Court have stated that the respondents should refrain from calculating the interest wrongly. The 1st respondent further stated that the document marked **Ⓓ 10** which is the mortgage agreement between the parties clearly stated the interest rate as 22% and on default of 3 months the rate should be calculated at 26% and that the petitioners are bound by the agreement they signed. 1st respondent stated that both the arbitrator and the 3rd respondent when delivering these findings have carefully considered all the documents placed before them.

This court has to decide whether the orders made by the 2nd and the 3rd respondents marked as on **P14, P15, P19 and P20** and also the order of the learned High Court Judge should be quashed by a mandate in the nature of a writ of certiorari.

On perusal of ටී 10 (එය වර්ග) the loan agreement which was drafted under the **Cooperatives Act No.5 of 1972** and **Sabaragamuwa Provincial Cooperatives Enactment No.5 of 1994** clearly states the annual interest rate as 22% and on default of 3 months the rate as 26% and petitioners have signed this document when they obtained the said Rs. 600000/= loan from the 1st respondent. The petitioner other than appealing to the 1st respondent on sympathetic grounds cannot lawfully state the interest is calculated excessively according to this document.

Gazette extraordinary of 05/09/1994 which relates to settlement of disputes in relation to cooperative societies has been product marked ටී 5 which gives authority to the 3rd respondent to appoint an arbitrator and hear the appeals Section 58(3) specifically states this. The petitioners have gone before the arbitrator, then have made an appeal to the 3rd respondent which was rejected. Moved in the High Court for writ which was also refused.

The 1st petitioner had been an executive committee member of the 1st respondent's Cooperative Society as the arbitrator pointed out in his findings therefore this court can come to the conclusion that he acted with a very good understanding of the whole procedure in relation to obtaining a loan from the 1st respondent.

The arbitrator has carefully considered the evidence decided on the percentage of interest to be paid by the petitioners.

The petitioners submission that there is no provision for the 3rd respondent in the Cooperative Society Act to refer this dispute to an arbitrator is incorrect the 3rd respondent has correctly referred this dispute to an arbitrator.

For the aforesaid reasons I affirm the order of the learned High Court Judge and dismiss the application of the petitioners.

JUDGE OF THE COURT OF APPEAL.

A.W.A. Salam J.

I agree.

JUDGE OF THE COURT OF APPEAL