

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

In the matter of an application for mandates  
in the nature of writs of Certiorari,  
Mandamus and Prohibition under Article  
140 of the Constitution of the Democratic  
Socialist Republic of Sri Lanka.

Rathnayake Mudiyanseelage Anil  
Hemantha Ratnayaka,  
51, Welagedara, Badulla.

**Petitioner**

C.A. Application Writ No: 482/2008

Vs

1. DFCC Vardhana Bank Limited,  
73, W A D Ramanayake Mawatha,  
Colombo 2.
2. DFCC Bank,  
73, Galle Road, Colombo 3.
3. Registrar of Lands, Badulla.

**Respondents**

<b><u>BEFORE</u></b>	:	<b>S. SRISKANDARAJAH, J (P/CA)</b>
<b><u>COUNSEL</u></b>	:	A.P.Niles, for the Petitioner. Kushan de Alwis for the 1 <sup>st</sup> and 2 <sup>nd</sup> Respondents
<b><u>Argued on</u></b>	:	26.11.2010
<b><u>Written Submission on</u></b>	:	15.12.2010 (1 <sup>st</sup> and 2 <sup>nd</sup> Respondent)

Decided on : 16.01.2012

**S.Sriskandarajah.J.**

The Petitioner in this application has sought a writ of certiorari to quash the Resolution marked X6 and quash the auction sale and the certificate of sale described in the schedule.

The property in question was subject to a mortgage to the 1<sup>st</sup> Respondent and a resolution was passed by the Board of Directors of the 1<sup>st</sup> Respondent Bank acting in terms of section 4 of the Recovery of Loans by Banks (Special Provisions) Act No 4 of 1990 as amended. Acting under the said Resolution the 1<sup>st</sup> Respondent had sold the said property by an auction sale. Accordingly the certificate of sale has been entered in favour of the 1<sup>st</sup> Respondent Bank. In *D.D.Jagathchandra Vs People's Bank and Others CA Writ Application No.2087/2004 CA minutes 09.01.2006* the court considering the fact that the property was sold after a resolution was adopted by the Bank, held: In any event it is futile exercise to quash the Resolution as the mortgaged property had been sold."

The learned counsel for the Petitioner at the time of argument restricted the argument to the prayer for a writ of certiorari to quash the auction sale and the certificate of sale. The Petitioner's challenge to the Auction sale and the certificate of sale is on the basis that the notice has a reference to the DFCC Bank the 2<sup>nd</sup> Respondent whereas the Resolution was passed by the 1<sup>st</sup> Respondent and the said property was purchased by the 1<sup>st</sup> Respondent as there are no bidders. In view of the Reference to DFCC Bank in the notice the Petitioner contended that the General public would have got misled. The Petitioner has not taken up this position in the Petition for the Respondent to respond.

The Respondents contended that there is no likelihood that the general public to get misled in view of the reference to the DFCC Bank contained in the said notice of sale. In view of the fact that the said notice has been published by DFCC Vardhana Bank and not by DFCC Bank and the said auction sale has been held consequent to the default made in respect of the Mortgage Bonds executed in favour of the 1<sup>st</sup> Respondent, DFCC Vardhana Bank. The Respondents further contended that as a matter of practice, any prudent, reasonable man with average intelligence who is interested in purchasing an immovable property would carry out a search at the land registry with regard to the title of the property and the contents of the Mortgage Bond referred to in the said notice of sale. Such an act would undoubtedly make any prospective purchaser with regard to the mortgage as well as steps taken by the 1<sup>st</sup> Respondent to auction the said property.

The Petitioner's contention that the Property would have been sold for a higher price if there is no reference to DFCC Bank in the notice is a factual matter that has to be established by leading evidence. When facts are in dispute, parties are not entitled to invoke writ jurisdiction: *Ekanayake and others Vs People's Bank (2005) 1 Sri L R page 94*. For these reasons I dismiss the application of the Petitioner without costs.

President of the Court of Appeal