

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

In the matter of an application for the issue of Writs under Article 140 of the Constitution of Sri Lanka read with the Debt Conciliation Ordinance as later amended and with other legal provisions.

Case No. CA (Writ) 463/10

Debt Conciliation Board

Case No. 41012

1. W.D. Dharmasiri Karunaratne,
Now at 01, MDH Pura, Pelawatte,
Battaramulla
2. H.D. Iranganie Wijewardena
397/3, Kotikawatta, Angoda.

Petitioners

-Vs-

1. Debt. Conciliation Board of Colombo,
2. Mr. A. Dayantha De Alwis,
Chairman of the Debt Conciliation Board,
3. Mr. K.A.P. Rajakaruna,

Member of the Debt Conciliation Board,

4. Mr. N. Balaraman,

Member of the Debt Conciliation Board,

5. The Secretary,

The Debt Conciliation Board,

All 5 of No. 80, Adikarana Mawatha,

Colombo 12.

6. H.A. Sachintha Perera,

7. A.D. Supun Sameera,

8. A.D.C. Maduwanthi,

All 3 of No. 226/1, Bolabotuwa,

Bandaragama.

Added Respondents

9. Malaniee A Ranatunga

The Chairperson of Debt Conciliation
Board

10. P. Samaratane

Member of the Debt Conciliation Board

11. M.A.N.A.S. Gunawardena

Member of the Debt Conciliation Board

12. D.M. Sarathchandra

Member of the Debt Conciliation Board

Respondents

Case No. CA (Writ) 463/10-Debt Conciliation Board Case No. 41012

BEFORE : S. Sriskandarajah J. (P/CA)
Deepali Wijesundera J.

COUNSEL : Sanjeewa Jayawardena for the
Petitioners.
Javed Mansoor for 6^t and 7th
Respondents.
F. Jameel DSG for 1st to 5th and 9th
to 12th added Respondents.

ARGUED ON : 18th May, 2012.

DECIDED ON : 15th June, 2012.

Deepali Wijesundera J.

The petitioners have filed this action seeking a writ of certiorari to quash the order of the Debt Conciliation Board delivered in case No. 41012 on 21/04/2012 (marked as X20 & X21) and seeking a writ of Mandamus directing 1st to 5th respondent to act in terms of orders dated 17/08/2009 (marked X10) and seeking a writ of prohibition, prohibiting the Board making the 2nd petitioner a party in case No. 41012 and proceeding with that case.

Damith Jayantha now deceased has filed a petition in the Debt Conciliation Board on 05/06/2008 marked X2 under section 14 of the Act

The contention of Damith Jayantha was that deed No. 27 which is stated as deed of sale was in fact a mortgage. While the inquiry was pending Damith Jayantha has died and his wife and 2 children have made an application to the Debt Conciliation Board as heirs to Damith Jayantha for substitution. They are the 6th, 7th and 8th respondents in this action. Damith Jayantha's application was dismissed by the Board on 10/08/2009 stating the application was not signed by him. The 6th respondent made an application to the Debt Conciliation Board under Section 54 (1) of the Debt Conciliation Ordinance to vacate this order of dismissal on 21/04/2010. And the Debt Conciliation Board has revised the order of dismissal and has allowed the substitution.

The 1st petitioner after the order of dismissal has sold the property in dispute to the 2nd petitioner. The 2nd petitioner is not a party in the action pending in the Debt Conciliation Board.

The argument of the petitioner was that since the signature of the said Jayantha was not found in the application to the Board there is no properly constituted application before the Board and the Board is not lawfully entitled to exercise its jurisdiction or to entertain the said application.

The petitioners counsel argued that X10 order is a final order which determines the rights of the parties, after dealing in detail the merits of the application and he further stated in view of this X20 and X21 which was

made subsequently, is an order blatantly contrary to the established principles of law and it should not be permitted to stand.

The respondents out of whom 2nd, 3rd and 4th respondents are no longer serving as members of the Board. The counsels for the other respondents submitted that deed No. 27 on the face of it is an outright transfer but whether it is a transfer or a mortgage is a matter presenting under consideration before the Debt Conciliation Board. The 6th, 7th and 8th respondents were substituted as heirs to the deceased Damith Jayantha after considering the 1st petitioners objections.

The respondents submitted that order X10 was later revised by the Debt Conciliation Board under section 54 of the Debt Conciliation ordinance which provides for the Board to review its own orders within 3 months of making the order. The respondents submitted in view of their arguments the application of the petitioners should be dismissed with costs.

The 1st petitioner is the respondent in case Number 41012 before the Debt Conciliation Board. Two weeks after the Board delivered X10 dismissing Damith Jayanthas application, the 1st petitioner has sold the said land to the 2nd petitioner in this application, who is not a party before the Debt Conciliation Board. X10 order was later revised by the Debt Conciliation Board under section 54 of the said ordinance.

Section 54 (1) reads as:-

“The Board may, of its own motion or on application made by any person interested, within three months from the making of an order by the Board dismissing an application, or granting a certificate, or approving a settlement, or before the payment of the compounded debt has been completed, review any order passed by it and pass such other order in reference thereto as it thinks fit.”

In Vineetha vs Chairman Debt Conciliation Board and others.

Appellate Law Recorder Volume 1 2001 Page 35.

An application was made to quash the order of the Debt Conciliation Board to the Court of Appeal. The Court of Appeal has held;

“When one considers Section 49 of the Debt Conciliation Ordinance, which provides that it would be the duty of the Board to do substantial justice in all matters coming before it without regard to matters of form, it would appear the Board had acted within the Law.”

The Court of Appeal refused the application of the petitioners.

When Section 54 is read with Section 49 of the said Act it is crystal clear that the Debt Conciliation Board has done its duty to do justice to the application before the Board.

It is very clearly stated that the Board can review its orders within a period of 3 months therefore it can be stated that the Board had acted in accordance with the law.

Deed No. 27 which both parties have agreed is an outright transfer but as the respondents stated has to be considered by the Debt Conciliation Board whether it is a transfer or a mortgage. Under sec. 21 A (3) (2) of the Debt Conciliation (amendment) Act no. 29 of 1999.

It reads thus:

“The burden of adducing evidence to show that a transfer of immovable property is in reality a mortgage shall be on the transferor.”

The Debt Conciliation Board has to decide whether Deed No. 27 is a transfer or a mortgage after leading evidence. This Court need not go into the merits of this issue.

The petitioners did not satisfy this court that the Board in making the impugned order acted contrary to any mandatory provisions of law or have ignored the principles of natural justice. For the aforesaid reasons I decide to dismiss the application of the petitioners with costs fixed at Rs. 10,000/=.

JUDGE OF THE COURT OF APPEAL

S.Sriskandarajah J(P/CA).

I agree

PRESIDENT OF THE COURT OF APPEAL