

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

CA Writ 496/2011

Tenkutti Dumidu Shemal Silva,
No.28/6,
"Nisansala",
Galle Road,
Kalawilawatta,
Kaluwamodara,
Aluthgama.

Petitioner

Vs.

1. Hatton National Bank PLC,
No.479,
T.B. Jayah Mawatha,
Colombo 10.

2. P.Muthukumarana,
Licensed Auctioneer,
No.156 1/13,
Hulftsdorph Street,
Colombo 12.

Respondents

CA Writ 496/2011

Before : S. Sriskandarajah J. P/CA

Counsel : Edward Samarasekera for the Petitioner.

Priyantha Alagiyawanne for the 1st Respondent.

**Argued &
Decided on** : 02.11.2012.

S. Sriskandarajah J. P/CA

The Petitioner in this application has sought a writ of certiorari to quash the Board Resolution marked P3 and also the notice of sale marked P7 on the basis that the mortgage bond is in valid. As at the date of execution of the said mortgage bond, the Petitioner was not the owner of the said property and secondly the Petitioner challenged the resolution on the basis that the amount quoted in the resolution as the sum due are not the sum due from the loan account for which the said mortgage relates to.

In relation to the 1st issue whether the said mortgage bond is valid, the Petitioner has filed a case in the District Court bearing No. DSP 111 of 2010 and the said District Court Case is still pending and this matter is a matter for the determination of the District Court. Therefore this court will not make any order in relation to this and the order of this court in

this application will not have a bearing on the order made by the District Court in the aforesaid action.

In relation to the sum mentioned in the resolution it is the contention of the Petitioner that the sum mentioned namely Rs. 2,695,335.60/- is not the sum that is due on the loan obtained having the said property as security. The contention of the Petitioner is that a sum of Rs. 83,264/- and Rs. 57,705.81/- are sum due on credit card accounts and those sums cannot be added to the resolution for the purpose of recovering the sum from the sale of the said property. The learned counsel for the respondent submitted that the said mortgage bond includes all facilities that were given to the Petitioner by the bank by way of loan and therefore that includes not only the housing loan facility that was given to the Petitioner but also the other loan facilities that were given to the Petitioner up to a maximum limit of 2.4 million plus interest. In view of the averments in the mortgage bond the sums mentioned in the resolution including the other facilities that were provided to the Petitioner cannot be held invalid or ultra vires the power of the board and in view of this fact, the board resolution cannot be held invalid.

The recovery of loan by Bank Special Provision Act No. 4 of 1990 by Section 4 provides that the board may by resolution sell by public auction any property mortgaged to the bank as security for any loan in respect of which a default has been made in order to recover the whole or of unpaid portion of such loan and the interest due thereon up to the date of the sale together with the monies and cost recoverable under Section 13. The recovery of loans by bank special provisions Amendment Act No. 1 of 2011 which was certified on 28th of January, 2011 has brought an amendment to Section 4 of the principal enactment by Section 5A and has provided that no action shall be initiated in terms of Section 3 of the Principal Enactment for the recovery of any loan in respect of which default is made, no shall any steps be taken in terms of Section 4 or Section 5 of the aforesaid Act where the amount of such loan is less than Rs. 5 million.

Even though this resolution relates to 2.6 million the resolution was passed on 07.01.2010 that is prior to the date of the said amendment to the law was brought into operation and therefore the said resolution will not fall under the provision of Section 5A of the Amendment Act No. 1 of 2011. In view of the above this court has no reason to quash the said resolution or the notice of sale that was challenged in these proceedings.

Therefore, this court dismisses this application without costs.

PRESIDENT OF THE COURT OF APPEAL.

Mm/-.