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

J. A. Piyadasa,
"Thakshila", Kadigamuwa,
Walasmulla.

Plaintiff -Appellant

C.A. NO.1048/98
DC.WALASMULLA
CASE NO.275/P

VS

1. Chandrawathie Dahanayake,
   566, Rammuthugala, Kadawatha.

2. Simon Dhanayake

3. Ranjith Dahanayake,
   both of Kanumuldeniya (South),
   Walasmulls.

Defendant -Respondents

BEFORE : **K.T.CHITRASIRI, J**

COUNSEL : Rohan Sahabandu, P.C. with Ms.S.Kumarawadu for the Plaintiff-Appellant.

Manohara de Silva, P.C. with Ms.A.Wijayalatha for the 1st to 3rd Defendant-Respondents

ARGUED ON : **06.06.2013**

WRITTEN SUBMISSIONS FILED ON : 2nd May 2013 by the Plaintiff-Appellant
20th June 2013 by the Defendant-Respondents

DECIDED ON : **25. 07.2013**

CHITRASIRI, J.

This is an appeal seeking to set aside the judgment dated 19.08.1998 of the learned District Judge of Walasmulla. In the petition of appeal addressed to this Court, it is stated that the learned District Judge is incorrect to have dismissed the plaint stating that the plaintiff-appellant (hereinafter referred to as the plaintiff) is not entitled to claim rights referred to in the deeds bearing Nos.11682 and 5311 marked as P4 and P5 on the basis that those deeds have become null and void in view of the provisions contained in the Settlement of Debts Law No.27 of 1975. [hereinafter referred to as the "S O D Law"] Submissions of the learned President's Counsel, made on behalf of the appellant too are restricted to the aforesaid point referred to in the petition of appeal. Therefore, the only question in this appeal is to determine whether the learned District Judge is correct to have rejected the title emanated from the deeds P4 and P5 marked on plaintiff's behalf relying upon the provisions contained in the said S O D Law.

The plaintiff alleged to have obtained his rights from the deed marked P5. Those rights in the deed P5 had derived from the deed No.11682 marked P4 in evidence. Therefore, if the rights referred to in the deed P4 are not accepted as valid, then the plaintiff will not become entitled to claim rights emanated from the deed marked P5 as well. In this instance, the learned District Judge relying upon the provisions contained in the S O D Law has declined to accept the deed P4 as a valid deed. Accordingly, he has declared that the deed P4 is null

and void and accordingly, it had resulted dismissing the action filed to partition the land called Katu Imbula Hena, morefully described in paragraph 2 in the plaint.

Learned District Judge has basically relied upon Section 3(7) of the S O D Law to decide the deed P4 null and void. The said Section 3(7) reads thus:

> "3 (7). ***Where any creditor referred to in subsection (1) fails to make an application for the settlement of a debt*** *in accordance with the provisions of that subsection, then –*
>
> *(a) no action shall be instituted in, or entertained by, any court;*
>
> *(b) no application shall be entertained by the Debt Conciliation Board; and*
>
> *(c) no application shall be entertained by the Chairman of a Panel of Conciliators under section 6 of the Conciliation Boards Act.*
>
> *for the recovery or settlement of that debt, and* ***where such creditor is a transferee of immovable property on a conditional transfer, such transfer shall be null and void".***
> [emphasis added]

Accordingly, it is clear that the consequences of failure to make an application for settlement of debts as referred to in Section 3(7) above, are basically of two fold. Those are namely:

(A) To prevent a creditor referred to in the S O D Law, making an application to a Court, to the Debt Conciliation Board or to a

Conciliation Board established under the Conciliation Board Act, to seek reliefs from those institutions; and

(B) A conditional transfer within the meaning of the S O D Law becoming null and void if there had been such a conditional transfer executed in connection with the money advanced by a creditor.

The consequences referred to above under the aforesaid Section 3(7) would come into play only when a creditor (as defined in Section 3(1) of the S O D Law) has failed to make an application to the Conciliation Board of the area in terms of Section 3(1) of the S O D Law. It stipulates thus:

> *"Subject to the provisions of section 4, every creditor to whom any liquidated sum of money is due on a debt, incurred or outstanding in whole or part prior to the appointed dated shall, within three months of such date, make an application in the prescribed form to the Chairman of the Panel of Conciliators of the Conciliation Board area in which the debtor or any of the debtors resides, for settlement or determination of such debt in accordance with the provisions of this Law."*

In terms of the above Section 3(1), a creditor to whom any liquidated sum of money is due should make an application to the Chairman of the Panel of Conciliators of the relevant Conciliation Board within the time frame stipulated therein for re-payment or for settlement of the debt. The debt referred to above would include a debt, incurred upon executing a conditional transfer of immovable property as well. [Section 3(2)]

Admittedly, the aforesaid deed P4 is a conditional transfer that had been executed with the condition that the vendor should pay back the consideration referred to therein to the transferee in that deed, within a period of two years from the date of the execution of the deed. The creditor within the meaning of Section 3(1) is the transferee in that deed P4, he being the person who advanced the money to the vendor in the deed P4. In the circumstances, he (transferee/creditor) should have made an application to the Conciliation Board in terms of Section 3(1) of the S O D Law. Admittedly, he has failed to make such an application to the Conciliation Board. Having acted upon those circumstances, the learned District Judge relying upon the said provisions has treated the Conditional Transfer P4 null and void. Accordingly, he has declined to accept the rights of the plaintiff, claimed under the deed P5, title of which had flowed from the conditional transfer marked P4.

Learned President's Counsel for the appellant has argued that when a deed is executed, the transferee of that deed becomes the owner of the property and the title derived from such a deed should prevail despite the consequences referred to in Section 3(7) of the S O D Law for the reason that it is a notarially executed document. He further contended that the provisions of the S O D Law would make only the conditions contained in the deed in question invalid but not the title derived from it. He also has contended that in the event the decision of the District Judge is to be prevailed then the creditor would lose both the property as well as the money that he has advanced.

Literal meaning of Section 3(7) of the S O D Law is that a conditional deed of transfer would become invalid or in other words such a transfer shall be considered null and void; if no application is made in terms of Section 3(1) of the S O D Law, within the time frame stipulated therein by a creditor who comes within the meaning of that Law, to the Conciliation Board of the relevant area. I do not see any ambiguity in the language used in those two Sections namely 3(1) and 3(7) of the S O D Law. In this instance, it is the transferee of the deed marked P4, he being the creditor should have made the application to the Chairman of the Panel of Conciliators of the Conciliation Board. He has failed to do so. Therefore, the obvious result would be to treat the conditional transfer namely the deed marked P4 null and void. That is the basis on which the learned District Judge has come to his conclusions. Accordingly, I see no error in the impugned judgment of the learned trial judge.

However, I wish to consider this point further, referring to the relevant authorities. In this regard, I quote from **N.S. Bindra's Interpretation of Statues,** 8th Edition. In that book, it is stated at pages 97 and 98:

> *"In the first instance, the grammatical sense of the words to be adhered to. If that is contrary to, or declared purpose of the Statue, or if it would involve any absurdity, repugnancy, or inconsistency, the grammatical sense must be modified, extended or abridged so far as to avoid such inconvenience, but no further. The elementary rule is that words used in a section must be given their plain grammatical meaning".*

In this regard, I also wish to draw attention to **"Maxwell on Interpretation of Statutes"** as well. At page 28 in its 12th Edition, it is mentioned as follows:

> *"The first and most elementary rule of construction is that it is to be assumed that the words and phrases of technical legislation are used in their technical meaning if they have acquired one, and otherwise in their ordinary meaning, {R Vs. Comm. Of Income Tax [1882 (22) Q B D 296], I R C Vs. Herdman [1969 (1) All t R 495] and the second is that the phrases and sentences are to be construed according to the rules of grammer. [R Vs. Ramsgate (1827) 6 B. & C. 712] ....* ***If there is nothing to modify, alter or qualify the language which the statute contains, it must be construed in the ordinary and natural meaning of the words and sentences. The safer and more correct course of dealing with a question construction is to take the words themselves and arrive if possible at their meaning without, in the first instance, reference to cases.*** *Barrel Vs. Fordree [1932 A C 676 per Lord Warrington of Clyffe at page 682]*

Upon considering the authorities referred to above, it is clear that this Court should not embark upon to have an alternative construction to the sections 3(1) and 3(7) of the S O D law when the language found therein is clear enough. I must reiterate that I do not see any ambiguity

when it comes to the interpretation of those two Sections 3(1) and 3(7). Plain reading of those sections would make it crystal clear that the creditor should make an application within three months from the date of operation of the law to the Conciliation Board to have the debt settled. Failure to do so would result in making the conditional transfer null and void in terms of Section 3(7).

As mentioned hereinbefore in this judgment, in addition to becoming a conditional transfer null and void, failure to act under Section 3(1) also prevents a creditor filing action in courts or making applications to Debt Conciliation Board or to a Conciliation Board. Therefore, the defendants in this instance could have challenged the institution of this action filed on the strength of the deed P4, at the very outset as well. However, I do not wish to elaborate on that point in this judgment since neither such objection has taken up nor an issue has been raised to that effect, in this case.

As mentioned by the learned President's Counsel for the appellant, It is correct to state that the provisions in the aforesaid S O D would result in preventing the transferee in the questioned conditional transfer, losing his right to claim rights emanating from the conditional transfer as well as the right to recover the monies that he had advanced. This issue has been well considered by the learned District Judge by looking at the object of the Legislature. In the impugned judgment, he has stated that the object of the Legislature when it

was enacted had been to give reliefs both to the debtors as well as to the creditors who are residing in rural areas. He also has stated that the idea behind this Law is to ensure settlement of debts through conciliation. His findings on this aspect are quoted below.

"1975 අංක 28 දරණ ණය නිරවුල් කිරීමේ පනතේ වගන්ති සමස්ථයක් වශයෙන් සලකා බලන විට පෙනී යන්නේ මෙම පනත ඉදිරිපත් කිරීම මගින් ව්‍යවස්ථාදායක විසින් අරමුණු කර ඇත්තේ ග්‍රාමීය ප්‍රදේශවල සිටින සුළු ණය කරුවන්ට සහනයක් ලබා දීම බවය. එමෙන්ම ණය හිමියන්ට එකී සුළු ණයකරුවන්ගෙන් එම ණය අයකර ගැනීම සම්බන්ධයෙන් යම්යම් සීමා පැනවීම බවය. මෙම කරුණු පනතේ 3(1) වගන්තිය සහ 3(7) වන වගන්තිය එක්ව සලකා බැලීමේදී පැහැදිලිව පෙනී යයි. 3(1) වගන්තියෙන් අවධාරණය කර ඇත්තේ පනත බලාත්මක වන දිනයේ සිට මාස 3 ක කාලයක් ඇතුලත ණය හිමියන් විසින් තමන්ට අය විය යුතු ණය ප්‍රමාණයක් නිරවුල් කරගැනීම සඳහා හෝ නිශ්චය කර ගැනීම සඳහා අදාල සමගි මණ්ඩලයට ඉල්ලීමක් කල යුතු බවය. එවැනි ඉල්ලීමක් ණය හිමියන් විසින් කිරීමට අපොහොසත් වී ඇති විටෙක එකී ණය හිමියාට අය යුතු ණය අය කරවා ගැනීම සඳහා හෝ එම ණය සමථ කරවා ගැනීම සඳහා සමගි මණ්ඩලය වෙත ඉල්ලීමක් කල නොහැකි බවටත් ණය සමාලෝචන මණ්ඩලයට ඉල්ලීමක් කල නොහැකි බවටත් කිසිම අධිකරණයක් වෙත ඉල්ලීමක් කල නොහැකි බවටත් පනතේ 3(7) උප වගන්තියෙන් අවධාරණය කර ඇත. ඒ අනුව සමගි මණ්ඩලය වෙත ඉල්ලීමක් කර නොමැති අවස්ථාවක එම ණය අය කරවා ගැනීම සඳහා ණය හිමියෙකුට ඇති නීත්‍යානුකූල මාර්ග වලට බාධා පැමිණවීම ව්‍යවස්ථාදායකයේ අරමුණ වී ඇති බව පෙනේ. සමගි මණ්ඩලය වෙත ඉල්ලීමක් කර නොමැති විටක අදාළ ණය හිමියන්ට යම්කිසි අධිකරණයකින් හෝ ණය සමාලෝචන මණ්ඩලය මගින් සහනයක් ලබා ගැනීමට පැවති අයිතිය අහෝසි කිරීම

ව්‍යවස්ථාදායකයේ අරමුණ වී ඇති බව පෙනේ. සාමාන්‍ය තත්ත්වයක් යටතේ පොරොන්දු සින්නක්කරයක පැවරුම්ලාභියා වන ණය හිමියාට ණය සමාලෝචන මණ්ඩලය වෙත ඉල්ලීමක් කොට එකී පොරොන්දු සින්නක්කරය උකසක් සේ සලකා, එම පොරොන්දු සින්නක්කරය යටතේ තමාට අය විය යුතු මුදල එකී ඔප්පුවේ පැවරුම්කරුගෙන් තමාට අය කර දෙන ලෙසට ඉල්ලීමක් කිරීමට අයිතියක් ඇත. එහෙත්, පනතේ 3(7) බි වන උප වගන්තිය යටතේ එම අයිතිය ද අහෝසි කොට ඇති බව පෙනේ. ඒ අනුව 3(7) ඒ,බී,සී උප වගන්ති වලට පසුව සදහන් කර ඇති පොදු වගන්තිය මගින් ව්‍යවස්ථාදායක විසින් අදහස් කර ඇත්තේ මෙවැනි පොරොන්දු සින්නක්කරයක පැවරුම් ලාභියෙකුට තමන්ට අය විය යුතු ණය මුදල අය කරවා ගැනීම සදහා ණය සමාලෝචනය මණ්ඩලය වෙතට යාමට ඇති අයිතිය අහෝසි කිරීමටය යන නිගමනයට කිසිසේත් එළඹිය නොහැකිය. මන්ද, 3(7) බි උපවගන්තිය මගින් එම අයිතිය අහෝසි කර ඇති බැවිනි. ඒ අනුව ඒ,බී,සී උපවගන්ති තුනට පසුව ඇති පොදු වගන්තිය මගින් ව්‍යවස්ථාදායක විසින් අරමුණු කොට ඇත්තේ ඔප්පුවේ අඩංගු කොන්දේසිය නොහොත් ණය ගනුදෙනුව පමණක් අහෝසි වී, පොරොන්දු සින්නක්කරය සම්පූර්ණ පැවරීමක් බවට පරිවර්ථනය වන්නේය යන කරුණ බවත් කිසිසේත් පිළිගත නොහැකිය. මන්ද මෙම වගන්තියට එවැනි අර්ථ නිරූපනයක් ලබා දුනහොත් එකී පොරොන්දු සින්නක්කරය මත තමාට අය විය යුතු ණය අඩු කරවා ගැනීමට ණය හිමියාට ඇති අයිතිය පමණක් නොව, අදාළ කාලය තුල ණය මුදල ගෙවා පොරොන්දු සින්නක්කරයට අදාල දේපල ආපසු තමා වෙත පවරා ගැනීමට පැවරුම් කාර ණයකරුට ඇති අයිතියද අහෝසි වී යන බවද පෙනේ. ව්‍යවස්ථාදායක මගින් ණයකරුවෙකු වෙත එවැනි බාධයක් පැනවීමට අදහස් කර ඇත්තේ යයි කිසිසේත් නිගමනය කල නොහැකිය. මන්ද, එය මෙම පනතේ අරමුණට හාත්පසින්ම පටහැනි වන බැවිනි. “

I do not see any error in those findings of the learned District Judge reached upon considering the object of the Legislature when the S O D Law No.27 of 1975 was enacted. Also, it must be noted that the learned trial Judge has applied the law by looking at the ordinary and natural meaning of the words contained in Section 3 of the S O D Law when he decided that the deed P4 has no force or effect before the law. Considering the authorities referred to above, I also inclined to have the statutory provisions implemented on its plain meaning without having an alternative construction being given thereto, irrespective of the consequences of losing the rights of the appellant. In the circumstances, I am not inclined to accept the contention advanced by the learned President's Counsel relying upon the consequences such as losing the right to recover the money advanced by the creditor as well as the conditional transfer executed in that connection becoming invalid.

Learned President's Counsel for the appellant also has advanced an argument that if those provisions are applied to determine the issue in this case it would lead to have given retrospective effect to the provisions of the S O D Law. Hence, I will now look at the facts of this case to ascertain whether the circumstances of this case would lead to have any retrospective effect of the law in the event the provisions of the S O D Law are applied in this instance.

The deed in question namely the conditional transfer marked P4 had been executed on the 02nd March 1974. The S O D Law came into operation with effect from 01st January 1976 pursuant to the publication of the Gazette

bearing No. 196/5 dated 29.12.1975. The date given for the transferor who is the debtor in this instance, to comply with the condition contained in the deed P4 by paying the money back to the creditor, fell on 02nd March 1976. The debtor has neither returned the monies due to the creditor by the date the law came into operation nor has the creditor made an application to settle the debt in terms of Section 3(1) of the S O D Law. Therefore, it is clear that the creditor who is the transferee to the deed P4 remained a creditor when the S O D Law in operation.

At this stage it is important to refer to Section 3(1) of the S O D Law. It reads thus:

> *"the money is due on a debt, incurred or outstanding in whole or part prior to the appointed date shall, within three months of such date making an application ....".*

The above Section clearly shows that it is the duty of the creditor to make an application to the Conciliation Board when there is money outstanding at the time the law came into operation. The facts mentioned above show that the date given for the debtor to re-pay the money due to the creditor extends beyond the date of operation of the law. Therefore, it is clear that the date on which the creditor was to recover the money due on the debt, fell after the date, the law came into operation.

Accordingly, the duty of the transferee of the deed marked P4, he being the creditor, to make an application to the Conciliation Board of the respective area within 3 months from the date of operation of the law, existed even after the law came into operation though the debt was granted before the law became effective. Failure to make such an application by the appellant in this instance would therefore become a violation of the said duty, existed during the operative period of the S O D law. Accordingly, I am not inclined to agree with the contention of the learned President's Counsel for the appellant as to his argument, advanced on the basis of retrospective effect of this particular Law.

For the aforesaid reasons, I do not wish to decide that the deed bearing No.11682 marked P4 is a valid despite the provisions contained in the S O D Law are in force. In the circumstances, I am not inclined to interfere with the findings of the learned District Judge. Accordingly, I decide that there is no merit in this appeal.

For the aforesaid reasons, this appeal is dismissed with costs fixed at Rs.75,000/-.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL