

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

Yashodha Holdings (Pvt.) Limited  
No. 455, Galle Road,  
Colombo 3.

**PETITIONER**

C.A 1268/1998 (Writ)

Vs.

People's Bank  
No. 75,  
Sir Chittampalam A. Gardiner Mawatha,  
Colombo 2.

**RESPONDENT**

**BEFORE:** Anil Gooneratne J. &  
Deepali Wijesundera J.

**COUNSEL:** Faiz Mustapha P.C., for the Petitioner

S. A. Parathalingam P.C., with Kushan de Alwis P.C., &  
D. Abeysena for the Respondents

**ARGUED ON:** 17.7.2013

**DECIDED ON:** 03.09.2013

**GOONERATNE J.**

The learned President's Counsel Mr. Mustapha for Petitioner supported motion dated 19.5.2011, on 17.7.2013 and submitted to court as referred to in the said motion that the Petitioner Company had deposited a total of Rs. 16 million with the Respondent Bank as in Journal Entries marked X1 and X2. It was the position as contained in the said motion that the said sum of Rs. 16 million was deposited as security so that the Bank would not proceed with the public auction of the properties referred to in the resolution of 10.7.1997. In the 3<sup>rd</sup> paragraph of the said motion it is stated that the Bank has taken steps to proceed with the auction in terms of parate execution dated 10.7.1997.

It is the position of the Petitioner Company as submitted by learned President's Counsel, that the People's Bank is obliged to refund the said sum of Rs. 16 million to the Petitioner Company. Annexed to the motion of 19.5.2011 are the journal entries of the above case marked X1 & X2 dated 10.12.1998 & 28.1.1999 respectively. In the same motion it is stated that the Petitioner has filed C.A. Application 339/2011 alleged to be connected to the subject matter of this

application. Ultimately it is pleaded that the order be made by this court to refund the said sum with interest and to take up this application along with C.A 339/2011.

Learned President's Counsel Mr. Parathalingam for the People's Bank objected to the said motion and resisted any kind of move on the part of the Petitioner Company to obtain an order from this court for any refund of monies as pleaded.

The motion at X1 (Journal Entry 10.12.1998) clearly state that the Petitioner Company has deposited a sum of Rs. 7 million in respect of the loan, and another Rs. 250,000/- in respect of charges relating to the sale. There is also an undertaking given by the Petitioner Company to make payment in a sum of Rs. 5 million on or before 10.1.1999. X2 (Journal Entry 28.1.99) merely states Petitioner Company would deposit a further sum of Rs. 4 million on or before 10.3.1999.

This court observes that even if credit is given to the amounts reflected in X1 & X2 it does not bring the case of the Petitioner Company anywhere near to Rs. 16 million. The statement as regards paying Rs. 5 million (X1) and Rs. 4 million in (X2) are mere statements without a firm undertaking to pay the loan. X1 & X2 only indicates that payments have been made in a sum of

Rs. 7 million only in satisfaction of the loans obtained and nothing about payment being made for security purposes. As such X1/X2 does not in any way support the Petitioner Company's contention of being entitled to a refund in the sum pleaded in motion dated 19.5.2011.

There is also a motion of 31.7.2011 filed by the Petitioner Company which more or less provide details which do not support the case of the Petitioner. In fact same gives the impression to this court that the Petitioner Company had been a habitual defaulter of loans to the People's Bank. The judgment at X1 – SC 11/2010, provides very many details of default.

It would be in the best interest of all parties that I refer to certain excerpts from the Supreme Court Judgment, (11/2010) at least to understand the question that a defaulter could not be permitted to re-agitate the matter over and over again and make frivolous unmeritorious Application to a court of law, more particularly to invite confusion and cloud the main issue of default.

*In the petition submitted to the Court of Appeal in the Application No. 1268/98, the Petitioner-Respondent has clearly admitted that facilities were granted to the company by the 1<sup>st</sup> Respondent-Appellant and that the property more fully described in the mortgaged bonds bearing Nos. 3185, 3186, 3567 and 3568 which form the subject matter of the Parate Resolution – were mortgaged to the 1<sup>st</sup>*

*Respondent-Appellant and specifically states that the 'mortgage bonds were executed' in respect of facilities obtained by the Petitioner-Respondent. Significantly this Application did not allude to the Bonds being 'fraudulent and illegal', but instead at paragraph 9, explicitly conceded that "the property more fully described in the schedule hereto was mortgaged to the 1<sup>st</sup> Respondent-Appellant", the annexed affidavits dated 17<sup>th</sup> March 2008, was signed by the Petitioner-Respondent in the present case as the Chairman and Managing Director of the Company.*

*Therefore, with regard to the very same Parate Resolution the Petitioner Respondent and has taken up a position which wholly contradicts its previous position taken in the case bearing No. 1268/98, a case that finally ruled on the Resolution. ....*

*Having considered the arguments raised by both parties, it is abundantly clear that the Petitioner-Respondent in seeking to quash the Parate Resolution dated 10<sup>th</sup> July 1997 by way of Writ Application No. 188/09 has taken up a wholly new position which contradicts the original position taken up in the previous Writ Application filed on the same subject matter bearing No. 1268/98. Close scrutiny of the arguments reveal clearly that the Petitioner-Respondent has pleaded contradictory and mutually inconsistent facts in order to subvert the sale of properties scheduled for 10<sup>th</sup> July 2010 by the Respondent-Appellant.*

*The main issue in this case which was the validity of the Parate Resolution dated 10<sup>th</sup> July 2010 was raised in the Writ Application 1268/98 and the Court of Appeal*

*by its decision dated 29<sup>th</sup> February 2008 held the Resolution was valid and refused a Writ of Certiorari to quash the said Resolution. The Supreme Court on the 3<sup>d</sup> December 2008 denied leave to appeal against the judgment of the Court of Appeal. Therefore the Resolution dated 10<sup>th</sup> July 1997 has been determined conclusively to be valid and executable by the decision of this Court on 3<sup>d</sup> December 2008. This is final and conclusive and cannot be reviewed and/or rescinded by any other Court.*

*It is clear that the present Writ Application by the Petitioner-Respondent is a deliberate and calculated attempt to prevent the Respondent-Appellant from proceeding with the auction sale and to circumvent and pervert the effect of the decision of the Court of Appeal and this Court in the said Writ Application No. 1268/98, affirm by this Court.*

*I find that this argument by the Petitioner-Respondent is without merit. The learned Judges of the Court of Appeal have found specifically in their decision dated 29<sup>th</sup> February 2008 in CA Writ Application 1268/98 that the Petitioner-Respondent – Mr. Yasasiri Kasturiarachchi, cannot be considered as a third party as against the Company – Yashodha Holdings. The effect of this decision is that the Petitioner-Respondent and the Company are considered to be one and the same entity for the purpose of the present Writ Application No: 188/09*

*I find that the judgment of this Court in SC (SPL) LA 60/2008 (C.A. Appl. 1268/98) acts as a complete bar to a proceeding by the same party which once again seeks to question the validity of Parate Resolution dated 10<sup>th</sup> July 1997.*

*The decision of the Supreme Court is binding on all lower Courts. For modern legal systems, judicial precedents are relevant information for anyone seeking to find law. Furthermore, precedent rules have emerged in accordance with which the "ratio decidendi" of a Superior Court must be applied by Courts lower in a judicial hierarchy. The decision of the Supreme Court has the distinct advantage of being final on the question of the Resolution passed by the 1<sup>st</sup> Respondent-Appellant. I further hold that the Respondent-Appellant, in light of the judgment of this Court in SC (SPL) LA 60/08, the later Application in CA Writ 188/09 cannot also succeed in view of the principle of 'collateral estoppel', whereby a party is barred from re-litigating an issue already finally determined against such party in an earlier decision.*

In all the above circumstances of this application to this court we are not inclined to grant any relief to the Petitioner. There is no merit in this application, seeking a refund of certain sum of money.

Motion/Application rejected and dismissed with costs.

JUDGE OF THE COURT OF APPEAL

Deepali Wijesundera J.

I agree.

JUDGE OF THE COURT OF APPEAL