

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

CA Writ 345/14

Chamila Dilanthi Ranasinghe
No:29,
Jambugasmulla Mw.,
Nugegoda.

Petitioner

Vs.

The People's Bank
No:75,
Sri Chittampalam A Gardiner Avenue,
Colombo 02.

And 12 others

Respondents

C.A. 345/14 - Writs of Certiorari and Prohibition

Before : Vijith K. Malalgoda, P.C.J. (P/CA) &

A.H.M.D. Nawaz,J.

Counsel : Faiz Musthapha,P.C. with Senani Dayaratne for the

Petitioner

Palitha Kumarasinghe, P.C. with Mavith de Mel for the

Respondent

Argued &

Decided on : 16.10.2014

A.H.M.D. Nawaz,J.

Extensive submissions have been made by both counsel for the petitioner and the 1st Respondent bank.

The petitioner seeks the reliefs claimed at subparagraphs 42 (a) and (b) as set out in the Petition and the consequent prayer is set out at b), c), d), and f) of the Petition. By way of this application for writs of Certiorari and

the Petitioner seeks to have the mortgage bond bearing No. 293 dated 10.03.2008 invalidated on the ground that the Petitioner had not executed the said mortgage bond nor did she authorize the 12th Respondent to execute the same. Developing this argument further, the counsel for the Petitioner submits that the resolution marked as P17 is consequently void and in the circumstances a writ of Certiorari is invoked to have the said resolution quashed. The mortgage bond which is attached to the petition is dated 10.03.2008 and up to the point of making this application before this Court, this mortgage bond has not been invalidated by any Court of competent jurisdiction. This mortgage bond bears the signature of the 12th Respondent as the agent of the petitioner and the Petitioner alleges that she did not authorize him to sign this mortgage bond as far back as 10.03.2008.

This Court has to observe that this Court is not vested with jurisdiction in terms of Article 140 of the Constitution to invalidate or declare null and void the mortgage bond which is marked P18. In *Ranasinghe v De Silva* 78 N.L.R. 500 there is authority for the proposition that a nullity action for invalidation of a deed lies in a civil court within three years from the date of accrual of the cause of action.

In the circumstances, this Court cannot accept the contention advanced by the counsel for the Petitioner that a Court exercising writ jurisdiction possesses jurisdiction to invalidate mortgage bonds. Accordingly, the resolution marked P17 which is sought to be impugned on the basis of the invalidity of the mortgage bond cannot be assailed nor can it be argued that the resolution marked P17 can be quashed for reasons advanced by the petitioner in her Petition

In the circumstances we are of the view that the main relief claimed at (b) and (c) of the prayer cannot be granted. We are also fortified in this view in view of other factors that militate against the grant of discretionary reliefs sought. Despite the passage of the resolution by the bank as far back as 2010, the Petitioner has not taken any steps to vindicate her rights if at all it was within her rights to move for a writ of Certiorari albeit in a timely manner and we observe that this Court has dismissed a previous application for a writ on 14.03.2014 (C.A. Writ Application No. 69/2014) on the ground that the bank resolution had not been attached to the Petition. We observe that though a copy of a resolution bearing the date 27th August 2010. has now been annexed to this application, the instant application for reliefs has been instituted only on 14th October 2014.

This Court is guided by authorities which inhibit the grant of discretionary relief on the basis of laches. We bear in mind the jurisprudence on delay encapsulated by Saleem Marsoof J in ***Dhahanayake and Others v Sri Lanka Insurance Corporation Ltd*** (2005) 1 Sri.LR 67. In addition to this bar, we are also of the view that since the main relief sought in this Petition namely a writ of certiorari quashing the Bank resolution based on the alleged nullity of the mortgage bond, cannot be granted by this Court, the interim relief sought namely an order of restraint on the Respondents from transferring/auctioning the said property cannot be granted either in as much as the mortgage bond gives validity to parate execution.

In these circumstances, we are disinclined to issue notice and dismiss the petition.

JUDGE OF THE COURT OF APPEAL

Vijith K. Malalgoda, P.C.J. (P/CA)

I agree

PRESIDENT OF THE COURT OF APPEAL