

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

**CA Writ No: 293/2015**

Handun Harsha Prabath De Silva  
43, Katana Road,  
Thimbirigaskatuwa , Negombo .

**Petitioner**

**Vs.**

Seylan Bank PLC  
90, Galle Road,  
Colombo 3.

**Respondent**

**C.A. Writ Application No: 293/2015**

**BEFORE** : Vijith K. Malalgoda, PC. , J. (P/CA) &  
H.C.J. Madawala, J.

**COUNSEL** : Palitha Kumarasinghe PC. with Priyantha  
Alagiyawanna for the Petitioner.

Faiz Musthapha PC. for the Respondents.

**SUPPORTED ON** : 14.08.2015

**Vijith K. Malalgoda, PC. , J. (P/CA)**

Heard counsel in support of this application as well as counsel for the Respondents.

The Petitioner has come before this Court against a order for Parate Execution under the Recovery of Loans by Banks (Special Provisions) Act No. 04/1990. The position of the Petitioner is that the Supreme Court in the case of Ramachandran Vs. Hatton National Bank had decided that the 3<sup>rd</sup> party borrower should not be penalized. However, we found that there are several decisions by the Supreme Court and also by the divisional Bench of this Court against and for the above decision. By looking at those decisions we found that each case had decided on the facts and circumstances of those cases. In the present case it is placed before this case that the Petitioner who is the

Managing Director of Vehicle Lanka Pvt. Ltd. is the principle shareholder of the said company. The Directors of the said company are the petitioner and his wife. Respondent in their limited objections have submitted 28 documents, correspondence between the petitioner and the bank where the Petitioner had borrowed money on several instance for his business. It is understood on the above correspondence that the petitioner being the principle shareholder was involved in borrowing money and therefore we see that the circumstance of this case defers to the circumstances of the facts in Ramachandran Vs. H.N.B. which was decided in year 2006.

In these circumstances, the Court is of the view that this is not a fit and proper case to issue notices on the Respondent and therefore we refuse notices in this application.

Registrar is directed to issue a certified copy of today's proceedings to both parties on payment of usual charges.

PRESIDENT OF THE COURT OF APPEAL

H.C.J. Madawala,J.

I agree

CN/-

JUDGE OF THE COURT OF APPEAL