

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

In the matter of an Application for a writ of
certiorari under Article 154P (4) of the
Constitution.

Case No: PHC/154/2008

Vijithalatha Jayasena,
Dewlegama,
Adurapothe.

Petitioner – Appellant

-Vs-

1. Kegalle Multipurpose,
Cooperative Society,
Kegalle.
2. Cooperative Development,
Commissioner – Sabaragamuwa,
Province, Ratnapura.
3. H.V.L.T. Sudusinghe,
4. K.A. Rohitha Kaluarchchi,
5. P.H. Rzanjith Rupasinghe,
6. H.R.V. Jopthipala,

Respondents – Respondents

Before : W.M.M.Malinie Gunarathne, J

: P.R.Walgama, J

**Counsel : Sunil Abeyrathne with D. Manamperi for the
Petitioner – Appellant.**

**: Mahinde Nanayakkara for the 1st Respondent –
Respondent.**

**: M.D. Wikramanayake for the 2nd Respondent –
Respondent on the Instruction of SSA Ms.
Shanmuganadan.**

Argued on : 14.09.2015

Decided on: 16.10.2015

CASE-NO- CA (PHC) - 154/2008 - JUDGMENT- 16/10/2015

P.R.Walgama, J

The Petitioner- Appellant (herein after called and referred to as the Appellant) lodged this appeal, seeking inter alia; to have the order of the High Court Judge, dated 08.09..2008, quashed.

The Appellant by her application to the Provincial High Court of Kegalle, moved court for an issuance of a mandate in the nature of a Writ of Certiorari to quash the orders of the 2nd

Respondent as stated in the documents marked P13 and P14,
AND

to quash the decisions of the 3rd Respondent, marked as P6 and P7.

After the inquiry in to the above application the Learned High Court Judge, dismissed the Petitioner Appellant's application accordingly.

Being aggrieved by the said impugned order the Petitioner – Appellant appealed to this Court, and sought an order vacating the said order.

The issue in appeal is crystallized thus;

The Appellant obtained financial facility in a sum of Rs. 35,000,00/ from the 1st Respondent Seema Sahitha Kegalle Samupakara Nagara Bankuwa, and had secured the said facility by mortgaging the property belonging to the petitioner and the 4th Respondent by deed bearing No. 6546 which is marked as P1. It is the position of the Appellant that she has repaid a sum of Rs. 22,000,000/, nevertheless the 1st Respondent has demanded a sum of Rs. 34,75,972.09, but the Appellant has refused to comply with the said demand.

As a result of the failure on the part of the Appellant to comply with the said demand, the 1st Respondent, referred the matter to the Commissioner of Corporative Development/ Registrar of the Sabaragamuva Province.

Mean time the 3rd Respondent has dispatched summons to the Appellant to appear at 1st Respondent's office on 26.04.2003, and on which date the Appellant and 5th and 6th Respondents(who stood as sureties) had appeared and placed their signatures to some empty forms. Subsequently 3rd Respondent, the Arbitrator has recorded his observation and arrived at the conclusion that a sum of Rs. 41,20,176.71 is due from the Appellant and the 4th and 6th Respondents accordingly.

It is contended by the Appellant the said Arbitrator was not holding the above said post and was not entitled to hold an inquiry of this nature.

Thereafter the Appellant has filed a writ application seeking to set aside the orders marked P6 and P7, But at that stage the 1st Respondent agreed to afford an opportunity to appeal against the said orders to the 2nd Respondent, hence the Appellant appealed to the 2nd Respondent. The 2nd Respondent by his letter dated 03.05.2005, marked as P11 had requested her to send certain particulars, and the Appellant has responded by letter marked as P12, to the 2nd Respondent.

It is alleged by the Appellant that the 2nd Respondent without holding an inquiry, arrived at the conclusion that the Appellant has not proved beyond reasonable doubt that prejudice has been caused to her by the said impugned orders.

On the said ground the 2nd Respondent has dismissed the Appeal.

In the said backdrop the Appellant alleged that the 2nd Respondent has not observed the rules of natural justice in arriving at said decision.

The counsel for the 1st Respondent has submitted that, although the Appellant is challenging the appointment of the arbitrator, the Appellant has participated in the Arbitration proceedings without objecting to the said appointment of the Arbitrator. Further it is stated that the Appellant has not challenged the said appointment in the proceedings before the Arbitrator namely the Commissioner of Cooperatives and secondly before the High Court of Kegall.

Therefore in the above setting this court see no merit in the above argument of the Appellant.

It is also salient to note that the Appellant, by document marked P10, has admitted the fact that she has paid only a sum of Rs. 28,3881.38 and a sum of Rs. 12,39483.38 from the entire loan. In addition, the Appellant has agreed to pay a sum of Rs. 38,54805.45 by the letter sent to the 1st Respondent which is marked as 1V4. Further by the Letter marked 1V6, the Appellant has moved for 1 month to pay the balance money to the 1st Respondent Bank.

Further more in the appeal against the Arbitral award the 2nd Respondent has reduced the interest rate from 22% to 16%, and the Respondents had moved Court to give effect to the Arbitral award.

The Learned High Court in taking in to consideration the above facts was of the view that the 2nd party to the Agreement has undertaken to pay a sum of Rs.46,45194.97 on behalf of the Appellant.

Therefore this Court is of the view that the Learned High Court Judge has arrived at the said determination in the correct perspective, which does not warrant to vary or set aside by this Court.

Hence I dismissed the appeal subject to a costs of Rs.10,000/.

JUDGE OF THE COURT OF APPEAL

W.M.M.Malinie Gunarathne, J

I agree,

JUDGE OF THE COURT OF APPEAL