

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

In the matter of an application for Leave to  
appeal from the order of the learned District  
Judge of Kuliyaipitiya dated 16<sup>th</sup> June 2005.

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Warnakulasuriya Ponnakuttige  
Alex Milroy Fernando  
Of " Royal Traders", Bowatte,  
Bingiriya.

**Plaintiff**

**C.A. L.A 257/2005**

**D.C. Kuliyaipitiya Case No. 12557/M**

**Vs**

Bank of Ceylon Head Office  
No. 4, Bank of Ceylon Mawatha,  
Colombo 01

**Defendant**

**AND**

Bank of Ceylon Head Office  
No. 4, Bank of Ceylon Mawatha,  
Colombo 01

**Defendant - Petitioner**

**Vs**

Warnakulasuriya Ponnakuttige  
Alex Milroy Fernando  
Of " Royal Traders", Bowatte,  
Bingiriya.

**Plaintiff - Respondent**

**BEFORE**

: Deepali Wijesundera J.

M.M.A. Gaffoor J.

**COUNSEL**

: Vikum De Abrew DSG for the

Defendant – Petitioner

Murshid Maharooof with

Ms. Ruchira Gunasekera for the

Plaintiff – Respondent.

**ARGUED ON**

: 03<sup>rd</sup> November, 2015

**DECIDED ON**

: 18<sup>th</sup> March, 2016

**Deepali Wijesundera J.**

The defendant petitioner has filed this application against the order of the District Judge of Kuliypitiya dated 16/06/2005 where the District Judge has allowed the application for interim injunction sought by the plaintiff respondent to prevent the defendant petitioner from proceeding with the auction of the plaintiff respondent's property.

The petitioner has filed the instant application challenging the granting of the injunction against the petitioner.

The learned counsel for the petitioner argued that the plaintiff respondent have named new parties as respondents without adding them as defendants in the case with permission of court. The petitioner stated citing the judgment in **Felix Dias Bandaranayake vs Ceylon Film Corporation 1981 2 SLR 287** that an injunction can be granted only against a defendant to the main action and not otherwise. In the instant case while the main action was pending the plaintiff has filed a separate petition praying for interim relief against second and third respondents whom have not been added as parties to the main case with leave of court. The petitioner stated that under *sec. 14 of the Civil Procedure Code* addition of parties are permitted in terms of *sec. 18 of the Civil Procedure Code* and no person can be added without following this procedure.

The petitioner stated that accepting and granting relief against the petitioner and other respondents to the partition is *void abinitio* and nothing flows from that petition.

The petitioner further submitted that the District Court has no jurisdiction to grant injunctions against the resolution passed by the Bank, under *sec. 19 of the Bank of Ceylon Ordinance as amended by Act No. 10 of 1974 and Act No. 54 of 2000*. The petitioner stated the

afore stated *Sec. 19 read with Sec. 22 of the Interpretation Ordinance* shows that the District Court has no jurisdiction to entertain such an application. He cited the judgments in **BOC vs Leela De Silva 2003 3 SLR 302, People Bank vs Hewawasam 2000 2 SLR 29, Fernando vs Peoples Bank CA No. 1100/2004 CA Mts. 03/07/2007.**

The counsel for the petitioner also submitted that the District Court has failed to consider the sequential tests that should be followed before granting interim injunctions and that as a general rule the case as a whole should be taken into account and the relative strength of the plaintiff's case.

The respondent's learned counsel submitted that by way of an amendment *no. 1 of 2011 to the said Act No. 4 of 1990 Sec. 5A* has been inserted therefore no action can be taken in terms of recovery of loans by Bank where the principle amount borrowed as less than five million rupees. He said the Board resolution was passed before the said amendment. Therefore the respondent said even though the resolution was passed the petitioner can not sell the property by public auction because the said amendment is now in operation. He further stated that the said amendment *No. 1 of 2011 and 19 of 2011* clearly prevents the

petitioner from taking further steps in terms of *Sec. 4 or 5* of the said Act.

The petitioner has filed the instant application praying for leave to appeal from the order of District Court dated 16/06/2005 and to set aside the said order and to refuse the said application of the plaintiff respondent. The argument of the respondent was based on the amendment brought in after this case was filed and the said interim injunction was granted. Therefore his argument fails at the beginning it-self this amendment has come into operation long after the said case was filed and the order dated 16/06/2005 was made.

The submissions of the respondent are that the petitioner is not permitted to sell the property as per resolution passed by the petitioner in view of the amended *Act in 2011*. The issue before this court is whether the interim injunction granted by order dated 16/06/2005 is valid in law. The respondent has made submissions on a future event that might or might not take place.

The petitioner submitted that a Board Resolution can not be challenged in the District Court. *Sec. 19 of the Bank of Ceylon Ordinance* as amended by **Act No. 10 of 1974** and **Act No. 54 of 2000** states thus;

***“Subject to the provisions of section 20 the board may by resolution to be recorded in writing authorize any person specified in the resolution to sell by public auction any movable or immovable of property mortgaged to the bank as security for any loan, overdraft, advance or other accommodation in respect of which default has been made in order to recover the whole of the unpaid portion of such loan, overdraft, advance or other accommodation, and the interest due thereon up to the date of the sale, together with the moneys and costs recoverable under section 26 and thereafter it shall not be competent for the borrower or any person claiming through or under any disposition whatsoever of the right, title or interest of the borrower to and in the property made or registered subsequent to the date of the mortgage to the bank, in any court to move to invalidate the said resolution or the subsequent sale for any cause whatsoever, and no court shall entertain any such application”.***

Cases should be decided and orders should be reviewed according to the laws at the time of filing of actions the laws are applicable prospectively unless the law itself has specifically states such laws shall apply retrospectively as stated by the petitioner in **De Silva**

**vs Weerasinghe 78/79 NLR 334, Talagune vs De Livera 1997 1 SLR 253, and also BOC vs Leela De Silva 2003 3 SLR 304** it was decided that no statute shall be construed to have a retrospective operation unless such a construction appears in the Act.

For the afore stated reasons I decide to set aside the order dated 16/06/2005 marked **LA 10** and grant relief as prayed for in the prayer to the petition. The application of the petitioner is allowed.

**JUDGE OF THE COURT OF APPEAL**

**M.M.A. Gaffoor J.**

**I agree.**

**JUDGE OF THE COURT OF APPEAL**