

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

**Writ Application 35/2017**

1. Perpetual Treasuries (Private) Limited  
Level 03, Prince Alfred Tower,  
No:10, Alfred House Gardens, Colombo 03.
2. Perpetual Asset Management (Private) Limited  
Level 03, Prince Alfred Tower,  
No:10, Alfred House Gardens, Colombo 03.
3. Perpetual Capital Holdings (Private) Limited  
Level 03, Prince Alfred Tower,  
No:10, Alfred House Gardens, Colombo 03.

**Petitioners**

**Vs.**

1. Central Bank of Sri Lanka  
P.O. Box 590,  
No.30, Janadhipathi Mawatha,  
Colombo 01.
2. Monetary Board of Central Bank of Sri Lanka  
P.O. Box 590,  
No.30, Janadhipathi Mawatha,  
Colombo 01.
3. Dr. Indrajit Coomaraswamy,  
Governor, Central Bank of Sri Lanka,  
P.O. Box 590,  
No.30, Janadhipathi Mawatha,  
Colombo 01.
4. Dr. R.H.S. Samaratunga,  
Official Member, Monetary Board,  
Central Bank of Sri Lanka,  
P.O. Box 590,  
No.30, Janadhipathi Mawatha,  
Colombo 01.

**Respondents**

C.A. (Writ) Application No. 35/2017

Before : P.R.Walgama, J (P/CA) and  
S. Thurairaja P.C. J.

Counsel : S.Parathalingam, PC with N. Parathalingam and  
G.G. Arulpragasam for the 1<sup>st</sup> Petitioner.

Nihal Fernando, PC with M. Perera for the 2<sup>nd</sup> and 3<sup>rd</sup>  
Petitioners.

Milinda Gunathilaka, DSG for the 1<sup>st</sup> to 10<sup>th</sup>, 12<sup>th</sup> and  
13<sup>th</sup> Respondents.

Faisz Musthapha PC with Faisza Marker for the 11<sup>th</sup>  
Respondent.

Decided on : 01.06.2017.

Counsel for the petitioner submits as follows:

It is respectfully submitted that consequent to the institution of this case and on or about the 30<sup>th</sup> of March 2017 the 2<sup>nd</sup> Respondent has issued a direction. In view of the aforesaid, it has been decided to institute a fresh application. Therefore, the Petitioners respectfully move to withdraw this case.

Counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners associates with the submissions of the Counsel for the 1<sup>st</sup> Petitioner.

Deputy Solicitor General Mr. Milinda Gunathilaka objecting to the application for withdrawal and submits as follows:

The learned President's Counsel appearing on behalf of the 1<sup>st</sup> Petitioner stated to your Ladyship and Lordship that a new direction has been issued. There is no document before this Court to establish that

position. My instructions are that the existing directions were merely extended for another period of 3 months. There was no new direction issued. The party coming before this Court as the 1<sup>st</sup> Petitioner namely Perpetual Treasuries (Pvt.) Limited does not exist. The documents filed by the 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners are companies that are purportedly before this Court as the holding company of the 1<sup>st</sup> Petitioner, Perpetual Treasuries (Pvt.) Limited. Given that, there is no entity in existence name Perpetual Treasuries (Pvt.) Limited, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have no standing before your Ladyship's and Lordship's Court. This objection was raised on behalf of the Respondents during the course of submissions when this matter was being supported for notice. In the absence of a legal entity before your lordship's Court, I refer in particular to the 1<sup>st</sup> Petitioner, learned President's Counsel appearing for the 1<sup>st</sup> Petitioner has no right to make any application on behalf of that entity. In these circumstances, I respectfully move that the only course of action open to Court is to dismiss this application. There is no question of withdrawing. It may be dismissed and I will reserve my right to ask for costs. I say this, because as was mentioned the Petitioners have now filed a fundamental rights application on the same matter. This is multiplicity of litigation on behalf of a company which purportedly came to Court on the basis that unfair allegations were made against in the press and that the Directions were based on such allegations. Having made such a serious allegation against the Monetary Board of Sri Lanka the Petitioners cannot be permitted to merely withdraw this application. The conduct of the Monetary Board in issuing the Directions was impugned in very strong terms. Clearly those submissions had no basis in law or fact. Accordingly, I respectfully move that the application to withdraw this writ Application 35/2017 be refused and this Writ Application be dismissed with costs.

**S.Thurairaja, PC, J.**

Three Petitioners came before this Court seeking a Writ of Certiorari and restraining orders regarding a Directive issued by the Central Bank marked P6. The said document was dated 7<sup>th</sup> November, 2016 addressed to the Chief Executive Officer, Perpetual Treasuries Limited, Level 03, Prince Alfred Tower, No.10, Alfred House Gardens Colombo 03. The case was listed on 20.02.2017 as an urgent request and on that day it was agreed to serve notice on the Respondents and to support, including the interim relief. The matter was taken up on 03.03.2017. On that day the counsel for the 1<sup>st</sup> Petitioner made submissions in support of his application. The matter was again postponed to be resumed on 08.03.2017. That day the matter was postponed due to the personal grounds of the Counsel for the 11<sup>th</sup> Respondent. Then again it was taken up on 10.03.2017 to be resumed. The counsel for the 1<sup>st</sup> Petitioner continued his submissions and further submissions were fixed on the 21.03.2017 and 22.03.2017. On 21.03.2017 the counsel for the 1<sup>st</sup> Petitioner made submissions and concluded his submissions and for the 2<sup>nd</sup> and the 3<sup>rd</sup> Petitioners submissions were put off for the following day namely 22.03.2017. That day it couldn't be reached and on 24.03.2017 it was taken up for submissions and the Counsel for the 2<sup>nd</sup> and the 3<sup>rd</sup> Petitioners made submissions and moved that he had only little time to prepare and he wants to make submissions on the next date. So time was granted till 30.03.2017. On that day also the counsel made his submissions and moved for time till today to file necessary information and documents before this Court. On perusing all the documents relating to the incorporation filed by the Petitioners, the Court was unable to understand the Company structure of the Petitioners.

Therefore, the Court requested counsels for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners to submit the company structure chart identifying the structure and the establishment of their company. This was asked in the light of the objections raised by the learned Deputy Solicitor General and the Senior President's Counsel who appeared for the 11<sup>th</sup> Respondent. Today, when the matter is mentioned the counsel for the 1<sup>st</sup> Petitioner moves to withdraw the application and made extensive submissions. The 2<sup>nd</sup> and the 3<sup>rd</sup> Petitioners associated with the application of the 1<sup>st</sup> Petitioner and moved to withdraw the petition. The Senior Deputy Solicitor General vehemently objecting to the withdrawal and submits that the petition per se is bad in law. Therefore it should be dismissed in-limine. The President's Counsel appearing for the 11<sup>th</sup> Respondent says that this involved in professional hours of preparation. Therefore he moves substantial cost be awarded for the 11<sup>th</sup> Respondent.

Considering the facts of this case this Court is required to answer the question, namely, the legality of the entity named as the 1<sup>st</sup> Petitioner namely, Perpetual Treasuries (Pvt.) Limited. In the course of the submissions made by the counsel for the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners and it was found that there is a incorporation certificate filed before the Court. According to the incorporation certificate of the 1<sup>st</sup> Petitioner which has been marked as P1B bearing a registration No. PB 88550, on 15.01.2013, the company called Perpetual Treasuries (Pvt.) Limited has changed it's name to Perpetual Treasuries Limited. Perpetual Treasuries (Pvt.) Limited was a Private Limited Liability Company. Perpetual Treasuries Limited is a Public Limited Liability Company. In accordance with the Companies Act, 07 of 2007 the Company is incorporated as Perpetual Treasuries Limited. As per our understanding that, this company is known since then as

Perpetual Treasuries Limited, as per the law. We find that the proxy which was filed on 08.02.2017 bears the name of Perpetual Treasuries (Pvt.) Limited signed by two persons as Directors. No names are mentioned. But the National Identity Card of two people have been mentioned. The 1<sup>st</sup> Director bearing National Identity Card No.5882552398V and the 2<sup>nd</sup> Director bearing a National Identity Card No.723013321V. Both Directors have signed on behalf of Perpetual Treasuries (Pvt.) Limited. The Court finds a rubber stamp on the proxy. The rubber stamp may be a Company seal. It says Perpetual Treasuries Limited bearing a number PB 88550 which corresponds with P1B, the Incorporation Certificate. Regarding the 2<sup>nd</sup> and the 3<sup>rd</sup> Petitioners there are two proxies filed that will be dealt little later.

Now the question, the learned Deputy Solicitor General raises is, that there is no company called Perpetual Treasuries (Pvt.) Limited. Hence the person purportedly appearing before this Court to make an application has no legal existence. Therefore, he moves that the petition be dismissed, as such application is a nullity. Now the next question is about the 2<sup>nd</sup> and the 3<sup>rd</sup> Petitioners. Again the documents are not sufficient for the Court to decide whether they were existing or non existing entities. It is questionable. Submissions of the Counsel for the 2<sup>nd</sup> and the 3<sup>rd</sup> Petitioners does not help the Court to come to a conclusion. The counsel for the Respondents submit that there is no 1<sup>st</sup> petition in existence. Therefore, this case cannot be maintained, taking up an objection, that this cannot be maintained. Therefore it is now a question of maintainability. Considering the papers before us and the judicial hours taken in support of this application and preparing the briefs by the Court, the Court is compelled to make a decision. The President's Counsel for the 1<sup>st</sup> Petitioner submits that

he has filed a petition, therefore he is entitled to withdraw it at any time. The question of substantive issues cannot be gone through or looked into at the preliminary stage. The 2<sup>nd</sup> and the 3<sup>rd</sup> Petitioners also associate themselves with the same submission.

The learned Deputy Solicitor General submits that in this matter, since there is no Petitioner existing in law, the Court cannot entertain an application. Further, hypothetically the counsel for the Respondents submit that if the cost is ordered who is going to pay the cost. Because there is non-existent person is before the Court. The Senior President's Counsel for the 1<sup>st</sup> Petitioner submits that the Attorney on record is a very senior person and with high integrity will take the responsibility of paying the cost. The next questions before the Court are;

1. Can the Court allow the application to be withdrawn at this stage?
2. If the Court decides to impose a cost, is it entitled to do so?

This question appears to be an academic question and there is a practical issue also involved. Commonly there are two types of people come before Court. One is direct, the litigant by himself. The other, person comes through Attorney-at-Law commonly known as instructing Attorney. When a person comes direct the Court takes steps to find out the identity of such person and proceed with the matter. When a person comes through the instructing Attorney the Court place reliance on the Attorney and proceeds with the papers. Court expects the Attorney to check and verify the identity of the person who is before him. It is the professional duty of the Attorney who is an officer of Court. Time and again our Courts confirmed this view. This does not mean that the Attorney cannot appear for all persons. He has a professional right to appear for any person but at his duty to identify and introduce the correct person to the Court. This is applicable to both natural

and justice persons. The lawyer has to satisfy himself before he represents the person in Court.

Considering the objections raised by the learned Deputy Solicitor General, the Court is compelled to come to a decision. The Court at this juncture finds there is no valid answer on behalf of the 1<sup>st</sup> Petitioner who is coming in the name of a Company which had ceased to exist somewhere in 2013. And further confusion is added in the proxy, the name was given as Perpetual Treasuries (Pvt.) Limited and a bearing a company seal of Perpetual Treasuries Limited. The proxy is signed by two unnamed Directors on behalf of Perpetual Treasuries (Pvt.) Limited. The Court anticipates and expects more responsible attendance by the Instructing Attorneys.

Considering all documents available and which were in length discussed in the arguments, the Court decides not to issue notice. The application stands dismissed.

Since the 1<sup>st</sup> Petitioner's existence is not proved by documents and there is an undertaking by the Counsel on record to pay the cost, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners are ordered to pay the cost as below stated. The Court wishes to place it on record that this does not mean, recognizing these persons are in existence. This is only for the purpose of awarding the cost. Respondents are requested to submit the assessment of legal cost including the professional charges to the Court and the cost will be paid accordingly, namely to the Senior Deputy Solicitor General who is appearing for the 1<sup>st</sup> to the 10<sup>th</sup> Respondents and 12<sup>th</sup> and 13<sup>th</sup> Respondents. And a special order is given regarding the Senior President's Counsel who is appearing for the 11<sup>th</sup> Respondent who can submit a separate claim.



Issuance of notice is refused.

JUDGE OF THE COURT OF APPEAL

**P.R.Walgama, J.**

I agree.

PRESIDENT OF THE COURT OF APPEAL

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