

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

In the matter of an Appeal in terms of
Article 138 read with Article 154P of
the Constitution of the Democratic
Socialist Republic of Sri Lanka.

C.A. Case No: **CA (PHC) 95/2013**

H.C. Kegalle Case No: **4456/Writ**

P.A.A.S. Buddadasa,
Arandara Watta,
Welimannathota,
Kegalle.

PETITIONER

Vs.

01. Kegalle Samupakara Nagara
Banku Samithiya,
No.26 & 27,
Main Street,
Kegalle.

02. R.P. Chandrathilaka (Arbitrator)
C/O U.M.A. Samaraweera,
Bangalawatta,
Nilwakka,
Kegalle.

03. Co-operative Development
Commissioner,
Co-operative Development Office,
Sabaragamuwa Provincial
Council,
New town,
Rathnapura.

RESPONDENTS

AND NOW BETWEEN

P.A.A.S. Buddadasa,
Arandara Watta,
Welimannathota,
Kegalle.

PETITIONER-APPELLANT

Vs.

01. Kegalle Samupakara Nagara
Banku Samithiya,
No.26 & 27,
Main Street,
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02. R.P. Chandrathilaka (Arbitrator)
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Commissioner,
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Sabaragamuwa Provincial
Council,
New town,
Rathnapura.

RESPONDENTS-
RESPONDENTS

BEFORE : K. K. Wickremasinghe, J.
Janak De Silva, J.

COUNSEL : The Petitioner-Appellant in person (Written
submission filed by AAL Asiri Warnapura)
AAL Mahinda Nanayakkara with AAL
A.Jayathilaka and AAL Keshani
Karananayake for the 1st Respondent-
Respondent
AAL U.P. Senasinghe for the 2nd and 3rd
Respondents-Respondents

ARGUED ON : 17.05.2018

WRITTEN SUBMISSIONS : The 1st Respondent-Respondent- on
20.06.2018
The Petitioner-Appellant – on 09.07.2018

DECIDED ON : 10.07.2018

K.K. WICKREMASINGHE, J.

The Petitioner-Appellant has filed this appeal seeking to set aside the Judgment of the Learned High Court Judge of Kegalle under case No. 4456/Writ dated 14.05.2013.

Facts of the Case:

The Petitioner-Appellant (hereinafter referred to as the Appellant) had borrowed a sum of Rs. 620,000/- from the 1st Respondent-Respondent (hereinafter referred to as the 1st Respondent) payable at an interest of 22% and on a condition that the Appellant would have to pay an interest of 26% if he defaults in repaying the loan.

Upon the failure of the Appellant to settle the said loan with legal interest, the 1st Respondent had initiated the arbitration proceedings to recover the same. Accordingly the 3rd Respondent-Respondent (hereinafter referred to as the 3rd Respondent) had appointed the 2nd Respondent-Respondent (hereinafter referred to as the 2nd Respondent) as the arbitrator to proceed with the arbitration and on 17.03.2007, the arbitral award was made by the said arbitrator. Being dissatisfied by the said arbitral award, the Appellant had filed an appeal to the Commissioner of Co-operative Development of Sabaragamuwa Province and the Commissioner had made his order of appeal along with reasons.

Thereafter the Appellant had invoked the writ jurisdiction of the Provincial High Court of Sabaragamuwa Province holden in Kegalle under case No. 4456/writ to quash the said decisions. Pronouncing the Judgment dated 14.05.2013, the Learned High Court Judge had dismissed the writ application. Being aggrieved by the said dismissal, the Appellant preferred an appeal in this court.

The Learned Counsel for the Appellant in his written submission has submitted that the 1st Respondent had overcharged the interest from the Appellant in contravention to the provisions of Constitution of the 1st Respondent Co-operative Society.

Sections 5.3.2 and 5.3.3 of the Constitution of the 1st Respondent Society are of vital importance in this regard.

Section 5.3.2 of the said Constitution reads as follows;

“ණයට දීම සඳහා තැන්පත් වශයෙන් හෝ ණය වශයෙන් හෝ ලබාගත් මුදල් යොදාගන්නා විට එවැනි ණයට අයකළ හැකි උපරිම පොලී ප්‍රතිශතය සමිතිය විසින් තැන්පත් සහ ණය වෙනුවෙන් ගෙවියයුතු පොලී ප්‍රතිශතයට වඩා සියයට හතරකට (4%) වැඩිනොවිය යුතුය”

Section 5.3.3 of the said Constitution reads as follows;

“සාමාජිකයන්ට දෙනු ලබන වෙනත් ඕනෑම ණයක් සඳහා අයකළ හැකි පොලිය කාරක සභාවේ උපදෙස් පරිදි මහ සභාව විසින් කලින් කලට නියම කරගත යුතුය.”

We observe that the 1st Respondent had obtained a loan from Sanasa Development Bank Limited at a rate of 18% material to the disputed loan and the said interest of 22% was permitted as per the Constitution of the 1st Respondent Society. It is noteworthy that the Appellant had been a member of the executive committee of the 1st Respondent Society during the time of the said loan transaction and had placed his signature to the minutes of the committee when the same loan was approved (Page 190 of the brief). Therefore it is understood that he could have withdrawn his approval if the interest to be charged was excessive.

The Learned Counsel for the Appellant further submitted that default payment by the Appellant was not preferable for the arbitration but rather, was entitled to institute an action in the District Court.

It is important to consider section 58 of the Corporative Societies Law No. 05 of 1972 (as amended), in order to ascertain whether the said dispute was preferable for arbitration.

Section 58 (2): *The Registrar may, on receipt of a reference under subsection (1)-*

(a) decide the dispute himself, or

(b) refer it for disposal to an arbitrator or arbitrators.

(3) Any party aggrieved by the award of the arbitrator or arbitrators may appeal therefrom to the Registrar within such period and in such manner as may be prescribed by rules.

Accordingly, it is evident that the Registrar was empowered to refer the said dispute to an arbitrator.

The Counsel for the Appellant averred that the 3rd Respondent had disallowed the Appellant to make oral submissions in the appeal of arbitral award. Section 58(4) Corporative Societies Law reads as follows;

No party to any appeal made to the Registrar under subsection (3) shall be entitled, either by himself or by any representative, to appear before and be heard by the Registrar on such appeal.

Therefore, the 3rd Respondent had disallowed parties to make oral submissions according to the aforesaid section. However we observe that both parties were

considered in the appeal proceedings by way of written submissions (Page 152 of the brief).

Further we observe that the Registrar/Commissioner of Co-operative Development had stated reasons for the order of appeal along with calculations in his order dated 09.09.2011 and had reduced the interest from 22% to an interest of 16%.

“...22% බැගින් සඳහන් රු.275339.07ක් වූ පොළිය 16% දක්වා අඩු කර ඉන් රු.75147.02ක් කපා හැරීමට තීරණය කරමි.” (Page 159 of the brief)

In the case of **K.K. Palitha Fernando v. The Registrar General and another** [CA Writ application No. 43/2012], it was stated that,

“The nature of a writ of certiorari and a writ of mandamus is explained in Wade's Administrative Law, Ninth Edition. At page 602 it says "*Certiorari is used to bring up in to the High Court the decision of some inferior tribunal or authority in order that it may be investigated. If the decision does not pass the test, it is quashed - that is to say, it is declared completely invalid, so that no need to respect it...*”

The Learned High Court Judge of Kegalle in the Judgment dated 14.05.2013 has stated that,

“...ඒ අනුව ඇත්ත වශයෙන්ම අභියාචනා තීරණයේදී මෙම පෙත්සම්කරුට හිඟ මුදලට පොලී අනුපාතය දී ඇත්තේ, එකඟ වූ පොලී අනුපාතයට වඩා අඩු පොලී අනුපාතයක් වේ.

ඒ අනුව මෙම තීරණ ප්රදානය සහ ඊට විරුද්ධව ඉදිරිපත් කරන ලද අභියාචනයේදී දී ඇති අභියාචනා තීන්දුවේ සර්වයෝරාථී ඊට ආඥාවක් නිකුත් කිරීමේදී

අධිකරණයක් විසින් සැලකිය යුතු කිසිදු කරුණක් මෙම පෙත්සම්කරුගේ පෙත්සමේ හෝ...සැලකිලිමකින් තහවුරු වන්නේ නැත...

...අභියාචනා තීන්දුවේ බැඳු බැල්මට තීතියට පටහැනි වූ හෝ පක්ෂපාතී වූ හෝ, දෙපාර්ශවයේම කරුණුවලට සවන් නොදීමක් සිදුව ඇති බවට මෙම අධිකරණයට පෙනීමට නැත... (Page 03 & 04 of the Judgment/ page 39 & 40 of the brief)”

Accordingly, we are of the view that the Learned High Court Judge has correctly considered the law and we see no reason to interfere with the Judgment dated 14.05.2013.

Therefore we affirm the Judgment of the Learned High Court Judge of Kegalle.

The Appeal is hereby dismissed without costs.

JUDGE OF THE COURT OF APPEAL

Janak De Silva, J

I agree,

JUDGE OF THE COURT OF APPEAL

Cases referred to:

- 1) K.K. Palitha Fernando v. The Registrar General and another
[CA Writ application No. 43/2012]