

**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 and in terms of Article 140  
of the Constitution of the Democratic  
Socialist Republic of Sri Lanka

**CA (Writ) Application No. 87/2018**

Hettiarachchige Sujeewa Meena Kumari,  
No. 97/72A, Jakotuwa , Welewatte,  
Wellampitiya.

**PETITIONER**

Vs.

- 1) Debt Conciliation Board,  
Debt Conciliation Board Department,  
No. 35A, Dr. N.M. Perera Mawatha,  
Colombo 8 or  
No. 428/11, Weera Densil  
Kobbekaduwa Mawatha, Battaramulla.
- 2) Malani Abeywardene  
(Chairperson)
- 3) T.D.K. Pujitha Thilakewardene (Member).

- 4) K.P. Banduala (Member).
- 5) K.M. Karunaratne (Member).
- 6) K.H. Premadasa (Member).

Members of the Debt Conciliation Board

All of Debt Conciliation Board  
Department,  
No. 35A, Dr. N.M. Perera Mawatha  
Colombo 8.

- 7) Hettiarachchilage Nimal Chandrasiri  
No. 127, Wennawatte, Wellampitiya.

#### **RESPONDENTS**

**Before:** P. Padman Surasena, J/ President of the Court of Appeal  
Arjuna Obeyesekere, J

**Counsel:** Ranjan Suwandarathne, P.C. with Anil Rajakaruna for the Petitioner

**Supported on:** 2<sup>nd</sup> July 2018

**Decided on:** 5<sup>th</sup> October 2018

**Arjuna Obeyesekere, J**

The Petitioner has filed this application seeking a Writ of Certiorari to quash the order made by the Debt Conciliation Board on 11<sup>th</sup> September 2017<sup>1</sup>, holding that Deed No. 1753 dated 28<sup>th</sup> September 2006 and attested by Upali Dasarath Perera, Attorney-at-Law and Notary Public, is in fact a mortgage and not a transfer. A copy of the said deed has been annexed to the petition, marked 'A1'.

The facts of this matter are briefly as follows.

The Petitioner claims that she purchased from the 7<sup>th</sup> Respondent a property called 'Kongahawatta' depicted as Lot No. 3 in Plan No. 792, containing in extent 7.25 perches, by virtue of the said Deed 'A1'. Even though the value given on 'A1' is Rs. 100,000, the attestation of the Notary Public does not contain any details with regard to the consideration. It is an admitted fact that a lease agreement valid for a period of one year was executed between the parties at about the same time as 'A1' and that the 7<sup>th</sup> Respondent continued to live in the said premises.

In terms of Section 14(1) of the Debt Conciliation Ordinance No. 39 of 1941, as amended, the 7<sup>th</sup> Respondent made an application dated 10<sup>th</sup> June 2010 to the 1<sup>st</sup> Respondent Debt Conciliation Board. A copy of the said application is annexed to the petition marked 'A2'. In terms of Section 14(1), the purpose of a debtor making such an application is to seek the assistance of the Debt Conciliation Board to effect a settlement of the debt/s owed by such debtor to his secured

---

<sup>1</sup> A copy of the Order of the Debt Conciliation Board has been annexed to the petition, marked 'A9'.

creditor/s. The 7<sup>th</sup> Respondent claimed in 'A2' that he had borrowed a sum of Rs. 200,000 from the Petitioner at the rate of 84% interest per annum and that he pledged the property referred to in the Deed 'A1' as security. The 7<sup>th</sup> Respondent claimed that 'A1' is in fact a mortgage, although it is written as a deed of transfer and admitted that the sum of money borrowed by him had not been paid to the Petitioner.

The Debt Conciliation Board, comprising of the 2<sup>nd</sup> – 6<sup>th</sup> Respondents, having issued notices on the Petitioner, proceeded to conduct a preliminary hearing at which the Petitioner and the 7<sup>th</sup> Respondent were afforded the opportunity of giving evidence, the right to summon witnesses of their choice and to produce documentary evidence in support of their respective cases. At the conclusion of this preliminary hearing, the 2<sup>nd</sup> – 6<sup>th</sup> Respondents, by a decision dated 11<sup>th</sup> September 2017 annexed to the petition marked 'A9', held that the Deed marked 'A1' is in fact a mortgage, for the reasons set out therein and that steps should be taken in terms of Section 25(1)(a)-(c) of the Debt Conciliation Ordinance.<sup>2</sup>

It is in the above factual background that the Petitioner has invoked the jurisdiction of this Court seeking a Writ of Certiorari to quash the said Order marked 'A9'. This Court observes that the Petitioner is not challenging the power of the Debt Conciliation Board to make such an order nor is the Petitioner challenging the said order on the basis that there has been any impropriety with

---

<sup>2</sup> Section 25(1)(b) provides for a notice to be published in the Gazette stating that the Board proposes to attempt to effect a settlement under the Ordinance between the debtor and his secured creditor, and specifying the date on or before which such secured creditor has been called upon to submit a statement of the debts owed to him by the debtor.

regard to the conduct of the proceedings before the Debt Conciliation Board. The Petitioners sole complaint is that the evidence led before the Debt Conciliation Board does not support the Order 'A9' amounting to an error on the face of the record. It must be borne in mind that when exercising its Writ jurisdiction, this Court is not concerned with the rights and wrongs of the decision sought to be impugned but only whether the said decision is legal or not.

Section 21A of the Debt Conciliation Ordinance requires the Board when deciding whether or not such transfer or conditional transfer is in reality a mortgage to take into consideration all the circumstances of the case and in particular the following matters:

- “(a) the language of the notarial instrument of transfer and where provision in regard to the right of the transferor or any other person to redeem or purchase the property transferred is contained in any other notarial instrument, the language of that other instrument;
- (b) any difference between the sum received by the transferor from the transferee and the value of the property transferred;
- (c) the continuance of the transferor's possession of the property transferred; and
- (d) the existence of any agreement in whatever form between the transferor and the transferee whereby the transferor is bound to pay

the transferee interest, or any sum which may reasonably be considered to be interest, on the sum received by the transferor from the transferee.”

This Court has examined the decision marked 'A9' and notes that the 2<sup>nd</sup> – 6<sup>th</sup> Respondents have considered the following matters *inter alia* in arriving at its decision:

- 1) The fact that the 7<sup>th</sup> Respondent continues to be in possession of the property which is the subject matter of the Deed marked 'A1'.
- 2) The evidence of Weliwita Vithanage Wilson<sup>3</sup>, an uncle of the husband of the Petitioner who signed as a witness to the Deed marked 'A1'. In his evidence, Wilson had stated that the 7<sup>th</sup> Respondent had informed he is in need of a sum of Rs. 200,000. Wilson in turn had referred the 7<sup>th</sup> Respondent to the Petitioner, who had agreed to give the money subject to the said sum of money being secured by a property.
- 3) The evidence of the 7<sup>th</sup> Respondent that he had only borrowed a sum of Rs. 200,000 from the Petitioner and that he had paid a sum of Rs. 216,000 and Rs. 92,000 as interest.
- 4) The property being more valuable than the money paid by the Petitioner.

---

<sup>3</sup> Annexed to the petition, marked 'A6'.

It is thus evident to this Court that the 2<sup>nd</sup> – 6<sup>th</sup> Respondents have acted on the material that was placed before them in arriving at its decision. This Court is therefore of the view that there is no merit in the argument of the Petitioner that there is an error on the face of the record or that the said decision is irrational or not supported by the evidence led before it.

In these circumstances, this Court does not see any legal basis to issue notices. This application is accordingly dismissed, without costs.

Judge of the Court of Appeal

**P. Padman Surasena, J/ President of the Court of Appeal**

I agree.

**President of the Court of Appeal**