

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

1. Horana Gamage Don Thushantha
Sampath,
2. Amaratunga Withanage Thanuja
Dharshani,
Both No. 10,
Gajabapura,
Kollonnawa.
Respondent-Petitioners

CASE NO: CA/RI/16/2017

DC COLOMBO CASE NO: 132/12/DSP

Vs.

Hatton National Bank PLC.,
No. 479,
T.B. Jayah Mawatha,
Colombo 10.
Petitioner-Respondent

Before: A.L. Shiran Gooneratne, J.
Mahinda Samayawardhena, J.

Counsel: Jacob Joseph for the Petitioners.
Priyantha Alagiyawanna for the Respondent.

Decided on: 03.12.2019

Mahinda Samayawardhena, J.

The petitioners filed this application for revision and *restitutio in integrum* seeking to set aside the order nisi and order absolute made by the District Court marked “A” and “B” respectively.

After order nisi was served on the petitioners, they filed objections against it being made absolute, and, thereafter, the District Court, after an inquiry, made the order nisi absolute by order dated 27.03.2014.

There is no basis to seek to set aside an order nisi (as opposed to order absolute) entered in terms of section 16 of the Recovery of Loans by Banks (Special Provisions) Act, No. 4 of 1990, as amended, because the affected party is given an opportunity to show cause against it being made absolute, which has been afforded in this case as well.

In paragraph 6 of the petition, the petitioners state that the order absolute was made by order dated 27th July 2014. I find no such order made on 27th July 2014. The order absolute has been made on 27th March 2014.

The petitioners seem to be filing cases irresponsibly to buy time, thereby postponing payments due to the Bank.

Against the order absolute made by the District Judge, the petitioners have filed a final appeal (instead of leave to appeal) in the High Court of Civil Appeal, in my view, to mark time.

The High Court has dismissed that appeal by Judgment dated 13.07.2017 marked “F” on the ground that no appeal lies against the said order absolute.

The petitioners in paragraph 10 of the petition state that “*The petitioners did not invoke the jurisdiction of the Supreme Court as the petitioners were not entitled to appeal under the Act No.4 of 1990.*” This is another misleading statement.

The petitioners are not entitled to appeal against the Judgment of the High Court of Civil Appeal not “*under the Act No.4 of 1990*”, but under section 5C of the High Court of the Provinces (Special Provisions) (Amendment) Act, No.54 of 2006, which requires special leave to be obtained from the Supreme Court in order to appeal against a Judgment of the High Court of Civil Appeal. No step has been taken by the petitioners to seek special leave to appeal against the said Judgment of the High Court of Civil Appeal.

Hence, the argument of the petitioners in paragraph 11 of the petition that “*Since the petitioners are without any legal remedy, the petitioners are entitled to make this application*” in this Court is baseless.

The petitioners’ whole application, in my view, is tainted with *mala fides*. They have not come before this Court with clean hands. Therefore, they are not entitled to the discretionary remedy by way of revision or *restitutio in integrum*.

I dismiss the application with costs.

Judge of the Court of Appeal

A.L. Shiran Gooneratne, J.

I agree.

Judge of the Court of Appeal