

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

*In the matter of an Application for Mandates in
the nature of Writs of Certiorari and Mandamus
in terms of Article 140 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.*

Dissanayaka Mudiyansele Saman Nishshanka,
No: 513/3, Gonawala, Kelania

APPLICANT (DEBTOR)

CA 369/2018

Debt Conciliation Board

Application No: 42685

Vs.

1. Kakul Kotuwage Don Melani Lakshika,
No: 507/3/A, New Bungalow Road,
Gonawala, Kelaniya.

RESPONDANT(CREDITOR)

AND NOW BETWEEN

Dissanayaka Mudiyansele Saman Nishshanka,
No: 513/3, Gonawala, Kelania

APPLICANT (DEBTOR)-PETITIONER

Vs.

1. Debt Conciliation Board of Colombo,
2. Hon. Malini Abewardena Ranathunga,
The Chairman of the Debt Conciliation Board.
(Ceased to hold office)
- 2A.Hon.Ayirangani Perera,
The Chairman of the Debt Conciliation Board.

3. Hon. T.D.K. Pujitha Thilakawardena,
Member of the Debt Conciliation Board.
(Ceased to hold office)

3A.Hon. Piyasili Wikramasinghe,
Member of the Debt Conciliation Board.

4. Hon. K.P. Bandula,
(Ceased to hold office),
Member of the Debt Conciliation Board.

4A.Hon. Shiromi Samala Perera,
Member of the Debt Conciliation Board.

5. Hon. K.P. Bandula,
(Ceased to hold office),
Member of the Debt Conciliation Board.

5A.Hon. Kusum Senerath Pathirana,
Member of the Debt Conciliation Board.

(2A, 3A, 4A, and 5A Added- Respondents)

6. The Secretary of the Debt Conciliation Board

All of No: 35A, Dr N.M. Perera Mawatha,
Colombo 08.

RESPONDENTS

7. Kakul Kotuwage Don Melani Lakshika,
No: 507/3/A, New Bunglow Road,
Gonawala, Kelaniya.

RESPONDENT(CREDITOR)- RESPONDENT

8. Hon. Sarath Chandhrasiri Vithana,
Member of the Debt Conciliation Board,
No: 35A, Dr N.M. Perera Mawatha,
Colombo 08.

8th ADDED-RESPONDENT

BEFORE: **M. T. MOHAMMED LAFFAR, J. &
K. K. A. V. SWARNADHIPATHI, J.**

COUNSEL: Sampath Wijewardhena
For the Petitioner.

N. Perera, JASA
For the 6th Respondent

Argument: By Written Submissions

Date of Judgment: 17.11.2021

K. K. A. V. SWARNADHIPATHI, J.

JUDGMENT

The petitioner, by his application, seeks a mandate in the nature of a writ of certiorari to quash the order dated 3rd July 2018, which dismissed the petitioner's application to the Debt Conciliation Board. Another writ of certiorari to quash the order dated 20th September 2018 for rejecting the petitioner's application to review the order made on 3rd July 2018.

A writ of mandamus to direct the 1st – 6th Respondents to review the order made on 03.07.2018 or in the alternative to issuing a writ of mandamus directing 1st – 6th Respondents to conduct a retrial based on amended application by the petitioner. Both parties presented their argument based on the facts argued before this court.

The petitioner had filed his application before the Debt Conciliation Board against the 7th Respondent. His application was that the two deeds executed are for loans from the 7th Respondent and her relatives. At the time of executing the deeds, the Petitioner had no intention of alienating the property to the 7th Respondent.

However, dishonouring the agreement, the 7th Respondent started to consider the transaction as an outright sale of the land. The matter was taken up at the Debt Conciliation Board, where

both parties presented their case. At the inquiry, Attorneys-at-Law had represented both parties and evidence had been let and cross-examined the witnesses. After a full inquiry, the three members of the board had pronounced their order with reasons. To which the Petitioner had sought to file an application to reconsider.

After considering, the Debt Conciliation Board members had decided that since they have already considered and reasoned out, there is no reason to reconsider. Even though the petitioner argues for setting aside these orders, he failed to reason out any valid reason why that should be done. Unless the petitioner can satisfy this court as to any fault of the members of the Debt Conciliation Board or any reasons to believe that an injustice had happened to the Petitioner, this court should not disturb a decision taken after a lengthy inquiry where both parties had been represented by Attorneys-at-Law.

The Petitioner set out that he had tried to amend his petition, which the Board rejected. Once the Petitioner abandons his application to amend and face the inquiry, he has no legal status to seek a retrial on the abandoned amended application. When rejecting the so-called application to amend, the petitioner should have asked for the writ he is asking for now.

As the Petitioner had been sleeping and not been vigilant on his case, this court is not in a position to make any order regarding the petitioner's application. On these grounds, I reject the petition of the Petitioner.

Judge of the Court of Appeal

M. T. MOHAMMED LAFFAR, J. &

I agree.

Judge of the Court of Appeal