

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

In the matter of an Application for Injunctions  
under and in terms of Article 143 of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka and Rule 62 (1) of the  
Supreme Court Rules 1978.

Subasinghe Contractors (Pvt) Ltd,  
No. 294/A, Hapugala,  
Wackwella,  
Galle.

**PETITIONER**

Case No: CA Injunctions 02/2022

Vs.

1. Hon. Mahinda Rajapaksa,  
The Minister of Urban Development &  
Housing,  
17<sup>th</sup> Floor, “Suhurupaya”,  
Sri Subhuthipura Road,  
Battaramulla.
2. Mr. Sirinimal Perera  
The Secretary,  
The Ministry of Urban Development &  
Housing,  
17<sup>th</sup> Floor, “Suhurupaya”,  
Sri Subhuthipura Road,  
Battaramulla.
3. The State Minister of Urban Development,  
Waster Disposal and Community Cleanliness,  
17<sup>th</sup> Floor, “Suhurupaya”,  
Sri Subhuthipura Road,  
Battaramulla.

4. Urban Development Authority  
6<sup>th</sup>, 7<sup>th</sup> and 9<sup>th</sup> floors,  
“Sethsiripaya”,  
Battaramulla.
5. The Project Director,  
Project Management Unit,  
Urban Development Authority,  
6<sup>th</sup> floor,  
“Sethsiripaya”.  
Battaramulla.
6. State Engineering Corporation  
No. 130 W A D Ramanayake Mawatha,  
Colombo 02.
7. Mr. Arjuna Hamangoda  
Senior Branch Manager,  
Nations Trust Bank PLC,  
Galle branch.
8. Nations Trust Bank PLC  
No. 242, Union Place,  
Colombo 02.
9. Mr Asanka Benthara Vithanage  
The Chief Manager,  
Bank of Ceylon,  
Super Grade Branch, Fort,  
Galle.
10. Bank of Ceylon  
No. 01, BOC Square,  
Bank of Ceylon Mawatha,  
Colombo 01.
11. Hon. Attorney General  
The Attorney General’s Department,  
No. 159, Hulftsdorp,  
Colombo 12.

**RESPONDENTS**

**Before:** Hon. Justice Pradeep Kirtisinghe  
Hon. Justice Mayadunne Corea

**For the Petitioner:** Dharshana Weraduwege with Dhanushi Kalupahana and Ushani Atapattu.

**Decided on:** 25.04.2022

### **Judgement**

The Petitioner is seeking for injunctions under and in terms of Article 143 of the Constitution of the Democratic Socialist Republic of Sri Lanka, preventing the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents from taking any steps to encash the bank guarantees marked X3A - X3B and preventing 7<sup>th</sup> – 10<sup>th</sup> Respondents from taking steps to encash the same bank guarantees and such other interim reliefs prayed for in the petition.

The Petitioner which is a limited liability Company, had entered into a contract with the Ministry of Urban Development, Water Supplies and Housing Facilities which is marked as X2. Thereafter, the Petitioner Company had started the construction work in pursuant to the contract. It appears that there had been a delay of performance under the contract and after several correspondence between the two parties, the secretary to the Ministry had terminated the contract as evidenced by the letter marked X8. The main submission of the learned Counsel for the Petitioner is that, the aforesaid termination of the contract is illegal. He submitted that the contract was entered between the Petitioner Company and the Ministry of Urban Development, Water Supply and Housing Facilities and the secretary of the Ministry is not authorized to terminate the said contract. It was his submission that the approval of the Minister in charge of the subject, was never obtained before the termination.

In the case of **Hemas Marketing (Pvt) Limited Vs Chandrasiri and others (1994) 2 SLR 181** Dr. Ranaraja J has observed as follows, “When a bank has given a guarantee, it is required to honor it according to its terms and is not concerned whether either party to the contract which underlay the contract was in default. The whole purpose of such commercial instruments was to provide security which was to be readily, promptly and assuredly realisable when the prescribed event occurred. The only exception to the rule is where fraud by one of the parties to the underlying contract has been established and the bank had notice of the fraud. A mere plea of fraud would in for the purpose of brining the case within this exception and which rests in the uncorroborated statements of the applicant will not suffice.” In that judgement Dr. Ranaraja J further observed as follows, “It is only in exceptional circumstances that Courts will interfere with the machinery of obligations assumed by the banks. They are the lifeblood of international commerce. Such obligations are regarded as collateral to underlying rights and obligations between merchants at either end of the banking chain. Courts will leave the merchants to settle their disputes under the contract by litigation.”

The same principle was accepted by S.N Silva J in **Indica Traders (Pvt) Limited Vs. Seoul Lanka Constructions (Pvt) Limited and others (1994) 3 SLR 387**. In this case, there is no evidence of fraud on the part of the Respondents and there is no evidence that the Respondents

banks had knowledge of such a fraud. There is no allegation of fraud in this case. Therefore, this Court cannot grant an injunction preventing the aforementioned Respondents from taking steps to encash the aforesaid guarantee bonds. If there is a violation of the contract the parties can settle their disputes under the contract by a separate action in the District Court.

For the aforementioned reasons we dismiss this application for a constitutional injunction under and in terms of Article 143 of the Constitution.

**Judge of the Court of Appeal**

Mayadunne Corea J – I agree

**Judge of the Court of Appeal**