

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

In the matter of an Application for an Injunction  
under and in terms of Article 143 of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka

Sarvo-Tech (Pvt) Ltd,  
“Dhamsak Mandiraya”, No: 98,  
Rawatawatta Road,  
Moratuwa.

**Petitioner**

**CA Injunction  
NO: INJ 05/2022**

**-Vs -**

1. Commercial Bank of Ceylon PLC,  
Commercial House, No. 21, Sir Razeek Fareed  
Mawatha,  
P.O. Box 856, Colombo 01
  
2. Plantation Human Development Trust,  
No: 427/14,  
Robert Gunewardena Mawatha,  
Battaramulla.

**Respondents**

Before: C.P. Kirtisinghe – J  
Mayadunne Corea – J

Counsel: Eraj de Silva with Daminda Wijayaratne and Ms. Chirshella Dias for  
the Petitioner instructed by Ms. Dimuthu Kuruppuarachchi.

Supported on: 28.09.2022

Decided on: 29.09.2022

C.P. Kirtisinghe – J

The Petitioner is making this application for an Injunction under and in terms of Article 143 of the Constitution of the Democratic Socialist Republic of Sri Lanka. The Petitioner had entered into certain contracts with the 2<sup>nd</sup> Respondent for the construction of 14 buildings for Child Development Centres. Under those contracts, the Petitioner had entered into several Performance Bonds and Advance Payment Bonds marked P4(1) to P4(20). The Petitioner is seeking this Injunction preventing the 2<sup>nd</sup> Respondent from claiming and receiving upon those bonds and preventing the 1<sup>st</sup> Respondent from paying or releasing the monies to the 2<sup>nd</sup> Respondent in terms of any demand made on those bonds.

By the letter dated 16<sup>th</sup> June 2022 marked P5(22), the 2<sup>nd</sup> Respondent had informed the Petitioner that the Petitioner was not performing to the conditions of the contractual agreement entered into between the parties and the progress of the work was poor. The Petitioner was advised to catch up the progress of the work and it was informed that in case of any failure, action would be taken to terminate the contract and arrangements will be made to forfeit the Performance Bonds submitted. Thereafter, by letter dated 5<sup>th</sup> July 2022 marked P5(23), the Petitioner had suggested to the 2<sup>nd</sup> Respondent to enter into an agreement to discharge the contracts on mutually agreed terms and several terms had been suggested. Thereafter, by letter dated 1<sup>st</sup> September 2022 marked P6(1), the 2<sup>nd</sup> Respondent had granted a time extension until 31<sup>st</sup> October 2022 to complete the constructions and by letter dated 16<sup>th</sup> September 2022, the 2<sup>nd</sup> Respondent had informed the Petitioner that the partly completed projects should be completed on or before 30<sup>th</sup> November 2022. Further, the 2<sup>nd</sup> Respondent had requested the Petitioner to extend the Advance Payments and Performance Bonds until 28<sup>th</sup> December 2022. The 2<sup>nd</sup> Respondent had informed the Petitioner to enter into a revised contractual agreement on 27<sup>th</sup> September 2022.

Therefore, the 2<sup>nd</sup> Respondent was willing to extend the time period for the completion of the construction work and from the letter dated 20<sup>th</sup> September 2022 marked P6(11) it appears that the Petitioner was not agreeable to those

conditions. When one takes into consideration the conduct of the 2<sup>nd</sup> Respondent, a fraud on the part of the 2<sup>nd</sup> Respondent cannot be inferred.

In the case of **Hemas Marketing (Pvt) Limited 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 honour 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 realizable 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 put in for the purpose of bringing the case within this exception and which rests in the uncorroborated statements of the applicant will not suffice.” In that judgment, 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 v Seoul Lanka Constructions (Pvt) Limited and others (1994) 3 SLR 387**.

The same principle will apply to this case also. There is no evidence of fraud on the part of the 2<sup>nd</sup> Respondent before this court and there is no evidence that the 1<sup>st</sup> Respondent Bank had any knowledge of such a fraud. It is only in exceptional circumstances that courts will interfere with the machinery of obligations assumed by the Banks. Therefore, this court cannot grant Injunctions preventing the 1<sup>st</sup> Respondent Bank from discharging the aforesaid bonds and preventing the 2<sup>nd</sup> Respondent from taking steps upon those bonds. If there is a violation of the contract which is an actionable wrong, the parties can settle their disputes under the contract by a separate action in an appropriate court.

For the aforementioned reasons, we dismiss this application for an Injunction under and in terms of Article 143 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Judge of the Court of Appeal

Mayadunne Corea – J  
I agree

Judge of the Court of Appeal