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

In the matter of an application for mandate in the nature of writs of Certiorari and Mandamus in terms of Article 140 of the Constitution.

Rangana Prasad Weerasooriya.

No.109/A, Old Mirigama,

Mirigama.

C.A. Case No. WRT-0174/20 **PETITIONER**

Debt Conciliation Board Case **Vs.**

Case No. 42123

1. Weerasooriya Arachchige
   Ariyawathie Mangalika.
   Walbothale, Mirigama.

2. Piyaseeli Wickramasinghe
   Chair Person.

3. W. Irangani Perera
   Member.

4. Shiromi Perera
   Member.

5. K.S Pathirana
   Member.

6. Sarath Chandrasiri
   Vithana
   Member.

02nd to 06th Respondents above, all of;

The Debt Conciliation
Board,
No. 35A,
Dr. N.M Perera Mawatha,
Colombo 08.

RESPONDENTS

BEFORE : **M. SAMPATH K. B. WIJERATNE, J**
WICKUM A. KALUARACHCHI, J

COUNSEL : Ransith Gunawardena for the Petitioner.
Sandamal Rajapakshe for the -1st Respondent.
S. Wimalasena, DSG for the 2nd - 6th Respondents.

ARGUED ON : 20.02.2023

DECIDED ON : 21.03.2023

WICKUM A. KALUARACHCHI, J.

This is an application for writs of *certiorari* and *mandamus* to quash the order of the Debt Conciliation Board dated 22.01.2020 and to direct the 2nd to 6th respondents to hear and adjudicate the application of the petitioner bearing number 42123 in accordance with the provisions of

the Debt Conciliation Ordinance (hereinafter referred to as the "Ordinance").

The 1st respondent-debtor made an application to the Debt Conciliation Board, praying to declare the deed bearing number 1512, dated 19.07.2010, attested by M.L Wickremasinghe, Notary Public, a mortgage. After a preliminary inquiry, the Debt Conciliation Board (hereinafter referred to as the "Board") decided that the said deed is a mortgage. Aggrieved by the said decision, the petitioner made an application to the Board in terms of Section 54 of the Debt Conciliation Ordinance to review the said decision. The application for review was rejected by the Board on the basis that the powers granted to the Board in terms of Section 54 of the Debt Conciliation Ordinance could not be exercised to review this order. Stating that the 2nd to 6th respondents have acted *ultra vires* and committed errors of law by making the said order, the petitioner invoked the jurisdiction of this court seeking writs of *certiorari* and *mandamus*.

At the hearing, the learned counsel for the petitioner and the learned counsel for the 1st respondent made oral submissions. The learned Deputy Solicitor General, who appeared for the 2nd to 6th respondents informed the court that he would not make oral submissions. Objections were also not filed on behalf of the 2nd to 6th respondents.

The learned counsel for the petitioner contended that his application to review the order dated 17.07.2019 was rejected by the Board on the basis that, the Board has the power under Section 54 of the Ordinance to review an order only when an application is dismissed, settled, or concluded by any other way without an inquiry. The learned counsel contended further that the said determination is erred in law and according to Section 54 of the Ordinance, any order made by the Board could be reviewed, irrespective of the fact whether an inquiry was held or not.

In reply, the learned counsel for the 1st respondent contended that the Board can review its order in accordance with Section 54 of the Ordinance only when dismissing an application, granting a certificate, approving a settlement, or before the payment of the compounded debt has been completed, as correctly determined by the Board.

The Section 54(1) of the Debt Conciliation Ordinance reads as follows;

> *"The Board may, of its own motion or on application made by any person interested, within three months from the making of an order by the Board dismissing an application, or granting a certificate, or approving a settlement, or before the payment of the compounded debt has been completed, review any order passed by it and pass such other in reference thereto as it thinks fit."*

According to the proceedings of the Debt Conciliation Board, a preliminary inquiry was held and the impugned order was made declaring that the deed bearing the No.1512 is a mortgage. In determining whether Section 54 gives power to the board to review the impugned order, it is important to consider the procedure laid down in the Ordinance in determining an application of this nature.

After an application had been made by the 1st respondent under Section 19A(1A) of the Ordinance, notices were sent and a preliminary hearing was held in terms of Section 24. Thereafter, the order had been made on 17.07.2019 that the deed bearing number 1512 is a mortgage. Further, the Board directed to act in terms of Section 25(1) (a), (b), (c). At that stage, the instant writ application has been preferred.

The next step which had to be followed as per the procedure laid down in the Ordinance was to call the statement containing the particulars of the debt under Section 28 of the Ordinance and then fix a day for the

hearing of the application. Thereafter, three types of orders could be made. An order could be made granting a certificate in terms of Section 29 of the Ordinance. The board could also dismiss an application in terms of Section 32(1) of the Ordinance at any stage of the proceedings. Apart from that, Section 30 deals with the Board's approval of a settlement.

It is apparent that Section 54 of the Ordinance gives power to the Board to review the aforesaid orders of dismissing an application, granting a certificate or approving a settlement. Other than that, Section 54 gives power to the board to review an order made before the payment of the compounded debt is completed. That is, any order made with regard to the payment of the debt could be reviewed by the Board before completing the payment of the compounded debt.

Therefore, as the learned counsel for the 1st respondent correctly contended, an order made only on those four instances could be reviewed in terms of Section 54 of the Ordinance. The order made following the preliminary hearing in determining whether the deed bearing No.1512 is a mortgage or not does not fall within the aforementioned four instances. Although the learned counsel for the petitioner advanced an argument that the words “any order” mean any order made at any time from the filing of the application to the stage of the debt being completely paid, I regret that I am unable to agree with that contention. If the contention of the learned counsel for the petitioner is accepted, it is apparent that enumerating the aforementioned four instances in Section 54(1) serve no purpose. Hence, it is evident that “any order” means any order relating to the aforesaid four instances. As the order dated 17.07.2019 was not an order of dismissing an application or granting a certificate or approving a settlement or an order made before completing the payment of the compounded debt as explained previously, I hold that the decision of

the Debt Conciliation Board dated 22.01.2020 dismissing the application made under Section 54 for a review is correct and lawful.

Accordingly, the application for writs of *certiorari* and *mandamus* is dismissed without costs.

JUDGE OF THE COURT OF APPEAL

M. Sampath K. B. Wijeratne J.

I agree.

JUDGE OF THE COURT OF APPEAL