

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

In the matter of an application under Article 140 of the Constitution for mandamus in the nature of Writ of Certiorari, Prohibition and Mandamus.

1. Weeraddana Heston de Silva,
No.10/A, Mihindu Mawatha,
Madakumbura,
Panadura.
2. Weeraddana Amantha Navodya de
Silva,
No.10/A, Mihindu Mawatha,
Madakumbura,
Panadura.

Petitioners

C.A.Writ No.38/2023

Vs

- 1 1A. R.K.Rathnasingham,
Former Officer-in-Charge,
C/O Maharagama Police,
Maharagama Police Station,
Maharagama.
- 1B. Maharagama Police,
Maharagama Police Station,
Maharagama.
2. Inspector General of Police,
Police Head Quarters,
Colombo.01.
3. CBC Finance Limited,
187, Katugastota Road,
Kandy.
4. Learned Magistrate,
Nugegoda Magistrate's Court,
Gangodawila,
Nugegoda.

Respondents

Before : **N. Bandula Karunarthna, J. (P/CA)**
M.A.R.Marikar, J.

Counsel : Niran Ankitel with Buddhika Chandrasekera for the Petitioner.
Janaka Amerasinghe with Pubudu C.Withanage for the 3rd
Respondent.
Dilan Ratnayake,SDSG for the State.

Argued on : 28.02.2023

Decided on : 09.05.2023

M. Ahsan R. Marikar, J.

Introduction

1. The Petitioners supported this application on 28th of February 2023 seeking interim relief and notices against the Respondents prayed for in the prayers of the petition dated 24th January 2023.
2. The counsels appearing for the Respondents objected for notices and interim relief and undertook to file limited objections. The 1st to 4th Respondents filed their limited objections.

Background of the Petitioners' case

3. The Petitioners had contended in the petition dated 24th January 2023, that they entered into a leasing facility with the 3rd Respondent and obtained the vehicle bearing registration No. CAI-0440 a Mercedes Benz C200.
4. The 3rd Respondent after entering the said lease facility had failed to handover the offer letter and/or copy of the vehicle registration to the Petitioners.

5. Subsequently, the lease facility which was granted for the vehicle was rescheduled.
6. The Petitioners had produced the document marked as P1 to support the periodic payments made by the Petitioners for the lease facility obtained.
7. Further, the Petitioners were not informed of any default payment of instalments payable for the lease facility obtained for the aforesaid Mercedes vehicle.
8. On or about 20th December 2022, the 2nd Petitioner (son of the 1st Petitioner) and the 1st Petitioner's wife while traveling in the said C200 Mercedes vehicle on the Maharagama-Dehiwela road were accosted by 8 strongly built men and demanded to handover the vehicle key and informed they were the seizers from the 3rd Respondent company.
9. Later, the said men had forced the 2nd Petitioner to enter into the front passenger seat and his mother in the back seat and proceeded towards Maharagama.
10. As per the facts stated in the petition, at the junction of Maharagama after seeing 2 constables, the 2nd Petitioner had shouted that they were kidnapped and then the vehicle was taken to the Maharagama Police Station.
11. Presently, a B report had been filed in the Magistrate Court under Section 431 of the Criminal Procedure Code to consider the possession of the vehicle.
12. This application had been filed by the Petitioners that the vehicle was taken by force and the 1A Respondent had acted unlawfully by taking the vehicle

into police custody and the Learned Magistrate had no power to conduct an inquiry under Section 431 of the Criminal Procedure Code.

13. On the said circumstances the Petitioners had sought to invoke the writ jurisdiction of this Court to grant the reliefs prayed for in the prayer of the petition.

Limited Objections of the 1A, 1B, 2nd and 4th Respondents.

14. The aforesaid Respondents had denied the position taken by the Petitioners and contended that the Petitioners have failed to avail themselves of the alternative remedies available prior to invoking the writ jurisdiction of this Court.
15. Further, the Respondents have stated the Petitioners are seeking to enforce a contractual right and have not disclosed the material facts. Therefore, they are guilty of willful suppression and misrepresenting the same.
16. Furthermore, the Section 431 inquiry is proceeding in the Magistrate Court to decide to deliver the property to the person who is entitled to it.
17. In the said circumstances the said Respondents moved to dismiss the Petitioners' application *in limine*.
18. The 3rd Respondent is the Finance Company that provided the leasing facility to the Petitioners to obtain the vehicle CAI-0440.
19. The position taken by the 3rd Respondent is that the Petitioners had failed to make the instalment payments as agreed by the lease agreement which is marked and produced as 3R6.

20. On that position the 3rd Respondent had taken steps to recover the possession of the said vehicle after making a statement to the Maharagama Police.
21. Further, the 3rd Respondent had emphasized that they have acted under clause 1(i) of article 18 of the aforesaid lease agreement and this is purely a contractual obligation between the Petitioner and the 3rd Respondent.
22. Therefore, the Petitioner cannot invoke the writ jurisdiction of this court.
23. In the said circumstances the 3rd Respondent had moved to dismiss the petition *in limine*.

Disputed Facts

24. Considering the facts pertinent to the petition, the limited objections, the documents and the submissions made by the counsels the following points need to be considered, whether notice and the interim reliefs sought by the Petitioners can be granted or not.
 - (i) Have the Petitioners entered into 3R6 lease agreement?
 - (ii) Is the said agreement between the Petitioner and the 3rd Respondent a contractual right-obligation?
 - (iii) If so, can the Petitioners seek to invoke a writ jurisdiction of this court?

Have the Petitioners entered into 3R6 lease agreement?

- 26) On perusal of 3R6 document which is a finance lease agreement entered between the 1st Petitioner and the 3rd Respondent, the 1st Petitioner had agreed for the terms and conditions of the said agreement and had

placed his signature on the said agreement when entering into leasing the vehicle No. CAI-0440.

- 27) Therefore, it is obvious the 1st Petitioner and the 3rd Respondent had a contractual agreement of leasing for the aforesaid vehicle.

Is the said agreement between the Petitioner and the 3rd Respondent a contractual right-obligation?

- 28) As the facts stated above and in considering the 3R6 document, it is obvious that it is a contractual obligation between the 1st Petitioner and the 3rd Respondent.
- 29) The Petitioners have vehemently denied that the copy of the offer letter and the other documents had not been provided after making several requests.
- 30) However, 3R6 lease agreement refers to the mode of instalment payments.
- 31) In the event the 3rd Respondent had failed to deliver the aforesaid requested documents, it is a civil dispute and not a judicial review under writ jurisdiction.
- 32) In the said circumstances we are of the view that the 1st Petitioner had entered into a contractual obligation by the 3R6 lease agreement with the 3rd Respondent.

If so can the Petitioners seek to invoke a writ jurisdiction of this court?

- 33)** The Petitioner has sought to invoke the writ jurisdiction of this court to quash the decision of the 3rd Respondent to seize the motor vehicle bearing registration No. CAI-0440 and to hold an inquiry by the Learned Magistrate under Section 431 of the Criminal Procedure Code.
- 34)** Those are the main reliefs claimed by the Petitioners under Writ of Certiorari, Writ of Prohibition and Writ of Mandamus.
- 35)** On the said reliefs the Petitioners had sought interim orders to stay the inquiry before the Magistrate under Section 431 of the Criminal Procedure Code.
- 36)** In considering the applications made by the Petitioners, the Section 431 inquiry under the Criminal Procedure Code is an inquiry to decide the ownership of the vehicle.
- 37)** The clause 1(i) article 18 of the 3R6 lease agreement specifies failing of the lessee to pay the instalment values, the lessor has the right to repossess the vehicle.
- 38)** Thus, it is obvious in a contractual obligation this court has no jurisdiction to interfere with the Magistrate Court proceedings as per the documents.
- 39)** Furthermore, the Petitioners have the right to seek alternative remedies in respect of the dispute between the parties.
- 40)** These facts are decided in **Somasunderam Vanmiasingham v. Forbes and another**¹ referred to as;

¹[1993] 2 SLR 362.

“on the other hand there may be instances where the law provides for satisfactory relief under the statute. A Court may in the exercise of its discretion withhold review in such situations. But it is the duty of the Court to consider whether certiorari is more appropriate in the circumstances. Where overlapping remedies exist for identical purposes a question may arise as to whether the statutory remedy is exclusive or concurrent. The language of the enactment must first be examined. If concurrent the Court's decision may be determined by deciding whether the statutory remedy provides a sufficient satisfactory alternative to the discretionary remedy by way of writ. As we have seen in the cases discussed, an alternative remedy may be available only upon the existence of other factors which are hard to find and difficult to establish which then does not render that remedy satisfactory. In this area of the law, where there is no illegality, the Court should first look into the question whether a statute providing for alternative remedies expressly or by necessary implication excludes judicial review. If not, where remedies overlap, the Court should consider whether the statutory alternative remedy is satisfactory in all.”

- 41)** In the aforesaid judgement it is decided when there is an alternative remedy and when it is a contractual obligation, writ jurisdiction does not apply.

CONCLUSION

In view of the aforesaid facts and documents we dismiss the petition dated 24th January, 2023 subject to payment of cost.

Judge of the Court of Appeal

N. Bandula Karunaratna, J (P/CA)

I agree.

President of the Court of Appeal