

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

Court of Appeal Case No : CA WRIT/422/2017

A.G.S.K.Jayarathna.

No.295/3

Delpe Junction,

Ragama.

Petitioner

Vs.

Bank of Ceylon.

No.01

Boc Square,

Bank of Ceylon Mawatha,

Colombo 01.

Respondents

C.A.422/2017

Before : S.Thurairaja, P.C. J (Acting President) and
A.L. Shiran Gooneratne, J

Counsel : Lakshan Dias with C. Hettiarachchi for the
Petitioner.

Chandimal Mendis with Sarasi Paranamanna
instructed by G. de Alwis for 1st Respondent.

On the instructions of G.D. Alwis Kithsiri
Mapa appears with Candimal Mendis, Sarasi
Paranamanna for the 2nd to 7th Respondents.

On the instructions of S.K. Illeperuma,
Chandimal Mendis and Sarasi Paranamanna
for the 8th Respondent.

G. Walisinghe Arachchi for AG.

Argued and

Decided on: 27.12.2017.

A.L. Shiran Gooneratne, J.

Heard Counsel for the Petitioner in support of notice and
the issue of an interim order in terms of paragraphs 'a', 'd' and
'e' of the prayer to the petition.

Counsel appearing for the Respondents have raised preliminary objections to the said application on the basis of suppression and misrepresentation of material facts and the transaction been commercial in nature.

The Counsel for the Respondents has drawn attention to paragraphs 9, 27 and 29 of the petition where the 1st petitioner states that he is a shareholder of St. Anthony's Kandy, Sri Import Export (Pvt.) Limited. However we find that in document marked P7 the said 1st Respondent has signed as a Director of the said company.

We also refer to paragraph 25 of the petition therein the petitioner has stated that he has been reliably informed that his property to be auctioned was published in the gazette notification dated 2017.10.27. Therefore the Petitioner was clearly on notice regarding the auction of his property and to seek relief from the appropriate jurisdiction.

This Court will not permit the Petitioners to make cross applications whereby the Petitioners would be abusing the

judicial process. It is within the discretion of the Court to refuse to issue writ if it is perceived that the Petitioners have an adequate and appropriate remedy to address the relief prayed for.

It is also noted that the Petitioners as stated above has clearly suppressed and or misrepresented material facts averred to in this petition.

In the circumstance we refuse notice and dismiss the said petition *in limine*. We order no costs.

JUDGE OF THE COURT OF APPEAL

S. Thurairaja, P.C. J

I agree.

ACTING PRESIDENT OF THE COURT OF APPEAL

Lwm/-