

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

In the matter of an Appeal with Special Leave to Appeal granted by Supreme Court under Article 128(2) of the Constitution of the Democratic Socialist Republic of Sri Lanka against the judgment dated 15.06.2012 of CA. (Writ) 463/10.

S.C. Appeal No. 100/2013

S.C. Spl. LA No. 136/2012

C.A. (Writ) No. 463/2010

Debt Conciliation Board No. 41012

A.D. Damith Jayantha

Applicant-Debtor

1. H.A. Sachintha Perera
(Wife of the Debtor)
2. A.D. Supun Sameera
(Son of the Debtor)
3. A.D.C. Maduwanthi (Daughter)
All 04 of No. 226/1, Bolabotuwana,
Bandaragama.

Substituted Legal Heirs

Vs.

W.D. Dharmasiri Karunaratne,
57, Baseline Road, Colombo 08.

Creditor

And Thereafter in Revision

1. H.A. Sachintha Perera
2. A.D. Supun Sameera
3. A.D.C. Maduwanthi

Vs.

W.D. Dharmasiri Karunaratne,

Respondent- Creditor

And in the Court of Appeal

1. W.D. Dharmasiri Karunaratne,
57, Baseline Road, Colombo 08.
2. H.D. Iranganee Wijewardena,
397/3, Kotikawatta, Angoda.

Petitioners

Vs.

1. Debt Conciliation Board of Colombo
2. Mr. A. Dayantha De Alwis,
Chairman of the Debt Conciliation Board
3. Mr. K.A.P. Rajakarua,
Member of the Debt Conciliation Board
4. Mr. N. Balaraman.
Member of the Debt Conciliation Board
5. The Secretary,
The Debt Conciliation Board
All 5 of No. 80, Adikarana Mawatha,
Colombo 12.
6. H.A. Sachintha Perera
7. A.D. Supun Sameera
8. A.D.C. Maduwanthi
All 03 of No. 226/1, Bolabotuwana,
Bandaragama.

New Members Added

9. Mrs. Malaniee A. Ranathunga.
The Chairperson
10. Mr. P. Samararatne
11. Mr. M.A.N.S. Gunawardena
12. Mr. D.M. Sarathchandra

Respondents

And Now Between

1. W.D. Dharmasiri Karunaratne,
57, Baseline Road, Colombo 08.
2. H.D. Iranganee Wijewardena,
397/3, Kotikawatta, Angoda.

Petitioner-Petitioners

Vs.

1. Debt Conciliation Board of Colombo
2. Mrs. Malaniee A. Ranathunga.
The Chairperson
3. Mr. P. Samararatne
4. Mr. M.A.N.S. Gunawardena
5. Mr. D.M. Sarathchandra

All 4 of Debt Conciliation Board,
No. 80, Adikarana Mawatha,
Colombo 12.

New Members of the Board

6. H.A. Sachintha Perera
7. A.D. Supun Sameera
8. A.D.C. Maduwanthi
All 03 of No. 226/1, Bolabotuwana,
Bandaragama.
9. Mr. K.A.P. Rajakarua,
Re-Appointed Member of the Board
10. The Secretary of the Board
Both of No. 80, Adikarana Mawatha,
Colombo 12.

Respondent-Respondents

BEFORE : **Eva Wanasundera, PC. J**
Buwaneka Aluwihare, PC.J. &
Upaly Abeyrathne, J.

COUNSEL : S. Kumarasingham for the Petitioner -Appellant.
Javed Mansoor with Ms. C. Hettiarachchi for the 6th, 7th & 8th
Respondent-Respondents.
Parinda Ranasinghe, DSG. for the 1st - 5th, 9th & 10th
Respondent-Respondents.

ARGUED ON : **23.09.2015**

DECIDED ON : **03.02.2016**

EVA WANASUNDERA, PC.J.

The Appellants have sought relief from this Court by way of the Petition dated 20th July,2012. Special Leave was granted on the following questions of law on 30th July,2013 against the impugned judgment of the Court of Appeal dated 15.06.2012. They are as follows and contained in paragraph 42(i), (ii) and (iii) of the said Petition. It is pertaining to a decision made by the Debt Conciliation Board.

- 42(i) Did the Court of Appeal err in law in holding that even an unsigned and belated application tendered to the Board can be entertained by the Board against Section 15 of the Ordinance?
- (ii) Did the Court of Appeal err in law in holding that no substitution of the legal heirs of the deceased Applicant were effected in substance by the Board before dismissing the application marked X2 or before its order marked X10?
- (iii) Did the Court of Appeal err in law in ignoring and misinterpreting the legal provisions in Sections 15, 49, 50, 54 and 64 respectively of the Ordinance?

The main relief sought by the Appellants is to “set aside the judgment of the Court of Appeal dated 15.06.2012 in case No. CA. Writ 463/10.”

In summary, the pertinent facts are that one A.D. Damith Jayantha had made an application to the Debt Conciliation Board under the Debt Conciliation Ordinance No. 39 of 1941 as amended, as provided for by Sec.14 thereof on 05th June,2008. The Applicant Damith Jayantha had died on 1st of August, 2008. On 27th August, 2008 the wife of the deceased namely Sachintha Perera, who is the 6th Respondent-Respondent in the case before this Court, had informed the Debt Conciliation Board that her husband the Applicant had expired. The Board had directed her to tender the necessary documents to the Board. Thereafter the Board made order dismissing the application on defects of the application on 17.8.2009 and later on, acted on a revision application made by the wife and children of the deceased applicant. The Board revised its own order and cancelled its previous order dated 17.8.2009, by its second order dated 21.04.2010.

Being aggrieved by the order dated 21.04.2010, the Appellants in this case invoked the jurisdiction of the Court of Appeal seeking a Writ of Certiorari to quash the order dated 21.04.2010, as well as a Writ of Mandamus directing the 1st to 5th Respondents to act in terms of the first order dated 17.8.2009 and also a Writ of Prohibition, prohibiting the Board from making the 2nd Appellant a party to the application for conciliation before the Board with regard to the subject matter before the Board.

The Court of Appeal made order dismissing the Writ Application of the Appellants in this case and now they are before this Court challenging the judgment of the Court of Appeal dated 15.06.2012.

I have, very carefully gone through the written submissions of the Appellants dated 09.09.2013 and 21.10.2015 and considered the oral submissions made by the Counsel for the Appellants on 23.09.2015 and considered each and every argument made to this Court on their behalf. I have also considered the written submissions tendered by the Respondents to Court on 28.02.2014 and oral submissions made on 23.09.2015. I have specifically stated this fact since the Appellant submitted that the Court of Appeal had not gone through his submissions.

I am not going to refer to each and every submission and argument made by the respective parties in this judgment since it is not necessary for me to do so. Yet I emphatically state that the submissions made with regard to the impugned judgment has been well considered by me.

I observe that the Debt Conciliation Ordinance No. 39 of 1941 has got amended 9 times and the last amendment was by Act No. 29 of 1999. Section 54(1) was amended only once, by Section 2 of Law No. 41 of 1973. This Section comes under the sub title of "Review of Decisions of the Board" and reads as follows:-

Section 54(1)-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.

[S 54(1) am by s 2 of Law 41 of 1973.]

The subject matter of the case before the Conciliation Board seems to be a transfer of an immovable property of an extent of 20 perches when the debtor obtained a loan of Rs.300,000/- from the creditor, the 1st Appellant for which interest was deposited regularly in a bank account in the name of another lady who is said to have been the creditor's mother, until the day the Applicant became aware of an attempt by the creditor to sell the said property to another outsider for Rs. 20 Lakhs. Since the Conciliation Board was of the view that this is a matter to be looked into under Section 21A of the Debt Conciliation Ordinance, the first order dated 17.08.2009 was later revised by the Board under Section 54(1).

When going through the Provisions of the Debt Conciliation Ordinance as amended, it is clear that it is an enactment of law which provided for the Board to "attempt to effect a settlement between the debtor and the secured or unsecured creditor". Firstly there is a preliminary hearing under Section 24. Section 27 provides that, where after holding the preliminary examination under Section 24, if the Board is of the opinion that it is not desirable to attempt to effect a settlement between the debtor and the creditor, that the Board could dismiss the application. Therefore I find that the Debt Conciliation Board Ordinance as amended even after 50 years in 1999 has been a creditable piece of legislation for about 65 years to date in serving the debtors and creditors whether secured or unsecured. It has worked well giving a lot of powers to the Debt Conciliation Board as well as privileges. I quote the following Sections to demonstrate the powers and privileges:-

Section 33 - Provisions Relating to settlements.

In any settlement under this Ordinance-

- (a) All property which is exempt from seizure and sale under section 218 of the Civil Procedure Code shall not be taken into account; and
- (b) A creditor shall be allowed, notwithstanding anything to the contrary in any other law, as interest such sum as appears to the Board to be reasonable, having regard to all the circumstances of the case.
[S 33(b) subs by s 6 of Act 29 of 1999.]

Section 53- Power of Board to state case on question of law for opinion of Court of Appeal:-

- (1) The Board may in its discretion, at any time in the course of any proceedings under this Ordinance, state a case for the opinion of the Court of Appeal on any question of law arising for decision in such proceedings.
- (2) The stated case shall set forth in writing the facts of the case as found by the Board and the question of law upon which the opinion of the Court of Appeal is sought, and shall, when signed by the Chairman of the Board be transmitted to the Court of Appeal, a copy of the stated case shall also be transmitted to each party to the proceedings.
- (3) Any two Judges of the Court of Appeal may cause a stated case to be sent back for amendment by the Board and thereupon the case shall be amended accordingly.
- (4) Any two Judges of the Court of Appeal may hear and determine any question of law arising on a stated case, and upon such determination the Registrar of the Court shall remit the case to the Board with the opinion of the Court of Appeal thereon. Such opinion shall be final and conclusive and shall be binding on the Board and on the parties to the proceedings.
- (5) Any party to the proceedings may appear either personally or by pleader at the hearing before the Court of Appeal.

It is quite obvious that the Board has to weigh the question at hand on the weighing balance of “reasonableness”. The string that binds the provisions in each Section is nothing but reasonableness. The Board has full power to even reason out their faults and revise its own orders. It has to act as a Court to bring matters to a settlement. When doing so, technicalities in procedure should be pushed aside as much as possible.

In the present case, the Board has not acted wrongly. It has acted on powers granted to it by law. The Board having acted under Section 54(1) has acted reasonably in revising its own orders since its first order dismissing the application for want of the proper signature of the Applicant and/or for his wife having signed on the first page of the application etc, which are technical in nature was not reasonable. Moreover the 6th, 7th and 8th Respondents being heirs of the deceased debtor comes within the interpretation given to 'debtor' in Section 64.

Section 64 reads:-

In this Ordinance unless the context otherwise requires-

“Board” means the Debt Conciliation Board established under section 2;

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“Debt” includes all liabilities owing to a creditor in cash or kind, secured or unsecured, whether payable under a decree or order of a civil court or otherwise, and whether mature or not, but does not include arrears of wages or any money for the recovery of which an action is barred by prescription;

“Debtor” means a person-

- (i) Who has created a mortgage or charge over any immovable property or any part thereof and whose debts in respect of such property exceed the prescribed amount; or
- (ii) Who is a transferee of a right of redemption on a conditional transfer, and **includes the heirs, executors and administrators of such person.**

[Subs by s 3 of Act 20 of 1983.]

“Mortgage” with reference to any immovable property, includes any transfer or conditional transfer of such property which, having regard to all the circumstances of the case, is in reality intended to be security for the repayment to the transferee of a sum lent by him to the transferor;

[Am by s 8(2) of Act 29 of 1999.]

It is observed that the Board has done its duty acting in compliance with Section 49 of the Ordinance, which reads:-

Section 49- Procedure before the Board.

It shall be the duty of the Board to do substantial justice in all matters coming before it without regard to matters of form.

In this case, I am of the opinion that the Board has acted within the law, when it revised its first order and allowed in its second order for the heirs of the deceased debtor to be substituted in place of the deceased who came before the Board within the time limit of 3 years of the date of the notarially executed instrument ie. transfer deed No.27 dated 27.07.2007 in compliance with Section 19 A (1A).

When the right parties are before the Board, it can hear all the evidence and thereafter decide whether Deed No. 27 which is the document questioned in the application was a sale proper or a security for a loan. The order of the Board dated 21.04.2010 was made in the presence of the deceased debtor's wife, the 6th Respondent-Respondent as well as the creditor, allowing the application of the Attorney-at-Law of the debtor, to substitute the heirs of the deceased in place of the original Applicant who was deceased by then. The Attorney-at-Law has to now substitute the 6th, 7th and 8th Respondent-Respondents in the room and place of the deceased Applicant on the face of the application made to the debt Conciliation Board for the Board to proceed to hear the matter on its merits. An amended caption has to be filed before the Debt conciliation Board with the names of the wife and two children of the deceased Applicant, namely the 6th, 7th and 8th Respondents, as heirs of the Applicant-Debtor, A.D. Damith Jayantha.

I answer the questions of law in favour of the Respondents and against the Appellant. I find no merit in this appeal. The Court of Appeal judgment should stand as it is. This appeal is dismissed with costs limited to Rupees Fifty Thousand.

Judge of the Supreme Court

Buwaneka Aluwihare, PC.J.

I agree.

Judge of the Supreme Court

Upaly Abeyrathne, J.

I agree.

Judge of the Supreme Court

