

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

In the matter of an appeal with leave of the Supreme Court in terms of section 5 (c) 1 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended by High Court of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006 read with Article 127 and 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka

**DFFCC Bank PLC
No. 73/5, Galle Road,
Colombo 03.**

Plaintiff

SC Appeal 211/2017

SC/HCCA/LA 390/2017

WP/ HCCA/COL/07/2017(RA)

DC/ Colombo Case No. 00137/2014/DDR

Vs,

**1. Shaedul Hijry Mohamed Risan alias
Shaheedul Hijry Mohamed Rishan**

**2. Wedaralagedara Mohamed Mubarak Siththi Sermila
alias Sithy Sharmila Rishan**

Both of

No.01, Charles Circus, Colombo 03

Presently of

No. 30/1/3, Glen Arber Place, Colombo 03

Defendants

And then between

**1. Shaedul Hijry Mohamed Risan alias
Shaheedul Hijry Mohamed Rishan**

**2. Wedaralagedara Mohamed Mubarak Siththi Sermila
alias Sithy Sharmila Rishan**

Both of

No.01, Charles Circus, Colombo 03

Presently of

No. 30/1/3, Glen Arber Place, Colombo 03

Defendant-Petitioners

Vs,

DFFCC Bank PLC

**No. 73/5, Galle Road,
Colombo 03.**

Plaintiff-Respondent

And between

- 1. Shaheedul Hijry Mohamed Risan alias
Shaheedul Hijry Mohamed Rishan**
- 2. Wedaralagedara Mohamed Mubarak Siththi Sermila
alias Sithy Sharmila Rishan**

Both of

No.01, Charles Circus, Colombo 03

Presently of

No. 30/1/3, Glen Arber Place, Colombo 03

Defendant-Petitioner-Petitioners

Vs,

DFFCC Bank PLC

**No. 73/5, Galle Road,
Colombo 03.**

Plaintiff-Respondent-Respondent

And now between

1. **Shaeedul Hijry Mohamed Risan alias
Shaheedul Hijry Mohamed Rishan**

2. **Wedaralagedara Mohamed Mubarak Siththi Sermila
alias Sithy Sharmila Rishan**

Both of

No.01, Charles Circus, Colombo 03

Presently of

No. 30/1/3, Glen Arber Place, Colombo 03

Defendant-Petitioner-Petitioner-Petitioners

Vs,

**DFFCC Bank PLC
No. 73/5, Galle Road,
Colombo 03.**

Plaintiff-Respondent-Respondent-Respondent

Before: **Hon. Nalin Perera C J
Hon. Vijith K. Malalgoda PC J
Hon. M.N.B. Fernando PC J**

Counsel: S.A. Parathalingam, PC with Sagara Kariyawasam instructed Ms. Kethake Siriwardena
for the 1st Defendant-Petitioner-Petitioner-Petitioner

Mangala Niyarepola with Ms. Kushini Gunaratna instructed by Ms. Kethake
Siriwardena for the 2nd Defendant-Petitioner-Petitioner-Petitioner

Nigel Hatch, PC with Dilumi de. Alwis instructed by Julius and Creasy for the Plaintiff-
Respondent-Respondent-Respondent

Supported on: 11.01.2019

Decided on: 18.02.2019

Vijith K. Malalgoda PC J

The Plaintiff-Respondent-Respondent-Respondent (hereinafter referred to as the Respondent) instituted action before the District Court under the Debt Recovery (Special Provisions) Act No 2 of 1990 against the Defendant-Petitioner-Petitioner-Petitioners (hereinafter referred to as Petitioners) seeking Recovery of sums amounting to Rs. 87,538,661.34 and Rs. 7,666,923.97.

The District Court on 5th August 2014 issued an order Nisi in the 1st instance and thereafter heard the Petitioners and made order granting the Petitioners conditional leave to appear and defend subject to the said Petitioners depositing a sum of Rs. 60 Million.

Due to the failure by the said Petitioners to secure the guarantee, the Respondent Bank has secured a decree absolute in its favour to recover sums of money referred to above against the Petitioners as judgment debtors.

The Petitioners have sought Special Leave to Appeal against the said decision of the District Court to the High Court of the Western Province and to the Supreme Court but were not successful in obtaining special leave from both courts.

As revealed before us, the Respondent Bank had then moved the District Court under section 219 of the Civil Procedure Code and obtained an order to issue notices initially on the registered Attorney of the Petitioners namely Ms. Anju Ukwatte, and thereafter both on the Petitioners as well as on the registered Attorney in case No 137/14 DDR.

In the absence of either the Attorney-at-Law or the Respondent appearing before the said District Court, the Court had proceeded to be effected the Controller of Immigration and Emigration, the civil warrant already issued on the Petitioners.

On 9th June 2017 the 1st Petitioner while on his way to a foreign country was detained by the officers of the Department of Immigration and Emigration at the Katunayake Air Port. The 1st Petitioner, who was subsequently produced before the Air Port Police by the officers of the Department of Immigration and Emigration, was thereafter produced before the Magistrate's Court of Negombo under case No. AR 3640/17 and released on bail subjected to the bail conditions being fulfilled after impounding the passport of the 1st Petitioner.

Upon being released on bail, the 1st Petitioner filed a petition supported by an affidavit before the District Court in case No. 137/14 DDR seeking that,

- a) To recall the warrant issued on him
- b) To release the passport already impounded by the learned Magistrate Nigombo in case No. AR 3640/17

However by order dated 14.06.2017 the learned Additional District Judge had only made order recalling the warrant upon a surety bond of Rupees five million being deposited in addition to the two sureties before the Magistrate's Court of Negombo but put off the order with regard to the release of the passport.

By order dated 04.07.2017 the learned Additional District Judge refused the said application for the release of the passport and made order to continue with the travel ban already imposed on the 1st Petitioner.

As further observed by me, the learned Additional District Judge was mindful of the circumstances under which an order was made under section 219 (2) of the Civil Procedure Code when refusing the application by the 1st Petitioner to lift the travel ban on him and to release the passport.

Being aggrieved by the said order and several orders made prior to that date by the Additional District Judge, the Petitioners have filed a revision application before High Court of the Civil Appeal of the Western Province holden in Colombo to set aside the said orders and also seeking interim relief upon the travel restriction imposed on them in case No 137/14 DDR.

When the said application was supported before the High Court of Civil Appeal, the said court after considering the material placed before court, decided to issue notice on Respondent as prayed for by the Petitioners in paragraph (a) of the prayer to the petition but refused granting interim relief as prayed in paragraphs (g) and (i) to the prayer which includes,

- i) Suspension of the travel restriction
- ii) Stay of further proceedings in case No 137/14 DDR

The Petitioners being dissatisfied by the refusal of granting interim relief including the suspension of the travel restriction, had appealed against the said order of the High Court of Civil Appeal dated 04.08.2017 to the Supreme Court praying inter alia.

- b) Grant the Petitioners leave to appeal from the portion of the order of the High Court dated 4th August 2017 marked as A8 refusing an interim order suspending the operation of the travel restrictions imposed on the 1st and 2nd Petitioners as prayed in prayer (g) of the petition of the Petitioner to the High Court
- c) Set aside the portion of the order of the High Court dated 4th August 2017 marked as A8 refusing an interim order suspending the operation of the travel restriction imposed on

the 1st and 2nd Petitioners as prayed for in prayer (g) of the petition of the Petitioner to the High Court

- j) Grant an interim order suspending the portions of the order of the Additional District Judge dated 14th June 2017 marked A5 (b) and 4th July 2017 marked A6 in relation to the refusal of the Additional District Judge to recall the travel ban imposed on the Petitioners
- k) Grant an interim order suspending the operation of the travel restriction imposed on the 1st and the 2nd Petitioners

When the said application was supported before the Supreme Court on 31.10.2017, this court granted leave to appeal on questions of law raised in paragraph 26 (e) and (h) which reads as follows;

- e) The learned High Court Judges have failed to consider the scope and ambit of section 219 of the Civil Procedure Code
- h) The learned High Court Judges have failed to consider the fact that the learned District Judge had erred in law by imposing bail conditions such as impounding of the passport of the Petitioners

However this court refused granting any interim relief as prayed by the Petitioners.

As observed by me, what is pending before this court now is the argument of the main matter, on the questions of law the leave was granted by this court on 31.10.2017. When considering the sequence of events referred to above, it is clear that the Petitioners have gone before the High Court of Civil Appeal on two main issues, i.e. firstly on the ambit of section 219 of the Civil Procedure Code and secondly on imposing travel restrictions by impounding the passport of the 1st Petitioner. The learned Judges of the High Court of Civil Appeal refused to grant interim relief by

lifting the travel restrictions and releasing the passport of the 1st Petitioner but decided to hear the revision application. Being dissatisfied with the said refusal of the interim relief, the Petitioners have come before this court. This court too had refused to grant any interim relief but decided to consider whether the learned Judges of the High Court of Civil Appeal had erred in law by failing to consider the question of imposing travel restrictions such as impounding of the passport by the District Judge and the ambit of section 219 when compared to the order already made by the District Judge.

In the said circumstances imposing a travel restriction such as impounding the passport of the 1st Petitioner is a matter to be decided by this court when the main appeal is argued by this court.

The 1st Petitioner, whilst the main appeal is pending, has now come before this court and moved that the inquiry against the 1st Petitioner under section 219 of the Civil Procedure Court is concluded as against him and therefore, to make order that the passport of the Applicant-Petitioner be released and the travel ban imposed on the Appellant-Petitioner be waived.

As for as the case before this court is concerned, the two Petitioners namely, Shaeedul Hijry Mohamed Risan alias Shaheedul Hijry Mohamed Rishan and Wedaralagedara Mohamed Mubarak Siththi Sermila alias Sithy Sharmila Rishan have complained of a travel ban imposed on them by the District Court pending a 219 inquiry against them, and what is to be decided by this court is the legality of the said order imposed by the District Court and that is what to be decided at the conclusion of the main appeal filed by the two Petitioners before this court. When the legality of the travel ban imposed by the District Judge is to be decided by this court, it is premature for this court to make any order directing the learned District Judge to lift the travel ban and release the passport to the 1st Petitioner.

In the said circumstances, I refuse to make any order as prayed by the 1st Petitioner in the aforesaid petition dated 21st November 2018.

Judge of the Supreme Court

Nalin Perera C J

I agree,

Chief justice

M.N.B. Fernando PC J

I agree,

Judge of the Supreme Court