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

1. Rajapaksha Mudiyanselage Jayathilaka Rajapaksha,
2. Risanga Nelka Riyensi Rajapaksha,
   Both of
   "Jayamani" Kehelwathugoda,
   Dewalegama.
   Petitioners

SC APPEAL NO: SC/APPEAL/83/2021
SC LA NO: SC/HCCA/LA/356/2020
HCCA KEGALLE NO: SP/HCCA/KAG/31/2019 (F)
DC KEGALLE NO: 8106/SPL

Vs.

1. Mallawa Waduge Samantha,
   No. 167/12, Udambewatta,
   Olagama, Kegalle.
2. Maggoma Ralalage Upali Jayawansha,
   No. 08, Dharmapala Mawatha,
   Kegalle.
   Respondents

AND BETWEEN

Maggoma Ralalage Upali Jayawansha,
No. 08, Dharmapala Mawatha,
Kegalle.
2nd Respondent-Appellant

Vs.

1. Rajapaksha Mudiyanselage Jayathilaka Rajapaksha,
2. Risanga Nelka Riyensi Rajapaksha,

Both of
"Jayamani"
Kehelwathugoda.
Dewalegama.
Petitioner-Respondents

Mallawa Waduge Samantha,
No. 167/12, Udambewatte,
Olagama,
Kegalle.
1st Respondent-Respondent

AND NOW BETWEEN

Maggoma Ralalage Upali Jayawansha,
No. 08, Dharmapala Mawatha,
Kegalle.
2nd Respondent-Appellant-Appellant

Vs.

1. Rajapakshe Mudiyanselage Jayathilaka Rajapaksha,
2. Risanga Nelka Riyensi Rajapaksha,

Both of
"Jayamani"
Kehelwathugoda,
Dewalegama.
Petitioner-Respondent-Respondents

Mallawa Waduge Samantha,
No. 167/12, Udambewatte,
Olagama, Kegalle.
1st Respondent-Respondent-Respondent

Before: P. Padman Surasena, J.
Mahinda Samayawardhena, J.
Arjuna Obeyesekere, J.

Counsel: Sudarshani Cooray for the 2nd Respondent-Appellant-Appellant.
Erusha Kalidasa for the Petitioner-Respondent-Respondents.

Argued on: 21.02.2022

Written submissions:
by the 2nd Respondent-Appellant-Appellant on 10.01.2022.
by the Petitioner-Respondent-Respondents on 05.05.2022.

Decided on: 19.07.2023

Samayawardhena, J.

In accordance with the written settlement dated 07.12.2010, the dispute was settled before the Debt Conciliation Board between the 2nd respondent-appellant (appellant) as the creditor and the two petitioners-respondents (respondents) as the debtors, in terms of which the respondents agreed to pay Rs. 900,000 to the appellants on or before 06.06.2011 in order for the appellant to retransfer the property to the respondents. This did not happen.

The respondents filed action against the appellant in the District Court (more than five years after that date) on 08.09.2016 under summary procedure in terms of section 43(1) of the Debt Conciliation Ordinance, No. 39 of 1941, as amended, seeking enforcement of the settlement. One of the objections taken up by the appellant creditor against the maintainability of the action was that the respondent debtors cannot file action in the District Court under section 43(1) of the Debt Conciliation Ordinance as that section can only be invoked by a creditor, not by a debtor.

Both the District Court and the High Court overruled this objection and granted relief to the respondents. The High Court stated that the term "creditor" in section 43(1) could include "debtor" as well. This Court granted leave to appeal on the question whether the High Court erred in law by interpreting section 43(1) of the Debt Conciliation Ordinance in that manner.

Section 43 of the Debt Conciliation Ordinance reads as follows:

> *43(1). Where the debtor fails to comply with the terms of any settlement under this Ordinance, any creditor may, except in a case where a deed or instrument has been executed in accordance with the provisions of section 34 for the purpose of giving effect to those terms of that settlement, apply to a court of competent jurisdiction, at any time after the expiry of three months from the date on which such settlement was countersigned by the Chairman of the Board, that a certified copy of such settlement be filed in court and that a decree be entered in his favour in terms of such settlement. The application shall be by petition in the way of summary procedure, and the parties to the settlement, other than the petitioner shall be named respondents, and the petitioner shall aver in the petition that the debtor has failed to comply with the terms of the settlement.*

(2) If the court is satisfied, after such inquiry as it may deem necessary, that the petitioner is prima facie entitled to the decree in his favour, the court shall enter a decree nisi in the petitioner's favour in terms of the settlement. The court shall also appoint a date, notice of which shall be served in the prescribed manner on the debtor, on or before which the debtor may show cause as hereinafter provided against the decree nisi being made absolute.

(3) In this section "court of competent jurisdiction" means any court in which the creditor could have filed action for the recovery of his debt, if the cause of action in respect of that debt had not been merged in the settlement; "summary procedure" has the same meaning as in Chapter XXIV of the Civil Procedure Code.

Learned counsel for the respondents accepts that upon a plain reading of this section it is clear that this section can only be invoked by a creditor, not by a debtor. The respondents are debtors. However, learned counsel submits thus: The Debt Conciliation Ordinance was originally enacted to cover only simple loan transactions between a creditor and a debtor, and therefore section 43(1) was intended to cover only a situation where the debtor violates the settlement since in a simple loan transaction there is no way the creditor can violate the settlement. The Ordinance was amended by Act No. 20 of 1983 and Act No. 29 of 1999, which extended its scope to include conditional transfers and outright transfers under the purview of the Debt Conciliation Board. Once these amendments were made, there should be a provision for the debtor also to file an action in the District Court to have the settlement enforced when the creditor violates the agreement; for instance, if the debtor pays the money to the creditor in terms of the settlement but the creditor does not retransfer the property.

Learned counsel submits that unless section 43(1) is interpreted allowing the debtor also to file action in the District Court, it would result in great injustice to the debtor because in the event the settlement is violated by the creditor, the debtor will have to file a regular action in the District Court to enforce the settlement whereas if the settlement is violated by the debtor, the creditor can file action in the District Court under section 43(1) following summary procedure to have the settlement enforced. He says this cannot be the intention of the legislature.

When the language of a material provision of a statute is plain, clear, unambiguous and explicit and admits only one meaning, the question of interpretation of the provision does not arise. The intention of the legislature shall be deduced from the language used in the statute. In such circumstances, the statute speaks for itself and no addition, subtraction or extension to the text is necessary. It is only when words are unclear, ambiguous and open to more than one construction, the Court needs to go after the intention of the legislature. This is the first canon of construction of statutes, which is known as the literal rule.

When section 43(1) clearly states that any “creditor” may apply to the District Court in terms of that section, how can the District Court and the High Court read into that section the word “debtor” to say that any creditor or debtor may apply to the District Court in terms of that section. It cannot be an oversight as learned counsel for the respondents sought to suggest. For instance, section 14 specifically refers to both the debtor and creditor when it comes to making an application to the Debt Conciliation Board to effect a settlement of the debts. Suffice it to say that creditor and debtor cannot be treated alike. However, the debtor is not without a remedy. The debtor can file a regular action to have the settlement enforced, if he so desires.

I cannot agree with learned counsel for the respondents when he states that when the Ordinance was enacted in 1941 the legislature contemplated only simple loan transactions between the creditor and the debtor without any collaterals, but complicated loan transactions were permitted to be entertained by the Debt Conciliation Board only after the Debt Conciliation Ordinance Amendment Acts No. 20 of 1983 and No. 29 of 1999. Section 19 of the Debt Conciliation Ordinance was first amended as far back as 1959 by Act No. 5 of 1959 whereby applications in respect of debts purporting to be secured by conditional transfers of immovable property were also allowed to be entertained. Thus, at least since 1959, the Debt Conciliation Board has been entertaining applications other than applications relating to simple loan transactions, but the legislature did not think it fit or necessary to amend section 43(1) to include the debtor in addition to the creditor. If the legislature thinks that, not only the creditor but also the debtor should be allowed to make an application under section 43(1), it is up to the legislature to amend the law.

I answer the question of law upon which leave to appeal was granted in the affirmative and hold that only the creditor can file an action in the District Court under section 43(1) of the Debt Conciliation Ordinance as the law stands today. I set aside the judgment of the District Court and the judgment of the High Court. The action of the respondents in the District Court shall stand dismissed. The appeal of the 2nd defendant appellant is allowed. I make no order as to costs.

Judge of the Supreme Court

P. Padman Surasena, J.
I agree.

Judge of the Supreme Court

Arjuna Obeyesekere, J.

I agree.

Judge of the Supreme Court