

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

In the matter of an application under  
Section 16 of the Recovery of Loans by  
Banks (Special Provisions) Act No. 04 of  
1990, read with Chapter XXIV of the Civil  
Procedure Code.

Seylan Bank PLC,  
Seylan Towers,  
P.O. Box 400,  
No. 90, Galle Road,  
Colombo 03.

**Petitioner**

**SC Appeal No: 121/2019**

**High Court Case No:**

**WP/HCCA/COL/59/18/LA**

**DC Colombo Case No:**

**DSP 73/2016**

**Vs.**

1. The Kandy Tyre House (Pvt) Limited,  
No. 1087, Maradana Road,  
Colombo 08.

And also, of  
No. 106, Kotugodella Veediya,  
Kandy.

**Respondent**

**AND BETWEEN**

The Kandy Tyre House (Pvt) Limited,  
No. 1087, Maradana Road,  
Colombo 08.

And also, of  
No. 106, Kotugodella Veediya,  
Kandy.

**Respondent-Petitioner**

**Vs.**

Seylan Bank PLC,  
Seylan Towers,  
P.O. Box 400,  
No. 90, Galle Road,  
Colombo 03.

**Petitioner-Respondent**

**AND NOW BETWEEN**

Seylan Bank PLC,  
Seylan Towers,  
P.O. Box 400,  
No. 90, Galle Road,  
Colombo 03.

**Petitioner-Respondent-  
Appellant**

**Vs.**

The Kandy Tyre House (Pvt) Limited,  
No. 1087, Maradana Road,  
Colombo 08.

And also, of  
No. 106, Kotugodella Veediya,  
Kandy.

**Respondent-Petitioner-**  
**Respondent**

**Before:**        **Justice P. Padman Surasena**  
                     **Justice A.L. Shiran Gooneratne**  
                     **Justice K. Priyantha Fernando**

**Counsel:**        Nigel Hatch, PC with Shiroshni Illangage instructed by Voyomi  
                     A. Paranagama for the **Petitioner-Respondent-Appellant.**

S.A. Parathalingam, PC with Nishkan K. Parathalingam and  
Upeka Sooriya Patabadige instructed by Anoma Goonethilleke  
for the **Respondent-Petitioner-Respondent.**

**Argued on:**     19/12/2024

**Decided on:**    30/05/2025

**A.L. Shiran Gooneratne J.**

- [1] By Petition and Affidavit dated 30/06/2016, the Petitioner-Respondent-Appellant (hereinafter referred to as “the Appellant”) preferred an Application, in the District Court of Colombo, Case No. DSP 73/16 against the Respondent-Appellant-Respondent (“the Respondent”), in terms of Section 16 of Recovery of Loans by Banks (Special Provisions) Act No. 4 of 1990 (as amended).
- [2] When this matter was taken up for inquiry, the Respondent raised a preliminary question of law to be decided upon prior to the action being taken up for inquiry. Having considered the pleadings and the written submissions tendered by the respective parties, the learned District Judge, by Order dated 16/03/2018, dismissed the preliminary objection raised by the Respondent and set the matter for Inquiry to decide whether the *Order Nisi* issued be made an *Order Absolute*.
- [3] Being aggrieved by the said Order, the Respondent preferred an Appeal to the Civil Appeal High Court of the Western Province exercising civil appellate jurisdiction holden in Colombo (“the Appellate Court”). In the Appeal, the Appellant raised a preliminary jurisdictional objection stating that no right of appeal lies in terms of Section 16 of Act No. 04 of 1990 (as amended), since the said statute had not expressly created such a right and therefore, the Court had no jurisdiction to hear and determine the application.
- [4] The Appellate Court, after hearing and also considering the submissions tendered by both parties, by Order dated 19/11/2018, dismissed the said preliminary objection raised by the Appellant.

[5] The Appellant is before this Court to have the said Order set aside. By Order dated 04/07/2019, this Court granted Leave to Appeal on the following questions of law;

- a) Has the High Court erred in law in disregarding and/or failing to apply the fundamental legal principle that no right of appeal lies unless expressly conferred by statute, which said legal principle has been followed in Sri Lanka for almost a century?
- b) Has the High Court erred in law in disregarding and/or failing to follow and apply the case law decided by the Court of Appeal that no right of appeal has been conferred against an order made under Section 16 of the Recovery of Loans by Banks (Special Provisions) Act No. 4 of 1990 (as amended)?
- c) Has the High Court erred in law in failing to judicially consider and/or misdirected itself in law in applying the case law cited by the Petitioner which have held that the Recovery of Loans by Banks (Special Provisions) Act No: 4 of 1990 (as amended) is a special law and does not provide for a right of appeal?
- d) Has the High Court erred in law in disregarding and/or failing to follow the principle of *stare decisis* where the High Court of the Western Province, Holden in Colombo (exercising appellate jurisdiction), is bound by the decisions of the Court of Appeal and Supreme Court?
- e) Has the High Court Judge erred in law in analyzing the case law and drawing a distinction between special and ordinary jurisdiction exercised by the District Court and holding that no right of Appeal exists from an order made by the District Court exercising unless expressly conferred by

statute and in doing so completely disregarding the case law cited which specifically held that the District Court exercise special jurisdiction under the Recovery of Loans by Banks (Special Provisions) Act No. 4 of 1990 (as amended) which does not confer any right of appeal?

- [6] When this matter was taken up for hearing on 04/11/2024, it was brought to the notice of Court that the questions of law raised in the instant Appeal are identical to the questions of law raised in Appeals No. SC/App/33/2019 and SC/App/34/2019, and that on the question whether a right of appeal exist against an order made under Section 16 of the Recovery of Loans by Banks (Special Provisions) Act No. 4 of 1990 (as amended), this Court on 26/02/2024, has decided that there was no right of Appeal from such an order of the District Court made under Section 16 of the aforesaid Act. Accordingly, the said Application for Leave to Appeal had been dismissed.
- [7] In the circumstances, when this matter was taken up on 04/11/2024, both parties agreed to address the question of law, whether a right of appeal exists against an order made under Section 16 of the Act to finally and conclusively determine the instant application and to tender written submissions accordingly.
- [8] The Appellant, by motion dated 21/03/2024, placed reliance on the Judgment dated 26/02/2024, in Appeal Nos. SC/App/33/2019 and SC/App/34/2019, and moved that the Court take judicial cognizance of the said Judgment, which has already answered the questions of law applicable to the instant appeal.
- [9] In paragraph 7 of the written submissions tendered by the Respondent, it is stated that;

*“At the outset the Respondent unequivocally concedes that by the said Judgment dated February 26, 2024 – pronounced in SC Appeals 33/2019 and 34/2019 – Your Lordships’ Court has categorically held that no right of appeal lies from an Order made under Section 16 of Act No. 4 of 1990 (as amended)”.*

- [10] The nature of special jurisdiction conferred in the District Court to determine matters arising under the Recovery of Loans by Banks (Special Provisions) Act No. 4 of 1990 (as amended), and taking into consideration the findings in ***DFCC Bank vs. Warnakulasuriya Chandima Prasad and another***<sup>1</sup> in its entirety, I see no reason to deviate from the said stand.
- [11] At the outset, it is important to distinguish between the two questions that arise in this matter. The first relates to the general issue of whether a right of appeal exists under Section 16 of the Recovery of Loans by Banks (Special Provisions) Act No. 4 of 1990 (as amended), which has already been addressed and conclusively determined in prior decisions of this Court. The second, which is more specific to this case, concerns whether, even if no general right of appeal exists under Section 16, a right of appeal nevertheless arises in the particular context of this case, where the impugned order was made on a preliminary objection rather than on the substantive application for delivery of possession. While the first issue is governed by settled law, the second requires not only analysis of whether a preliminary order made during proceedings constitutes an order within the meaning of Section 16, but also calls for justification through principles of statutory interpretation, given that the statute is silent on whether such orders fall within the prohibition on appeals.

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<sup>1</sup> SC/Appeal/33/2019 SC Minutes of 09.02.2023

[12] The position insisted upon by the Respondent is that the impugned order dated 16/03/2018, arising from the instant application is not an order which was made under Section 16 of Act No. 4 of 1990 (as amended), but an order made consequent to a preliminary jurisdictional objection raised by the Appellant, which does not amount to an order made under Section 16 of the Act.

[13] In the light of the above, both parties agreed that this Court consider the following question of law;

*“Can an aggrieved party be entitled to a right of appeal on a preliminary order made under Section 16 of Act No. 4 of 1990 (as amended)?”*

**Right of Appeal Under Section 16: General Prohibition**

[14] Section 16 of the Recovery of Loans by Banks (Special Provisions) Act No. 4 of 1990 (as amended) reads thus:

*“(1) The purchaser of any immovable property sold in pursuance of the preceding provisions of this Act shall, upon application made to the District Court of Colombo or the District Court having jurisdiction over the place where that property is situated, and upon production of the certificate of sale issued in respect of that property under section 15, be, entitled to obtain an order for delivery of possession of that property.*

*(2) Every application under subsection (1) shall be made and shall be disposed of, by way summary procedure, in accordance with the provisions of Chapter XXIV of the Civil Procedure code ; and on all documents filed the purpose of each such application and on all proceedings held thereupon, stamp duties and other charges shall be payable at the respective rates payable under any written law for the time*



*being in force on applications for, and proceedings connected with, of incidental to, the execution of a decree of a District Court for the delivery of possession of any immovable property of the same value as the property to which such application relates.*

*(3) Where any immovable property sold in pursuance of the preceding provisions of this Act in the occupancy of the borrower or some person on his behalf or of some person claiming under a title created by the borrower subsequently to the mortgage of the property to the bank the District Court shall order delivery to be made by putting the purchaser or any person whom he may appoint to receive possession on his behalf, in possession of the property.*

*(4) Where any immovable property sold in pursuance of the preceding provisions of this Act is in the occupancy of tenant or other person entitle to occupy the same, the District Court shall order delivery to be made by affixing a notice that the sale has been taken place, in the Sinhala, Tamil and English languages, in some conspicuous place on the property, and proclaiming to the occupant by beat of tom-tom or any other customary mode or in such manners the court may direct, at some convenient place, that the interest of the borrower has been transferred to the purchaser. The cost of such proclamation shall be fixed by the court and shall in every case be prepaid by the purchaser.*

*(5) Every order under subsection (3) or subsection (4) shall be deemed, as the case may be, to be an order for delivery of possession made under section 287 or section 288 of the Civil procedure Code, and may be enforced in like manner as an order so made, the borrower and the purchaser being*

*deemed, for the purpose of the application of any provisions of that Code, to be the judgment-debtor and judgment-creditor, respectively.”*

- [15] Section 16(1) of the Act entitles a party to obtain an order for delivery of possession from the District Court having jurisdiction over the place where the land is situated, upon production of the certificate of sale. This Court in ***DFCC Bank vs. Warnakulasuriya Chandima Prasad and another***<sup>2</sup>, referred to an order made in respect of Section 16(1) of the Act, where it stated;

*“Under section 16(1), the Court is not expected to have a full trial or full inquiry and make an order on the merits of the substantive case, if any. The Court makes a perfunctory order for delivery of possession upon production of the certificate of sale. The intervention of the Court is sought at this stage primarily to prevent the breach of peace in the execution of a non-judicial order.”*

- [16] As held in, ***Martin vs. Wijewardena***<sup>3</sup>;

*“A right of appeal is a statutory right and must be expressly created and granted by statute. It cannot be implied. Article 138 is only an enabling Article, and it confers the jurisdiction to hear and determine appeals to the Court of Appeal. The right to avail of or take advantage of that jurisdiction is governed by the several statutory provisions in various Legislative Enactments.”*

This principle applies with even greater force in statutory schemes such as the present Act, which confer special jurisdiction and provide for expedited

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<sup>2</sup> *ibid*

<sup>3</sup> [1989] 2 SLR 409, 410

procedures. In such instances, the absence of an express right of appeal must be regarded as a conscious legislative choice to limit appellate interference.

### **Application of Section 16 to Preliminary Objections**

- [17] I am not inclined to accept the distinction that the impugned order pertains to a preliminary jurisdictional objection, rather than to the substantive application for delivery of possession, and therefore lies outside the scope of the Act. It is evident that the said order was delivered in the course of proceedings instituted under Section 16. This forms an inseparable part of the statutory procedure provided for by the legislature.
- [18] A decision on a preliminary objection delivered in the course of a proceeding under a special statute cannot be considered in isolation or considered to be independent of the jurisdiction exercised under that statute. When a Plaintiff institutes an action in a Court, under a particular statute which provides for its procedure, the jurisdiction exercised by the District Court at all stages of the proceeding will be derived from the jurisdiction conferred by the Act. Therefore, the nature of the Order, whether preliminary or final, does not change the nature of the proceedings or confer a right of appeal when the statute does not provide for such a right.
- [19] At this stage, I find it necessary to turn to the legislative intent to further clarify the statutory scheme governing Section 16 and to determine whether a right of appeal should be read into the statute in respect of such orders.

### **Legislative Intent and Statutory Scheme**

- [20] Although Section 16 of the Recovery of Loans by Banks (Special Provisions) Act No. 4 of 1990 (as amended) appears clear in its written text and does not contain any ambiguity requiring interpretation, the matter before this Court

arises from a different source. The statute remains silent on the procedural law concerning preliminary objections raised in proceedings instituted under the Act. This requires the Court to refer to established principles of statutory interpretation. In circumstances where the statute does not expressly provide for a procedural right, and permitting such a right may potentially frustrate the intention of the legislature, it becomes incumbent upon the Court to interpret the statute in a manner that gives effect to a purposive interpretation of its intent.

- [21] It is well established that courts, when interpreting statutes, should consider the intent of the legislature. Interpretation of the scope and application of a statutory provision, particularly in circumstances where the statute is silent or ambiguous on a material fact, it is both appropriate and useful to refer to the Parliamentary Hansard Report to ascertain the objectives the legislature sought to achieve. As held in the landmark case of ***Pepper vs. Hart***<sup>4</sup>

*"The days have passed when the courts adopted a literal approach. The courts use a purposive approach, which seeks to give effect to the purpose of legislation and are prepared to look at much extraneous material that bears upon the background against which the legislation was enacted."*

- [22] In this regard, the statement made by the Honorable Minister in the process of enabling Act No. 4 of 1990 provides a clear insight into the legislative intent in order to establish a summary and an expedited process for the recovery of possession, without the delays associated with ordinary litigation.

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<sup>4</sup> [1992] 3 WLR 1032

The extract from the Hansard reads thus;

“...පැහැර හරිනු ලැබ ඇති බැංකු ණය ආපසු අයකර ගැනීමේලා මුහුණ පෑමට සිදුවී ඇති දීර්ඝ ප්‍රමාදයන් ගැන ශ්‍රී ලංකාවේ බැංකු ආයතනයන් කාලාන්තරයක සිට මුදල් අමාත්‍යාංශය වෙත කරුණු සැලකරමින් සිටිනවා. බොහෝ අවස්ථාවල ණය ආපසු අයකර ගැනීමේ නීති කෘතීන් අවුරුදු 6ක් 8ක් තරම් කල් දිගින් දිගට ඇදී ඇදී යනවා.

බැංකු විසින් ණය ගැනුම්කරුවන්ගෙන් අධික පොලී අනුපාතයක් අයකරනු ලැබීමට එක් හේතුවක් වන්නේ බැංකු ණය අයකර ගැනීමේ දීර්ඝ ප්‍රමාදය සහ අධික වියදම් යයි බැංකු පවසනවා.

රටෙහි ආයෝජනය සහ සංවර්ධනය දිරිගැන්වීම සඳහා පොලී අනුපාතයන් හැකි අවමය දක්වා පහත හෙළීම අනිශ්චයෙන් ප්‍රඥාගෝචරයි. මේ නව ව්‍යවස්ථා ක්‍රියාත්මක කිරීම මෙම අරමුණ සාක්ෂාත් කර ගැනීමට උපකාරී වනු ඇතැයි මම බලාපොරොත්තු වෙනවා.

බැංකු සහ වෙනත් ණය දෙන ආයතනයන් ඒවායේම මූල්‍ය ශක්තියෙන් පවත්වාගෙන යෑමට සැලැස්වීමේ අවශ්‍යතාවය ද එතරම්ම වැදගත් වෙනවා. බැංකු පද්ධතියෙන් ණය ලබාගත් පුද්ගලයන්, විශේෂයෙන්ම, රාජ්‍ය බැංකුවලින් මුදල් ණයට ලබාගත් අයවලුන් විසින් ගෙවීම පැහැර හැරීම ඉහළ මට්ටමක පැවතීම නිසා බැංකුවල මූල්‍යමය ස්ථාවරත්වයට තර්ජනයක් එල්ල වෙනවා.

මෙම තත්ත්වය දිගටම පැවතීමට ඉඩ දුනහොත්, ඒ හේතුකොටගෙන ම ඇතැම් බැංකු ඇදවැටෙන්නට පුළුවනි. එවිට, එම බැංකුවල තමන්ගේ මුදල් යොදා ඇති සිය දහස් ගණන් සුළු තැන්පත්කරුවන්ට අනර්ථකාරී ප්‍රතිවිපාක ඇතිවෙන්නට ඉඩ තිබෙනවා මෑතකදී, මුදල් සමාගම් ගණනාවක් සම්බන්ධයෙන් අප ලැබූ අත්දැකීම් සිදුවිය හැක්කේ කුමක්දැයි යන්න පිළිබඳව තදබල අනතුරු ඇඟවීමක් වශයෙන් සැලකිය හැකිය.<sup>5</sup>”

[23] As explained by Lord Diplock in *Sweet vs. Parsley*<sup>6</sup> “**Purpose** connotes an intention by some person achieve a result desired by him” (emphasis is

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<sup>5</sup> Sri Lanka, Parliament, Hansard, 23 January 1990, p 1 (Hon D B Wijetunga)

<sup>6</sup> [1970] AC 132, 165

mine) This makes it abundantly clear that the legislative purpose was to create a framework free from any procedural delays usually encountered in the Civil Procedure. This legislation was brought about as a response to repeated and long-standing concerns by banks that debt recovery litigation was long, drawn-out, and protracted. The delay in litigation procedure was contributing to the frustration of institutional efficiency and was also compromising the financial stability of banks and the economy of the State. It is in this context that the Act vested the District Court with special jurisdiction in terms of Section 16. To permit appeals from preliminary rulings, such as orders on jurisdictional objections, would invite a reintroduction of precisely the procedural delays and uncertainties that the Act was enacted to eliminate.

[24] The stand advanced by the Respondent would certainly enable litigants to segmentize the procedure to their convenience, which is contrary to the legislative intent and would undermine the expeditious recovery mechanism established under the Act. Permitting a right of appeal, in my view, would erode the foundation of the legislative scope and scheme, reintroducing uncertainty and procedural confusion, contrary to the clear intent of the legislature.

[25] Therefore, the position taken by the Respondent is unsustainable. This Court is mindful that while the judiciary plays a pivotal role in ensuring justice, it must do so within the bounds of legislative intent. Particularly in special enactments that create limited and expedited remedies, the Court must be mindful when expanding the procedural rights that the legislature has consciously curtailed.

- [26] In the circumstances, the question of law stated earlier in this Judgment is answered in the negative. The impugned Order dated 19/11/2018 is set aside, and the Application for Leave to Appeal filed in the Civil Appeal High Court is dismissed.
- [27] This Appeal is allowed. The Appellant is entitled to costs in the Civil Appeal High Court and in this Court.

**Judge of the Supreme Court**

**P. Padman Surasena, J.**

I agree

**Judge of the Supreme Court**

**K. Priyantha Fernando, J.**

I agree

**Judge of the Supreme Court**