

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

In the matter of an Application for Leave to Appeal against the order of the Learned Judge of the Commercial High Court in Case No CHC/61/2024/MR made on 05.05.2025, under and in terms of Chapter LVIII of the Civil Procedure Code read together with Section 5(2) of the High Court of the Provinces (Special Provisions) Act No 10 of 1996.

SC Appeal 122/2025  
SC (HC) Leave to Appeal No  
35/2025  
Commercial High Court Case no  
– CHC/61/2024/MR

1. Neththasingha Appuhamilage Rohana  
Neththasingha  
No 63, Thalgasmote,  
Veyangoda.
2. Bandula Ashoka Thamarasingha  
No 160/A, Palm Grove Gardens,  
Paththalagedara,  
Veyangoda.
3. Dambadeni Arachchige Karunashantha  
Dambadeniarachchi  
No. 476/21, Kamburagalla Watta,  
Rukgahawila
4. Hettige Dona Thushiri Lakmini  
Thirimanna  
No 205/2E, Dudley Senanayake  
Mawatha,  
Nittambuwa.

5. Rajasuriya Jayarathnalage Ranjith  
Premathilake  
No 152C, Plam Grove Gardens,  
Paththalagedara,  
Veyangoda.

**PLAINTIFFS**

Vs.

1. Gampaha Development Company  
(PVT) Ltd  
Sanasa Square,  
Court Road,  
Gampaha.

2. Seylan Bank PLC  
No 90, Seylan Towers,  
Galle Road,  
Colombo 03.

**DEFENDANTS**

**AND NOW BETWEEN**

Seylan Bank PLC  
No 90. Seylan Towers,  
Galle Road,  
Colombo 03.

**2<sup>nd</sup> DEFENDANT-PETITIONER**

Vs.

1. Neththasingha Appuhamilage Rohana  
Neththasingha  
No 63, Thalgasmote,  
Veyangoda.

2. Bandula Ashoka Thamarasingha  
No 160/A, Palm Grove Gardens,  
Paththalagedara,  
Veyangoda.
3. Dambadeni Arachchige Karunashantha  
Dambadeniarachchi  
No. 476/21, Kamburagalla Watta,  
Rukgahawila.
4. Hettige Dona Thushiri Lakmini  
Thirimanna  
No 205/2E, Dudly Senanayake  
Mawatha,  
Nittambuwa.
5. Rajasuriya Jayarathnalage Ranjith  
Premathilake  
No 152C, Plam Grove Gardens,  
Paththalagedara,  
Veyangoda.

**PLAINTIFF-RESPONDENTS**

Gampaha Development Company (PVT)  
Ltd  
Sanasa Square,  
Court Road,  
Gampaha.

**1<sup>ST</sup> DEFENDANT-RESPONDENT**

**Before:**           **Justice A.L. Shiran Gooneratne**  
                          **Justice Dr. Sobhitha Rajakaruna**  
                          **Justice Menaka Wijesundera**

**Counsel:** Kushan D’ Alwis, PC with Mr. Wickramanayake and Sashendra Mudannayake and Mr. Missaka instructed by Wayoma Paranagama for the **2<sup>nd</sup> Defendant-Petitioner-Appellant**

Harith de Mel with Hasini Rupasinghe instructed by Chamithry Kaluhenadige for the **1<sup>st</sup>–5<sup>th</sup> Plaintiff-Respondent-Respondents.**

**Argued on:** 10/02/2026

**Decided on:** 27/03/2026

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

The 2<sup>nd</sup> Defendant–Appellant (hereinafter referred to as the “2<sup>nd</sup> Defendant bank”) has invoked the jurisdiction of this Court seeking to set aside the Order dated 05/05/2025 made by the learned Judge of the Commercial High Court of Colombo in Case No. CHC 61/2024/MR, whereby an interim injunction was issued pending the hearing and final determination of the said action.

The 1<sup>st</sup> to 5<sup>th</sup> Plaintiff–Respondents (hereinafter referred to as the Plaintiffs), in their Complaint marked X1, have stated that they had entered into Agreements of Sale with the 1<sup>st</sup> Defendant–Respondent, Gampaha Development Company (Pvt) Ltd, the developer of Siyane City Shopping Complex, and had paid substantial sums of money towards the purchase of condominium units therein. They contend that the 1<sup>st</sup> Defendant–Respondent has failed to duly complete the said development. The Complaint further discloses that the property in question had been mortgaged to the 2<sup>nd</sup> Defendant Bank as security for loan facilities obtained by the 1<sup>st</sup> Defendant–Respondent and that, upon default in repayment, the 2<sup>nd</sup> Defendant-Bank has taken steps to auction the mortgaged property.

In the Statement of Objections, the 2<sup>nd</sup> Defendant-Bank states that the 1<sup>st</sup> Defendant–Respondent had obtained several term loan facilities subject to agreed terms and conditions, secured *inter alia* by Mortgage Bonds Nos. 1312 and 1313 dated 11/07/2017. It is further averred that the said facilities were rescheduled on several occasions with the concurrence of the 2<sup>nd</sup> Defendant-Bank. Notwithstanding repeated demands, the 1<sup>st</sup> Defendant–Respondent has failed and neglected to pay the outstanding dues. The 2<sup>nd</sup> Defendant-Bank maintains that having duly complied with the provisions of the Recovery of Loans by Banks (Special Provisions) Act No. 4 of 1990, it has lawfully proceeded to auction the mortgaged property to recover the sums due.

By the impugned Order, the learned Judge of the Commercial High Court granted an interim injunction as prayed for, restraining the 2<sup>nd</sup> Defendant-Bank from proceeding with the auction pending the final determination of the action.

When this matter was supported before this Court, leave to proceed was granted on the following questions of law,

- a) Did the learned judge err in law in failing to consider that the Petitioner has a statutory right to auction the said property,
- b) Did the learned Judge err in law in failing to consider that the Petitioner has a priority over the rights of the property in question, by way of the Mortgage Bond Nos. 1312 and 1313, both dated 2017/07/11, attested by W.A.R.J. Wellappili Notary Public,
- c) Did the learned Judge misdirect himself in law by erroneously concluding that the Plaintiff-Respondents had established a prima facie case against the Petitioner and /or that the balance of convenience warranted the grant of an interim injunction in the above-styled case.

At the outset, it must be noted that on 05/05/2025, the learned Judge of the Commercial High Court delivered two separate orders in this matter, one relating to the addition of parties as plaintiffs and the other relating to the application for an interim injunction. The present appeal is confined to the latter order. The 2<sup>nd</sup>

Defendant Bank has only challenged the order granting the interim injunction, which has been marked X5.

It is important to note that the scope of this appeal stems from the order granting the interim injunction, and the inquiry is limited to whether that order was issued in accordance with the relevant principles governing interim relief. The substantive issues between the parties are not to be finally decided at this stage. However, the factual circumstances that led to the dispute cannot be ignored, as these facts must be considered to the extent necessary to determine whether the conditions for granting an interim injunction are satisfied.

The parties are well aware of the jurisprudence surrounding the law relating to the grant of interim injunctions. In an application of this nature, the Court must first be satisfied that the Plaintiff has established a prima facie case. In ***Felix Dias Bandaranaike v State Film Corporation*** [1981 2 SLR 287], it was held that the applicant must show that there is a serious matter in relation to his legal rights to be tried at the hearing and that he has a good chance of success. It is sufficient if the probabilities are that he will succeed. At the same time, if the probability is that no right of the Plaintiff will be violated or that he will suffer no wrong recognized by law, an injunction should be denied. The Court must consider the case as a whole and assess the relative strength of the positions taken up by both parties.

In ***Kariyawasam v Sujatha Janaki and Others*** [2013 1 SLR 176], it was observed that, for the purpose of interim relief, the Plaintiff need not establish his claim conclusively at this stage, yet it must appear that the probabilities are such that the Plaintiff is entitled to judgment in his favor. The Plaintiff must show that a legal right of his is being infringed and that he will probably succeed in establishing that right.

Once a prima facie case is established, the court must then determine *inter alia* where the balance of convenience lies. In doing so, the court must weigh the merits of each side and decide which side would face greater inconvenience pending the final determination of the case.

In this case, since the interim injunction granted by the Commercial High Court prevents the 2<sup>nd</sup> Defendant Bank from exercising its statutory power of *parate* execution, the Court must be satisfied that the Plaintiffs have at least a prima facie legal right protected against the Bank, and that the circumstances justify intervening with that statutory right at this interim stage. It is within this limited context that the facts and documents relied upon by the parties must now be examined.

An inquiry into the existence of a prima facie case necessarily includes consideration of whether the Plaintiffs have disclosed a legal right and a sufficient interest in the subject matter to seek the relief prayed for.

The learned President's Counsel for the 2<sup>nd</sup> Defendant-Bank drew the attention of Court to the fact that the learned Judge had arrived at erroneous conclusions in law and in fact when the learned Judge held;

First, that the Plaintiffs were owners of the respective units notwithstanding the absence of deeds of transfer,

Secondly, that the documents relied upon by the Plaintiffs had been executed prior to the Mortgage Bond No. 1312 dated 11/07/2017.

Thirdly, that there was no evidence before the Commercial High Court of a condominium plan, provisional or semi condominium plan, and in the absence of an execution of a valid declaration by the 1<sup>st</sup> Defendant-Respondent according to the Apartment Ownership Law No. 11 of 1973, there cannot be any derivation of title and/or transfer of title.

Finally, that the Plaintiffs had made out a strong prima facie case warranting interim relief against the 2<sup>nd</sup> Defendant-Bank. It was therefore contended that the Commercial High Court had misdirected itself in law and in fact in reaching those conclusions.

It was therefore contended that the Commercial High Court was misdirected both in law and in fact in reaching the aforesaid conclusions.

Upon a perusal of the marked Agreements to Sell, it is observed that the Agreements entered into between the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> Plaintiffs and the 1<sup>st</sup> Defendant were executed subsequent to the execution of Mortgage Bond No. 1312 dated 11/07/2017. Although Agreement to Sell No. 8366 dated 26/05/2015 predates the said Mortgage Bond, clause 11 of Agreement No. 8366 expressly provides that any mortgage bond executed over the land shall take priority over the said Agreement.

The Plaintiffs seek to restrain the process of *parate* execution on the basis that they are the lawful owners and occupants of the respective condominium units, having paid consideration to the 1<sup>st</sup> Defendant and entered into Agreements to Sell in respect of those units. Yet, on the material presently before Court, what is disclosed is no more than a contractual relationship between the Plaintiffs and the 1<sup>st</sup> Defendant. The 2<sup>nd</sup> Defendant Bank is not a party to those agreements and has undertaken no contractual obligation to the Plaintiffs therein. Accordingly, no contractual right arising from those agreements can be asserted against the 2<sup>nd</sup> Defendant Bank.

The Agreements to Sell do not, by any means, constitute a valid instrument that transfers title to the property to the Plaintiff-Respondents. Title passes only upon the execution and registration of a valid deed of transfer or conveyance according to law. No such deed in favor of the Plaintiffs has been produced. In those circumstances, the Plaintiffs cannot, on the strength of Agreements to Sell alone, assert a right superior to that of the mortgagee Bank.

Also, as submitted by the learned President's Counsel, the Plaintiffs have failed to produce any condominium plan, whether semi or provisional, nor have they established that a valid Declaration has been executed by the applicant in terms of the Apartment Ownership Law No. 11 of 1973. In the absence of such compliance with the statutory requirements governing condominium property, no lawful subdivision or transfer of title to the respective condominium units in favor of the Plaintiffs could have taken place. Accordingly, the Plaintiffs cannot assert that any proprietary title to the said units has vested in them.

The Plaintiffs have also sought to draw support from sections 5 and 8 of the Mortgage Act. Those provisions arise in the context of hypothecary actions and form part of the procedural scheme relating to persons entitled to notice in such actions. In the present appeal, which is confined to the correctness of the order granting interim injunction, it is not necessary to enter into any final determination on the scope or application of those provisions. It is sufficient to observe that, even leaving those contentions aside, the material presently before Court does not disclose a prima facie legal right in the Plaintiffs as against the 2<sup>nd</sup> Defendant Bank to justify restraint of the Bank's statutory right of *parate* execution.

In ***Seylan Bank PLC v The Kandy Tyre House (Pvt) Ltd (SC Appeal No. 121/2019, decided on 30/05/2025)***, this Court has discussed the legislative objective of implementing an expeditious recovery mechanism and avoiding delays and uncertainties associated with ordinary litigation.

In analyzing how the statutory scheme should be understood and applied, this Court adopted a purposive approach to interpretation and referred to the Parliamentary Hansard relating to the Recovery of Loans by Banks (Special Provisions) Act No. 4 of 1990. The Court held as follows:

*“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.”*

Therefore, when the Court is invited to grant interim relief which, in practical terms, prevents the continuation of the Bank's statutory enforcement process, the Court must be vigilant and cautious, particularly where the Plaintiffs have not placed material sufficient to establish a sustainable claim.

It is well-settled law that the right of a licensed commercial bank to realise mortgaged property by *parate* execution under the Recovery of Loans by Banks (Special Provisions) Act is a substantive statutory right which cannot be lightly interfered with by Court. The mortgage bond executed in favor of the Bank creates a proprietary security over the land and entitles the Bank to realise that security by *parate* execution. This Court has consistently held that judicial intervention is warranted only upon prima facie proof of non-compliance with the mandatory provisions of the Act, fraud, mala fides, or excess of statutory authority.

In the absence of any such material averred in the Plaint demonstrating illegality in the exercise of the statutory power to sell, the grant of an interim injunction restraining the Appellant from proceeding with the auction amounts to an unwarranted curtailment of a right expressly conferred by statute.

In these circumstances, the Plaintiffs have failed to establish a prima facie case against the 2<sup>nd</sup> Defendant Bank. The material presently before Court does not disclose a legal right in the Plaintiffs, capable of protection by way of an interim injunction against the Bank. Further, there is no material to suggest that the 2<sup>nd</sup> Defendant Bank was under any contractual obligation to the Plaintiffs which could give rise to a claim enforceable against it. Nor is there any sufficient basis to restrain the exercise of the Bank's statutory right of *parate* execution. In that background, the balance of convenience cannot be said to favor the continuance of an order which has the effect of preventing the Bank from exercising a statutory remedy expressly conferred by law.

The Plaintiffs indeed contend that, if the interim injunction is refused and the sale proceeds, they would suffer serious prejudice and the intent and purpose of the action would be substantially diminished. That consideration is relevant to the balance of convenience. However, such prejudice cannot by itself justify the continuance of an interim injunction where the material before Court does not disclose a prima facie legal right in the Plaintiffs capable of enforcement against the 2<sup>nd</sup> Defendant Bank.

For the reasons set out above, all three questions of law are answered in the affirmative, and therefore, the Order of the Commercial High Court dated 05/05/2025 is set aside.

**Judge of the Supreme Court**

**Dr. Sobhitha Rajakaruna, J.**

I agree.

**Judge of the Supreme Court**

**Menaka Wijesundera, J.**

I agree.

**Judge of the Supreme Court**