

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

In the matter of an Appeal against an Order  
of the Civil Appellate High Court of the  
Central Province holden in Kandy.

Yasasiri Kasturiarachchi  
No.19, Nugegoda Road,  
Pepiliyana,  
Boralasgamuwa.

**Plaintiff**

-Vs-

SC Appeal No: 127/2014  
SC HCCA LA No: 371/2013  
HCCA Kandy LA No: 09/2013  
DC Nuwara Eliya Case No: 1633/L

Peoples' Bank  
No. 75, Sir Chittampalam A Gardiner  
Mawatha,  
Colombo 2.

**Defendant**

**AND BETWEEN**

Yasasiri Kasturiarachchi  
No.19, Nugegoda Road,  
Pepiliyana,  
Boralasgamuwa.

**Plaintiff-Petitioner**

-Vs-

People's Bank  
No. 75, Sir Chittampalam A Gardiner  
Mawatha,  
Colombo 2.

**Defendant- Respondent**

**AND NOW BETWEEN**

Yasasiri Kasturiarachchi  
No.19, Nugegoda Road,  
Pepiliyana,  
Boralasgamuwa.

**Plaintiff- Petitioner- Petitioner/**  
**Appellant**

-Vs-

People's Bank  
No. 75, Sir Chittampalam A Gardiner  
Mawatha,  
Colombo 2.

**Defendant-Respondent-Respondent**

Before: **Sisira J. de Abrew, J.,**  
**Murdu N.B. Fernando, PC J. and**  
**Yasantha Kodagoda, PC J.**

Counsel: Chatura Galhena with Manoja Gunawardena for the Plaintiff -Petitioner -Appellant.

S.A. Parathalingam PC with Kushan D'Alwis PC and Hiran Jayasuriya for the Defendant- Respondent-Respondent.

Argued on: 02.03.2020.

Decided on: 02.06.2021

**Murdu N.B. Fernando, PC. J.**

This Appeal arises from the Order of the Civil Appellate High Court of the Central Province holden in Kandy dated 30.07.2013. By the said Order, the Civil Appellate High Court ( “the High Court” ) refused to grant Leave to Appeal and dismissed the Leave to Appeal Application filed in the High Court, challenging the Order made by the District Court of Nuwara Eliya dated 26.02.2013.

On 23.07.2014, this Court granted Leave to Appeal to the Plaintiff-Petitioner-Appellant, upon the said Order of the High Court on the following two Questions of Law:

- I. Have their Lordships of the High Court of Civil Appeal erred in law by failing to recognize the legal principle enunciated in the case of Ramachandran and Another; Anandasiva and Another vs Hatton National Bank 2006 [1] SLR 393, that property liable to be sold under the Recovery of Loans by Banks (Special Provisions) Act No. 4 of 1990 as amended is limited to the property mortgaged

by the borrower himself and it would exclude the property mortgaged by a third party on behalf of the actual borrower/ debtor?

- II. Have their Lordships of the High Court of Civil Appeal erred in law by failing to consider that the Certificate of Sale does not transfer any title to the subject land from the plaintiff to the defendant under and in terms of Section 29 (N) (1) of the Peoples' Bank Act as amended?

The Plaintiff- Petitioner- Appellant (“the Plaintiff / Appellant”) filed a “**Land Case**” against the Defendant-Respondent-Respondent (“the Defendant/ Defendant bank”) in the District Court of Nuwara Eliya on 11.02.2013 seeking *inter alia* a **declaration of title** to six lots of land (“the land”) more fully referred to in the plaint filed in the said case and to **restrain the Defendant bank from evicting the Plaintiff** and other persons occupying the said land under him and thereby taking possession of the said land, by way of **an Enjoining Order, Interim Injunction and a Permanent Injunction**. The Plaintiff also sought a declaration from Court that the Certificate of Sale dated 14.07.2010 annexed to the plaint is null and void and /or voidable and moved for an order to quash such Certificate of Sale.

The learned Judge of the District Court of Nuwara Eliya having heard Counsel for the Plaintiff **rejected the application for issuance of an Enjoining Order as well as notice of Interim Injunction** for reasons stated in the Order therein and only issued summons on the Defendant bank returnable on a given date.

Being aggrieved by the said Order, the Plaintiff went before the High Court in a Leave to Appeal application and the **High Court refused to grant Leave to Appeal to the Plaintiff** and dismissed the application. Thus, the Plaintiff is now before this Court having obtained Leave to Appeal on the two Questions of Law referred to earlier.

Prior to discussing the Questions of Law raised before this Court, I wish to look at the chequered history *albeit* brief which instrumented the Plaintiff to file this action in the District Court of Nuwara Eliya as revealed by the pleadings and documents filed before this Court.

1. The Plaintiff Yasasiri Kasturiarachchi is the Chairman and Managing Director of Yasodha Holdings (Pvt) Limited, a member of the Yasodha Group of Companies and was the lawful owner of the six lots of land, “the land” more fully referred to in the plaint.
2. In or around the years 1994 and 1995, the said Yasodha Holdings (Pvt) Limited (“Yasodha Holdings”) obtained many banking facilities from the Defendant bank on several mortgage bonds executed, which were secured by the Plaintiff by pledging the six lots of land referred to earlier.
3. Yasodha Holdings failed to repay the monies due to the Defendant bank on the facilities obtained and on **10.07.1997 the Defendant bank adopted a resolution** in terms of section 29D of the People Bank Act No. 29 of 1961 as amended, **to sell by public auction ‘the land’ mortgaged by the Plaintiff** in order to recover the monies due to the Defendant bank from Yasodha Holdings.
4. Yasodha Holdings challenged the said resolution by way of a Writ Application in the Court of Appeal. The principle ground of challenge was that the resolution was ultra vires as it related to a third party mortgage. The said **Writ Application bearing No. 1268/98** was dismissed by a Divisional Bench of three Judges of the Court of Appeal on 29.02.2008.
5. Being aggrieved by the said Court of Appeal judgement, Yasodha Holdings then came before this Court by way of a **Special Leave to Appeal application bearing No. SC/SPL/LA 60/2008** and on 03.12.2008 the Supreme Court **refused to grant**

**Special Leave to Appeal to Yasodha Holdings** and dismissed the said Special Leave to Appeal application.

6. Whilst the above stated Writ Application filed by Yasodha Holdings was pending before the Court of Appeal, the Defendant bank resorted to execute the mortgage bonds by way of filing a **regular action** dated 09.07.2007 in the **Commercial High Court of Colombo**. According to the Defendant bank, such a course of action was initiated in order to overcome the period of prescription with regard to filling an action upon a mortgage bond.
7. Consequent to the **Supreme Court rejecting the Application No. SC/SPL/LA/60/08** filed by Yasodha Holdings for Special Leave to Appeal against the judgement of the above said Court of Appeal Writ Application bearing No.1268/98 on 03.12.2008, **the Defendant bank proceeded with the summery procedure** by publishing notice to sell by public auction the land referred to in the resolution dated 10.07.1997. The position of the Defendant bank was that by rejection of the Special Leave to Appeal application, the Supreme Court, upheld the Court of Appeal judgement that the resolution was a valid resolution in the eyes of the law and capable of execution.
8. On 25.03.2009, Yasasiri Kasturiarachchi, the Managing Director of Yasodha Holdings (the same appellant before this Court), challenged the above said course of action of the Defendant bank, by going before the Court of Appeal in yet another **Writ Application bearing No.188/09**. The main grievance of Yasasiri Kasturiarachchi before the Court of Appeal was that the Defendant bank, having resorted to regular action by filling an action before the Commercial High Court to adjudicate the dispute between the parties cannot usurp and nullify the judicial process already initiated in filling regular action by proceeding with the summary procedure and moving to parate execute, “the land” mortgaged by him, a third party,

and to sell by public auction the said land, to recover the monies due from Yasodha Holdings to the Defendant bank.

9. On 15.06.2009, the said Writ Application bearing No. 188/09 was supported before the Court of Appeal for granting of notice and interim relief by the learned Counsel for Yasasiri Kasturiarachchi. The Defendant bank strenuously objected to the application filed on the ground that it was a blatant attempt to challenge and assault the same resolution which was upheld as a valid resolution by the Court of Appeal and the Supreme Court through the due process of law.
10. The Court of Appeal having reserved Order, thereafter granted notice only and refrained from granting interim relief as prayed for in the Writ Application. It is observed, although an interim order was not issued by the Court of Appeal restraining the sale of the land, the Defendant bank did not proceed with the sale on the scheduled date.
11. Consequent to filling its objections to the said **Writ Application bearing No. 188/09**, the Defendant bank proceeded with the summary procedure and re-fixed the sale for 07.11.2009. At that stage, Yasasiri Kasturiarachchi once again moved court for interim relief against the said sale and the **Court of Appeal** on 05.11.2009 **granted an interim order as prayed for by Yasasiri Kasturiarachchi staying the impugned sale of the land** fixed for 07.11.2009.
12. Being **aggrieved by the said interim order**, the Defendant bank came before this Court in a Special Leave to Appeal application, bearing No. **SC/SPL/LA 294/2009**, and on 11.02.2010, **this Court granted Special Leave to Appeal** to the Defendant bank with regard to the issuance of the above said interim order by the Court of Appeal restraining the Defendant bank from proceeding with the auction sale of the land in issue.

13. Thereafter, the said Special Leave to Appeal application, now bearing **SC/Appeal No. 11/2010** was heard before this Court and on 09.07.2010, **the Supreme Court allowed the Appeal and set aside the Court of Appeal Order and permitted the Defendant bank to proceed with the sale of the land by public auction.**

14. Consequent to same, on 14.07.2010, **the Defendant bank auctioned the mortgaged land** and there being no bidders **purchased the said land** as signified by the Certificate of Sale annexed to the proceedings.

15. Thereafter, on 11.01.2011, the Defendant bank filed an action in the **District Court of Colombo** bearing No. **DLM 10/2011** against Yasasiri Kasturiarachchi, (the Plaintiff in the instant case) moving for a Direction of Court, by virtue of section 29P of the People's Bank Act, **to evict the said Yasasiri Kasturiarachchi** and others occupying the land in issue under him and to take possession of the land purchased by the Defendant bank.

16. On 31.01.2012, Yasasiri Kasturiarachchi filed objections to the said case before the District Court of Colombo and the case proceeded *inter partes*.

17. Whilst the above case was progressing in the District Court of Colombo, the Plaintiff, Yasasiri Kasturiarachchi filed the instant **“Land Case” bearing No.1633/L before the District Court of Nuwara Eliya seeking a declaration of title to the very same land and moving for restraintment of the Defendant bank**, by way of an Enjoining Order, an Interim Injunction and a Permanent Injunction.

18. **The District Court of Nuwara Eliya did not grant the Enjoining Order or notice of Interim Injunction restraining the Defendant bank from evicting the Plaintiff Yasasiri Kasturiarachchi and the Plaintiff filed a Leave to Appeal application against the said Order in the High Court of Kandy.** That application was also

**rejected by the High Court** and dismissed with costs, which culminated in the present appeal to this Court.

Hence, the Appellant Yasasiri Kasturiarachchi is now before this Court challenging the very same resolution upheld by this Court, in a subtle manner.

From the foregoing multitude of cases filed, it is amply demonstrated,

- that **the land** morefully referred to in the resolution dated 10.07.1997 to be parate executed was **sold by public auction consequent to the judgement of the Supreme Court in case No. SC/Appeal 11/2010 dated 09.07.2010 wherein this Court permitted the Defendant bank to proceed with the sale**;
- that thereafter, by virtue of the provisions of the Peoples' Bank Act, **the Defendant bank went before the District Court of Colombo** on the Certificate of Sale issued in its favour **to obtain an eviction order against Yasasiri Kasturiarachchi** from possessing the said land;
- that **whilst the said case was pending**, Yasasiri Kasturiarachchi **went before the District Court of Nuwara Eliya** praying for a declaration of title to the very same land and also to restrain the Defendant bank from dispossessing him and the District Court refused the said application for an Order of restraint; and
- the **High Court** refused to grant leave and **dismissed the Leave to Appeal application** filed against the Order of the District Court.

It is observed that the High Court dismissed the Leave to Appeal application on three main grounds.

Firstly,

Yasasiri Kasturiarachchi, is not entitled to and estopped in challenging the resolution dated 10.07.1997 in any manner, as the Supreme Court, being the apex court of the country has settled the validity and legality of the said resolution.

Secondly,

The instant case has been filed by Yasasiri Kasturiarachchi in order to negate or delay the process contemplated by law, and being very well aware that the Defendant bank has filed action in the District Court of Colombo based on the Certificate of Sale and its entitlement to obtain possession of the said land by virtue of the provisions of the law.

Thirdly,

Yasasiri Kasturiarachchi, has failed to establish a *prima facie* case and no justifiable ground exist to interfere with the Order of the learned District Judge.

Having referred to the background, history, facts and circumstances which culminated in the Appellant filing a land case in the District Court of Nuwara Eliya which paved the way for the Appellant to come before this Court once again, I would now examine the first ground referred to by the learned judges of the High Court in refusing to entertain the Leave to Appeal application filed in the High Court, namely ***the appellant is estopped in challenging the validity and legality of the resolution dated 10.07.1997.***

As correctly held by The High Court, this Court in **SC Appeal 11/2010** (stemming from Court of Appeal Writ Application bearing No. 188/09) now reported as **Peoples' Bank and Seven others v Yasasiri Kasturiarachchi [2010] 1 SLR page 227 at page 235** observed as follows:

*“The main issue in this case which was the validity of the Parate Resolution dated 10.07.2010 was raised in the Writ Application 1268/98 and the Court of Appeal by its decision dated 29.02.2008 held the Resolution was valid and refused a Writ of Certiorari to quash the said Resolution. The Supreme Court on the 03.12.2008 denied Leave to Appeal against the judgement of the Court of Appeal. Therefore, the resolution dated 10.07.1997 has been determined conclusively to be valid and executable by the decision of this Court on 03.12.2008. This is final and conclusive and cannot be reviewed and / or rescinded by any other Court.”*

In the said judgement, this Court considered the main argument put forward that whilst the **Petitioner in CA 1268/98** (the 1<sup>st</sup> writ application) was the company **Yasodha Holdings**, in **CA 188/09** (the 2<sup>nd</sup> writ application) the Petitioner was not the company but **Yasasiri Kasturiarachchi** the Managing Director of the company, who was not a party to the 1<sup>st</sup> writ application but a separate individual who mortgaged his land to the Defendant bank and thus, a third party in the eyes of the law and the matter revolved around a 3<sup>rd</sup> party mortgage, and went onto observe as follows:

*“The Petitioner – Respondent (i.e Yasasiri Kasturiarachchi) is the same Chairman / Managing Director of the Company Yasodha Holdings and the Company is fully owned and controlled by Petitioner-Respondent (i.e Yasasiri Kasturiarachchi). All the benefits from the Company accrue to Yasasiri Kasturiarachchi and his family. Despite the corporate veil, the Company Yasodha Holdings and Yasasiri Kasturiarachchi are in fact one and the same entity and represent the same interest. Clearly this was the pith and substance of the finding of the Court of Appeal” (page 236)*

*“Yasasiri Kasturiarachchi cannot be considered as a third party against the Company Yasodha Holding. [ ] the judgement of this Court in SC/SPL/ LA 60/2008 [CA Appeal 1268/98] acts as a complete bar to a proceeding by the same party which once again seeks to question the validity of the Parate Resolution dated 10.07.1997 [ ] in light of the judgement of this Court in SC(SPL)LA 60/2008, the later application in CA/ Writ 188/99 cannot also succeed in view of the principle of ‘collateral estoppel’ whereby a party is barred re-litigating an issue already finally determined against such party in an earlier decision”. (page 237)* (emphasis added)

Thus, it is observed that in the instant case, the High Court correctly relied upon the *ratio decidendi* of the afore said judgement of this Court in **SC/Appeal 11/2010**, in holding *that the legality and validity of the Resolution dated 10.07.1997 cannot be impugned nor can it be challenged on any ground or on any basis, before any Court.*

It is further observed in the instant case, the High Court correctly analyzed and came to the finding that there was no merit in the contention of the Petitioner (Yasasiri Kasturiarachchi) that the learned District Judge erred in its Order by following the decision in **Hatton National Bank v. Jayawardhana and others [2007] 1 SLR 181** instead of the decision in **Ramachandran and another v. Hatton National Bank [2006] 1 SLR 393**, based on the above reasoning and finding of the High Court, which is that the Petitioner cannot and is estopped in challenging before the District Court the Resolution dated 10.07.1997, since the Petitioner *Yasasiri Kasturiarachchi has already canvassed the said Resolution before the Supreme Court in an earlier instance and has not been successful and thus, legally not entitled to attack the said decision once again*. In my view, the afore said reasoning of the learned High Court Judges is legally valid and correct and cannot be faulted.

Hence, I see no reason to interfere with the Order of the High Court on the said ground too.

As discussed earlier, consequent to the sale of the land and issuance of the Certificate of Sale, the Defendant bank filed action in the District Court of Colombo on 11.01.2011, to evict Yasasiri Kasturiarachchi. Prior to the said case coming to a final conclusion, Yasasiri Kasturiarachchi co-laterally challenged and filed the instant land case, in the District Court of Nuwara Eliya on 11.02.2013. Eight long years have already passed and still the said case is at summons returnable stage. Hence, I am of the view that the finding of the learned Judges of the High Court was correct, when holding, that the *Appellant filed the case in the District Court of Nuwara Eliya only to negate and delay the process* begun by the Defendant bank in resorting to the due process of law as clearly laid down in the Peoples' Bank Act, and by going before the District Court of Colombo to evict the Appellant from the land more fully referred to in the Certificate of Sale.

Similarly, the finding of the High Court that the Appellant has also failed to establish a *prima facie* case against the Defendant bank, in order to obtain interim relief from the District Court of Nuwara Eliya is also *ex-facie* correct and cannot be faulted, for the reasons already discussed in this judgement.

Therefore, upon the said ground too, I see no reason to interfere with the Order made by the High Court in refusing to grant Leave to Appeal to the Plaintiff, on the Order made by the District Court of Nuwara Eliya dated 26.02.2013.

The Law Courts of Sri Lanka have been structured for administration of justice and the primary object of a judicial officer is to dispense justice to the citizenry who come before courts, without fear or favour and in terms of the Rule of Law. This does not mean that the citizenry are given the freedom of the wild ass to abuse the said process, at their whim and fancy and attack and challenge the statutory process by filling multiple actions before numerous courts, in the length and breadth of Sri Lanka.

In the instant matter, the Supreme Court has twice over in SC/SPL/LA 60/2008 and in SC/Appeal 11/2010 categorically upheld;

- **that the resolution dated 10.07.1997, is legal and valid and is enforceable in law,**
- **such decision is final and conclusive and cannot be reviewed and/or rescinded by any other court; and**
- **the parties are estopped in collaterally challenging the said decision of the Supreme Court.**

In terms of the Resolution dated 10.07.1997 (issued more than two decades ago) the land has now been sold. A Certificate of Sale has been issued. By virtue of the provisions of the Peoples' Bank Act, an action has been filed to evict the occupiers of the land. In such a background, the Appellant filling a '**Land Case**' to obtain a declaration of title and in the interim, restraining order, in my view is not in good faith and tantamount to an abuse of the process of the law. Such action is reeling with bad taste. It is not an instance of coming to court with clean hands. Hence, the course of action resorted to by the Plaintiff, in my view, is with an ulterior motive. It is to de-rail and delay the actions initiated by the Defendant bank in accordance with the provisions laid down in the Peoples' Bank Act.

**The District Court and the High Court has quite correctly refused to issue a restraining order**, by way of an Enjoining Order or an Interim Injunction or even notice of an Interim Injunction against the Defendant bank.

This Court too, did not issue any Interim Orders, although Leave to Appeal was granted on 23.07.2014.

The scope of this appeal is very limited. The Appellant is before this Court only to obtain an Order of Restraint, an issuance of an Enjoining Order and/or notice of Interim Injunction. There is no substantive relief prayed for from this Court.

Hence, I see no merit in this appeal. The Appellant has failed to show any good ground or reason to set aside the Orders of the High Court and the District Court. Similarly, the Appellant has failed to substantiate the relief prayed for in the Petition of Appeal, in order for this Court to issue an Enjoining Order and/or notice of Interim Injunction.

Therefore, based on the factual matrix discussed in this case, I am of the view that the appeal should stand dismissed.

**Nevertheless**, this Court granted Leave to Appeal to the Appellant on two questions of law in this application. Hence, I would now move onto consider the said questions referred to in full at the beginning of this judgement.

**The 1<sup>st</sup> Question of Law** relates to the failure of the High Court to recognize the legal principles enunciated in the case of **Ramachandran and another, Anandasiva and another v. Hatton National Bank** which is reported in [2006] 1 SLR at page 39, pertaining to third party mortgages. (herein after referred to as “**Ramachandran v. HNB case**”)

In the above referred **Ramachandran v. HNB** case, a Divisional Bench of this Court by a majority decision held that the property liable to be sold under the Recovery of Loans by Banks (Special Provisions) Act No 4 of 1990 as amended, is limited to the property mortgaged by the borrower himself and it would exclude the property mortgaged by a third party on behalf of the actual borrower/debtor.

In the said case, **the sureties of a loan** came before Court challenging the resolution adopted by the bank to sell by public auction, the land referred to in the surety bond and the Court held that the said land cannot be sold under the afore maintained Act No 4 of 1990 as it was mortgaged not by the borrower but by a third party and more so **as the said third party is completely unaware of the borrowers acts and has no access to the bank or to the information pertaining to the monies paid by the borrower or the sum in default, whereas**

**a borrower who has continuous transactions with the bank is very much aware of the amount paid and the sum in default.**

It is observed that in the instant case, although the learned Judges of the High Court, in its Order did not refer, analyze and examine in detail the findings of the aforesaid **Ramachandran v. HNB** case, it heavily relied on *the decisions of the apex court pertaining to the validity and legality of the Resolution dated 10.07.1997.*

Hence, at this juncture, I wish to look at the “*said decisions of the apex court*” in greater detail.

As discussed earlier in this judgement, this Court in the case of **Peoples’ Bank V. Yasasiri Kasturiarachchi SC/APP 11/2010 S.C. minutes 09.07.2010**, now reported in **[2010] 1 SLR 227** categorically held, that the judgement of this Court in **SC /SPL / LA 60/2008** stemming from CA App 1268/98, namely, **Yasodha Holdings V. Peoples’ Bank, act as a complete bar to a proceeding by the same parties to attack and challenge the very same Resolution.**

In **SC/SPL/LA 60/2008** referred above, this Court dismissed the Leave to Appeal application filed by Yasodha Holdings and **upheld the judgement in CA/1268/98**, the judgement of a three judge bench of the Court of Appeal, given in favour of the Defendant bank.

Hence, I wish to delve into the said Court of Appeal judgement bearing no. **CA 1268/98**, in greater detail now.

In the said **Court of Appeal judgement, CA 1268/98**, the Court exhaustively considered the **Ramachandran v. HNB** case (supra) as well as the judgement in **Hatton National Bank v. Samathapala Jayawardhana and two others SC/CHC/Appeal 06/2006**

of S.C minutes 11.07.2007 (now reported as **Hatton National Bank v. Jayawardhana [2007] 1 SLR 181**), and came to the following finding:

*“Yasodha Holdings, the Petitioner in the said case cannot claim that the mortgage of the property of Yasasiri Kasturiarachchi which secured facilities from the respondent bank falls within the category of ‘third party mortgages’ (vide page 12 of the Court of Appeal judgement) **Yasodha Holdings v. Peoples’ Bank CA 1268/98 decided on 29.02.2008.***

In the aforesaid **CA 1268/98 judgement**, the Court of Appeal examined the four mortgage bonds wherein Yasodha Holdings and Yasasiri Kasturiarachchi are referred to as the ‘obligor’ and ‘mortgagor’ respectively and the said ‘obligor’ and the ‘mortgagor’ requested the Peoples’ Bank to lend and advance monies and grant accommodation and facilities to the ‘obligor’ Yasodha Holdings, and the ‘obligor’ in consideration thereof mortgaged as security the properties owned by the ‘mortgagor’ Yasasiri Kasturiarachchi in his personal capacity.

The Court of Appeal also considered the significance of the signatories to the mortgage bonds, namely Yasasiri Kasturiarachchi and J. Kasturiarachchi being Directors of Yasodha Holdings and Yasasiri Kasturiarachchi on his own volition being the ‘mortgagor’ together with the specific reference given to the said wording in the attestation clause of the Notary Public.

The Court of Appeal in its well-reasoned out judgement went onto refer to the following facts:

- that Yasodha Holding is a family concern;
- that there are only three share-holders in the said Company, Yasodha Holdings, namely Yasasiri Kasturiarachchi, his brother Jagath

Kasturiarachchi and Yasasiri Kasturiarachchis' wife Udayangana Kasturiarachchi, each holding one share each;

- that the said three shareholders are also the only Directors of the Company;
- that Yasasiri Kasturiarachchi is the Chairman and Managing Director of the Company; and
- that the Company was incorporated on 30.03.1992 and within 18 months the impugned mortgage bonds were executed to obtain financial facilities running into millions by mortgaging the property of Yasasiri Kasturiarachchi.

Thus, the Court of Appeal came to the finding that *Yasasiri Kasturiarachchi cannot be treated as a 'third party', as per the ratio decidendi of **Ramachandran v. HNB** case.*

Furthermore, in order to arrive at its decision, the Court of Appeal extensively relied upon another judgement of the Supreme Court, namely the case of **Hatton National Bank v. Jayawardhana** (supra). In the said case, this Court held that the two Respondents therein, (Husband and Wife) cannot hide behind the veil of incorporation of the Company Nalin Enterprises (Pvt) Limited and referred to the Directors being the *alter ego* of the company. In the said case, the 1<sup>st</sup> Respondent (husband) was the Managing Director of Nalin Enterprise and the second Respondent (wife) was the other sole Director of Nalin Enterprise (pvt) limited and the Court held that in an appropriate circumstance, **the court can lift the veil of incorporation.**

Thus, the Court of Appeal in CA 1268/98, having referred to the above propositions, a number of landmark English authorities on Company Law and the correspondence Yasasiri Kasturiarachchi had with the Defendant bank, unreservedly went onto hold, that **Yasasiri Kasturiarachchi cannot claim that he is a third party** and rely upon the judgement of **Ramachandran v. HNB**, to evade responsibility.

Thus, it could be seen that the Court of Appeal, in its unanimous judgement exhaustively looked into all aspects of 3<sup>rd</sup> party mortgagors and came to the conclusion that the Resolution dated 10.07.1997 is legal and valid and enforceable.

This judgement was upheld by the Supreme Court by dismissing the Special Leave to Appeal application filed by Yasodha Holdings, in SC/SPL/LA 60/2008 as already adverted to and in SC/Appeal 11/2010, upholding that the Resolution was final and conclusive and **unequivocally and without any ambiguity holding that the Resolution cannot be reviewed and/ or rescinded and / or challenged collaterally.**

I see no reason to deviate from such finding. The circumstances of this intricate and interwoven case is such that the Court could and the Court should **lift the veil of incorporation and ascertain the true identity of the person** behind the scene, is it an innocent 3<sup>rd</sup> party or a not so innocent party, in order to mete out justice and come to a correct finding as to who the actual borrower or the debtor is.

Thus, I am of the view, that the High Court did not err in law in coming to its findings and correctly relied on the '*decisions of the apex court*' and dismissed the Leave to Appeal application filed therein.

Further **the said decisions** of the apex court, although not specifically mentioned by the Learned Judges of the High Court, **SC/Appeal 11/2010 and SC/SPL/LA 60/2008 stemming from CA 1268/98** clearly and precisely considered the legal principles enunciated in the Divisional Bench decision in **Ramachandran v. HNB** and came to the correct finding that the **property mortgaged by Yasasiri Kasturiarachchi does not fall within the four corners of a third party mortgage**. The High Court categorically held that on the strength of the Resolution dated 10.07.1997, the legality of which was confirmed by the Supreme Court, that the Plaintiff-Petitioner Yasasiri Kasturiarachchi i.e. the Appellant before this Court, has not established a *prima facie* case against the Defendant bank to obtain relief from the said court and dismissed the Leave to Appeal application filed therein with costs fixed at Rs. 25,000/=.

Thus, I am of the view, that the learned Judges of the High Court correctly came to the finding, that the **property of Yasasiri Kasturiarachchi** liable to be sold under the provisions of the Peoples' Bank Act, **cannot be excluded as a 3<sup>rd</sup> party mortgage** as adverted to by the Appellant and no Restraintment Order can be obtained to prevent evicting the Appellant from the impugned property. Hence, the High Court correctly refrained from issuing a Restraintment Order as prayed for by the Appellant.

In the aforesaid circumstance, **I answer the 1<sup>st</sup> Question of Law raised before this Court in the negative.**

The **2<sup>nd</sup> Question of Law** relates to the Certificate of Sale and passing of title to the Defendant bank.

In my view, an answer to this question does not arise in this case as the District Court and the High Court did not consider nor examine this issue.

As discussed earlier in this judgement, the scope of this appeal is very limited. It only pertains to issuance of Restraining Orders, specifically, an Enjoining Order until the final determination of the Interim Injunction Inquiry and notice of Interim Injunction on the Defendant bank.

The Appellant has not sought any substantive relief from this Court. The District Court has only issued summons on the Defendant bank. The matters pertaining to Certificate of Sale and passing of title of the properties will have to be first determined by the relevant District Court.

In the said circumstance, **an answer to the 2<sup>nd</sup> Question of Law raised before this Court in my view, does not arise.**

Therefore, for reasons more fully adumbrated in this judgement, the appeal of the Plaintiff- Petitioner- Appellant is dismissed. The Order of the Civil Appellant High Court

helden in Kandy dated 30.07.2013 and the Order to the District Court of Nuwara Eliya dated 26.02.2013 is affirmed.

The appeal is dismissed with costs fixed at Rs. 500,000/=.

Judge of the Supreme Court

**Sisira J de Abrew, J.**

I agree

Judge of the Supreme Court

**Yasantha Kodagoda, PC J.**

I agree

Judge of the Supreme Court