

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

In the matter of an appeal made in terms of Article 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka with Section 5 (C) of the High Court of the Provinces (Special Provisions) Act No.19 of 1990 as amended by Act No.54 of 2006.

SC / APPEAL / 49 / 2018

SC / HCCA / LA / 139 / 2016

NWP / HCCA / KUR / 25 / 2011 / F

DC / Chilaw / 3553 / RE

People's Bank,

75, Sir Chittampalam A. Gardiner Mawatha,
Colombo 02.

PLAINTIFF

-Vs-

- 1. Poruthotage Mervin Anasly Fernando,**
08/20, Ilakkattuwa,
Nalladarankattuwa.

- 2. W. Siriyani Sunanda Gunawathie,**
08/20, Ilakkattuwa,
Nalladarankattuwa.

3. P. Anushika Maduwanthi Perera,
08/20, Ilakkattuwa,
Nalladarankattuwa.

4. P.D. Akila Jeewantha Perera,
08/20, Ilakkattuwa,
Nalladarankattuwa.

RESPONDENTS

AND THEN BETWEEN

1. Poruthotage Mervin Anasly Fernando,
(Deceased),
08/20, Ilakkattuwa,
Nalladarankattuwa.

1A. W. Siriyani Sunanda Gunawathie,
08/20, Ilakkattuwa,
Nalladarankattuwa.

2. W. Siriyani Sunanda Gunawathie,
08/20, Ilakkattuwa,
Nalladarankattuwa.

3. P. Anushika Maduwanthi Perera,
08/20, Ilakkattuwa,
Nalladarankattuwa.

RESPONDENT – APPELLANTS

-Vs-

People's Bank,

75, Sir Chittampalam A. Gardiner Mawatha,

Colombo 02.

PLAINTIFF – RESPONDENT

P.D. Akila Jeewantha Perera,

08/20, Ilakkattuwa,

Nalladarankattuwa.

4TH RESPONDENT – RESPONDENT

AND NOW BETWEEN

People's Bank,

75, Sir Chittampalam A. Gardiner Mawatha,

Colombo 02.

PLAINTIFF – RESPONDENT –

APPELLANT

-Vs-

**1. Poruthotage Mervin Anasly Fernando,
(Deceased),**

08/20, Ilakkattuwa,
Nalladarankattuwa.

1A. W. Siriyani Sunanda Gunawathie,

08/20, Ilakkattuwa,
Nalladarankattuwa.

2. W. Siriyani Sunanda Gunawathie,

08/20, Ilakkattuwa,
Nalladarankattuwa.

3. P. Anushika Maduwanthi Perera,

08/20, Ilakkattuwa,
Nalladarankattuwa.

**RESPONDENT – APPELLANT –
RESPONDENTS**

4. P.D. Akila Jeewantha Perera,

08/20, Ilakkattuwa,
Nalladarankattuwa.

**4TH RESPONDENT – RESPONDENT –
RESPONDENT**

Before: A.H.M.D. Nawaz, J.
K. Priyantha Fernando, J. &
Menaka Wijesundera, J.

Counsel: Rasika Dissanyake with Shabbeer Huzair for the Plaintiff – Respondent – Appellant.

Niranjan de Silva with Shane Foster for the 1st, 2nd and 3rd Respondent – Appellant – Respondents.

Argued on: 28.05.2025

Decided on: 06.05.2026

A.H.M.D. Nawaz, J.

1. If one unpacks the chronology of facts before this Court, the following emerges as the salient features in this case. This appeal arises from eviction proceedings instituted by the Petitioner – Respondent – Appellant Bank (*hereinafter “the Appellant”, “the People’s Bank” or “the Bank”*), after it purchased the property mortgaged to it at an auction it had conducted and though the District Court of *Chilaw* proceeded to make an order absolute in regard to the ejection of the mortgagor (the 4th Respondent, his father (the 1st Respondent), 2nd and 3rd Respondents, these Respondents preferred an appeal to the Civil Appellate High Court which eventually reversed the order of the District Court by its judgment dated 18 February 2016.
2. It was from this judgement of the Civil Appellate High Court that the Appellant Bank preferred this appeal to this Court and leave was granted on the following questions of law.

- i. Whether the Civil Appellate High Court has erred in law by failing to appreciate the fact that the resolution passed by the Board of Directors of the Petitioner Bank under the provisions of Section 29D of the Peoples Bank Act cannot be questioned in any manner in the District Court?*
- ii. Whether the Civil Appellate High Court have erred in law by failing to appreciate the fact that the provisions of Section 29F and 29G could not have been applied to the instant action?*
- iii. Whether the Civil Appellate High Court has erred in law by disregarding the fact that the Respondents have not disclosed a prima facie defence to the application made by the Petitioner under Section 29P as to why they should not be ejected from the premises in suit?*
- iv. Whether the judgement of the Civil Appellate High Court of Kurunegala is based on irrelevant considerations and thus cannot stand in Law?*
- v. Whether their lordship of the Civil Appellate High Court have erred in law by failing to appreciate the fact that there is no valid reason whatsoever to interfere with the Judgment of the learned District Judge?*
- vi. Whether the Judgment of the Civil Appellate High Court is totally against the finding of our superior courts?*

3. Alternatively, the learned counsel for the Respondents raised an additional question of law;

“Whether the Court is entitled to consider the legality and/or the validity of the certificate of sale in an inquiry stemming from an application filed in terms of Section 29P of the People's Bank Act No.29/1991 as amended?”.

4. The 4th Respondent to this application – one Akila Jeewantha Perera, who is a son of the 1st Respondent had mortgaged the subject matter of the action to the People’s Bank and in default of the loan being serviced, the People’s Bank – the Appellant in the case proceeded to sell by auction the land that had been mortgaged. An abortive attempt was made to the District Court for an enjoining order, injunction and constructive trust on the part of the father – the 1st Respondent and I must state that the District Court of *Chilaw* dismissed this action.
5. The narrative prior to the *parate* execution unfolded as follows; The 4th Respondent had entered into a loan transaction with the People’s Bank, when he executed a mortgage bearing No. 2470 dated 3 March 2006, to secure a financial facility. Shortly thereafter, on 6 April 2006, a second mortgage bond bearing No. 4009 was also executed by the 4th Respondent to secure additional funding.
6. Following these transactions, the 4th Respondent failed to pay his installments and consequently, the Board of Directors of the Bank exercised their statutory authority under Section 29D of the People’s Bank Act as amended by Act No. 32 of 1986 (hereinafter sometimes referred to as “the Act”), passing a resolution on 17 December 2007, to auction the mortgaged property to recover the outstanding debt.
7. Pursuant to the Board's resolution, a public auction was scheduled and conducted on 23 December 2008. However, since the auction failed to attract any external bidders,

the People's Bank proceeded to purchase the property itself. A certificate of sale was subsequently issued on 20 January 2009 and formal registration was completed in the name of the Appellant Bank, granting it legal title to the premises.

8. After having acquired the title, the Bank sought to gain physical possession of the property, which remained in the occupation of the Respondents. In order to achieve this, the People's Bank instituted legal action in the District Court of *Chilaw* (case No.3553 / RE) under Section 29P of the People's Bank Act as amended by Act No. 32 of 1986. These were proceedings instituted to obtain an order for delivery of possession.
9. At the outset of these proceedings, the District Court issued an *order nisi* against the Respondents. While the 4th Respondent did not take any steps such as filing objections, it was the 1st, 2nd and 3rd Respondents who contested the eviction proceedings, seeking to dismiss the Appellant's application. During the pendency of this litigation, the 1st Respondent passed away, leading to the substitution of the 2nd Respondent in the deceased's position.
10. Following a formal inquiry into the matter, the learned District Judge of *Chilaw* delivered an order on 10 January 2011, making the *order nisi* absolute in favor of the Bank.
11. Dissatisfied with this outcome, the 1st to 3rd Respondents preferred an appeal to the Civil Appellate High Court of Kurunegala. On 18 February 2016, the High Court delivered its judgment, allowing the Respondents' appeal and setting aside the District Court's order.
12. It is from this judgment that the People's Bank has preferred this appeal to this Court. A principal argument that was put forward by the Appellant Bank is that there was no right of appeal bestowed upon a party dissatisfied with an order under

Section 29P of the People’s Bank Act as amended by Act No. 32 of 1986. As regards the unavailability of a right of appeal against orders for delivery of possession, it is trite law that no right of appeal exists unless it is granted by statute and such an absence of right to appeal in the People’s Bank Act demonstrates that the proceedings for delivery of possession are *sua generis* and exclusively catered to the speedy recovery of the premises purchased in *parate* execution proceedings - see ***Bakmeewewa Authorised Officer of People’s Bank v. Konarage Raja***¹; ***Senok Trade Combines (Pvt) Ltd v. Mirama, Beach Hotel Limited***²; ***Hatton National Bank PLC v. Hikkaduwa Gamage Thejasiri Gunethilake***³.

13. I must observe that the learned Civil Appellate High Court Judges were focused more on procedural requirements prior to the holding of the auction rather than the absence of right of appeal against an order made by the District Court for delivery possession.

14. Moreover, the learned Civil Appellate High Court Judges paid scant attention to the ouster clause in Section 29N (1) of the People’s Bank Act as amended by Act No. 32 of 1986. The section ousts the jurisdiction of any Court to invalidate the sale for *any cause whatsoever*. There is not a tittle of reference to the ouster clause - Section 29N (1) in the judgement of the Civil Appellate High Court and instead, the Civil Appellate High Court Judges exercising a putative appellate jurisdiction proceeded to vacate the order of the learned District Judge dated 10 January 2011, the *order nisi* and the eviction proceedings.

15. In the circumstances, it is pertinent at this stage to turn to the judgement of the Civil Appellate High Court that has reversed the order of the District Court for delivery of possession.

¹ 1989 Sri.L.R 231

² SC / APPEAL / 96 / 2013 (SC minutes of 24 March 2022)

³ SC / APPEAL / 189 / 2019 (SC minutes 23 November 2016)

16. The judgment of the Civil Appellate High Court rests on what it considered strict compliance with the procedural requirements spelt out in the People's Bank Act as amended by Act No. 32 of 1986 and the foundation of the judgment of the Civil Appellate High Court is premised upon the alleged non-compliance on the part of the Bank with these procedural requirements.
17. The Civil Appellate High Court concluded that the People's Bank acted in disregard of what it called the mandatory provisions set out in the People's Bank Act, No.29 of 1961 as amended. These are the procedural steps precedent to the conduct of *parate* execution such as the notice of resolution and notice of sale that have to be served in terms of Sections 29F and 29G of the Act.
18. The aforesaid Sections mandate notices to be served on the borrower as regards the resolution and the date, time and place of auction. The Civil Appellate High Court declared that barring some quit notices served on 04 June 2009, there had been no notices of the resolution and the sale that had been despatched to the borrower.
19. It is pertinent to point out that it was not the borrower (the mortgagor) who complained of the want of notices but his father (the 1st Respondent to this appeal). Whilst notices have been enjoined on borrowers principally in terms of the aforesaid provisions, I find no reference to persons such as the father, mother and other relatives who have to be served with notice. Section 29F stipulates that only those persons, who have, in respect of the property, registered their addresses, are entitled to notice of the resolution. The Respondents nowhere asserted that they came within this category.
20. The father of the mortgagor who became the 1st Respondent in the Civil Appellate High Court had contended before that Court that although the property was transferred to his son-the mortgagor, he (the father) had not parted with the

beneficial interest. The High Court quite rightly rejected this argument, observing that when property is mortgaged as security for a loan, a certificate of sale issued after the *parate* execution transfers both legal and beneficial ownership to the purchaser, which is in this case the People's Bank.

21. It must be stated that when the son (the mortgagor) mortgaged the property to the Appellant Bank (the mortgagee), he had acquired legal title to the property at the time of the execution of the mortgage of the property and as such, the father could not lay any claim to the property as the District Court was not in the process of adjudicating upon an equitable claim. The jurisdiction conferred upon the District Court in terms of Section 20P (1) for an order for delivery of possession stems from a precedent fact namely the purchaser of any immovable property sold in pursuance of the Act shall produce, upon application made to the District Court, the certificate of sale issued in respect of the property. This certificate of sale which the Bank obtained at the sale of the property had bestowed upon it the *rights, title and interest* of the borrower to and in the property in terms of Section 29N (1) of the Act and the learned Civil Appellate High Court Judges take the view that the ouster clause would have no effect if the procedural requirements were not adhered to by the Bank.

Was there non-compliance with the procedural requirements?

22. As I said before, the Civil Appellate High Court reversed the order of the learned District Judge on the basis that there was non-compliance with the requirements as contained in Sections 29F and 29G of the Act.

23. Section 29F of the Act requires the Bank to publish a notice of the Board's resolution in the Gazette and a daily newspaper, and to despatch copies of this notice to the borrower. Section 29G mandates that a notice stating the date, time, and place of the sale must be published in the Gazette and despatched to the borrower and other relevant parties at least 14 days before the auction.

24. It has to be remembered that the borrower in this case was the son of the 1st Respondent. It was this son of the 1st Respondent who mortgaged the property to the People's Bank. It is undisputed that at the time of the mortgage, Akila Jeevantha Perera – the son of the 1st Respondent had legal title to the property, because on the face of his title deed the Bank had found a valid transfer in his favor. Undoubtedly, notices to the borrower of the resolution passed by the Bank and the intended *parate* execution were imperative. But Mr. Shane Foster, the learned Counsel for the Respondents, argued that there were no notices of the resolution and the sale that had been served on the borrower. I must observe that the borrower himself never complained of any non-receipt of such notices.

25. When the Bank took proceedings under Section 20P of the People's Bank Act to obtain an order for delivery of possession, it was the father (the 1st Respondent) along with the 2nd and 3rd Respondents who opposed the *decree nisi* being made absolute. One of the grounds adduced by the aforesaid Respondents was that they had no valid notice to quit. Moreover, there was also an averment that a case was already pending in the District Court of *Chilaw* (3186/L) in which they had challenged the impending *parate* execution namely the auction.

26. The record bears evidence of the other case that had challenged the impending auction. By way of a plaint dated December 2008, the father – the 1st Respondent had instituted this action against the People's Bank, the licensed auctioneer, his son (Akila Jeevantha Perera) and one Prasanna Mendis.

27. I have examined the plaint filed in this case and it is a serendipitous discovery that the father was well aware of the impending auction. In his plaint, there was an unambiguous admission that he had notices of both the resolution and the auction. In fact, the 1st Respondent had appended to the plaint the resolution published in the

Gazette and copies of the newspaper publications that the Bank had sent as regards the intended auction on 20 December 2008. This is an admission that the Respondents cannot resile from. They had knowledge of the *parate* execution and the bank had duly served notices of the resolution in compliance with Sections 29F and 29G. It is on that account that the 1st Respondent took immediate steps to file action to enjoin the auction by way of an enjoining order and injunction. There was also a relief sought for a declaration of a constructive trust in his favour. No enjoining order was issued nor was the case for a constructive trust entertained. The learned District Judge who was adjudicating upon the eviction proceedings quite rightly rejected the pendency of the aforesaid action as a ground to prevent the eviction proceedings. In any event, the other case quite unambiguously demonstrated that the Respondents had full knowledge of the auction as they had received notices of the resolution and the auction and it is preposterous that this glaring compliance by the Bank with the procedural requirements escaped the attention of the Civil Appellate High Court.

28. It is also strange that the Civil Appellate High Court turned a blind eye to Section 29D of the Act that enacted;

“A borrower is not competent to make an application to court to move to invalidate a resolution to sell by public auction any immovable property mortgaged to the bank”.

29. In the circumstances, the learned High Court Judges made an erroneous finding that the Petitioner had not despatched the requisite notices to the Respondents, leave alone the right of the Respondents to receive such notices. The mortgagor, the son - the 4th Respondent should be imputed with the knowledge of this notice as he never complained of any notice. In the circumstances, the ouster of an appellate jurisdiction against an order for delivery of possession could not have been ousted at all by the

Civil Appellate High Court Judges. The Civil Appellate High Court usurped a jurisdiction which it did not have under the Act.

30. The Civil Appellate High Court fell into a serious error in entertaining an appeal against the order of the learned District Judge for the order of delivery of possession, as there was no conferral of a right of appeal against an order made under Section 20P of the Act.

31. The questions of law raised on behalf of the Appellant are answered in its favour and accordingly, this Court proceeds to set aside the judgement of the Civil Appellate High Court dated 18 February 2016 and allows the appeal of the Bank. The order of the learned District Judge of *Chilaw* dated 10 January 2011 is affirmed. Consequently, the *order nisi* is restored and the reliefs prayed for in the application made to the District Court by the Appellant are hereby allowed. The District Court of *Chilaw* is directed to take appropriate steps in accordance with the law to give effect to its order dated 10 January 2011.

Judge of the Supreme Court

K. Priyantha Fernando, J.

Judge of the Supreme Court

I agree.

Menaka Wijesundera, J.

Judge of the Supreme Court

I agree.