IN THE SUPEME COURT OF THE DEMOCRATICSOCIALIST REPULIC OF SRI LANKA.

In the matter of an Appeal to the Supreme Court of the Democratic Socialist Republic of Sri Lanka.

SC/Appeal/No.68/2015

SC/SPL/LA/240/14

C.A. Appeal No. 335/99(F)

D.C Maho Case No. 3664/L

IN THE DISTRICT COURT OF MAHO.

Rangallage Sirimawathie Navaratne.

No. 17/6, Malkaduwawa, Circular Road,

Kurunegala.

Plaintiff.

Vs.

Semasinghe Wanninayake

Mudyanselage Kamalawathie,

Rest House Road, Ebalagodayagama,

Nikaweratiya.

Defendant.

IN THE COURT OF APPEAL.

Rangallage Sirimawathie Navaratne.

No. 17/6, Malkaduwawa, Circular Road, Kurunegala.

Plaintiff – Appellant.

Vs.

Semasinghe Wanninayake

Mudyanselage Kamalawathie,

Rest House Road, Ebalagodayagama,

Nikaweratiya.

Defendant – Respondent.

IN THE SUPREME COURT.

Rangallage Sirimawathie Navaratne.

No. 17/6, Malkaduwawa, Circular Road,

Kurunegala.

Plaintiff – Appellant – Appellant.

Vs.

Semasinghe Wanninayake

Mudyanselage Kamalawathie,

Rest House Road, Ebalagodayagama,

Nikaweratiya.

Defendant – Respondent - Respondent.

Before : Sisira J De Abrew J

L.T.B. Dehideniya J

E.A.G.R. Amarasekara J

Counsel : Dr. Sunil F.A. Cooray with Nilanga Perera for the Plaintiff – Appellant – Appellant.

Upendra Walgampaya for the Defendant – Respondent – Respondent.

Argued on : 05.07.2020.

Decided on : 02.06.2021.

E.A.G.R. Amarasekara J

The Plaintiff – Appellant – Appellant (hereinafter sometimes referred to as the Plaintiff or the Appellant) instituted an action against the Defendant – Respondent – Respondent (hereinafter sometimes referred to as the Respondent or the Defendant) in the District Court of Maho praying inter alia for a judgment;

- Directing the defendant to retransfer the property described in the schedule to the plaint to the plaintiff by executing a deed of conveyance and,
- In the event the defendant fails to do so, for such transfer to be effected by executing a deed of transfer by the Registrar of the District Court of Maho, and,
- To evict the defendant and everyone under her and to give the vacant possession of the land to the plaintiff,
- For a sum of Rs. 75000/- for the damages already caused and Rs.1000 per month as damages for unlawful possession.

Plaintiff by her plaint dated 23.01.1993 inter alia stated that;

- The plaintiff who was the owner of the land described in the schedule to the plaint mortgaged the property to the defendant and obtained a loan by keeping the said land as a security, and the said mortgage(උකස්කරය) was executed as a transfer deed (deed of transfer no. 560 dated 27.01.1989 attested by W.T.M.P.B. Tennakoon, Notary Public) and together with it, another deed (පොරොන්දු පත්‍රය) was executed by the defendant undertaking to re-convey the land to the plaintiff, namely deed no. 563 dated 31.01.1989 attested by said W.T.M.P.B. Tennakoon, Notary Public.
- The plaintiff's signature was also obtained on some other documents at the time of signing the said deeds.
- Although the deed no. 560 had been executed as a deed of transfer, it was always considered by the plaintiff as a mortgage bond for the repayment of

the loan obtained from the defendant. The consideration of Rs. 100'000 stated in the said deed is the balance amount of the loan obtained from the defendant and the interest that had to be paid.

- Although the plaintiff had endeavored to repay the balance of the said loan together with a reasonable interest thereon to the defendant, the defendant failed to accept the same. Thus, the plaintiff made an application to the Debt Conciliation Board (hereinafter sometimes referred to as the board) which was inquired into by the said board.
- Although the plaintiff suggested a settlement before the said board, the defendant refused to come into the said settlement. Having considered the said settlement as a fair offer, on 16.01.1991, the said board issued a certificate under Section 32(2) of the Debt Conciliation Ordinance (hereinafter sometimes referred to as the Ordinance)
- Although the defendant made an application to review against the said decision of the board, the said application was refused by the board.
- The land in issue had been in the possession of the plaintiff at every time material to the case. However, since the plaintiff had to go abroad for overseas employment, the plaintiff leased out the premises to Amarasinghe Arachchige Siri Amarasignhe by deed of lease no. 17 dated 16.09.1991 attested by T.M. Amarakoon, Notary Public for a period of 2 years and has kept one room to store the belongings of the plaintiff and left the country.
- However, subsequent to the issuance of the aforesaid certificate, the defendant on or around 01.11.1991 has ejected the lessee of the plaintiff, has thrown out the belongings of the plaintiff and has taken the possession of the land in issue unlawfully. The defendant is now in possession due to an order delivered by the Primary Court pursuant to an action filed by the Nikawaratiya Police. In this regard case No. 3599/L is pending before the same District Court.
- The damages caused to the property by the defendant amounts to Rs. 75'000/- and the defendant is causing continuing damages to the plaintiff due to unlawful possession at the rate of Rs,1000/- per month.
- Thus, a cause of action has arisen against the defendant to the plaintiff to file an action to get the reliefs as prayed for.

The defendant filed her answer dated 07.06.1993, and as per the answer;

- The defendant admitted the execution of aforesaid deeds no. 560 and no.563 but she has stated that she purchased the said land for Rs. 100000.00 by deed no.560 and agreed re-convey by deed no.563, if Rs.300000.00 was paid within 3 years from the date of execution of the said deed which was 31.03.1991.
- The defendant has stated that as the owner of the land, the defendant leased out the premises to the plaintiff by deed of lease no. 561 dated 27.01.1989 and thereafter it was again given on lease to the plaintiff until the month of May 1989 by deed of lease no. 769 dated 17.08.1989.
- A preliminary objection has been taken that the plaintiff cannot maintain the action since the defendant was the owner of the land in issue at every time material to this action.
- The defendant has stated that the said board, having considered the deed no.560 and deed no. 563 as a mortgage, made an effort to grant a relief to the plaintiff and requested the plaintiff to pay Rs.100000.00 and a reasonable interest to the defendant, but the defendant refused to accept it as it was not reasonable. Thus, on 16.01.1991, the said board dismissed the application of the plaintiff.
- It is averred that however, in order to give further reliefs to the plaintiff, the aforesaid board ordered the plaintiff to pay the defendant Rs. 100’000/- with 20% interest from 27.01.1989 less Rs.18000.00 within 18 months from 16.01.1991, namely before 16.07.1992 and issued a certificate under Section 32(2) of the said Ordinance.
- It is further averred, that the plaintiff has deliberately renounced the reliefs given under the certificate as from 17.17.1992, and the reliefs given by the said certificate is no more valid after 17.17.1992.
- The defendant has stated that since the plaintiff did not have any right in the land in suit after 27.01.1989, the deed of lease executed by the plaintiff as mentioned in paragraph 10 of the plaint is of no avail in law.
- It is also stated that, subsequent to the expiry of the lease granted by the defendant to the plaintiff, as the absolute owner of the land in suit, the defendant has a right to enjoy the land in issue.

Accordingly, the defendant prayed that the action filed by the plaintiff be dismissed and for costs.

As per the aforesaid pleadings it can be observed that the deed no 560 and 563 were not executed on the same day and there appears to be a deed of lease which gave possession back to the plaintiff from the defendant after the deed of transfer no.560, which, as per the plaintiff's stance, is the purported mortgage.

There were 7 admissions made by the parties.[1] On behalf of the plaintiff issues no. 1-9 were raised and on behalf of the defendant issues no. 10-28 were raised.[2]

Thus, at the trial, jurisdiction of the court was admitted and followings were among the admitted facts as per the said admissions made by the parties at the commencement of the trial.

1. Execution and signing of the aforesaid deeds no.560 dated 27.01.89 and 563 dated 31.01.89.
2. The fact that the plaintiff made an application to the aforesaid board and the said board held an inquiry.
3. The board suggested that the plaintiff shall pay the consideration of deed no.560, namely Rs.100000.00 along with the interest.
4. The board suggested that the interest be 20% per year.
5. The fact that the board issued a certificate dated 16.01.1991 under section 32(2) of the Ordinance.

Only one Chandimal Pathiraja, an officer from the Debt Conciliation Board had given evidence on behalf of the plaintiff. Neither the plaintiff, nor the power of attorney holder nor any other witness has testified at the trial for the plaintiff. Apparently, said Pathiraja has been called to give evidence with regard to the application made to the said board and issuance of the section 32(2) certificate and to tender the relevant documents in evidence. No evidence was, thus led with regard to the issues no.3 to 8 raised at the trial by the plaintiff. It appears that even the plaintiff later limited her case only to issues no. 1, 2 and to the costs and other reliefs raised in issue no.9, as she had stated in her written submission in the original court that she does not seek any relief as prayed in prayer (c) and (d) of the plaint and only seek relief as per prayer (a) (b) (e) and (f).[3]

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[1] Vide proceedings dated 22.01.1996 and 22.02.1999, pages 46 and 86 of the brief.

[2] Vide pages 47 to 50.

[3] Vide paragraphs 12 and 13 of the written submissions tendered to the original court at page 112 of the brief.

Hence, the plaintiff's case before the original court rested upon the issues no 1 and 2 which queried whether the plaintiff is entitled to the relief (a) and (b) of the prayer in terms of the certificate issued by the aforesaid board as per section 32(2) of the Ordinance and if so, what would be the amount and interest that has to be paid by the plaintiff to the defendant.

The plaintiff has tendered documents marked P1 to P4 at the trial, namely aforesaid certificate issued as per section 32(2) of the Ordinance, deed no.560, deed no.563 and minutes of the board meeting dated 27.02.1992 which refused to review the order due to the absence of the defendant respectively. The defendant gave evidence in support of her case and has tendered in evidence documents marked V1 to V7, namely, minutes of a board meeting dated 20.12.1990 which dismissed the application of the plaintiff on a previous occasion, aforesaid certificate issued as per section 32(2) of the ordinance, aforesaid deed no.560, deed of lease no. 561, aforesaid deed no.563, deed of lease no.769 and aforesaid minutes of the board meeting dated 27.02 1992.

After the conclusion of the trial learned District Judge delivered his judgment dated 22.03.1999 dismissing the action of the plaintiff with costs. The learned District Judge in his judgment inter alia stated that;

- Plaintiff had not given evidence to testify the facts adduced in his plaint and only an officer from the Debt Conciliation Board had given evidence on behalf of the plaintiff.
- The said board cannot order to pay the relevant amount and interest within a prescribed period in terms of section 32(2) or any other section of the Ordinance when there was no settlement between the creditor and the debtor.[4]
- A certificate issued under Section 32(2) of the Ordinance cannot be the sole basis for entering judgment in favor of the plaintiff, and the plaintiff has to file an action under the regular procedure and the plaintiff has to prove that a cause of action has arisen against the defendant, but she had failed to do so, therefore, not entitled to any reliefs prayed for in the plaint.
- No evidence was adduced on behalf of the plaintiff to the effect that the defendant was in unlawful possession of the property in question or that

[4] Vide page 10 of the district court judgment.

the defendant had caused damages to the plaintiff's properties or that a cause of action had arisen as set out in the plaint.

Being aggrieved by the said judgment, the plaintiff preferred an appeal to the Court of Appeal. The Court of Appeal having heard the arguments of both the parties dismissed the appeal of the plaintiff with costs. Learned Court of Appeal Judges in the said judgment inter alia stated that;

- In **Silva Vs Sai Nona 78 NLR 313** it was held that the certificate issued under section 32(2) of the Debt Conciliation Ordinance read with Act No. 05 of 1959 cannot reduce a conditional transfer in law to a mortgage. As per the said judgment conditional transfer is treated as a mortgage only for the purpose of the jurisdiction of the board.
- The plaintiff has not made payments according to the requirements of the certificate of the Debt Conciliation Board. All these facts have been admitted by the parties at the trial.
- No evidence was adduced on behalf of the plaintiff to the effect that the defendant was in unlawful possession of the subject matter in question or that the defendant has caused damages or that a cause of action has arisen as set out in the plaint.
- The learned district judge has correctly analysed the evidence before him and has come to the correct conclusion that the plaintiff failed in proving that a cause of action had arisen against the defendant in this case.

Having heard the submissions of the counsel for the plaintiff and the counsel for the defendant in the special leave to appeal application filed against the judgment of the Court of Appeal, this court was inclined to grant leave to appeal on the questions of law set out in paragraph 16 of the petition of appeal undated, but, filed on 10.12.2014[5], which will be referred to and answered later in this judgment.

As said before, the plaintiff's case rested upon the issues no.1 and 2 raised at the original court. As per the way the said two issues were framed, the plaintiff to be successful, she must establish that, along with the admissions already made, by the issuance of section 32(2) certificate, she is entitled to a judgment in her

[5] Vide Journal entry dated 01.04.2015

favour as prayed in prayer (a) and (b) of the plaint. For this, she either has to establish that along with the admissions made, such certificate is sufficient to enter judgment and decree even without a cause of action or that in the backdrop of the admissions made, the issuance of such certificate itself gives a cause of action and proof for that cause of action for her to get a judgment in her favour. At this moment, it must be noted that the action was filed in the district court not to enforce a certificate under any given provision in law but on an alleged cause/s of action as averred in the plaint. It must also be noted that even though in paragraph 15 of the plaint, the plaintiff had averred that causes of action have accrued to the plaintiff, in the body of the plaint the plaintiff had not set forth separate causes of action as required by section 40(d) of the Civil Procedure Code but averred the cause/s of action as a composite whole through its averments. It appears, now, that the plaintiff had relinquished proving most of the averments in that composite whole and rely only on the production of the said certificate (P1) and purported decisions of the board connected to it (P4) along with the two deeds no.560 (P2) and no.563 (P3).

In deciding whether the learned judges below erred, it is necessary to peruse some relevant provisions in the Ordinance as amended in relation to the facts of the case at hand. However, as the said certificate and the order mentioned in it as part of it was made on 16.01.1991, the amendments made to the Ordinance by Acts no. 29 of 1999 and 4 of 2019 need not to be considered in this decision as they are amendments made after the issuance of the said certificate marked P1. Section 14 of the Ordinance provide for debtors and secured creditors to make application to the board to effect settlement of the debts. Thus, the scheme of the act is to effect settlement of debts through applications made by the debtor or the creditor. As per the section 19A as amended by the Act No. 20 of 1983, the board can entertain applications in relation to debts that are secured by conditional transfers of property as is a mortgage within the meaning of the ordinance, only if the application is made before the expiry of the period within which the property has to be redeemed by the debtor by virtue of any legally enforceable agreement between the debtor and his creditor. (As per the amendments made in 1999, now it is possible for the board to entertain application relating to debts secured even by transfers of immovable property as is a mortgage within the meaning of the Ordinance.) Thus, transfer deeds were

not subject to the board's jurisdiction, unless it could have been considered as a conditional transfer as per the interpretation given in the Ordinance at the time the relevant application was made. Hence, it is pertinent to peruse the interpretations given to mortgage and conditional transfers in the Ordinance at the time of the relevant application, which are quoted below.

' "Mortgage" with reference to any immovable property, includes any conditional transfer of such property which, having regard to all the circumstances of the case, is in reality intended to be security for the repayment to the transferee of a sum lent by him to the transferor.'

Hence, it is clear for the purposes of the Ordinance to effect a settlement of a loan, the legislature has made provision to consider a conditional transfer as a mortgage if the circumstances shows that it was in reality a security for repayment of a loan. (With the amendments made to the Ordinance in 1999 now even transfer deeds can be considered as mortgages for the aforesaid purposes)

" 'Conditional transfer of immovable property' means any transfer, sale, or alienation of immovable property which is effected by a notarial instrument and which, by virtue of such instrument or any other notarial instrument, is subject to the right of the person by whom the property was transferred, sold or alienated or of any other person to redeem or purchase the property within a period specified in such instrument or such other instrument."

Thus, right to redeem or purchase the property may contain in the very document which becomes a conditional transfer without any doubt or in some other notarial document when the first document is a transfer deed on the face of it. It appears from the decision of the board contained in the overleaf of the P1 certificate as part of that certificate, the board considered the deeds no.560 and 563 together as a conditional transfer that falls within the interpretation of mortgage given in the Ordinance. However, as per section 21A of the Ordinance prior to the amendment made in 1999, which section was relevant to the application made to the board in the case at hand, the board had to consider certain matters before deciding a conditional transfer was in reality a mortgage as per the Ordinance. They were;

- The language in relevant notarial instruments,

- Any difference between the sum received by the transferor from transferee and the value of the property transferred,
- The continuation of the transferor's possession of the property transferred, and
- The existence of a legally enforceable agreement between the transferor and the transferee whereby the transferor is bound to pay interest or any sum that may reasonably be considered as an interest.

As per order referred to in P1 certificate as part of it, it is clear that the board decided to consider deeds marked 560 (P2) and 563 (P3) formed a conditional transfer and also fall within the interpretation of mortgage given in the Ordinance. However, order contained in the certificate(P1) does not indicate that the board considered that there was a lease agreement (deed of lease marked as V4) executed between the plaintiff (transferee) and the defendant (transferor) in between the execution of P2 and P3 and that, if V4 is a legally valid document, the plaintiff's possession after P2 can be referable to said V4. On the other hand, whether deed no.560 is a conditional transfer or not has to be decided on the intention of the parties as at the time they entered into that contract. It is true, even if there was no condition to reconvey in the same document, the intention can be shown through a subsequent deed such as P3 but when there is deed of lease written prior to P3 giving the possession of the property back to the plaintiff, it appears parties to those P2 and P3 considered P2 as an outright transfer that gave the possession of the property to the defendant. To support this view there was another deed of lease executed between the parties even after the execution of P3, marked as V6. Thus, it appears the background to the transactions between the plaintiff and the defendant suggests a possibility that the possession of the plaintiff of the property, after P2 was executed, was not due to the fact that it was a conditional transfer but due to a lease agreement and that P3 was a separate agreement to resell the property. However, for some reason the board had considered the deed of transfer P2 as a conditional transfer and, that it also fell within the interpretation of "mortgage" as contemplated by section 64 of the Ordinance. Thus, the board had tried to effect a settlement but the defendant refused to accept the said settlement. In this regard, it is pertinent to examine the provisions of section 32(2) that existed prior to the amendment made by Act no.29 of 1999.

“32(2). Where no amicable settlement is arrived at between the debtor and any secured creditor, the board shall dismiss the application so far as it relates to the debts due to the creditor, and may, if it is of the opinion that the debtor has made the creditor a fair offer which the creditor ought reasonably to have accepted, grant the debtor a certificate in the prescribed form in respect of the debts owed by him to that creditor.”

The gazette containing the relevant prescribed form is found in pages 127 to 130 of the brief. The said form is reproduced below.

“ The Debt Conciliation Ordinance, No. 39 of 1941

Form of Certificate under Section 32(2)

This is to certify that during proceedings No. …….

under the Debt Conciliation Ordinance, no.39 of 1941, between

…….of……(debtor) on the one hand and ……..of

……..(creditor) on the other hand, for the settlement of an

alleged debt of ……..……rupees …… the said creditor has,

in our opinion, refused a fair offer of settlement made by the said

debtor which the said creditor ought reasonably to have accepted.

2. The following particulars of the debt were furnished by the

debtor under section ……of the Ordinance: -

(Particulars)

Dated the ……day of ……19…

…….

Chairman, Debt Conciliation Board

Thus, when the said section 32(2) is considered together with the prescribed form, it is clear even when the board considered a conditional transfer as a mortgage and proceeded to inquire into the application, if there was no amicable settlement, the board had to dismiss the application as per the provisions existed

at the time the relevant application was made and considered. And there was no provision to include an order or decision of the board in the certificate. On the other hand, it is not logical to allow the board to make a decision on the application when the law requires it to dismiss the application. The section only allowed the board to express its opinion if it thought that a fair offer was rejected by the creditor. As per the prescribed form, particulars of the debt furnished by the debtor could have been entered in the said form. Under the provision to include particulars of debt furnished by the debtor, the board has included its purported decision in the certificate by referring to the interest ordered and to the order contained in the overleaf. Such an act or step by the board is not supported by any provision in the Ordinance. Thus, what is found in the certificate marked P1, that is within the legal provisions relevant to the matter, appears to be the opinion expressed by the board that a fair suggestion to settle the loan was refused by the defendant and the details provided by the plaintiff with regard the purported debt. It cannot be perceived how a court of law can grant reliefs as prayed for in prayer (a) and (b), namely an order to reconvey the property and to evict the defendant, on a mere expression of an opinion of the board as to the refusal of the settlement or on the other contents in P1 which are not envisaged or permitted by the section 32(2) to include in such certificate.

It is also pertinent to note that, even though, section 40 of the Ordinance makes the settlements reached under section 30 and 31 final between the parties subject to the board's power to review them, there was no provision in the Ordinance at the relevant time giving any finality to a certificate issued under section 32(2) or to the opinion expressed therein or to any order that may contained therein. As said before, other than dismissing the application and expressing the opinion as to the fairness of refusing the settlement, under section 32(2) there was no provision to make any other order or to include it in the certificate. Further, there was no provision in the Ordinance that make such an order or conclusions included in a certificate issued under section 32(2) unassailable before a court of law. The bar in relation to civil actions contained in section 56 of the Ordinance concern only entertaining of actions in respect of pending matters before the board or the validity of any procedure before the board or the legality of any settlement and certain application to execute decrees but not with regard to purported conclusions of the board that may contain in a

certificate issued under section 32(2). Section 60 of the ordinance only make documents issued by the board prima facie proof of the contents of that document and that it was issued by the board. Thus, with regard to P1 certificate, one can argue that it is a prima facie evidence to say that the board was of the opinion stated therein and came to the decisions stated therein but it does not stop a civil court questioning the correctness of such conclusions in the said certificate and coming into its own decision with regard to the nature of the transactions.

After filing an application by the debtor or creditor, in the process endeavoring to effect a settlement, the board under certain sections of the Ordinance can make certain decisions. For example, under section 29(4) the board can issue a certificate in respect of debts owed by the debtor to the creditor when the creditor fails to show cause to the satisfaction of the board and under section 37, the board can decide the existence or the amount of the debt after hearing evidence when there is a dispute in that regard and, the decision shall be binding on all parties in all proceedings before the board. Even in this instant, no provision is made to bind parties on such decision in proceedings before court of law. Under section 47, the board is empowered to make orders or decision or settlements when a matter has been referred to it by a court. Section 48 provides that the court shall enter decree in accordance with such settlement, order or decision. However, there is no evidence or issue raised to indicate that the order or decision included in P1 is a decision made under section 29(4), 37 or 47. Thus, other than the opinion of the board with regard to the refusal of the settlement and the parts that relates to the dismissal of the plaintiff's application, the rest of the order/s or decision/s of the board that contained in P2 remain an order/s or decision/s which was/were not contemplated by section 32(2) of the ordinance.

Thus, on the face of it what is not contemplated by section 32(2) or the prescribed form are not matters ipso facto put in to effect by a court merely because the said certificate was tendered in court and conclusions or decisions of the board which are not contemplated by the said section 32(2) cannot be binding on the parties or the court which hear a case after the issuance of the said certificate. There may be an evidential value it bears to indicate that the application before the board was dismissed and the board was of the opinion that the settlement offered was fair and it ought to have been accepted by the creditor.

Furthermore, no provision of law is there in the ordinance that enable the board to convert a transfer or a conditional transfer to a mortgage. As discussed above, the Ordinance enable the board to consider conditional transfers (at present even transfer deeds) as mortgages in terms of the interpretations given in section 64 for the purposes of the ordinance to effect settlements of loans. Merely because the board considered a conditional transfer as a mortgage for such a purpose, a civil court of law is not bound to consider such deed as a mortgage when it becomes the subject matter in an action filed before it and the civil court has to decide the action on the facts proved before it. By tendering a certificate in terms of section 32(2), what can be proved is that the application before the board was dismissed and the board was of the view that the suggested settlement was fair and the plaintiff ought reasonably to have accepted it. It also could have proved the particulars of the debt as furnished by the debtor to the board to the extent revealed in the certificate as it can be considered as prima facie proof as indicated above.

It is also important to consider section 39(2)(a) of the Ordinance. Section 39(1) and 39(2)(b) relates to actions filed by the creditor and have no relevance to the matter at hand. Section 39(2)(a) prior to the amendment made in 1999 and as existed at the relevant time to the case at hand, is quoted below.

" (2) Where a certificate has been granted under this Ordinance in respect of a debt secured by a conditional transfer of immovable property and subsequent to the granting of that certificate an action is instituted in any court for the recovery of the property, the court-

(a) may, notwithstanding that the title to that property has vested in the creditor in relation to that debt, make such appropriate orders as are necessary to reconvey title to, and possession of, that property to the debtor, in relation to the debt, on the payment by the debtor of the debt together with the interest thereon in such installments and within such period not exceeding ten years, as the court thinks fit; and

(b)……"

The aforementioned section does not refer to an application to enforce the certificate. There is no other section in the Ordinance that enables a party to file an application to enforce the certificate issued under section 32(2). On the other

hand, section 32(2) certificate, as per the law at the relevant time, could contain only a dismissal of an application and an opinion of the board as to the refusal of a suggested settlement and details about the debt as furnished by the purported debtor to the board. Thus, it could not contain a decision that can be enforced by a court merely by producing it. As explained above other orders or decisions contained in P1 certificate could not have been included in it as per section 32(2). Hence P1 certificate does not contain anything that can be enforced by mere production of it. Further the aforementioned section contemplates an action filed for the recovery of the property. As per section 6 of the Civil Procedure Code, every application to a court for relief or remedy obtainable through the exercise of court's power or authority or otherwise to invite its interference, constitute an action. It was stated in **Lowe Vs Fernando 16 N L R 398** that generally "cause of action" is the wrong for the prevention or redress of which an action may be brought[6]. The wrong is the combination of the right and its violation. It is said that every action is based on a cause of action[7]. Thus, the action contemplated in section 39(2) (a) of the Ordinance also has to be based on a cause of action. In fact, the plaint in the action in the district court appears to have been drafted on purported causes of action- vide paragraph 15 of the plaint. Thus, to be successful in the action, the plaintiff had to prove her cause of action. By tendering or proving a certificate issued under section 32(2) of the ordinance which can lawfully contain a dismissal of an application tendered by the plaintiff to the board and an opinion of the board as to the reasonableness of the refusal of the defendant to accept a suggested settlement which in the opinion of the board was a fair settlement cannot prove a cause of action when it is considered with admissions made. To prove a cause of action, the plaintiff must prove a wrong done to her by the defendant. Mere opinion of the board along with the admissions mentioned above cannot prove such wrong. She should have proved that P2 is in fact a conditional transfer and she reasonably took steps to fulfill the conditions but the plaintiff failed to reconvey the property or at least that her proposed settlement was in fact a reasonable settlement but the plaintiff failed to accept it and reconvey the property. Mere proof of the opinion of the board cannot be considered as proof of such cause of action. She or person who had first-hand knowledge should have given evidence to prove such cause of action.

[6] See section 5 of the Civil Procedure Code which interprets the cause of action.
[7] Jakson V Spittel 1880 LR 5 CA 542 cited in Seylan Bank Ltd V Piyasena and Others (2005) 2 Sri L R 132

As only an officer from debt conciliation board gave evidence who has no knowledge of P2 and P3 deeds or the deeds of lease mentioned by the defendant, it cannot be considered that she proved any cause of action. In this regard, it is necessary to refer to the following decision in **Silva V Sai Nona 78 N L R 313**[8] which expressed its view as follows;

"In this context, the case Johanahamy V Susiripala (69 N L R 29) may be usefully referred to. In that case it was sought to be argued, as in the present case, that once the Debt Conciliation Board chose to treat a transaction involving a conditional transfer as a mortgage, it got transformed into a mortgage and the stamp of mortgage attached to the transaction even in proceedings outside the board also. This argument was rightly rejected. It was held that a conditional transfer was treated as a mortgage only for purposes of the jurisdiction of the board and that such recognition by the board as mortgage did not entail the consequence that title remained with the vendor (debtor)"[9]

"By virtue of this amendment,[10]the board is enabled to entertain, for the purposes of exercise its jurisdiction, a new category of transactions, viz, conditional transfer savouring of a mortgage. The Board is now authorised to effect a settlement between the parties to a conditional transfer. Any such settlement, on being reached and authenticated, supersedes the terms and stipulations of the original conditional transfer -sec.40.The question arises as to the consequences when no settlement between the parties is possible because of unreasonable attitude of the 'creditor' the transferee. Section 32 of the Ordinance provides for the dismissal of application in such an eventuality and for the grant of a certificate in terms of the section[11]."

"But when a conditional transfer has been squeezed into the definition of mortgage for the purpose of proceedings before Debt Conciliation Board, the engrafting does not outlive such proceedings and the transaction resumes its old label and nature after such proceedings get terminated by the dismissal of the application in terms of section 32 of the Ordinance[12]."

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[8] Manam Maggie Silva V Manikkuge Sai Nona 78 NLR 313
[9] Ibid at at page 324
[10] Act No.5 of 1959
[11] Manam Maggie Silva V Manikkuge Sai Nona 78 NLR 313 at page 323
[12] Ibid at page 324

"The meaning given statutorily to the word 'mortgage' for the purpose of jurisdiction of the Board cannot be extended to other jurisdictions unless there is warrant in the language of the statute. The unnatural sense ascribed to the word should be confined to the statutory context and should not be extended to other contexts though in pari materia[13]."

The learned counsel for the plaintiff argued that the above decision now does not apply since section 39(2) has been introduced by an amendment after the said decision. I am not inclined to accept this argument in its totality as said before, the provisions to consider a conditional transfer as a mortgage are provided for the purposes of the Ordinance, namely to effect settlements of loans. If the legislature wanted to give power to the board to convert conditional transfers to mortgages it should have been given expressly in the ordinance or by an amending Act. As observed in the above case if there is no settlement, the document regains its old label and nature. Section 39(2) only gives a court a discretion to grant relief as provided by that section in a suitable case notwithstanding the title to the property vested in the creditor in relation to the debt, when a certificate has been granted with regard to a conditional transfer of immovable property, but as explained above, it has not done away with the proof of a cause of action.

In the backdrop of above discussion now I would consider the questions of laws allowed by this Court.

Question;

a) In terms of the provisions of Section 39(2)(a) of the Debt Conciliation Ordinance (as amended) the plaintiff is entitled to the reliefs prayed for in the plaint, on the admissions recorded and the documents admitted as evidence in the District Court without objection;

Answer;

The above assertion cannot be accepted as the admissions made and the documents marked were not sufficient to prove a cause of action; a wrong done

[13] Ibid at page 325

by the defendant. A court of law is not bound to blindly follow an opinion of another institution. The court of law must form its own opinion

Question;

b) Has the Court of Appeal erred in applying to the facts of the present case the decision of Silva V Sai Nona 78 NLR 313, which has been decided before the enactment of S. 39(2)(a) of the Ordinance, and which therefore did not consider the meaning and effect of the said S.39(2)(a)?

Answer;

No

Question;

c) Has the Court of Appeal erred in holding that the certificate issued under the said S.32(2) of the Ordinance required the plaintiff to make payment of Rs.100,000/= to the Defendant along with an interest of 20% within 18 months?

Answer;

No. As the said order is included as a part of the certificate, but as per section32(2), such an order cannot be a part of the certificate.

Question;

d) Was the certificate under S.32(2) issued because there was no settlement?

Answer;

Yes.

Question;

e) Under the certificate there was no requirement that the plaintiff should pay money to the Defendant, there being no settlement between them;

Answer;

Yes, as per the law there cannot be any order made in a section 32(2) certificate requiring the plaintiff to pay as there was no settlement. However, the certificate issued included such an order as part of it which is not supported by provisions in section 32(2).

Question;

f) Has the Court of Appeal misunderstood and misinterpreted the meaning and effect of the certificate of non-settlement issued under the said S.32(2)?

Answer;

No. The Court of Appeal has only referred to the order contained in the certificate and has not expressed any view regarding whether such an inclusion of an order is correct but has stated that the plaintiff had not made payment as per the requirement in the said certificate. Since such an order was correctly or wrongly included in the certificate by referring to it among the contents of the certificate by stating that the said order is on the over leaf and 20% interest per year was ordered, the Court of Appeal was referring to the factual situation in relation to the certificate actually issued. The conclusion of the court of appeal was to affirm the analysis of the learned district judge as no cause of action was proved by the plaintiff.

Question;

g) Has the Court of Appeal erred by upholding as correct the finding of the District Court that the plaint of the Plaintiff did not disclose a cause of action?

Answer;

No, the decisions of the District Court confirmed by the Court of Appeal was that the plaintiff failed to prove a cause of action.

Question;

h) Has the Court of Appeal failed to analyze and carefully consider the provisions of section 39(2)(a) of the Debt Conciliation Ordinance (as amended). ” this court.

Answer;

No, sufficient analysis with reference to case law has been done and has come to the correct finding at the end.

For the foregoing reasons, this court cannot allow the appeal. Therefore, the appeal is dismissed with costs.

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Judge of the Supreme Court.

Sisira J de Abrew, J.

I agree.

……

Judge of the Supreme Court.

L.T.B. Dehideniya, J.

I agree.

……..

Judge of the Supreme Court.