
**RANATUNGA
VS
TIKIRI BANDA**

COURT OF APPEAL,
WJAYARATNE J.,
SRIPAVAN J.,
C A NO. 1342/2001
AUGUST 30, 2004
OCTOBER 7, 2004

Debt Conciliation Board Ordinance No. 39 of 1941 - Sections 14, 15 - Amended by Act 20 of 1983 - Section 19A (1) Difference between date of application and date application is entertained? - Should a certified copy of the Deed be tendered along with the application?

The 1st Respondent made an application on 30.08.1996 to the Debt Conciliation Board in terms of Section 14 of the Debt Conciliation Board Ordinance (DCB) for the settlement of his debt to the 2nd Respondent secured by a conditional transfer.

Board entertained the application on 10. 09. 96 and ordered the issue of Notice which was despatched on 14. 09. 96 and received by the 2nd Respondent on 17. 09. 96 . The 2nd Respondent appeared before the Board and intimated that the property had been sold, thereafter the purchaser had been made a party.

The added party objected to the application on the ground that

- (i) The application is time barred as the original application was entertained on 10. 09. 96
- (ii) That a certified copy of the Deed was not submitted with the application

The Board overruled the preliminary objection and fixed the matter for inquiry. The Petitioner sought to quash the said Order.

HELD:

- (i) Upon a reading of Section 19A it is very clear that the Board cannot entertain any application unless it is made within time and the validity of the application is not determined by the entertainment of same (10. 09. 96) within time but the application being made in time (30. 08. 96)

- (ii) The time taken before the order of entertaining the application is made is a lapse of time due to administrative delay which is totally beyond the control of the respondent applicant.
- (iii) There is no requirement of law that a certified copy of the deed should be tendered along with the application. The Board was satisfied that the application made together with affidavit to furnish prima facie proof of material facts was sufficient compliance with Section 15.

APPLICATION for a Writ of Certiorari.

Cases referred to :

1. *Nachichaduwa Vs Mansoor* - 1995 2 Sri LR 273
2. *W. M. Mendis & co., Vs Excise Commissioner* - 1999 1 Sri LR 351

Rohana Jayawardena for petitioner.

David Weeraratne for 1st Respondent

Cur adv vult

November 24, 2004

Wijayaratne, J.

The petitioner preferred this application invoking the writ jurisdiction of this Court seeking the grant of a mandate in the nature of Writ of Certiorari quashing the order of the Debt Conciliation Board marked X 39 dated 19. 07. 2001 and also seeking a Writ of Prohibition against the several members of the Debt Conciliation Board restraining or prohibiting them from proceedings with the application of the 1st respondent marked X14.

The 1st respondent made application on 30. 08. 1996 to the Debt Conciliation Board in terms of section 14 of the Debt Conciliation Ordinance, No. 39 of 1941 as amended, for the settlement of his debt to the 2nd respondent secured by a Conditional Transfer X2. The Board entertained the said application on 10. 09. 1996 and ordered the issue of notice which was dispatched on 14. 09. 96 and said to have been received by the 2nd respondent on 17. 09. 96. The second respondent appearing before the

Board intimated that the property had been sold and conveyed to the petitioner on 11. 09. 96 by deed marked X4. Having considered the matters of fact elicited by the the parties, the Debt Conciliation Board (referred to as the Board) made order on 06. 11. 1997 directing the 1st respondent to amend application X 14 dated 15. 12. 197 in terms of the order. The Board caused notice to be issued on the petitioner who is the added party who appeared before the Board and objected to the application of the 1st respondent being entertained on grounds that

- (a) The original application of the 1st respondent was entertained on 10. 09. 1996 after the expiry of the period within which the property may be redeemed by the debtor the 1st respondent by virtue of the agreement contained in the said deed of Conditional Transfer.
- (b) The petitioner is a bona fide purchaser of the property for valuable consideration in the absence of any Caveat or other information of such application of the 1st respondent to redeem the property.

The Board on several dates postponed the matter with the view to settlement and finally on 19. 07. 2001 made order that the application of the 1st respondent dated 30. 08. 1996 has been made within the prescribed time and the Board is entitled to proceed with the application and fixed the same for inquiry. The petitioner thereupon preferred this application invoking the writ jurisdiction of this Court seeking to quash the decision of the Board and restrain them from proceeding to inquiry. The application is made on several grounds stipulated in paragraphs 15 A to 15 E. The first respondent resisted the application of the petitioner and insisted that the decision of the Board is lawful and the Board has the power and authority of the law to proceed to inquiry into the matter.

The main thrust of the argument for the petitioner was that the application entertained by the Board on 10. 09. 1996 was out of time prescribed by section 19A of the Debt Conciliation Ordinance. Section 19A (1) of the Debt Conciliation Ordinance as amended by section 2 of Act No. 20 of 1983 states;

"(1) The Board shall not entertain any application by a debtor or creditor in respect of debt purporting to be secured by any such conditional transfer of immovable property as is a mortgage within the

meaning of this ordinance unless that application is made before the expiry of the period within which that property may be redeemed by the debtor by virtue of any legally enforceable agreement between him and his creditor.”

Upon a reading of the section it is very clear that the Board cannot entertain any application unless it is made within time and the validity of the application is not determined by the entertainment of the same within time but the application being made within time. The section states

“The board shall not entertain any application by a debtor in respect of Conditional Transfer of immovable property unless that application is made before the expiry of the period within which that property may be redeemed”

The deciding factor, in terms of the provision of section 19A (1) is “the date on which the application is made” and not the date on which the application is entertained. The petitioner concede the application upon which the impugned order was first made on 30.08.1996 a date at least 10 days anterior in time to the date on which the redeemable period of time expired.

The time taken before the order of entertaining the application is made, is a lapse of time due to administrative delay in the office of the Board which is totally beyond the control of the 1st respondent applicant. In the case of *Nachichaduwa Vs Mansoor*⁽¹⁾ it was held

“(4) The act of filing the petition and that of forwarding the record to the Court of Appeal are official acts of the District Court. Any delay in filing a petition in the record cannot be attributed to the appellant.”

Applying the rule set up in that case by analogy to the facts of the present application, the act of entertaining the application made by debtor within time is an official act. Any delay in making the order entertaining the application cannot be attributed to the applicant 1st respondent.

The debtor applicant the 1st respondent made his application within the period of redeemable time, i.e. on 30.08.1996. The delay in making

orders of entertaining the application on 10. 09. 1996 is no mistake, negligence or inadvertence on the part of the applicant 1st respondent. Even if it were so the rule of procedure cannot punish him or deny him just relief. Vide the decision of *W. M. Mendis and co. Vs Excise Commissioner*²³

The Petitioner also referred to the fact of a certified copy of the deed of Conditional Transfer not being tendered along with the application. There is no requirement of law that such a copy should be tendered along with the application. The petitioner does not refer to any such provisions requiring the tender of a certified copy of the deed. However the document is subsequently tendered and following the rule set up in the case of *W. M. Mendis & Co. (supra)* that is no reason to refuse him just relief. The Board was satisfied that the application made together with affidavit to furnish prima facie proof of material fact was sufficient compliance with the requirements of section 15 and the condition of redeem is one conceded by the petitioner. The fact that a certified copy of the deed was not tendered could not have caused any prejudice to the petition in these circumstances.

The order of the Board is lawful and within the spirit of the Debt Conciliation Ordinance. There is no reason to interfere with same. The petitioner has failed to establish any grounds on which the writ jurisdiction of this court could be exercised.

The application is dismissed with costs fixed at Rs. 5000/-

Sripavan, J. – I agree,

Application dismissed
