

## ERRATA

HAJI OMAR

v.

WICKREMASINGHE AND ANOTHER

1999 – 1 S L R

At Page 82

The Head Note should read as follows:

*An action for invalidation of a sale of property by the Seylan Bank – Interim Injunction – Basis and scope of interim relief.*

An interim injunction to prevent the issue of the certificate of sale was refused by the trial court, whereupon the plaintiff filed a petition seeking an order on the purchaser and the Bank inter alia, restraining them from demolishing or alienating the property. The court issued an interim injunction to that effect.

**Held :**

The basis of injunctive relief should be the plaint and the prayers contained therein; it is not designed to prevent other activities of the parties to an action.

February 16, 1999.

**AMERASINGHE, J.**

The plaintiff-petitioner-respondent Mr. Wickremasinghe, was a debtor of the 1st defendant-respondent-respondent, the Seylan Bank Ltd. Pursuant to a resolution passed by the Board of Directors of the Bank on the 20th of September, 1996, steps were taken by the Bank in terms of the Recovery of Loans by Banks (Special Provisions) Act, No. 4 of 1990, to sell by auction the debtor's property mortgaged as security for the payment of the debt. At the auction sale on the 7th of November, 1997, the appellant, Mr. Mohammed Haji Omar, the successful bidder, paid a deposit of 10% of the purchase price and subsequently, on the 8th of December, 1997, paid the balance due. On the 12th of December, 1997, the Bank issued a Certificate of Sale in terms of section 15 of the Bank (Special provisions) Act. The Purchaser took possession of the land.

On the 17th of December, 1997, Mr. Wickremasinghe instituted an action in the District Court of Colombo praying that the resolution of the Bank and the sale be invalidated and for the prevention of the issue of the certificate of sale and for an injunction restraining the issue of the certificate of sale. The injunction prayed for was not granted. The certificate has been granted before the institution of the action and in my view an application for an injunction restraining the issue of the certificate was misconceived. On the 19th of March, 1998, Mr. Wickremasinghe, by way of petition and affidavit, sought an order to restrain the purchaser and the Bank and their servants and agents from demolishing or damaging the buildings on the land and from alienating, mortgaging, leasing or otherwise encumbering the property. The learned District Judge took no action on the petition and affidavit but instead, having regard to the value of the subject-matter of the action, directed that it be tried by the Commercial High Court. On the 3rd of April, 1998, the learned Judge of the High Court issued an enjoining order operative till the 17th of April, 1998, as prayed for in the petition dated the 19th of March, 1988. After inquiry, the learned Judge of the High Court in his order dated the 2nd of June,

1998 issued the interim injunction prayed for in the petition dated the 19th of March, 1998.

I am of the view that the learned Judge of the High Court erred in making his order, for the basis of injunctive relief was not, as it should have been, the plaint dated the 17th of December, 1997 and the prayers contained therein. Interim relief is designed to prevent the frustration of the court's order if the reliefs prayed for in the plaint are eventually granted; it is not designed to prevent other activities of the parties to an action. Moreover, the petition dated the 19th of March, 1998 in response to which the injunction was granted had not been formally accepted by either the District Court or by the High Court and could not have been the legal basis for any remedy or relief.

The appeal is therefore allowed with costs and the order of the learned Judge of the High Court dated the 2nd of June is set aside.

**PERERA, J.** – I agree.

**WEERASEKERA, J.** – I agree.

*Appeal allowed.*