

DASSANAYAKE
v.
SAMPATH BANK LTD.

COURT OF APPEAL
UDALAGAMA, J. AND
NANAYAKKARA, J.
CALA NO. 387/2000
DC COLOMBO NO. 5559/SPL
FEBRUARY 15, 2002

Recovery of Loans by Banks (Special Provisions) Act, No. 4 of 1990, sections 16 and 16 (1) – Property sold in execution – Delivery of possession – Can the aggrieved party seek leave to appeal?

Held:

- (1) Jurisdiction exercised by the District Court under Act, No. 4 of 1990 is in the nature of special jurisdiction created by the Act.
- (2) A right of appeal is a statutory right; unless it is expressly created and provided by the statute it cannot be implied or inferred.
- (3) Act, No. 4 of 1990 is an enactment which has conferred special jurisdiction on the District Court and does not permit a party who is dissatisfied with an order in the course of proceedings under it, to seek relief by way of leave to appeal.

APPLICATION for leave to appeal from an order of the District Court of Colombo.

Cases referred to :

1. *Sangarapillai v. Mayor, Municipal Council of Colombo* – 32 NLR 62.
2. *Vanderpoorten v. The Settlement Officer* – 42 NLR 97.
3. *Kanagasunderam v. Podihamine* – 42 NLR 97.
4. *Bakmeewewa, Authorised Officer of People's Bank v. Konarage Raja* – (1989) 1 Sri LR 231.
5. *Gunarathne v. Thambinayagam* – (1993) 2 Sri LR 355.

Manohara de Silva for petitioner.

Chanaka de Silva with *V. Gamage* for respondent.

February 26, 2002

NANAYAKKARA, J.

An order made by the learned District Judge of Colombo in the course of an action instituted under the provisions of the Recovery of Loans by Bank (Special Provisions) Act, No. 4 of 1990 gives rise to this application for leave to appeal. ⁰¹

When this matter was taken up for inquiry into leave on 18. 05. 2001 the following preliminary objection, which has a direct bearing on the maintainability of this application was taken by the respondent Bank.

The preliminary objection taken was briefly as follows:

That the petitioner is not entitled to seek relief by way of leave to appeal as no such right of appeal has been conferred on a party dissatisfied with an order made under the provisions of the Recovery of Loans by Bank (Special Provisions) Act, No. 4 of 1990. ¹⁰

This court has now been called upon to determine the validity of the preliminary objection, on the basis of the written submissions tendered and the authorities cited by the parties.

It should be observed at the outset that the written submissions tendered by the petitioner in this connection have not been helpful in resolving the preliminary objection taken as they do not have a direct bearing on it. ²⁰

The question at issue is whether the petitioner is entitled to come by way of leave to appeal seeking redress, which he has prayed for in his petition against an order made by the District Judge under section 16 of the Recovery of Loans by Banks (Special Provisions) Act, No. 4 of 1990.

A careful analysis of the provisions of the said Act makes it evident that the jurisdiction exercised by the District Court under the Recovery of Loans by Banks (Special Provisions) Act, No. 4 of 1990, is in the nature of special jurisdiction created by the Act.

As far as section 16 (1) of the said Act is concerned, it provides ³⁰ for expeditious mode of recovery of the property, which has already been vested in the purchaser by an issuance of a certificate of sale in terms of the provisions of the said Act.

The right of appeal is a statutory right; unless it is expressly created and provided by the Statute, it cannot be implied or inferred. A long line of authorities enunciates this principle governing situations analagous to the matter in consideration. The following are some of the important authorities which deal with situations, which are identical to the present case:

Sangarapillai v. Mayor, Municipal Council of Colombo.⁽¹⁾

Vanderpooten v. The Settlement Officer.⁽²⁾

Kanagasunderam v. Podihamine.⁽³⁾

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The principle enunciated in the above-mentioned cases, has also been clearly upheld in the following recent authorities:

Bakmeewewa, Authorized Officer of People's Bank v. Konarage Raja.⁽⁴⁾

Gunaratne v. Thambinayagam and Others.⁽⁵⁾

Therefore, it is manifestly clear from the reasoning adopted in these cases that the Recovery of Loans by Banks (Special Provisions) Act is an enactment which has conferred special jurisdiction on the District ⁵⁰ Court, and does not permit a party who is dissatisfied with an order made in the course of proceedings instituted under it, to seek relief by way of leave to appeal.

Therefore, applying the principle set forth in the above-mentioned authorities, I uphold the preliminary objection taken by the petitioner-respondent Bank and dismiss this application casting the respondent-petitioner in cost in a sum of Rs. 5,000.

UDALAGAMA, J. – I agree.

Application dismissed.