

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

In the matter of an application
under and in terms of Article
126 read with Article 17 of the
Constitution of the Democratic
Socialist Republic of Sri Lanka.

S.C (FR) No. 263/2009 AND
S.C(FR) No. 262/2009

1. H.C.K. Kumarasinghe
No. 176,
St. Sebastian Mawatha,
Mudungoda.
2. D.E. Gunasekera,
No. 176,
St. Sebastian Mawatha,
Mudungoda.

And 12 others.

PETITIONERS

-Vs-

1. Monetary Board of the Central
Bank
Central Bank of Sri Lanka
No. 30,
Janadhipathi Mawatha,
Colombo 01.
2. His Excellency Mahinda
Rajapaksa

- President of the Democratic
Socialist Republic of Sri Lanka,
Minister of Finance,
The Ministry of Finance and
Planning,
The Secretariat,
Colombo 01.
3. Sumith Abeysinghe,
Secretary to the Treasury,
The Ministry of Finance and
Planning,
The Secretariat,
Colombo 01.
 4. Sumith Abeysinghe,
The Ministry of Finance and
Planning,
The Secretariat,
Colombo 01.
 5. Ajith Nivaard Cabraal,
Governor of the Central Bank
No. 30,
Janadhipathi Mawatha,
Colombo 01.
 6. Ceylinco Shriram Capital
Management Services
Company (Pvt.)
Limited,
No. 15A,
Alfred Place,
Colombo 03.
 7. C IC Asset Management
(Pvt.) Limited,
No. 283,
R. A. De Mel Mawatha,
Colombo 03.

8. Deshamanya Dr. Lalith
Kotelawala,
Chairman,
Ceylinco Centre,
No. 2,
R. A. De Mel Mawatha,
Colombo 04.
9. P. K. Karunanayake,
Deputy Chairman,
Ceylinco Centre,
No. 2,
R. A. De Mel Mawatha,
Colombo 04.
10. R. Thiyagaraja,
Director,
Ceylinco Centre,
No. 2,
R. A. De Mel Mawatha,
Colombo 04.
11. H. K. De Silva,
Director,
Ceylinco Centre,
No. 2,
R. A. De Mel Mawatha,
Colombo 04.
12. A. R. Gunawardena,
Director,
Ceylinco Centre,
No. 2,
R. A. De Mel Mawatha,
Colombo 04.
13. T. N. M. Pieris,
Director,
Ceylinco Centre,

- No. 2,
R. A. De Mel Mawatha,
Colombo 04.
14. A. Srinivasan,
Director,
Ceylinco Centre,
No. 2,
R. A. De Mel Mawatha,
Colombo 04.
15. R. Sridhar,
Director,
Ceylinco Centre,
No. 2,
R. A. De Mel Mawatha,
Colombo 04.
16. Shocklingam Alagappan,
Director,
Ceylinco Centre,
No. 2,
R. A. De Mel Mawatha,
Colombo 04.
17. Rajiv Wijetunga,
Director,
Ceylinco Centre,
No. 2,
R. A. De Mel Mawatha,
Colombo 04.
18. K. Arachchige Sunil Jayatissa
Director,
Ceylinco Centre,
No. 2,
R. A. De Mel Mawatha,
Colombo 04.
19. Ruwan Sirisena,
Director,

- Ceylinco Centre,
No. 2,
R. A. De Mel Mawatha,
Colombo 04.
20. Ceylinco Consolidated
(Private)
Limited,
No.13, Dickmans Lane,
Colombo 04.
21. Walter Ladduwahetty,
No. 143A,
Vajira Road,
Colombo 05.
22. Hon. Attorney General,
Attorney General's
Department,
Colombo 12.

RESPONDENTS

AND NOW BETWEEN

Ajith Rohan Gunawardena
No. 03,
St. Anthony's Road,
Mount Lavinia.

**12th RESPONDENT-
PETITIONER**

-Vs-

The Monetary Board of the
Central Bank,
Central Bank of Sri Lanka,
Janadhipathi Mawatha,
Colombo 01.

01st RESPONDENT-
RESPONDENT

BEFORE : P. PADMAN SURASENA, J.
A.L. SHIRAN GOONERATNE, J.
ACHALA WENGAPPULI, J.

COUNSEL : Roshan Hettiarachchi with Eranthi
Abeywardena instructed by Mallawarachchi
Associates for the Petitioners in SC. FR.
262/2009 and SC. FR 263/2009.

Mahen Gopallawa SDSG with Sabrina Ahmed
SSC for the 1st Respondent-Respondent (as per
motion filed by the 12th Respondent-Petitioner.)
Dr. Romesh De Silva, PC with Sugath Caldera
for the 12th Respondent-Petitioner in SC. FR
262/2009 and SC. FR 263/2009

ARGUED ON : 02nd May, 2024

ORDER ON : 16th October, 2024

ACHALA WENGAPPULI, J.

Originally two Petitioners had filed the Fundamental Rights Petition
bearing No. SC FR 262/2009 in which one could find twenty-three

Respondents named. It appears that the Court has concluded this case. One could come to that conclusion because this case is no longer being mentioned in open Court. This is an old case filed by the Petitioners over two decades ago and the case records consist of many bulky volumes containing a vast number of documents. Perusal of journal entries of the docket reveals that this Court had taken numerous steps to ensure the repayment of the monies deposited by a vast number of depositors in the collapsed finance companies. The original Petitioners who instituted these cases have alleged in their Petitions that those transactions are fraudulent on the part of the Directors and others managing/controlling those companies.

The person who was cited as the 12th Respondent in both the above Fundamental Rights Petitions, now filed a 'Petition' dated 30.01.2024, which was supported before us by the learned President's Counsel on his behalf. It is remarkable, at the outset, to note that the '12th Respondent' who has filed the said 'Petition', has chosen not to give notice of whatever the application he had intended to support before this Court through the afore-said 'Petition' and the nature of reliefs prayed for, either to the original Petitioners who had instituted these Petitions or to any other Respondents except the 1st Respondent. A notice has been issued on the 1st Respondent, which is the Monetary Board of Sri Lanka.

Learned Senior DSG who represented the Monetary Board of Sri Lanka strongly urged before us that the Petition filed by the 12th Respondent-Petitioner on 30.01.2024 should be dismissed in *limine*. It was submitted by the Senior DSG that the application of the 12th Respondent-

Petitioner is in effect making an attempt to vary the directions and orders issued by this Court on these two applications and the Committee of Chartered Accountants appointed on the orders of this Court, stated in its report issued on 08.04.2024, *inter alia* “ ... any release of Directors assets should only be considered after the payment to the investors/depositors.”

The 12th Respondent-Petitioner did not notice any of the original Petitioners who invoked jurisdiction of this Court under Article 126 in their applications. One of those original Petitioners, who learnt of the 12th Respondent Petitioner’s application through a third party, strongly objected to the consideration of the instant application on the basis that he was neither named as a party to the application nor was given any notice of the same. On that premise, learned Counsel moved this Court to dismiss the application of the 12th Respondent-Petitioner *in limine* as the reliefs sought, if granted, would be detrimental to his interests.

There is much merit in that submission. Be that as it may, let us also consider the merits of the ‘Petition’ dated 30.01.2024 filed by the ‘12th Respondent-Petitioner’.

The reliefs that were sought from this Court as per the prayer to the said ‘Petition’, in verbatim are as follows:

- a. *That your Lordship’s Court be pleased to make order that no order in this case prevents the Petitioner from withdrawing the monies in the accounts as shown in the schedule annex hereto marked X2 and from*

trading in the shares in the schedule X2 and from withdrawing the pension as shown in the schedule marked X2 hereto;

b. That your Lordship's Court makes order that the directions of the Central Bank and/or the 1st Respondent-Respondent in documents marked P5 and P6 are not consequent to any order made in this case;

c. For such other and further relief; and

d. Costs.

On the face of it, we observe that the above prayers are rather unusual. This is because the 12th Respondent-Petitioner requests this Court to make an Order stating that there is no Order in this case to prevent him from doing certain things that had been specified in prayer (a).

Prayer (b) is also no different except to the institution in respect of the relief sought. This is because the 12th Respondent-Petitioner requests this Court to make an Order that certain actions done by the Central Bank of Sri Lanka and /or the 1st Respondent-Respondent, had been done not in consequence to any Order made by this Court.

We are of the view that if there is any Order made by this Court, that Order must stand on its own.

Admittedly, the 12th Respondent-Petitioner stands indicted before the High Court of Kandy in Case No. H.C. 153/2011 as the 6th accused. The

indictment presented to the High Court by the Hon. Attorney General on 03.08.2011, contained 135 counts. That indictment was subsequently amended, and the amended indictment presently contains 3806 counts. In that amended indictment, it was alleged that the 12th Respondent-Petitioner, along with others, had conspired to commit the offence of cheating, punishable under Section 403 read with Sections 113B and 102 of the Penal Code. The charges appear to have alleged that the 12th Respondent-Petitioner had conspired to defraud monies of the Depositors, deceiving them to believe that the companies relevant to these alleged fraudulent activities namely Ceylinco Shriram Capital Management Services Company (Pvt.) Ltd., C. L. C. Asset Management (Pvt.) Ltd., Ceylinco Capital Investment Company (Pvt.) Ltd. would repay the monies of the Depositors on demand. Admittedly, the High Court of Kandy had not yet concluded this case.

The 12th Respondent-Petitioner has annexed some proceedings pertaining to the said High Court case along with this Petition. It is observed that on several occasions the High Court has postponed this case on the applications of the Accused. It is important to note the ground that was urged by the 12th Respondent-Petitioner before the trial Court, urging it to grant a postponement of the trial against him. On 24.03.2014, the learned Counsel who appeared in the High Court for the 6th accused (12th Respondent-Petitioner) successfully persuaded the trial Court to grant a postponement on the basis of the pendency of this Petition, SC FR 262/2009 in this Court, even though an order made in SCFR 191/2009 directing that High Court to proceed with the trial on day-to-day basis.

The 12th Respondent-Petitioner failed to convince this Court of the existence of any valid reason upon which he became entitled either to maintain this Petition dated 30.01.2024 or to support the same for the reliefs prayed for in the said Petition. Therefore, this Court decides to refuse the petition of the 12th Respondent-Petitioner dated 30.01.2024.

Accordingly, the Petition filed by the 12th Respondent-Petitioner is dismissed. This Order must apply to SC FR 262/2009.

JUDGE OF THE SUPREME COURT

P. PADMAN SURASENA, J.

I agree.

JUDGE OF THE SUPREME COURT

A.L. SHIRAN GOONERATNE, J.

I agree.

JUDGE OF THE SUPREME COURT