

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

SC. APPEAL. No. 168/2015

Supreme Court Leave to Appeal No.  
SC/HCCA/LA/122/2015

High Court No. NCP/HCCA/LA/09/2011

DC Anuradhapura Case No. M 21814

K. G. P. M. Nirmalatha,

596/76 Bandaranaike Mawatha,

Anuradhapura

**Plaintiff**

- VS -

1. Rajarata Sanwardana Bankuwa,
2. A B Karunathilake,
3. Rathnasiri Siriwardena,
4. U B Semasinghe

Rajarata Sanwardana Bankuwa,

Head Office, Anuradhapura

**1<sup>st</sup> to 4<sup>th</sup> Defendants**

**AND BETWEEN**

K. G. P. M. Nirmalatha,

596/76 Bandaranaike Mawatha,

Anuradhapura

**Plaintiff – Petitioner**

- VS -

1. Rajarata Sanwardana Bankuwa,
2. A B Karunathilake,
3. Rathnasiri Siriwardena,
4. U B Semasinghe

of Rajarata Sanwardana Bankuwa,  
Head Office, Anuradhapura

**1st – 4th Defendants  
Respondents**

- 1a. Pradeshiya Sanwardana Bankuwa  
12<sup>th</sup> Floor, Access Towers  
278, Union Place, Colombo 2

**Party Sought to be Substituted in  
place of the 1<sup>st</sup> Defendant**

**AND BETWEEN**

Pradeshiya Sanwardana Bankuwa  
12<sup>th</sup> Floor, Access Towers,  
278, Union Place, Colombo 2

**Party Sought to be Substituted in  
place of the 1<sup>st</sup> Defendant –  
Petitioner**

**- VS -**

K. G. P. M. Nirmalatha,  
596/76, Bandaranaike Mawatha,  
Anuradhapura

**Plaintiff – Petitioner – Respondent**

1. A B Karunathilake,
2. Rathnasiri Siriwardena,
3. U B Semasinghe

Of, Rajarata Sanwardana Bankuwa,  
Head Office, Anuradhapura

**2nd – 4th Defendants Respondents  
Respondents**

**AND NOW BETWEEN**

Pradeshiya Sanwardana Bankuwa  
933, Kandy Road, Vedemulla,  
Kelaniya

**Party Sought to be Substituted in  
place of the 1<sup>st</sup> Defendant –  
Petitioner – Appellant**

**- VS -**

1. K G P M Nirmalatha,  
596/76 Bandaranaike Mawatha,  
Anuradhapura

**Plaintiff – Petitioner – Respondent  
– Respondent**

2. A B Karunathilake,  
3. Rathnasiri Siriwardena,  
4. U B Semasinghe  
of Rajarata Sanwardana Bankuwa,  
Head Office, Anuradhapura

**2nd 4th Defendants-Respondents-  
Respondents-Respondents**

**Before** : S. Thurairaja, PC, J  
E.A.G.R. Amarasekara, J  
.  
A.L.S. Gooneratne, J.

**Counsel** : G. Alagaratnam, PC, with Suren Fernando for the Party Sought to be  
Substituted in place of 1<sup>st</sup> Defendant-Petitioner-Appellant.  
S.A.D.S. Suraweera for the Plaintiff-Petitioner-Respondent.

**Argued on** : 12.02.2021

**Decided on** : 24.03.2025

**E A G R Amarasekara, J**

This is an appeal by the Party Sought to be Substituted in Place of the 1<sup>st</sup> Defendant – Petitioner – Appellant (Hereinafter sometimes referred to as the “Appellant” or the “Party Sought to be Substituted”) against the Order dated 10.02.2015 of the Provincial High Court of the North Central Province (exercising Appellate Jurisdiction) holden in Anuradhapura where the Learned High Court Judges dismissed the Appellant’s appeal and upheld the Order of the District Court of Anuradhapura dated 07.10.2011.

The Plaintiff – Petitioner – Respondent – Respondent (Hereinafter sometimes referred to as the “Plaintiff”) filed action in the District Court of Anuradhapura in Case No.21814/M against the Rajarata Sanwardana Bankuwa (Hereinafter sometimes referred to as the “1<sup>st</sup> Defendant”) and the 2<sup>nd</sup> – 4<sup>th</sup> Defendants – Respondents – Respondents – Respondents (Hereinafter sometimes referred to as the “2<sup>nd</sup> – 4<sup>th</sup> Defendants”). As per the Plaint dated 06.03.2007, filed in the District Court of Anuradhapura, the claim of the Plaintiff was related to an alleged deprivation of overtime payments, promotion and certain other payments etc. Further, the Plaint states that the said 1<sup>st</sup> Defendant was established under the Regional Development Bank Act, No. 6 of 1997.

In responding to the above Plaint, the Defendants, namely 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants, together filed their Answer dated 26.07.2007, claiming that the Plaintiff’s claim is that of a malicious prosecution, and also raised few preliminary objections. Thus, the Defendants *inter alia* pleaded to dismiss the case of the Plaintiff at the first instance based on the preliminary objections and otherwise also on merits. In reply, a Replication was filed by the Plaintiff refuting the claims in the Answer.

Subsequently, trial commenced on 12.09.2008, and the Plaintiff led evidence-in-chief on 10.09.2009 and 12.02.2010. The Plaintiff, by Petition dated 20.08.2010, sought to substitute the Appellant as a Defendant in place of the original 1<sup>st</sup> Defendant. As per the Petition, the said application was based on the following grounds;

- The 1<sup>st</sup> Defendant, the Rajarata Pradeshiya Bankuwa was abolished by the Pradeshiya Sanwardana Bank Act, No. 41 of 2008 (hereinafter sometimes also referred to as “the Act”).
- Aforesaid Act has merged all the Development Banks in the provinces into one institution and it was officially established on 30.04.2010.
- In terms of the Section 45 (2) (b) of the said Act, it should be the Appellant that should be substituted in place of the 1<sup>st</sup> Defendant.

Aforesaid Petition was supported on 03.02.2011, after which, notice was issued on the Appellant. The Appellant filled objections for the substitution by way of Statement of Objections along with an Affidavit both dated 26.04.2011. Through its objections, the Appellant took up the position that;

- The Pradeshiya Sanwardana Bank Act No.41 of 2008 does not suggest that the intention thereof was to ensure ‘merger’ of Development Banks of the Provinces, including the 1<sup>st</sup> Defendant,
- The Pradeshiya Sanwardana Bankuwa (Regional Development Bank or RDB) was incorporated, and through the Gazette Extraordinary No.165/5 dated 03.05.2010, business of the 1<sup>st</sup> Defendant was vested with the Appellant (along with the business of other Development Banks),
- Section 42(1) of the said Act provides only to vest the business presently carried on by the Development Banks. Thus, employment contracts were not transferred to the Pradeshiya Sanwardana Bankuwa,
- Aforesaid Act makes specific provisions for the employees of the Vesting Bank to be granted fresh employment in the Pradeshiya Sanwardana Bankuwa and does not simply vest those employees in the said Bank,
- The employees or related liabilities were not *ipso facto* vested in or transferred to or acquired by the Appellant merely on the fact of the said enactment and establishment of the Pradeshiya Sanwardana Bankuwa,
- The Plaintiff has suppressed that she was offered a fresh employment by Pradeshiya Sanwardana Bankuwa and the fact that she accepted it,
- The Plaintiff is not entitled to continue with her purported action against the Pradeshiya Sanwardana Bankuwa, the Appellant, in as much as Section 45 (2) (b) of the Act only permits the continuity of actions pertaining or related to the vested business and the employment contracts were not vested and did not form part of the banking business.

Thus, the position of the Appellant was that it cannot be substituted in the place of the 1<sup>st</sup> Defendant.

The relevant Sections 42 and 45 of the Act are quoted below for easy reference.

*“42. (1) Notwithstanding the provisions of any other law to the contrary within a reasonable time after the establishment of a Bank under section 2 of this Act, the Minister may by Order published in the Gazette (hereinafter referred to as "Vesting Order") vest the business presently carried on by the Development Banks as is specified in the Schedule to this Act as "Vesting Bank or Banks" being business which such Development Banks were authorized to carry on under the Regional Development Banks Act, No. 6 of 1997, in the Bank established under section 2 (hereinafter referred to as the "acquiring bank").*

*(2) For the purpose of subsection (1), the business presently carried on by the Development Bank includes —*

- (a) *all immovable and movable property owned by the Vesting Bank or Banks on, the day immediately preceding the date of the Vesting Order (including cash balances, reserve funds, investments and deposits);*
- (b) *all rights, powers, privileges, authorities and interests arising in or out of, any property, movable or immovable owned by the Vesting Bank or Banks and any leasehold rights in any immovable property enjoyed by such Vesting Bank or Banks on the day immediately preceding the date of the vesting Order;*
- (c) ***all the liabilities of the Vesting bank or Banks as are subsisting on the day immediately preceding the date of the Vesting Order; and***
- (d) *all books, accounts and documents relating or appertaining, to the business of such Vesting Bank or Banks, which were being maintained by such Bank on the day immediately prior to the date of this Vesting Order.*” (Highlighted in bold letters is done by me)

The section quoted above clearly indicates that the intention of the legislature was to vest the business of the vesting bank carried on at the time of vesting in the acquiring bank. It must be also noted that, as per the Section 45 (1) of the Act quoted below, with the publication of the vesting order in the Gazette, the Regional Development Banks Act, No. 6 of 1997 which established the 1<sup>st</sup> Defendant was repealed terminating the existence of the 1<sup>st</sup> Defendant Bank before law as there was no provision to keep the 1<sup>st</sup> Defendant as an existing legal person. In fact, incorporation orders of Development Banks including the 1<sup>st</sup> Defendant are deemed to have been revoked in terms of Section 43(b) of the Pradeshiya Sanwardana Bank Act, No.41 of 2008. The Pradeshiya Sanwardana Bank Act No.41 of 2008 does not provide to merge or amalgamate the banks such as 1<sup>st</sup> Defendant Bank with the Bank established by the said Act, namely the Pradeshiya Sanwardana Bankuwa, the Party Sought to be Substituted, which is also the Appellant, other than the provisions for vesting its business on the acquiring bank. It is important to consider what is mentioned in aforesaid Section 42(c) which vest all the liabilities of the Vesting Bank or Banks as are subsisting on the day immediately preceding the date of the Vesting Order since those liabilities too fall within the term ‘the business presently carried out by the Development Banks’. The case that was filed by the Plaintiff and pending against the 1<sup>st</sup> Defendant Bank was not concluded against the 1<sup>st</sup> Defendant on the day immediately preceding the date of the vesting order. Whether there is a liability on the Defendant Bank was contingent upon the Judgment of the case that was yet to be decided. It is true that at the end, rights were to be decided as at the date of filing of the action but it was yet to be decided and the 1<sup>st</sup> Defendant became abolished before law with the vesting order. Thus, there was no existing liability decided by the Court in that case as at the day immediately preceding the date of vesting order except for the alleged cause of action of the case. Hence, everything depends on the fact whether there was a surviving cause of action that could be proceeded against the Party Sought to be Substituted, in other words against the Appellant, on the day of the vesting order. The case filed by the Plaintiff against the 1<sup>st</sup> Defendant was based on the contract of

employment and/or employer-employee relationship between the Plaintiff and the 1<sup>st</sup> Defendant. No where in the Pradeshiya Sanwardana Bank Act, has it been provided to vest employment contracts or obligations relating to employer-employee relationship that existed as at the time of vesting *ipso facto* to be vested in the acquiring bank; thus, in the case at hand on the Party Sought to be Substituted or the Appellant. In this regard, Section 45 of the Act which is quoted below is important.

***“45. (1) With effect from the date of vesting of the Banks by an Order published in the Gazette, the Regional Development Banks Act, No. 6 of 1997 shall be repealed.***

*(2) With effect from the date of vesting —*

*(a) all contracts, deeds, bonds, agreements, powers of Attorney, grants of legal representation and other instruments of whatever nature **pertaining or relating to the vested business of the Vesting Bank or Banks** and subsisting or having effect on the day immediately preceding the date of vesting and to which the Vesting Bank or Banks is or are party or which is or are in favour of the Vesting Bank or Banks shall be deemed with effect from the date of Vesting to be contracts, deeds, bonds, agreements, powers of Attorney, grants of legal representation or other instruments entered in to or granted, as the case may be, by the acquiring bank;*

*(b) **all actions** and proceedings of whatever nature instituted by or against the Vesting Bank or Banks **pertaining or relating to the vested business of such Bank or Banks** and pending on the day immediately preceding the date of vesting shall be deemed with effect from the date of vesting to be actions and proceedings instituted by or against the acquiring Bank and may be continued or prosecuted accordingly;*

*(c) all monies of the Vesting Bank as on the day immediately preceding the date of Vesting be transferred to the Special Reserve Fund and form part of such Fund;*

*(d) **all such officers and servants of the Vesting Bank or Banks** and were holding a permanent post in such Vesting Bank or Banks on the day immediately preceding the date of vesting shall with effect from the date of such vesting, **be offered employment on terms and conditions not less favourable than the terms and conditions which were previously enjoyed by them with the acquiring bank, and—***

*(i) **where such offer is accepted, such officers and employees shall be employed therein on such terms and conditions of employment as the acquiring bank considers reasonable having regards to the qualifications and experience of such officers and employees; and***

*(ii) **where such offer is not accepted, such officers and employees shall be entitled to the payment of compensation as determined under section 46.***

Section 45(1) above repealed the Act that paved way for the establishment of the 1<sup>st</sup> Defendant. Section 45(2)(a) vest all contracts, bonds and agreements etc. **pertaining or relating to the vested business of the vesting bank or banks** in the acquiring bank. However, it does not vest contracts of employment in the acquiring bank. Section 45(2)(b) above vest all actions and proceedings pertaining or **relating to the vested business of vesting bank or banks** pending on the day immediately preceding the day of vesting in the acquiring bank. However, it does not vest pending actions based on contract of employment or relating to employer-employee relationship. Hence, the action against the 1<sup>st</sup> Defendant filed by the Plaintiff does not fall within the ambit of Section 45(2)(b) as it does not relate to the vested business of the vesting bank but relates to the issues pertaining to employer-employee relationship between them.

Section 45(2) (c) above is to transfer the monies of the vesting bank to a special reserve fund.

Afore mentioned Section 45(2)(d) clearly indicates that the intention of the legislature was to create new employer-employee relationships between the employees of the vesting bank with the acquiring bank as far as possible on the same or better terms and conditions that existed with the vesting bank when the said employees accept the offers of new employment offered to each of them. However, if any of the employees not willing to accept the new offer, he or she could opt for compensation as determined under Section 46 of the Act. As per the submissions made and documents marked R2 and R3 found in the brief, it is apparent that the Plaintiff accepted the offer made by the Party Sought to be Substituted, namely by the Pradeshiya Sanwardana Bankuwa or Regional Development Bank. Thus, the relationship between the Party Sought to be Substituted and the Plaintiff is based on the said new contract of employment and Party Sought to be Substituted is not a party to the contract of employment between the 1<sup>st</sup> Defendant and the Plaintiff nor a successor to it as the Pradeshiya Sanwardana Bank Act did not make the Party Sought to be Substituted a successor to every contractual obligation of the vesting bank. In such a backdrop, cause of action that allegedly arose against the 1<sup>st</sup> Defendant in relation to the contract of employment or employer-employee relationship based on that contract of employment cannot survive against the Party Sought to be Substituted whose relationship with the Plaintiff is based on a new contract of employment. The Plaintiff cannot be allowed to blow hot and cold together stating that her relationship with the Party Sought to be Substituted is based on both the contract of employments, namely one with the 1<sup>st</sup> Defendant as well as with the new contract of employment with the Party Sought to be Substituted. In that context, it is apparent that the Learned District Judge erred in allowing the substitution of Party Sought to be Substituted in the place and room of the 1<sup>st</sup> Defendant and the Learned High Court Judges also erred in affirming such substitution.

It must be noted that there is no provision in the Pradeshiya Sanwardana Bank Act to merge or amalgamate the two institutions or for the continuation of the legal personality of the 1<sup>st</sup> Defendant through the Party Sought to be Substituted as its successor, other than certain provisions to vest its business and liabilities that existed at the time of vesting in the acquiring bank. However, it provided for new contract of employment with the Party Sought to be Substituted and the Plaintiff accepted the offer made by the Party Sought to be Substituted. As there was provision for compensation, if the Plaintiff did not want to accept the offer and



thought that it should have considered what she had prayed for in the action against the 1<sup>st</sup> Defendant, she could have opted for compensation in terms of Section 46 of the Act. Such an option may not be favourable to the Plaintiff but, once an Act is passed by the legislature, it becomes the law of the country and its validity and propriety cannot be challenged in courts. In this regard, the Party Sought to be Substituted had brought this Court's attention to Article 80(3) of the Constitution and relevant case laws which are quoted below;

Article 80(3) of the Constitution:

*“Where a Bill becomes law upon the certificate of the President or the Speaker, as the case may be, being endorsed thereon, no court or tribunal shall inquire into, pronounce upon or in any manner call in question, the validity of such Act on any ground whatsoever.”*

**Gamage v. Perera (2006) 3 Sri L.R. 354, 359:** *“The aforesaid Article thus had clearly stated that in terms of that Article, the constitutional validity of any provision of an Act of Parliament cannot be called in question after the certificate of the President or the Speaker is given.”*

**In re the Thirteenth Amendment to the Constitution and The Provincial Councils Bill (1987) 2 Sri LR 312 at 331:** *“Such a law cannot be challenged on any ground whatsoever even if it conflicts with the provisions of the Constitution, even if it is not competent for Parliament to enact it by a simple majority or two third majority.”* (See the Judgment where reference has been made to provisions in Article 80(3) of the Constitution)

The Party Sought to be Substituted has further brought this Court's attention to the case **Matara Wallaboda Pattu Bahukariya Sewaka Samitiya v Matara Wallaboda Pattu Multi-Purpose Co-operative Society**, SC 182/68 decided on 17<sup>th</sup> November 1969 which is found in M.S. Mohammed Hussain's Complete Digest of Case Law of Sri Lanka, Volume 13 at page No. 209 and referred to in some other texts to state that when a business is taken over by another, in the absence of an agreement to the contrary, the transferee does not automatically take over the employees of the business. It is further brought to the attention of this Court to **S.R. De Silva's 'The Contract of Employment,' Monograph No. 04 (2017), at page 100** where it is stated that *“Where a business is taken over by another employer, the transferee does not, in the absence of an arrangement to the contrary, become the employer of the transferor's employees.”*

The Party Sought to be Substituted has argued in its written submissions that there is a novation of contract. Whatever it is, as explained above, once the Plaintiff accepts the new contract of employment, it is a new contract between the Plaintiff and the Party Sought to be Substituted. The Party Sought to be Substituted does not become a party to the contract of employment that existed between the Plaintiff and the 1<sup>st</sup> Defendant. When there is no provision in the new contract of employment to accept liability for the causes of actions against the previous employer, the 1<sup>st</sup> Defendant, the Plaintiff cannot say that the Party Sought to be Substituted can be substituted for the cause of action against the previous employer, the 1<sup>st</sup> Respondent.

The documents marked R2 and R3 (documents establishing new contract of employment) do not indicate that there was an agreement to accept the liabilities that may arise from impugned causes of action by the Party Sought to be Substituted. Hence, neither Pradeshiya Sanwardana Bank Act nor the new contract of employment indicates that the cause of action against the 1<sup>st</sup> Defendant can be proceeded against the Party Sought to be Substituted because it is a new contract of employment that exists between the Party Sought to be Substituted and the Plaintiff.

Even though this Court is not bound to follow the decision in *Ruhunu Development Bank v Hon. P.J.S. Perera, Court of Appeal Application No. CA. 849/01, C.A.M.02.09.2002*, it is important to refer to the said decision as it considered similar provisions in Regional Developments Bank Act No. 6 of 1997. There it was held as follows;

*“What was envisaged by the Act was that there had to be security of employment, by way of guarantee, fresh contracts would be offered to all such employees of the Vesting Bank.”* At page 10 of the said decision - page 325 of the brief.

*“If the contracts of employment between the employees of the Vesting Bank did not succeed upon the point of vesting in the acquiring bank one could not see at that point of vesting, that the employees of the Vesting Bank were employees of the acquiring Bank or the Petitioner Bank. In these circumstances it is clear that at the point of vesting all contracts of employment terminated by operation of statute in so much as what was envisaged by statute was the operation of new contracts of employment made to the officers and servants who accepted the offer that had been made by the acquiring bank.”* – at pages 11 and 12 of the said decision – pages 317 and 318 of the brief.

*“In other words in considering the rights of the acquiring bank, the Petitioner upon the contracts of employment in terms of the provision of 49(a), the intention of the legislature has to be considered. In this regard two matters are relevant. One is that if contracts of employment were to be included under section 49(a) then there would have been no need to specifically mention that new employment would be offered in terms of section 49(c). If contracts of services and employment were included in 49(a) there would have been no need for it to have been dealt specifically in terms of Section 49(c) and this becomes all the more so when one considers the new contracts of employment that had been offered to each and every officer and servant who were employed by the Vesting Bank.....In other words if fresh contracts had been envisaged by the Act it would be mutually inconsistent to consider that all the contracts have been kept alive in terms of section 49(c) as then two provisions contained in these Sections would be mutually inconsistent...”* at pages No. 9 and 10 of the said decision – pages 315 and 316 of the brief. (It is observed that Section 49(a) and 49 (c) referred to in the aforesaid decision is very much similar to Section 45 (2) (a) and 45 (2) (c) of the Pradeshiya Sanwardana Bank Act which are relevant to the matter at hand.)

Aforesaid decisions referred to by the Party Sought to be Substituted (the Appellant) supports the finding this Court reached above that there is a new contract of employment between the Plaintiff and the Party Sought to be Substituted governing the employer-employee relationship

between them, and the Party Sought to be Substituted is not a successor to the obligations between the Plaintiff and the 1<sup>st</sup> Defendant, which could have arisen between Plaintiff and the 1<sup>st</sup> Defendant based on the contract of employment they had.

The Plaintiff has attempted to say that there is a difference of meaning in the Sinhala Section 45(2) (b) and the English section, and therefore, the Sinhala Section must prevail. However, I do not see any difference in meaning as both sections, whether in Sinhala or English, contemplates all actions and proceedings pertaining to or related to the vested business (එකී බැංකුවේ හෝ බැංකු වෙත පැවරුණු ව්‍යාපාරික කටයුතු සම්බන්ධයෙන් අදාළ වූ ද) of such bank or banks.

For the reasons discussed above, I have to hold that the Learned District Judge erred in substituting the Party Sought to be Substituted and the Learned High Court Judges erred in affirming the said decision. It must be noted that the application for substitution dated 20.10.2010 was made on the basis that all development banks in various regions have been amalgamated to form the Pradeshiya Sanwardana Bankuwa while also stating that 1<sup>st</sup> Defendant had been abolished by the Act No.41 of 2008- vide paragraph 2 of the said application. What appears to have happened is that the 1<sup>st</sup> Defendant has been abolished through the operation of the new Act and a new entity called Pradeshiya Sanwardana Bankuwa has been established while vesting the business of the 1<sup>st</sup> Defendant and some other development banks on the newly created entity.

Being aggrieved by the Judgement of the Civil Appellate High Court, the Appellant, the Party Sought to be Substituted, sought leave to appeal from this Court. When the leave to appeal application was supported on 02.10.2015, this Court granted leave to appeal on the following questions of law set out in sub paragraphs (a), (b) & (c) of the Paragraph 19 of the Petition of the Petitioner dated 23.03.2015;

- (a) *Did their Lordships of the Civil Appellate High Court err in law in failing to recognise that the learned District Judge erred in law in failing to recognize that in terms of Section 42 of the Pradeshiya Sanwardana Bank Act, No. 41 of 2008 it was only the **“BUSINESS presently carried on by the Development Banks”** which was transferred to the instant Petitioner, and that the **employment contracts or employee related liabilities were not transferred** to the instant Petitioner?*
- (b) *Did their Lordships of the Civil Appellate High Court err in law failing to recognise that the subject matter of the District Court action was not a liability which vested in the instant Petitioner?*
- (c) *Did their Lordships of the Civil Appellate High Court err in law in failing to recognise that the learned District Judge erred in law in failing to recognise that **Section 45(2)(b) of the Act** only permits the continuity of Actions **pertaining or related to the vested business**, and the employment contracts were not **NOT VESTED**, and did **NOT FORM***

*PART OF THE BANKING BUSINESS and that accordingly the Plaintiff was not entitled to continue the action against the instant Petitioner?*

As per the Journal Entry dated 02.10.2015, the Learned Counsel for the Plaintiff-Petitioner-Respondent raised the following question of law:

*“Whether the Petitioner is entitled to maintain this action or application on the provisions contained in the Pradeshiya Sanwardana Bank Act No. 41 of 2008 contained in section 45(2)(b).”*

As per the reasons given above, I answer the first three questions of law contained in paragraph 19 (a), (b), (c) of the Petition dated 23.03.2015 in the affirmative and the question of law raised by the Plaintiff-Respondent in the Negative, considering the word “Petitioner” used therein, is to denote the Plaintiff-Petitioner in the original application made in the original action, as the Defendant-Appellant has not relied on section 45(2)(b) to claim any entitlement to maintain the action in the original court. The Defendant-Appellant however, can maintain the present application.

Hence, this appeal is allowed and I set aside the Order dated 10.02.2015 made by the Provincial High Court of North Central Province (exercising Civil Appellate Jurisdiction) in Application No. NCP/HCCA/LA/09/2011 which confirmed the District Court Order dated 07.10.2011. The Order dated 07.10.2011 of the District Court of Anuradhapura in Case No.21814/M which allowed the substitution of Party Sought to be Substituted (the Appellant) in the place of the 1<sup>st</sup> Defendant is also set aside and the learned District Judge is directed to release the Party Sought to be Substituted, the Appellant from the proceedings before it.

Appeal is allowed with costs.

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Judge of the Supreme Court

S. Thurairaja, PC, J.

I agree.

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Judge of the Supreme Court

A.L.S. Gooneratne, J.

I agree.

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Judge of the Supreme Court