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

In the matter of an application under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka for a mandate in the nature of Writ of Prohibition and Mandamus

Dissanayaka Mudiyanselage
Chanaka Lakmal Dampitiya
27/1 C, 5th Lane,
Katuwawala Mawatha,
Ambilla Waththa Road,
Boralesgamuwa.

Petitioner

Court of Appeal (Writ)
Application No. 342/ 2022

Vs.

1. 532 C, wattegedara Thrift and Credit Co-operative Society Ltd,
   No. 123, Wattegedara,
   Maharagama.

2. Ruwini A. Wijewickrama,
   Commissioner of Co-operative Development Department / Register of Co-operative Society Development – Western Province,

No. 444, Duke Street,
Colombo 01.

3. Lionel Withana,
   Assistant Commissioner of
   Co-operative Development,
   Assistant Secretariat Office,
   No. 72, Mahagewatte,
   Maharagama.

4. K. Champa N. Perera
   Secretary,
   Ministry of Roads,
   Transport, Co-operative
   Development and Trade-
   Western Province,
   No.204, Denzil
   Kobbekaduwa Mw,
   Battaramulla.

5. J.M.C. Jayanthi
   Wijethunga,
   Chief Secretary's Office-
   Western Province,
   No. 204, Denzil
   Kobbekaduwa Mw,
   Battaramulla.

6. Roshan Goonatileke
   Hon. Governor,
   10th Floor,
   No. 204, Denzil
   Kobbekaduwa Mw,

Battaramulla.

7. D. Jeevanadan,
   Commissioner of Co-operative Development Department / Registrar of Co-operative Society Development,
   No. 444, Duke Street,
   Colombo 01.

8. A.M.P.M.B. Atapattu,
   Secretariat of Trade, Commerce and Food Security Ministry,
   No.330, Union Place,
   Colombo 2.

9. Nalin Fernando,
   Hon. Minister of Trade Commerce and Food Security Ministry,
   No.330, Union Place,
   Colombo 2.

10. Hon. Attorney General,
    Attorney Generals Department,
    Hulftsdorp Street,
    Colombo 12.

Respondents

Before	:	**Hon. M.T. Mohammed Laffar, J.(Act.P/CA)**
	:	**Hon. K. Priyantha Fernando, J. (CA)**
Counsel	:	Lahiru Galappaththige with Madushani De Soyza instructed by Tharika Sooriyaarachchi for the Petitioner. K.D. Sampath, S.C for the 2nd to 6th & 8th to 10th Respondents.
Supported on	:	07.05.2025
Decided on	:	02.06.2025

K. Priyantha Fernando, J. (CA)

The Petitioner by the amended Petition dated 27.02.2024 has sought Writs of Certiorari **quashing the decisions** of the 4th Respondent to enter arbitral award against the Petitioner; **quashing the decisions** of the 2nd Respondent to institute proceedings in the Magistrate Court of Nugegoda-No. 24920 (P-27),

Writs of Prohibition prohibiting 1st Respondent Co-operative Society from taking any steps to enforce the arbitral awards and prohibiting the current President of the 1st Respondent to act to please the account holders unlawfully and arbitrarily,

Writ of Mandamus directing the 1st, 2nd, and 3rd Respondents to produce the proper accounts, pass book and other necessary documents to establish that the Petitioner is not owed an excessive amount fraudulently indicated in the mortgage bond or in the applications.

The Petition was due to be supported on 7th May 2025 but several preliminary objections were raised on behalf of the Respondents. I will deal with said preliminary objections by this order.

THE POSITION OF THE PETITIONER:

Petitioner is a member of the 1st Respondent Co-Operative Society since 2012 under the membership number 1446. He applied for a property loan of Rs. 5,000,000 from the 1st Respondent society and agreed to mortgage his own property as security. It was his position that although the full loan was approved, only Rs. 500,000 was disbursed in two parts; despite repeated inquiries, he received no clear explanation for the non-disbursement of the remaining funds. Later, legal proceedings were initiated against him before the Magistrate's Court- Nugegoda under case number 24920 for defaulting on the full Rs. 5,000,000. He asserts that the mortgage bond was wrongfully executed for the full amount, based on incomplete documents signed by him. The 1st Respondent acted arbitrarily by executing the mortgage bond (dated 24th November 2014) even before the loan application (dated 26th November 2014) was submitted. It was alleged that this irregularity highlights procedural violations and malpractice within the 1st Respondent society.

The Petitioner states that the society failed to follow required rules and regulations, leading to a disorganized and mismanaged state; Up to 2005, the society operated in accordance with its Interim Constitution and relevant cooperative laws. However, after 2005, no annual audits were conducted until 2016, without any explanation to members. The 3rd Respondent, responsible for ensuring annual audits, only completed them from 2001 to 2005 and then failed to act. This lack of oversight allowed the 1st Respondent's administration to operate in a chaotic, irregular, and non-transparent manner, in violation of its constitutional and legal obligations. The Petitioner asserts that the 1st, 2nd,3rd, and 4th Respondents deliberately violated the Interim Constitution of the society (P1) and the rules published in Gazette 93/5 on 10th January 1974 under section 61 of the Co-operative Societies Law No. 05 of 1972, the Co-operative Societies Charter No. 3 of 1998, and the Co-operative Societies (Amended) Charter No. 04 of 2011 (P-2, P-3, and P-4). Their actions were arbitrary and ultra vires.Members of the 1st Respondent Society consistently raised complaints about these irregularities with the relevant authorities (2nd to 9th Respondents). As a result of this pressure, the

3rd Respondent appointed auditors in December 2016 to complete audits for the years 2005–2010. These audits covered the following periods: 2005.07.01 to 2006.06.30; 2006.07.01 to 2007.06.30; 2007.07.01 to 2008.06.30; 2008.07.01 to 2009.06.30; 2009.07.01 to 2010.06.30 However, the audit reports noted that they were completed based on incomplete and flawed records, highlighting significant discrepancies. Since 2016, no further audits have been conducted. The Audit report of 532/c Wattegedara Thrift and credit Co-Operative Society for the year started in 2009.07.01 and end in 2010.06.30 revealed the following discrepancies; Non-Compliance with the existing accounting policies and shortcomings in the financial statements; Weaknesses in book-keeping process - Maintenance of the Books and Accounts of the society The Petitioner alleges that the 1st to 6th Respondents have acted *ultra vires* for many years by failing to follow the procedures set out in the Rules published in Gazette 93/5 on 10. 01. 1974 under Section 61 of the Co-operative Societies Law No. 05 of 1972, the Co-operative Societies Charter No. 3 of 1998, and the Co-operative Societies (Amended) Charter No. 04 of 2011 (marked as P-2, P-3, and P-4). Despite full awareness that the 1st Respondent Society was functioning in an irregular, unlawful, unreasonable, and arbitrary manner, the 3rd Respondent took minimal action, limiting its response to a series of letters, without following the procedures laid down in the relevant regulations. The 1st and 2nd Respondents disregarded these instructions and continued to act unlawfully. It was further alleged that in April 2016, a group of outsiders and some depositors who were not members of the 1st Respondent Society exploited the prolonged disorganized state to illegally and arbitrarily appoint a managing committee, discriminating against actual members and violating the interim constitution of the 1st Respondent Society (marked as P1), in direct contradiction to Section 35 of the Co-operative Societies Charter No. 3 of 1998 and the Co-operative Societies (Amended) Charter No. 04 of 2011 (P-3 and P-4). The Petitioner alleges that, 1stRespondent and newly appointed President who is now abusing the powers of the Office and acting unfair and wrongfully by using their powers and has prepared fraudulent documents. He alleges that,

1. The said loan amount is not correctly reflected in the books of accounts of the 1st respondent.
2. The Petitioner was never provided with copies of the said passbook or the amount statements.
3. The 1st Respondent who was dealing with the Petitioner indicated to the Petitioner that it was necessary to retain the passbook of the Petitioner for auditing purposes and ease of reference.
4. Also, the Petitioner was not provided any reference number for the loan facility.
5. The 1st Respondent indicated to the Petitioner that the 1st Respondent's account statements and passbook of the Petitioner would be updated to reflect the loan servicing by the Petitioner.

The Petitioner claims that the 1st Respondent's failure to conduct audits for several consecutive years led to disorderly and arbitrary conduct by the Respondents. Financial records and documentation were not properly maintained, allowing the 1st Respondent to exploit the lack of oversight and misappropriate funds. Despite the Petitioner's repeated efforts to raise concerns through official letters, the relevant authorities failed to respond appropriately, and the requested documents were never produced, resulting in unjust treatment of the Petitioner. He further states that in July 2016, serious allegations of financial misappropriation were made against the President, Secretary, and other office bearers of the 1st Respondent, who are now under police investigation and untraceable. Non-member account holders took over the 1st Respondent and appointed a new President, who is abusing his powers and failing to maintain proper accounts. He later learned of court proceedings (Case No. 24920, Magistrate's Court of Nugegoda) initiated without notice, based on an ex parte arbitral award claiming a capital outstanding of Rs. 7,115,711 and overdue interest of Rs. 195,597—totalling Rs. 7,311,308. He argues this is incorrect, as the original loan amount was only Rs. 500,000. He claims that despite repeated requests, the 2nd Respondent failed to produce proper accounts to verify the actual loan amount owed, suggesting fraudulent inflation by the 1st Respondent; the 1st

Respondent failed to present original loan documents in court, submitting only certified copies after the judgment. The Petitioner highlights discrepancies between their loan passbook and the records held by the 1st Respondent, and states they were never served with the arbitral award or given a fair hearing. Additionally, he discovered two receipts—claiming they received Rs. 5,000,000—which were later added to court records and allegedly contain forged signatures.

OBJECTIONS of the 2nd to 6th and 8th to 10th Respondents-25.11.2024

Following Preliminary Objections were raised:

i. The Petitioner is guilty of laches,
ii. He is precluded from challenging the decision to institute proceedings in the Magistrate Court, as by the time this Writ application was filed, the proceedings in the Magistrate Court case had already been concluded, rendering the reliefs sought futile, even if granted.
iii. The reliefs prayed for in the Petition are vague,
iv. The purported decisions pertaining to prayers (c) and (d) and the purported arbitral award are not before the Court,
v. This Writ application cannot be maintained as there were alternative remedies available to the Petitioner,
vi. The Petitioner has failed to come before Court with clean hands,
vii. The Petitioner is guilty of suppression and misrepresentation of material facts.

Petitioner applied for a loan (No. 1446) of Rs. 5,000,000/- to the 1st Respondent Co-operative Society on 26.11.2014. (Vide loan application marked R1). The Petitioner and the 1st Respondent entered into the loan agreement dated 26.01.2014. (vide R2) 1stRespondent agreed to provide Rs. 5,000,000/- at 21% annual interest to the Petitioner. Repayment: 84 monthly instalments of Rs. 83,333/-. The Petitioner further attested a Deed of Loan executed on 26.11.2014 (R3). A Guarantor Agreement also executed between 1st Respondent and two guarantors (R4). A Mortgage bond (No. 91, dated

24.11.2014) as security for the loan, attested by D. Dileepa Jayakodi, Notary Public. The said Loan has been disbursed in two instalments of Rs. 2,500,000/- each on 27.11.2014 and 11.12.2014. The Petitioner has only repaid Rs. 255,000/- in two instalments: Rs. 155,000/- on 30.01.2015 and Rs. 100,000/- on 03.03.2015 (R7) as the Petitioner defaulted on repaying the loan, a Letter of Demand was issued for Rs. 7,013,699/- (principal + interest) to be settled by 10.11.2016. (R8(1), R8(2) and R8(3)) As the Petitioner failed to repay, the 1st Respondent referred the dispute to the Registrar of Co-operative Societies (R9). Accordingly, the Assistant Commissioner of Co-operative Development referred the matter for arbitration by way of referral dated 11.01.2017 (R10) to an arbitrator, and one S.A.G. Asanka appointed as arbitrator.

As the Petitioner and his guarantors have failed to attend arbitration proceedings, Ex-parte arbitration award rendered in favour of 1st Respondent on the third hearing date. The Petitioner was notified of arbitral award on 07.03.2017, with an option to appeal to the Registrar. He did not appeal the arbitral award nor settle the amount. 1stRespondent requested the Assistant Commissioner of Co-operative Development to enforce the arbitral award through court. A Certificate (R14) dated 12.05.2017 was issued by the Assistant Commissioner on to the Magistrate's Court of Nugegoda.

The Magistrate summoned Petitioner and guarantors to show cause why proceedings should not be initiated. The Petitioner has failed to provide sufficient cause in response. **Accordingly, the Magistrate ordered recovery of the amount as a fine under Section 291 of the Code of Criminal Procedure** Act No. 15 of 1979 (as amended) **on 13.09.2018**.

In the circumstances, it is clearly seen that the Respondents, at all material times relevant to the dispute, acted in accordance with the procedures established by law.

The Magistrate's order for the recovery of the defaulted loan amount, as specified in the certificate, has been delivered in favour of the 1st Respondent on 13.09.2018.

An application for a Writ of Certiorari should be filed within a reasonable time from the date of the Order which the applicant seeks to have quashed. What is reasonable time and what will constitute undue delay will depend upon the facts of each particular case. However, the time lag that can be explained does not spell laches or delay. If the delay can be reasonably explained, the Court will not decline to interfere. The delay which a Court can excuse is one which is caused by the applicant pursuing a legal remedy and not a remedy which is extra-legal. One satisfactory way to explain the delay is for the petitioner to show that he has been seeking relief elsewhere in a manner provided by law-page 379 of *Biso Menika vs. Cyril de Alwis and Others*-S.C. No. 59/81-SLR 1982 Volume I.

In this case, the Petitioner has filed this Writ application on 22.09.2022. He has failed to explain the prolonged delay of 4 years in filing this case and is therefore guilty of laches.

Moreover, he had filed an appeal bearing No. HC/MCA/187/2020 against the Magistrate's Order in the High Court of Colombo and has suppressed that fact from this Court. The Petitioner has not come before this Court with clean hands.

For the foregoing reasons, I uphold the preliminary objections and dismiss this application. No costs.

Judge of the Court of Appeal.

M.T. Mohammed Laffar, J.(Act.P/CA)

I agree.

Judge of the Court of Appeal.