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

In the matter of an application for *Restitutio-In-Integrum* and Revision under and in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka

Court of Appeal
Case No: CA/RII/0063/2024

District Court of Colombo
Case No: DSP 0377/22

DFCC Bank PLC.,
No. 73/5, Galle Road
Colombo 03

Petitioner

Vs.

Udaporuwe Rajapakshalage Daya Nandasiri
No. 121/125, Heenmoragolla
Dambulla

Respondent

And Now Between

Udaporuwe Rajapakshalage Daya Nandasiri
No. 121/125, Heenmoragolla
Dambulla

Respondent - Petitioner

Vs.

DFCC Bank PLC.,
No. 73/5, Galle Road
Colombo 03

Petitioner-Respondent

Before : R. Gurusinghe J
&
M.C.B.S. Morais J

Counsel : Rasika Dissanayake with Himal Hewage

Instructed by Danuka Lakmal

for the Respondent-Petitioner

Supported on : 18/06/2024

Decided on: 25/06/2024

ORDER

R. Gurusinghe

The petitioner filed this application seeking to revise or set aside the order of the Learned District Judge of Colombo dated 05-12-2023 marked P3, made in the case bearing No. DFC 0377/2022, contained in the case record marked P3.

The petitioner mortgaged certain allotments of land to the respondent Bank and obtained some loan facilities. Since the petitioner was unable to repay the loans as agreed, the respondent Bank had taken steps under the provisions of the Recovery of Loans by Banks (Special Provisions) Act No. 4 of 1990. Thereafter, as per the provisions of Section 15 of the above Act, Certificates of Sales were issued. The respondent Bank thereafter had taken steps to file an application under the provisions of Section 16 of the Act (hereinafter referred to as the Act) in the District Court of Colombo, seeking to obtain an Order for Delivery of possession of that property described in the Certificates of Sale.

The petitioner in this application states that according to the provisions of Section 16 of the Act, the respondent Bank should have sought an Order *Nisi*, whereas the respondent Bank, in the applications made to the District Court of Colombo, sought a decree*Nisi.* However, the Learned Additional District Judge ordered an Order *Nisi* to be issued in favour of the respondent Bank. Counsel for the petitioner argues that the respondent Bank had not sought an Order *Nisi,* but they have only sought a Decree *Nisi* and made the Decree absolute. Therefore, the Learned Additional District Judge had no jurisdiction to issue an Order *Nisi* for delivery of possession in favour of the respondent Bank. Further, it was argued that separate actions should be instituted for each Certificates of Sale.

The remedy of *Restitutio-in-Integrum* is an extraordinary relief granted to a petitioner where there are exceptional grounds that prejudice the substantial rights of the petitioner or occasion a failure of justice. The respondent Bank had sought in the District Court of Colombo an order for delivery of possession of the lands referred to in the Certificates of Sales. The effect of the order of the Additional District Judge is to deliver possession of such land to the respondent Bank in terms of the provisions of the Act. Whether such Order was referred to as a Decree *Nisi* or Order *Nisi*, or even if there were several actions for each Certificates of Sale, the effect of such Order is the same. Therefore, the substantial rights of the petitioner were not prejudiced or occasioned as a failure of justice.

Article 138 (1) of the Constitution is as follows:

> 138. (1) The Court of Appeal shall have and exercise subject to the provisions of the Constitution or of any law, an appellate jurisdiction for the correction of all errors in fact or in law which shall be [committed by the High Court, in the exercise of its appellate or original jurisdiction or by any Court of First Instance], tribunal or other institution and sole and exclusive cognizance, by way of appeal, revision and *restitution in integrum*, of all causes, suits, actions, prosecutions, matters and things [of which such High Court, Court of First Instance], tribunal or other institution may have taken cognizance:
>
> *Provided that no judgement, decree or order of any court shall be reversed or varied on account of any error, defect or irregularity, which has not prejudiced the substantial rights of the parties or occasioned a failure of justice.*(emphasis added)

Prima facie, there is no miscarriage of justice or failure of justice. Having considered the facts and law, we are not satisfied to issue notice on the respondents. The application is dismissed.

Judge of the Court of Appeal.

M.C.B.S. Morais J.
I agree.

Judge of the Court of Appeal.