

**IRANGANIE
V.
ABEYRATNE AND OTHERS**

COURT OF APPEAL.

S. N. SILVA, J.

C. A. APPLICATION NO. 464/82.

APRIL 04, MAY 24, AUGUST 20 AND SEPTEMBER 08, 1991.

Certorari - Debt Conciliation Ordinance - Debtor - Agent of Debtor.

An application could be made to the Debt Conciliation Board only by a debtor or secured creditor as defined in section 64 of the Debt Conciliation Ordinance. The application should be in writing and signed by the debtor or the secured creditor, as the case may be. Such an application could not be made on behalf of a debtor or a creditor by any person claiming to be an agent or representative. Where an application has not been made by a debtor or a creditor as provided there is no valid invocation of the jurisdiction of the Board and the steps taken by the Board upon such application are null and void and of no effect in law. Since there is no valid application, it is not open to make an amendment to bring in a person who could validly make an application, at a later stage.

The provisions of the Civil Procedure Code regulate the procedure in Civil courts. They would not be applicable to proceedings in statutory tribunals such as the Debt Conciliation Board unless express provision is made to that effect. The Civil Procedure Code only regulates proceedings in civil actions. It does not give any person a right to invoke the jurisdiction of a civil court. The question whether a person has a cause of action on the basis of which an action could be filed under the Civil Procedure Code, has to be determined on the basis of the applicable substantive law. The substantive jurisdiction of the courts is also not laid down in the Civil Procedure Code. On the other hand, the Debt Conciliation Ordinance gives a statutory right to certain limited categories of persons to invoke the jurisdiction of the Board with regard to particular transactions. The jurisdiction of the Board, the procedure and the manner in which that jurisdiction could be invoked and exercised are all laid down in the Ordinance. In the circumstances any attempt to apply section 13 (wrong plaintiff) or 18 (addition of parties) of the Civil Procedure Code to applications and proceedings before the Board would be totally inappropriate.

Case referred to:

1. *The Board of Trustees of the Tamil University Movement v. De Silva and Another*, Srikanthas' Law Reports Vol. 1 p. 65.

APPLICATION for Writ of Certiorari to quash the decision of the Debt Conciliation Board.

Faiz Musthapha P.C. with *Gaston Jayakody* for petitioner.

K. Balapatabendi for 1st, 7th, and 8th respondents.

Cur. adv. vult.

October 18, 1991.

S. N. SILVA, J.

The 7th Respondent Siobel Nona and her husband Nobosinghe Appuhamy (deceased) were the owners of an undivided 1/4th share of a paddy field called "Hathpatha Kumbura" of about two bushels paddy sowing extent. By deed No. 12309 dated 23-11-1974 and attested by A. Senanayake, Notary Public (P1) they transferred this paddy field to the Petitioner for a

consideration of Rs. 2000/-. The transfer was subject to the condition that if the transferors paid the sum of Rs. 2,000/- to the Petitioner within a period of five years of the date of the deed of transfer, the Petitioner will re-transfer the paddy field. The Petitioner got possession of the paddy field according to the deed of transfer.

On 16-10-1979 one R. P. Abeyratne, a son-in-law of the transferors made an application under section 14(1) of the Debt Conciliation Ordinance for a settlement of the debt under the said conditional transfer. On 27-11-1979 it appears that the Chairman of the Debt Conciliation Board sought to make an amendment to this application by bringing in the names of the transferors, as applicants, in place of R. P. Abeyratne. Thereafter the Board decided to return the application for amendment. The amended application has according to the proceedings been forwarded to the Board on 20-01-1981. In this application, the 7th and 8th Respondents have been added as applicants. The matter came up for inquiry on 05-08-1981. The Petitioner objected to the amendment. The Board considered the submissions made on behalf of the parties and by its order dated 19-01-1982 accepted the amendment. On the same day the inquiry was concluded by the Board and a certificate was granted in respect of the debt secured by the said conditional transfer. This application has been filed for Writs of Certiorari to quash the said decisions of the 2nd to 6th Respondents (constituting the Board), dated 19-01-1982.

It is common ground, that by the time the amended application was received the period provided for in section 19A(1) of the Ordinance before which an application should be made to the Board had lapsed. Therefore, the main question to be determined is whether the application dated 19-10-1979 made by R. P. Abeyratne could be considered as a proper invocation of the jurisdiction of the Board and whether an amendment of that application is permitted in law.

Learned President's Counsel for the Petitioner submitted that the said R. P. Abeyratne is not a debtor within the meaning of section 14(1) read with the interpretation of the term 'debtor' in section 64 of the Ordinance. Therefore, he had no legal status or locus standi to make the application. That, the Board acted without jurisdiction in permitting an amendment where there was in law no application pending before it.

Learned Counsel for the 7th and 8th Respondents submitted that there is no provision in the Ordinance with regard to substitution or addition of parties and the matter should be considered in the light of section 18 of the Civil Procedure Code. It was submitted that in terms of section 13 of the Civil Procedure Code, a Court is empowered to permit a substitution of the plaintiff in an action where it has been instituted in the name of the wrong person. In any event, it was submitted that the Board had inherent jurisdiction to permit the addition of the 7th and 8th Respondents as applicants, in the interest of justice.

The Board relied on the following grounds to hold that the application was made within the time provided for in section 19A(1).

They are:

- (1) that the application was made on 19-10-1979 by R. P. Abeyratne as an agent of the debtors and that he apprised the Board of the existence of the debt;
- (2) that the application was returned for amendment under section 22, to include the names of the debtors as applicants;
- (3) that the amendment whereby the 7th and 8th Respondents were brought in as debtors; although received after the period within which an application could be made, dates back to the original application made by Abeyratne;

- (4) that the amendment does not alter the cause of action and that it should be accepted since it had not been made malafide;
- (5) that the Board should not have regard to matters of form but must do substantial justice.

I will now consider these grounds and the submissions of learned Counsel, in the light of the applicable provisions of the Debt Conciliation Ordinance. The Debt Conciliation Ordinance introduced a statutory scheme as a departure from the generally applicable law and regular actions in the ordinary Courts, intended to provide for a settlement of certain categories of debts. Section 14 gives a right to a debtor or a secured creditor to make an application to the Board to effect a settlement of debts. An amendment was effected in 1959 whereby the application of the Ordinance was extended to money due upon conditional transfers as well. This amendment also introduced section 19A(1) which provides that the Board shall not entertain any application by a debtor or a creditor in respect of such a conditional transfer unless that application is made at least 30 days before the expiry of the period within which the property may be redeemed by the debtor.

The mode of making such an application by a debtor or a creditor is expressly provided for in the Ordinance. Section 15 requires that an application shall be in writing and signed by the applicant.

The contents of an application are set out in section 17(1)(a) to (g). Further particulars to be furnished may be provided for by regulation. Section 17(1)(a) provides that the application should contain the name, description and place of residence of the applicant. The other particulars relate to the debts in respect of which relief is sought, debts that are due from the applicant and particulars of the movable and immovable properties of the applicant.

Section 15 requires the application to be supported by an affidavit as constituting prima facie proof of the material facts set out in the application. Section 16 is descriptive of the nature of the required affidavit.

The word "debtor" is defined in section 64 as follows:

"debtor" means a person —

- (i) who has created a mortgage or charge over any immovable property or any part thereof, and
- (ii) whose debts in respect of such property exceed the prescribed amount, and includes the heirs, executors and administrators of such person".

It is significant that the word "debtor" is defined by the use of the word "means". It follows that the word is thereby restricted to the scope indicated in the definition section (Maxwell on Interpretation of Statutes, 12th Edition page 270). The phrase "secured creditor" is also similarly defined using the word "means". By these definitions the legislature restricted the categories of persons who could make applications to the Board for relief.

It has never been contended that R. P. Abeyratne is a debtor as defined in section 64. Therefore, the question that comes up for consideration is whether the application could be made by him as an agent of the debtors. It has to be observed that there is no reference to an agent in the provisions referred above with regard to the making of an application and the definition of the word "debtor". When these provisions are considered as a whole, the inference that has to be drawn is that an application may be made only by a debtor or a secured creditor and that the application should be signed by such debtor or secured creditor, as the case may be. If the legislature intended to permit an agent to make such an application on behalf of a debtor or a creditor, it would have done so by including specific provision to that effect. Indeed, provisions

have been made with regard to certain matters where a debtor or a creditor could be represented by an agent. I refer to section 51 of the Ordinance which provides that any party may appear in proceedings before the Board *inter alia*, by "an agent authorised in writing". Section 38 provides that "a duly authorised agent of any debtor or creditor may consent to any settlement..... on behalf of that debtor or creditor and.....the settlement shall be binding on that debtor or creditor, as the case may be". The existence of these provisions which expressly deal with situations where a duly authorised agent could represent and act for a party shows that the legislature did not intend an application to be made on behalf of a party by an agent. If such a matter was considered necessary the legislature would have, to say the least, provided that the agent making an application on behalf of a debtor or a creditor should have written authority, as stated in the two sections referred above. Therefore, the principle ground relied upon by the Board that the application was made by an agent of the debtor is entirely untenable.

The other grounds relied upon by the Board relate to the matter of amendment. It appears that the application was returned for amendment under section 22 of the Ordinance. This section clearly limits the particulars that could be the subject of amendment. They are "the particulars required by section 17 or section 18.....". These two sections relate to the particulars that should be contained in an application. It is clear that such an amendment could be made only if there is a valid application before the Board. I am inclined to agree with the submissions of learned President's Counsel for the Petitioner that the purported application made by R. P. Abeyratne made on 16-10-1979 is not a valid invocation of the jurisdiction of the Board. The application should not have been entertained by the Board at the outset. The Board was clearly in error when it considered this matter as one relating to form. It is really a matter on which the jurisdiction of the Board depends. If the jurisdiction of the Board is invoked by a per-

son who is not entitled to make an application under section 14 of the Ordinance, the steps taken upon such a purported application are void and are of no consequence in law. Therefore the purported amendment effected after the period within which an application could be made under section 19A(1) is of no effect in law and could confer no jurisdiction on the Board to entertain that application. Since the matter relates to a question of jurisdiction, the equitable considerations referred by the Board in its order and learned Counsel for the 7th and 8th Respondents do not arise for consideration.

Learned Counsel for the 7th and 8th Respondents relied on the provisions of section 13 and 18 of the Civil Procedure Code. Section 13 deals with a situation where an action has been instituted in the name of the wrong person as plaintiff. It empowers the Court in such a situation to substitute the correct person as the plaintiff.

It has to be noted that the provisions of the Civil Procedure Code regulate the procedure in civil courts. They would not be applicable to proceedings in statutory tribunals such as the Debt Conciliation Board unless express provision is made to that effect. Indeed, section 50 of the Ordinance provides for the application of certain provisions of the Civil Procedure Code to proceedings before the Board. In the absence of any such provisions it would not be open to apply section 13 or 18 of the Civil Procedure Code in relation to proceedings before the Board. There is also another matter that militates against this submission of learned Counsel. The Civil Procedure Code only regulates proceedings in civil actions. It does not give any person a right to invoke the jurisdiction of the Court. The question whether a person has a cause of action on the basis of which an action could be filed under the Civil Procedure Code, has to be determined on the basis of the applicable substantive law. The substantive jurisdiction of the civil courts is also not laid down in the Civil Procedure Code. Section 9 of the Code specifies the grounds on which territorial jurisdiction

is determined. On the other hand the Debt Conciliation Ordinance gives a statutory right to certain limited categories of persons to invoke the jurisdiction of the Board with regard to particular transactions. The jurisdiction of the Board, the procedure and the manner in which that jurisdiction could be invoked and exercised are all laid down in the Ordinance. In the circumstances any attempt to apply section 13 or 18 of the Civil Procedure Code to applications and proceedings before the Board would be totally inappropriate.

Learned Counsel for the 7th and 8th Respondents also relied on the judgement of this Court in the case of *The Board of Trustees of the Tamil University Movement vs de Silva and Another*, (1). The case relates to an application to the Labour Tribunal made by a trade union in respect of the termination of service of ten workmen. A preliminary objection was taken that the application was not properly constituted because the Tamil University Movement was not a legal or natural person. At that stage an application was made by the trade union for the amendment of the caption by substituting the Board of Trustees. Learned President allowed the amendment subject to objection. A petition was then filed in this Court for a Writ of Certiorari to quash that order. Soza, J. in his judgement held that the error in the caption is one of "name and description and not of identity". Hence it is permissible to amend the caption so as to substitute in the room of the erroneously described respondent, the correct respondents". Thus it is seen that there was a valid application to the Labour Tribunal in that case made by a party entitled to present such application. The error was in the description of the respondent. Therefore, the judgement is no authority for the proposition that where a person who is not entitled to present an application has done so, the application could subsequently be amended by bringing in the persons who are entitled in law to make such application. The passage cited by learned Counsel in the judgement relates to the procedure in civil actions where the main question relates to the cause of action upon which the action is

instituted. I have already held that the provisions of the Civil Procedure Code in this regard are inappropriate in relation to applications to the Debt Conciliation Board.

For the reasons stated above I do not see any merit in the grounds relied upon by the Board and the submissions of learned Counsel for the 7th and 8th Respondents. I hold that an application could be made to the Debt Conciliation Board only by a debtor or a secured creditor as defined in section 64 of the Debt Conciliation Ordinance. The application should be in writing and signed by the debtor or the secured creditor, as the case may be. Such an application could not be made on behalf of a debtor or a creditor by any other person claiming to be an agent or a representative. When an application has not been made by a debtor or a creditor as provided, there is no valid invocation of the jurisdiction of the Board and the steps taken by the Board upon such application are null and void and of no effect in law. Since there is no valid application it is not open to make an amendment to bring in a person who could validly make an application at a later stage. The Board has no jurisdiction to entertain such an application and it should be rejected in limine.

I accordingly allow the application and grant to the Petitioner the reliefs prayed for in paragraph I and II of the prayer to the petition.

Application allowed.