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**NATIONAL DEVELOPMENT BANK  
VS.  
RUPASINGHE AND OTHERS**

COURT OF APPEAL.  
SOMAWANSA, J.(P/CA) AND  
WIMALACHANDRA, J.  
CALA 21/2004 (LG).  
DC MAWANELLA 639/L.  
MAY 12, 2005.

*National Development Bank of Sri Lanka – Parate execution – Section 53 – Interim injunction issued – Wider than which was sought – Property situated in Mawanella – Resolution passed in Colombo – Cause of action – Where ? – Damages quantified – Injunction available?*

The District Judge of Colombo issued an interim injunction against the defendant – petitioner Bank preventing the Bank from taking any further steps in respect of the auction sale of the property; the interim injunction issued has enjoined the defendant-petitioner Bank from transferring the property in terms of section 51.

The defendant – petitioner Bank sought leave to appeal from the said order.

**HELD :**

- (1) The interim injunction issued is much wider than the relief sought by the plaintiff-respondents themselves.
- (2) Jurisdiction of court is limited and restricted to what is prayed for and no other relief could be granted by Court if not prayed for.

**HELD FURTHER :**

- (3) Court has not considered that the plaintiff-respondents have quantified the damage and whether an injunction would lie or not has not been considered by the District Judge.
- (4) The plaintiffs-respondents are not challenging the manner in which the auction was held. The main dispute was not in respect of the ownership but was in respect of the 1<sup>st</sup> defendant-petitioner's decision

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to proceed with parate execution. the culmination of the 1<sup>st</sup> defendant-petitioner taking such steps was based on the resolution that was adopted in Colombo at the address of the 1<sup>st</sup> defendant-petitioner in Colombo.

The cause of action would have accrued at the 1<sup>st</sup> defendant-petitioner's address in Colombo, District Court of Mawanella has no jurisdiction and accordingly no interim injunction could be issued.

**APPLICATION** for leave to appeal from an order of the District Court of Mawanella with leave being granted.

**Case referred to :**

*Surangi vs. Rodrigo* 2003 3 SRI LR 35

*Romesh de Silva, P. C. with Geethaka Gunawardane* for 1<sup>st</sup> defendant-petitioner.

*Anil Silva with Ganesh Dharmawardane* for plaintiffs-respondents.

*Cur.ad.vult.*

July 22, 2005.

**ANDREW SOMAWANSA, J. (P/CA)**

As per minute dated 31.03.2005 when this application for leave to appeal was taken up both parties agreed to tender written submissions on the question of leave as well as the main matter and parties were directed to tender their written submissions on 12.05.2005. However on 12.05.2005 the plaintiffs-respondents were absent and unrepresented and failed to tender their written submissions even thereafter.

The 1<sup>st</sup> defendant-petitioner in this leave to appeal application is seeking to set aside the order of the learned District Judge of Mawanella dated 12.01.2004 whereby the Court issued an interim injunction against the 1<sup>st</sup> defendant-petitioner Bank preventing the 1<sup>st</sup> defendant-petitioner from transferring the property in terms of section 53 of the NDB Act.

The relevant facts are that the plaintiffs-respondents instituted the instant action in the District Court of Mawanella on 19.08.2003 in order to prevent a parate execution sale taking place on the same date viz : 19.08.2003.

The application for interim injunction was supported on 20.08.2003 and the Court issued notice of interim injunction only to be served on the 1<sup>st</sup> defendant-petitioner. Copy of the notice of interim injunction is marked B which reads as follows:

“මෙහි පහත උපලේඛණයේ සඳහන් මෙම නඩුවට විෂය වස්තුව වූ දැවම වෙන්දේසිය පිළිබඳ සියලු ඉදිරි පියවර ගැනීම මෙම නඩුව අවසන් වනතෙක් වළක්වන අතුරු තහනම් කියෝගයක් නිකුත් කිරීම පිළිබඳව ඔබ විරුද්ධ වන්නේ නම් වර්ෂ 2003 ක්වූ සැප්තැම්බර් මස 01 දින පෙ. ව. 9.00 ට මෙම අධිකරණය ඉදිරියේ පෙනී සිට එහි විරෝධතා ඉදිරිපත් කරන ලෙසට මෙයින් කියෝග කරනු ලැබේ”.

The 1<sup>st</sup> defendant-petitioner filed his objections and took up the position that the sale had already taken place. The certificate of sale dated 19.08.2003 (on which date the instant action was instituted) was marked D 15. After the conclusion of the inquiry into the application for interim injunction, Court made order allowing an interim injunction and further directed the 1<sup>st</sup> defendant-petitioner Bank not to take any steps in terms of section 53 of the NDB Act to dispose of or transfer the property.

One of the matters raised by counsel for the 1<sup>st</sup> defendant-petitioner is that the interim injunction that was issued is much wider than that which was sought for by the plaintiffs-respondents. I would say there is force in this argument. It is to be seen that the interim injunction that was sought by the plaintiffs-respondents was only to prevent the 1<sup>st</sup> defendant-petitioner Bank from taking any further steps in respect of the auction sale of the property described in the schedule to the plaint. The prayer to the plaint more particularly sub paragraphs ('ඇ', 'ඈ' සහ 'ඊ') of the prayer to the plaint reads as follows :

ඇ. මෙම විෂය වස්තුව ප්‍රසිද්ධ වෙන්දේසියේ විකිණීම තහනම් කෙරෙන සහ වෙන්දේසිය පිළිබඳ ඉදිරි සියලු පියවර ගැනීම තහනම් කරන ඉන්පත්පත් තහනම් කියෝගයක් වින්තිකරුවන්ට එරෙහිව නිකුත් කරන මෙන් ද.

ඈ. මෙම විෂය වස්තුව ප්‍රසිද්ධ වෙන්දේසියේ විකිණීම තහනම් කෙරෙන සහ වෙන්දේසිය පිළිබඳ සියලු ඉදිරි පියවර ගැනීම තහනම් කෙරෙන අතුරු තහනම් කියෝගයක් වින්තිකරුවන්ට එරෙහිව මෙම නඩුව විමසන අවස්ථාව ගෙයක් නිකුත් කරන මෙන් ද.

ඊ. මෙම විෂය වස්තුව ප්‍රසිද්ධ වෙන්දේසියේ විකිණීම තහනම් කෙරෙන සහ වෙන්දේසිය පිළිබඳ සියලු ඉදිරි පියවර ගැනීම තහනම් කෙරෙන ඉන්පත්පත් තහනම් නියෝග දැන්වීම විත්තිකරුවන් වෙත නිකුත් කරන මෙන් ද.

The interim injunction sought for by the plaintiffs-respondents do not speak of section 53 of the National Development Bank of Sri Lanka Act nor does it speak of transfer of property. The notice of interim injunctions is also in line with paragraph 'අ' of the prayer to the plaint. In the circumstances the 1<sup>st</sup> defendant-petitioner Bank was called upon to show cause only in respect of the interim injunction prayed for by the plaintiffs-respondents. The 1<sup>st</sup> defendant-petitioner too showed cause only in respect of the interim injunction sought for by the plaintiffs-respondents and notice of which was served on him. However the interim injunction issued as per the order dated 12.01.2004 marked 'H' has enjoined the 1<sup>st</sup> defendant-petitioner from transferring property in terms of section 53 of the NDB Act. The last sentence of the order reads as follows :

“ඒ අනුව දැනටත් විත්තිකාර බැංකුව විසින් මිලදී ගෙන ඇති මෙම ඉඩම ජාතික සංරක්ෂණ බැංකු පනතේ 53 වැනි වගන්තිය ප්‍රකාර අත්සතු කිරීම නවතාලමින් විත්තිකරුවන්ට එරෙහිව අතුරු ඉන්පත්පත් තහනමක් නිකුත් කිරීම.”

Thus it is to be seen that the interim injunction that has been ultimately issued and the order made by the learned District Judge is much wider than the relief sought by the plaintiffs-respondents themselves. It is settled law that the jurisdiction of Court is limited and restricted to what is prayed for and no other relief could be granted by Court not prayed for.

In the case of *Surangi vs. Rodrigd*<sup>1)</sup> the facts were :

By her plaint the plaintiff-petitioner claimed a divorce on malicious desertion/constructive malicious desertion. She also averred that a cause of action has accrued to her to recover damages of Rs. 700,000/- by way of permanent alimony. The defendant respondent contended in his answer that, the plaintiff has no right to claim damages. The plaintiff after her evidence was led, raised an issue whether the plaintiff was entitled to permanent alimony in a sum Rs. 700,000/-. This was objected to on the basis that there is no prayer to permanent alimony and no issue had been framed relating to payment of alimony. This was upheld.

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**On leave been sought :**

It was held :

“1. No court is entitled to or has jurisdiction to grant reliefs to a party which are not prayed for in the prayer to the plaint.

2. In the absence of a prayer for alimony, the Court was correct in refusing to allow the petitioner to frame an issue relating to alimony.”

Thus it is to be seen that the interim injunction sought for is only to prevent any steps being taken in respect of the auction sale and when the notice of interim injunction was issued the sale had already taken place and the learned district Judge has erred in issuing an interim injunction preventing the 1<sup>st</sup> defendant-petitioner from taking any steps to auction the property when the sale had already taken place. As Row in his work titled Law of Injunctions 6<sup>th</sup> Edition Vol. (1) page 304 states :

“Where events occur after filing of the bill which renders an injunction unnecessary or ineffectual it will ordinarily be refused”.

In any event, the learned District Judge has erred in granting an interim injunction which is much wider in scope than what was prayed for and notice that was served on the 1<sup>st</sup> defendant-petitioner to show cause.

Another matter raised by the counsel for the 1<sup>st</sup> defendant-petitioner is that the plaintiffs-respondents have quantified their damages and therefore no injunction would lie. It is to be seen that the property mortgaged was to cover a loan of Rs. 3.8 million plus the interest and other charges. The plaintiffs-respondents in any event has as a final relief prayed for damages in a sum of Rs. 10 million as per paragraph ‘c’ of the prayer to the plaint, three times the loan that was granted by the 1<sup>st</sup> defendant-petitioner. It appears that the learned District Judge erred in not considering this fact.

It is also contended by counsel for the 1<sup>st</sup> defendant-petitioner that the learned District Judge erred when he came to a finding that as the property that was sold lies within the jurisdiction of the District Court of Mawanella, the District Court of Mawanella had jurisdiction. Here again as submitted by counsel for the 1<sup>st</sup> defendant-petitioner the main relief claimed by the plaintiffs-respondents is to prevent the 1<sup>st</sup> defendant-petitioner Bank from taking steps to effect parate execution of sale of property. The title of the plaintiffs-respondents were never in dispute so was the 1<sup>st</sup> defendant-

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petitioner's rights flowing from the title of the plaintiffs-respondents who mortgaged their rights to the 1<sup>st</sup> defendant-petitioner. The plaintiffs-respondents are not challenging the manner in which the auction was held.

The learned District Judge in his order has come to a finding that as the property that was sold is situated within the jurisdiction of the District Court of Mawanella, the District Court of Mawanella had jurisdiction. As stated above the main dispute was not in respect of the ownership but was in respect of the 1<sup>st</sup> defendant-petitioner's decision to proceed with the parate execution. The culmination of the 1<sup>st</sup> defendant-petitioner taking such steps was based on the resolution that was adopted in Colombo at the address of the 1<sup>st</sup> defendant-petitioner in Colombo. Thus a cause of action if any would have accrued at the 1<sup>st</sup> defendant-petitioner's address in Colombo. In the circumstances the District Court of Mawanella had no jurisdiction to hear and determine this action and accordingly no interim injunction could be issued by the Court.

For the foregoing reasons leave to appeal is granted and the order of the learned District Judge dated 12.01.2004 is set aside and the interim injunction will stand dismissed with costs of this application fixed at Rs. 10,000/-.

**WIMALACHANDRA, J.** — I agree.

*Application allowed.  
Interim injunction set aside.*

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