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**DAYARATHNE**  
**VS**  
**STATE MORTGAGE AND INVESTMENT BANK**

COURT OF APPEAL  
SRIPAVAN, J, AND  
BASNAYAKE, J.  
CA 1417/2004  
JULY 1, 2005  
AUGUST 1, 2005

*Writ of certiorari - Resolution passed to parate execute property - Stamp Duty Act, Section 16 - Can the Bank recover anything other than the consideration secured under the Mortgage Bond?*

The petitioner sought a writ of certiorari to quash the resolution on the basis that the Mortgage Bond is stamped only to the value of Rs. 600,000 and the Bank cannot recover anything more than Rs. 600,000 and the sum due as interest on the outstanding loan cannot be recovered.

**HELD:**

Sections 16 and 17 of the Stamp Duty Act have to be interpreted strictly. It is clear that duty is payable only on the principal amount and not on the interest. The mortgage must be stamped to the value of the principal sum only, and no stamp duty is required to be paid on the interest payable. It is untenable to say no interest could be recovered.

**APPLICATION** for a writ of certiorari/mandamus.

*A. S. K. Senatharachchi* for petitioner.

*Milinda Gunatilake*, State Counsel with *W. K. Perera*, State Counsel for respondents

*Cur. ad. l. vult.*

September 14, 2005

**BASNAYAKE, J.**

The petitioner in this case was awarded a loan of Rs. 600,000 by the respondent bank on the mortgage bond No. 2039 dated 24.12.1997 marked P1. The petitioner states that he paid a sum of Rs. 360,000 by way of interest and principal and defaulted payments. Thereafter the Board of Directors of the Respondent Bank had passed a resolution on 08.12.1999 in terms of the State Mortgage and Investment Bank Act to sell the mortgaged property by public auction (P3) and the petitioner was informed by letter (P4) that the date of the sale was fixed for 10.07.2004. According to this letter the amount due as at 10.07.2004 was Rs. 1,004,566.88. The petitioner is moving to have the resolution quashed by way of a writ of certiorari and is also seeking a writ of mandamus to compel the respondent to accept whatever dues in terms of section 16 of the Stamp Duty Act No. 43 of 1982.

The respondent filed objections along with documents marked R1 to R13 and prayed for a dismissal of the petitioner's application. At the hearing the only argument put forward by the learned counsel for the petitioner was that the bank cannot recover anything other than the consideration secured under the mortgage bond. The learned counsel rests his argument on section 16 of Stamp Duty Act. The learned counsel submits that the mortgage bond is stamped only to the value of Rs. 600,000 and the bank cannot recover anything more than Rs. 600,000 and as such the sum due as interest on the outstanding loan cannot be recovered. To that extent he submits that the resolution is bad in law and is liable to be quashed.

The learned State Counsel submits that in terms of section 17 of the Stamp Duty Act no stamp duty is required to be paid on the interest payable. He submits that section 16 is only a "charging provision" which prescribes that the mortgage must be stamped to the value of the principal sum only.

Sections 16 and 17 of the Stamp Duty Act are as follows :

**Section 16**

"A bond or mortgage for the payment or repayment of money to be lent, advanced or paid shall be charged, where the total amount secured or to be ultimately recoverable is in any way limited, with the same stamp duty as on a bond or mortgage for the amount so limited. **Where**

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**the total amount recoverable is unlimited, the bond or mortgage shall be available for the recovery of such an amount only as is covered by the stamp duty paid on the instrument”.**

### **Section 17**

**“Where interest is expressly made payable by the terms of an instrument, such instrument shall not be chargeable with stamp duty higher than that with which it would have been chargeable had no mention of interest been made therein” (emphasis added)**

The aforesaid two sections have to be interpreted strictly. These sections deal with the imposition of stamp duty on instruments. By looking at the sections it is clear that duty is payable only on the principal amount and not on the interest. Therefore it is untenable to say that no interest can be recovered. Hence this application cannot be maintained and is therefore dismissed with costs fixed at Rs. 10,000

**SRIPAVAN J.** — *I agree.*

*Application dismissed.*

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