

BANK OF CEYLON
v
LEELA DE SILVA

COURT OF APPEAL
AMARATUNGA, J.
ABEYRATNE, J.
CALA 304 / 2002 (LG)
D.C.TANGALLA 2643/L
FEBRUARY 25, 2003
MAY 28, 2003

Bank of Ceylon Ordinance – Section 19 – Amendment Act, No. 54 of 2000 – Applicability of the Amendment – Prospective or Retrospective – Interpretation Act, Amendment No.18 of 1972 – Section 22 – Its applicability – Entertain? – Constitution, Article 23(1) – Civil Procedure Code section 545.

Held:

- (i) The effect of the Amendment is to take away the right of any person to bring an action to invalidate the Resolution and the auction thereunder on any basis described in the section and to take away the jurisdiction of Courts to entertain any such action. There is nothing in the Amending Act to show that its provisions had retrospective operation and application.

- (ii) When action was (before the Amending Act was passed) instituted there was nothing in section 19 of the Bank of Ceylon Ordinance to attract provisions of section 22 as a bar to the plaintiff's action.
- (iii) The word "entertain" in section 19 has been used in the sense "acceptance" while in Sinhala is "සාර ගැනීම or පිළිගැනීම" it does not connote an ongoing process.

AN APPLICATION for leave to appeal from an Order of the District Court of Tangalla.

Cases referred to:

1. *Alagakawandi v Mutumal* (1920) – 22 NLR 111.

Gamini Marapana P.C., with *Navin Marapana* for defendant-appellant.

Nihal Fernando with *Ms. Dilani Somadasa* for plaintiffs-respondents.

Cur. adv. vult

December 17, 2003

GAMINI AMARATUNGA, J.

This is an appeal with leave to appeal granted by this Court. The plaintiffs-respondents filed action against the defendant-appellant Bank (hereinafter referred to as the Bank) seeking a declaration that the resolution passed by the Board of Directors of the Bank had no force or effect in law and that the Bank had no right to auction the property described in the schedule to the plaint. The plaintiffs also sought a permanent injunction and an interim injunction preventing the Bank from proceeding to sell the said property by public auction. This action has been filed on 3/1/2000. On 16/7/2002, the District Court having considered the material placed before it, issued an interim injunction as prayed for by the plaintiffs. One of the grounds urged on behalf of the Bank against the granting of an interim injunction was that in view of the amendment brought to section 19 of the Bank of Ceylon Ordinance by Bank of Ceylon (Amendment) Act, No. 54 of 2000, the Court had no jurisdiction to grant the injunction sought by the plaintiffs. This amendment was certified by the speaker on 18/8/2000 and came into operation from that date when the plaintiffs' action was pending in the District Court.

The learned District Judge held that the amending Act did not apply to the pending action of the plaintiffs. The Bank, which contends that the amendment applies to the plaintiffs' action has preferred this appeal. Section 19 of the Bank of Ceylon Ordinance empower the Board of Directors of the Bank to adopt a resolution to sell by public auction any property mortgaged to the Bank as security for any loan etc. in respect of which default has been made, to recover the whole of the unpaid portion of the loan together with the interest. The amending Act added the following provision at the end of section 19. 20

"It shall not be competent for the borrower or any person claiming through or under any disposition whatsoever of the right, title or interest of the borrower to and in the property made or registered subsequent to the date of the mortgage to the Bank, in any court to move to invalidate the said resolution or the subsequent sale for any cause whatsoever and no court shall entertain any such application." 30

The effect of this amendment is to take away the right of any person to bring an action to invalidate the resolution and the auction thereunder on any basis described in the section and to take away the jurisdiction of Courts to entertain any such action. There is nothing in the amending act to show that its provisions have retrospective operation and application. Therefore we begin with the conclusion that the provisions of the amending Act, including the part added to section 19 of the principal enactment, have no retrospective application. 40

When the law is altered during the pendency of the action and in the absence of any indication that the change should apply to pending actions, the ordinary rule is that the rights of the litigants are to be governed by the law in force when the action was commenced. In other words rights of the parties are determined as at the date of the action. "In general, when the law is altered during the pendency of an action, the rights of the parties are decided according to the law as it existed when the action was begun unless the new statute shows a clear intention to vary such rights." Maxwell-Interpretation of Statutes (12th Ed) page 220. There is no such clear intention to be gathered from the amending Act. 50

The submission of the Bank, as set out in the written submissions tendered by the learned President's Counsel is that in the amending Act the word "entertain" has been used to describe an on going process. The submissions cite examples from Blacks Law Dictionary 7th Edition (1999) page 552; Stroud's Judicial Dictionary 5th Edition (1986) page 853 and several Indian Decisions. However a clear example of the meaning of the word "entertain" used in legislation in Sri Lanka is provided by section 46(2) of the Civil Procedure Code which enacts that "Before the plaint... is allowed to be filed, the Court may, if in its discretion it shall think fit, refuse to entertain the same...." This section clearly shows that the word entertain has been used in the sense 'acceptance' which in Sinhala is භාරගැනීම or පිළිගැනීම'. It does not connote an ongoing process. In order to connote the ongoing process the word used is 'maintain'. See section 545 of the Civil Procedure Code (formerly numbered as section 547). See also *Alagakawandi v Muttumal* ⁽¹⁾ (1920).

According to article 23(1) of the Constitution 'All laws and subordinate legislation shall be enacted or made and published in Sinhala and Tamil, together with a translation thereof in English. The relevant part of the Sinhala text of the amendment of 2000 reads 'කිසිම අධිකරණයක් විසින් එවැනි ඉල්ලීමක් භාරගනු නොලැබිය යුතුය.' This makes it very clear that the effect of the amendment is to prevent courts from accepting such an application. It applies to the future. If the Legislature intended to make the new provision applicable to pending actions the legislature could have used the words 'කිසිම අධිකරණයක් විසින් එවැනි ඉල්ලීමක් භාරගැනීම හෝ පවත්වාගෙන යාම කරනු නොලැබිය යුතුය.' The Legislature has not said so. In view of the clear and unambiguous Sinhala word used by the Legislature we do not have to attempt to interpret the meaning of the English word 'entertain' used in the English translation of the amending Act.

The other argument made on behalf of the appellant was that the plaintiffs-respondents cannot maintain their action in view of the provisions of section 22 of the Interpretation Ordinance as amended by Act, No.18 of 1972. Section 22 of the Interpretation Ordinance was intended to take away the jurisdiction of Courts in a certain category of cases. Where there is in any enactment the

expression 'shall not be called in question in any Court', or any other expression of similar import, in relation to any order, decision or determination which any person or authority is empowered to make under such enactment, no court shall have jurisdiction to pronounce upon the validity of such order or decision. 100

The argument of the appellant, based on the said section 22 is tenable, if at all, in view of the amendment made by the Act, No. 54 of 2000. Before it was enacted, there was nothing in section 19 of the Bank of Ceylon Ordinance to make the provisions of section 22 of the Interpretation Ordinance applicable to a resolution passed under that section. Therefore when the plaintiff's filed their action (before the amending Act was passed) there was nothing in section 19 of the Bank of Ceylon Ordinance to attract the provisions of section 22 of the Interpretation Ordinance as a bar to the plaintiff's action. As I have already indicated, the rights of the parties are decided as at the date of the 110
plaint (action). A provision of law which bars actions similar to the action brought by the plaintiffs was not in existence at the time the plaintiffs' action was filed. Act, No.54 of 2000 has no retrospective effect. Accordingly the amended section 19 cannot be used to invoke the provisions of section 22 of the Interpretation Ordinance to scuttle the plaintiffs' action. I therefore reject the appellant's argument based on section 22 of the Interpretation Ordinance. In the result I uphold the learned trial Judge's conclusion that the Bank of Ceylon (Amendment) Act, did not apply 120
to the pending action of the plaintiffs. The appeal is therefore dismissed with costs in a sum of Rs.5000/-.

ABEYRATNE J. I agree.

Application dismissed