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පෙත්සම්කරුවන්ට යුක්තිය ලබාදෙමින් බැංකු මඟින් ණය ආපසු අයකර ගැනීමේ ක්‍රියාවලියට එදිරිව ශ්‍රේෂ්ඨාධිකරණයේ දිග හැරුණු නඩු විභාගයේ දී නීතිවේදියකු නොවන- ව්‍යාපාර උපදේශකයකු වන නිහාල් ශ්‍රී අමරසේකර පස් පුද්ගල විනිසුරු මඩුල්ලක් ඉදිරියේ තමාම පෙනී සිටිමින් ශ්‍රේෂ්ඨාධිකරණය ඇමතීමේ අධිකරණ පුර්වාදර්ශයක් නිර්මාණය කර තිබේ.

ණය ආපසු අයකර ගැනීමේ(විශේෂ විධි විධාන) සංශෝධන පනත් කෙටුම්පත සහ බැංකු මඟින් ප්‍රධානය කරන ලද ණය ආපසු අයකර ගැනීමේ (විශේෂ විධි විධාන) පනත් කෙටුම්පත අභියෝගයට ලක් කරමින් "මානව අයිතිවාසිකම් හා සංවර්ධනය පිළිබඳ නීතිඥයෝ" නම් වූ රාජ්‍ය නොවන ආයතනය සහ තවත් පෙත්සම්කරුවන් දෙදෙනෙක් ඉදිරිපත් කළ මෙම පෙත්සම්වලට ඒ එක් පාර්ශවයක් සඳහා නීතිවේදී එම්.ඒ සුමන්දිරම්ද අනෙක් පාර්ශවය වෙනුවෙන් වෘත්තීය වරලත් ගණකාධිකාරීවරයකු වූ නිහාල් ශ්‍රී අමරසේකරද පෙනී සිටියහ. එකී රාජ්‍ය නොවන ආයතනය වෙනුවෙන් පෙනී සිටියේ නීතිවේදී කේ. තිරානගමය.

අදළ බැංකු ණය ආපසු අයකර ගැනීමේ පනත් කෙටුම්පතින් අපේක්ෂා කර ඇත්තේ සැබෑ ණයකරු නොවන ඇපකරුගේ දේපොල සාමාන්‍ය උගස් පනතේ නීතියෙන් පරිභාහිරව දේපොළ පවරාගෙන වෙන්දේසි කිරීමේ ක්‍රියාවලියට යටත් කිරීමය. ණය ආපසු අයකර ගැනීමේ (සංශෝධන) පනත් කෙටුම්පතින් රු 50,000ට වැඩි සුළු කාල ණය කරුවන් මූලික ප්‍රඥප්තියේ සීමාවට ඇතුල් කිරීම මෙන්ම "ණය" යන වචනයේ නිර්වචනය පුළුල් කිරීමද අපේක්ෂා කර තිබේ.

මෙසේ අධිකරණයේ මැදිහත් වීමකින් තොරව පුද්ගල අයිතියට එරෙහිව ඔහුගේ දේපොල පවරාගෙන විකිණීම සඳහා බලය යෙදීම "පරාටේ ඇස්කීසී" ක්‍රියාවලිය නම් වේ.

මෙම නඩු නිමිත්ත සැලකිල්ලට ගත් ශ්‍රේෂ්ඨාධිකරණය එම පනත් කෙටුම්පත් දෙකම ආණ්ඩුක්‍රම ව්‍යවස්ථාවට අනනුකූලයැයි තීරණය කරමින් ප්‍රතික්ෂේප කර තිබෙන අතර එහි දී,

19 වන පිටුවට

බැංකු ණය

1 පිටුවෙන්

අධිකරණය රළු, පීඩාකාරී හෝ සීමාව ඉක්මවා යන නීති බැහැර කරන බවද ප්‍රකාශ කර තිබේ.

මෙම නඩුව මෙහෙය වූ පස්පුද්ගල කමිටුව වූයේ අගවිනිසුරු- සරත් එන් සිල්වා ජී.එදිස්සුරිය, හෙක්ටර් එස් යාපා, ජේ.ඒ.එන් ද සිල්වා, සහ .ටී.බී වීරසුරිය වන අතර ඔවුන්ගේ අවසාන තීරණය වී තිබෙන්නේ මෙම පනත් කෙටුම්පත් සම්මත කිරීමට නම් පාර්ලිමේන්තුවේ 2/3 බලය ලබා ගත යුතු බවය.

මෙම නඩු නිමිත්තේ ස්වරූපය සහ ඒ යඳහා ශ්‍රේෂ්ඨාධිකරණය මැදිහත් වූ ආකාරය මේ රටේ අධිකරණ ඉතිහාසයේ සාධනීය නැවුම් ලක්ෂණයක් ලෙස පිළිගන්නා "නිදහස්" එහි දී දැනට පවතින වෘත්තීයමය සීමාවන් අතික්‍රමණය කරමින් වරලත් ගණකාධිකාරී නිහාල් ශ්‍රී අමරසේකර මැදිහත් වූ ආකාරය නව ප්‍රවණතාවයක් ලෙසද හඳුනා ගනී■

Price Rs. 25/= Pages 16 Friday, September 26, 2003 Vol 2 No 17

The Business Standard

Newspaper of the Corporate World

SC rejects amendments on debt recovery laws

Says proposed amendments are harsh, oppressive, unconscionable and unconstitutional

By Dilshani Samaraweera

Amendments proposed by the Ministry of Finance to two laws on debt recovery by banks and lending institutions are harsh, oppressive and unconscionable, as well as unconstitutional, rules the Supreme Court.

The two laws that were to be amended were the Recovery of Loans by Banks (Special Provisions) Act of 1990 and the Debt Recovery (Special Provisions) Act of 1990.

The proposed amendments to the Recovery of Loans Law extend a bank's power of parate execution to include persons who have not themselves borrowed money but acted as guarantors.

Parate execution is the right of a bank to seize and sell property without the intervention of a Court of Justice. The Recovery of Loans Law allows a bank to unilaterally decide on parate execution on any property mortgaged to the bank.

The proposed amendments extended the scope of parate execution to cover a syndicated loan given by more than one bank and allowed any of the banks to resort to parate execution for the entire amount outstanding.

The term 'bank' was amended to include specialised banks, finance companies and the housing and development finance corporation.

Amendments also removed any room for legal action against a parate execution by a bank - a change in law banks have been calling for in the recent past.

In pronouncing judgement the Supreme Court agreed that there might be inherent strengths and weaknesses among the parties to a transaction and that the law could seek to remedy such inherent inequality. However, ruled the Supreme Court, the law certainly cannot strengthen the strong and weaken the weak, which is what is manifest in the amendments, which not only denies a person mortgaging property equality, but also denies him access to justice.

Please turn to page 8

SC rejects...

From page 1

The second set of amendments that were challenged in the Supreme Court was to the Debt Recovery (Special Provisions) Act. The proposed amendments reduced the debt limit on which debt recovery (DR) action could be taken from Rs 150,000 to 50,000 and extended the scope of the word 'debt' to cover agreements that are not in writing.

This would allow DR action on small-scale loans and on any transaction, which is not necessarily a written agreement by the borrower to pay back a loan.

The Debt Recovery Act provides more stringent procedures for a lending institute to recover a debt. Using it a lending agency can stop a defaulter from selling any movable or immovable property and thereby stop all income generation by the borrower. DR action is considered exceptionally severe since this can put a borrower out of business. Presently the provisions of this law can only be used on money borrowed under a written document. The amendments - by reducing the debt limit and extending beyond a written promise to repay - would extend the application of DR action to small businesses and individuals and to any transaction with a lending institution. This could mean any monetary facilities provided by a lending institution that is not necessarily a loan.

The Supreme Court agreed, with the petitioners challenging the amendments, that the debt limit for debt recovery action should be increased and not reduced given the country's rate of inflation.

The Supreme Court also stated that there was no rational basis to extend the provisions of the law that is presently in force in the above manner.

The Speaker Joseph Michael Perera read the ruling by the Supreme Court in Parliament this week. One of the petitioners challenging amendments, Mr Nihal Sri Ameresekere, questions, why the proposed amendments did not target large-scale tax and debt defaulters. Why, asks Mr Ameresekere, were these two very strong debt recovery laws amended to capture small scale defaulters when they (the laws) could have been amended to use against large scale tax defaulters in the national interest.

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Small borrowers get life line from SC

Recovery of loan amendment laws ruled inconsistant

By Sajeewan Wijewardana

The Supreme Court squashed two bills as inconsistent with the Constitution, Speaker Joseph Michael Perera informed Parliament yesterday. In the determination it was said that the 'Court will strike down harsh, oppressive or unconscionable law'.

One of the bills was to amend the Recovery of Loans by Banks (Special Provisions) Act No. 4 of 1990 and the other was to amend the Debt Recovery (Special Provisions) Act No. 2 of 1990, amended by Act No. 9 of 1994.

Both were challenged before the Supreme Court and a five bench comprising the Chief Justice, Sarath N. Silva, Justices P. Edussuriya, Hector S. Yapa, J.A.N. de Silva and T.B. Weerasuriya unanimously determined that the provisions of the Amendment Bills were inconsistent with the provisions of the Constitution.

Both amendment bills were challenged by a legal officer of the Lawyers for Human Rights & Development, and were supported by Attorney-at-Law, K. Tiranagama. Two other Petitioners intervened to challenge the constitutionality of the Bill. One of whom was represented by Attorney-at-Law, M.A Sumanthiran whilst the other Peti-

Chief Justice, Sarath N. Silva

The Recovery of Loans by Banks Amendment Bill sought essentially to include the property of a Mortgagor, who is not a borrower, to be subjected to parate execution procedure, outside the normal law of the Mortgage Act. The Debt Recovery Amendment Bill sought to include small time debtors over Rs. 50,000 to come within the purview of the principal enactment and to expand the definition of the word "debt". The enforcement of a right as against another person by seizure and sale of property without the intervention of a Court is described as "Parate execution".

The SC in its Recovery of Loans by Banks determination stated that 'Therefore it would be inconsistent with the Rule of Law and the requirements of our Constitution as to the administration of justice to invest in any person the power to decide in respect of his rights as against another and for

such a distinction is made between two parties who have entered into a transaction, placing one party in a more advantageous position and submitting the other to a more stringent procedure, the question arises as to an inconsistency with Article 12(1) of the Constitution. Article 12(1) requires that all persons be equal before the law and entitled to the equal protection of the law. The matters stated in S.C.(SD) 22/2003 regarding the application of the equality provision in relation to any law that provides for a special procedure which is seen as harsh, oppressive and unconscionable would apply in relation to this matter as well".For the reasons stated above we make determination in terms of Article 123(2)(b) that the Bill bearing title "Recovery of Loans by Banks (Special Provisions) (Amendment) may only be passed by the special majority required under the provisions of Article 84(2) of the Constitution.

We have further considered in terms of Article 123(2)(c) whether an amendment could be made to the Debt Recovery Bill by which the inconsistency would cease. Accordingly we make the de-
termination that