

IN THE COURT OF APPEAL OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA.

CA (PHC)APN 56/2013
HC Tangalle Writ 2/12

J.A. Kuminda Nalaka
45A, Palathuduwa,
Tangalle.

Petitioner.

Vs.

1. Commissioner/Registrar
for Cooperative
Development of
Southern Province,
147/3, Pettigalawatte,
Galle.
2. Tangalle Multipurpose
Cooperative Society
Limited, 178, Beliatta
Road, Tangalle.
3. Hon. Attorney General,
Attorney General's
Department, Colombo
12.

Respondents

Before : A.W.A. Salam, J &
Malani Gunarathne, J.

Counsel : Upul Kumarapperuma with Sanjeewani Samarakoon and Udumbara Dassanayake for the Petitioner and Saliya Peiris with T. Nandasiri for the 1st Respondent and Anusha Samaranayake SSC for the 2nd and 3rd Respondents.

Argued on: 11.07.2013

Decided on: 19.07.2013

A.W.A. Salam, J.

The 2nd respondent-petitioner has filed the present revision application to set aside and/or revise the orders of the learned High Court judge dated 31 October 2002 to (P7) 4 December 2012 (P13) and 4 March 2013 (P14) in the exercise of the revisionary powers of this court. By way of incidental relief the petitioner sought a stay order staying the said orders P7, P13 and P14. Further, the petitioner sought a stay order staying further proceedings in the High Court in case No HC writ 2/2012 of the Provincial High Court of Tangalle until the final determination of this application.

The matter of the application for stay order was supported *ex parte* on 9th May 2013 and by order dated 10th May 2013 this court having considered the petition, affidavit and the documents annexed issued a stay order to be operative initially until 23 May 2013 as prayed for in paragraph (C) and (D) to the petition.

On 16 July 2013 the learned counsel for the petitioner respondent vehemently objected to the extension of the stay order on the basis of the petitioner not having complied with rule 2 (1) published in Gazette No 645/2 dated 15 January 1991 is not entitled to have the stay order extended in that the petitioner has failed to give notice to the respondents of their intention to move for interim relief, despite the fact that the petitioners had sufficient time to do so, as is evident from document marked P14. Document marked P14 is a certified copy of the order made by the learned High Court judge in writ application No 2/2012 on 4 March 2013. Admittedly, the petitioner has obtained a certified copy of P14 as far back as in March 2013. Despite the fact that the petitioner had obtained the proceedings in March 2013, he filed the present revision application only on 7 May 2013 and supported the same on 9 May 2013. The principal complaint of the respondent is that in terms of rule 2 of the Court of Appeal (appellate procedure) rules 1990 dated 15 January 1991 and published in the Government (extraordinary 645/4) every application for a stay order or interim injunction or other interim relief shall be made with notice to the adverse parties that the applicant intends to apply for such interim reliefs. Such notice shall be set out the date on which the applicant intends to support such application and shall be accompanied by a copy of the application and the documents annexed thereto. The exception to this rule of having to notice the opposite party is found in proviso to the rule under subheadings A and B.

Initially for the petitioner to obtain interim relief without notice being given to the respondents, he must satisfy court that there has been no unreasonable delay on his part in filing the application. As far as the present application is concern the petitioner has obtained the certified copy of the relevant order from the High Court on 6 March 2013 and waited for little more than two months to file the application.

He supported the application two days after it was filed. The petitioner has had sufficient time to give notice of the intention to support the application for stay order. The petitioner has not accounted for his delay in any manner.

As a matter of fact even before the date the petitioner obtained the certified copy of the proceedings in the High Court, he was aware as to when the case in the High Court was to be called. On a perusal of P14 it is quite evident that he has been guilty of laches. Taking into consideration all these matters we are of the opinion that the petitioner is guilty of laches and not accounted the same. Further the petitioner has not given notice of his intention to support the application for stay order even though he had ample time to do so. Therefore, I see this is as a clear instance of the abuse of the process of court and therefore I am of the opinion that the application made for extension of the stay order warrants no favourable consideration. Hence, the objection is upheld and the application for the extension of the stay order is refused. There shall be no costs.

Judge of the Court of Appeal

Malani Gunarathne, J.

I agree

Judge of the Court of Appeal

NR/-