

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

CA (PHC)APN 113/2010

M.M.P.Fernando

Vs

Petitioner-Petitioner

Delpitiya/Gampola PC 46872

1. S.M.Podimenike

HC Kandy 60/2005(Rev)

2. S. Erawpola

3. R.B. Jayaweera

4. Ramiah

5. S. Erawpola

Respondent-Respondents

BEFORE: A.W.A. Salam J

Sunil Rajapakse J

COUNSEL L.E.Wijewardena for 1,2,5 Respondents

ARGUED ON 20.06.2013

DECIDED ON: 02.12.2013

Sunil Rajapakse J.,

When the Petitioner's Revision Application was taken up for argument on 20.2.2013 the learned Counsel for the Respondent raised following preliminary objections regarding the maintainability of this application. Those objections are as follows :

- i) Although the Petitioner has a right of appeal, the Petitioner has come by way of Revision application and therefore he must aver exceptional circumstances :
- ii) The mandatory requirement stating that he has not previously invoked the jurisdiction of this court has not been averred in his petition;
- iii) The Petitioner had failed to mention the grounds of revision application;

Both parties agreed to dispose this matter by way of written submissions.

The Petitioner appeared in person and made his submissions.

In this case the Respondents-Respondents-Respondents Counsel urged if there is a statutory right of appeal from an order of the Provincial High Court that the Petitioner could institute an application in Revision only if exceptional circumstances are averred in the Petition. Therefore, the Respondent's main contention is that the Petitioner cannot maintain this revision application as the Petitioner has failed to plead any exceptional circumstances.

With regard to the above objection I am of the view that it is now settled law that the exercise of the revisionary powers is confined to cases in which exceptional circumstances exist warranting the intervention of Court. It is well established principle that a party who has no alternative remedy can invoke revisionary jurisdiction of Court of Appeal only upon establishment of exceptional circumstances. In

Rustome vs Hapangama it has been held inter alia that revision is available to a party even if there is a right of appeal in exceptional circumstances. Further I would also like to consider a judgment of Justice Udalgama in Devi Property Development (Pvt) Ltd., and another vs Lanka Medical (Pvt) Ltd., C.A.518/01 decided on 20.06.2001. His Lordship in the said judgment observed thus : *“Revision is an extraordinary jurisdiction vested in court to be exercised under exceptional circumstances, if no other remedies are available. Revision is not available until and unless other remedies available to the Petitioner are exhausted.”*

In K.W.Ranjith Samarasinghe vs K.W. Wilbert C.A(PHC) 127/99 and PHC Galle No. 59/98, whereby the Appellant made an appeal to the Court of Appeal from the H.C. Galle against the order under Section 66 of the Primary Court Procedure Act, Sisira de Abrew J held “It is a well established principle that a party who has an alternative remedy can invoke revisionary jurisdiction of a Superior Court only upon establishment of exceptional circumstances. As I observed that the Respondent who sought the revisionary jurisdiction of Court of Appeal has an alternative remedy in this case. Petitioner aggrieved by the judgment of the learned High Court Judge in the exercise of his revisionary jurisdiction against the order made by the learned Magistrate has not appealed against the said order, but he has filed the present application in Revision. I have gone through the Petitioner’s petition and note that the Petitioner has not established any exceptional circumstances in his petition. In order to maintain a revision application

an exceptional circumstances should be averred in the petition. But in the present revision application there is no such exceptional circumstances disclosed to grant relief by way of revision. Further the Petitioner has not stated as to what errors of law or facts exist in the order canvassed. In this case the Petitioner has not noted any exceptional circumstances which constituted a grave miscarriage of justice to revise the impugned order of the learned Magistrate. Furthermore, the Petitioner has not specifically elaborated how the impugned order of the Magistrate is illegal and he has no alternative remedies or other remedies rather than revision application”.

After considering submissions made by both parties I hold on the facts and circumstances of this case do not warrant the exercise of revisionary powers of the Court. Therefore, I uphold the preliminary objections raised by the Respondents. For the aforesaid reasons the Revision Application of the Petitioner is dismissed without costs.

Revision application is dismissed without costs.

JUDGE OF THE COURT OF APPEAL

Salam J.,

I agree.

JUDGE OF THE COURT OF APPEAL