

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

In the matter of an application for Revision
of the Judgment of the Provincial high Court
of Southern Provincial sitting at the Galle
delivered on 16/09/2013 in H.C. ?RA/32/13
Revision in Magistrate's Court of Galle Case
No.3514/13

C.A. (PHC) APN No.117/2013 RA

H.C.Galle No.HC/RA/32/13

MC Galle Case No.3514/13

Ananda Sarath paranagama.

No.189/1, Matara Road, Unawatuna.

**Party of 2nd part Petitioner -
Petitioner**

Vs.

1. Dhammadinna Sarath Paranagama
No.195/1, Matara Road,
Unawatuna.

2. Kamitha Aswin Paranagama
No.195/1, Matara Road,
Unawatuna.

**Parties of 1st part Respondents-
Respondents.**

Officer in Charge,
Police Station, Habaraduwa.

Informant-Respondent-Respondent

C.A. (PHC)APN 117/2013

H.C. Galle No. HCRA/32/23

Before : A.W.A. Salam, J. &
Sunil Rajapakshe, J.

Counsel : Subashini Cooray with Buddhika Gamage
for the 2nd Party-Petitioner-Petitioner.
Janake Balasuriya with Hashan for the 1st party –
Respondent-Respondent.

Argued on : 20.11.2013

Decided on : 12.12.2013

A.W.A.Salam,J.

This is a revision application to set aside and revise the judgement of the High Court dated 16/09/2013 and the order of the learned Magistrate dated 04/09/2013. The order of the Magistrate has been entered in respect of the land described under chapter (vii) of the Primary Court Procedure Act No. 44/1974. By the said order the learned Magistrate inter alia order made the demolition of the parapet wall in question. The learned High Court Judge in the exercise of the revisionary power has affirmed the order of the Magistrate. Against the said judgment, an appeal has already been filed by the party of the 2nd part-petitioner-petitioner and the present revision application has been filed merely to obtain the interim relief for stay of the execution of the order of the learned Magistrate. When the matter of the application for revision was supported for interim relief, this Court by order dated 20/9/2013 issued a stay order restraining the execution of the order of the Magistrate. The 1st party- Respondent – Respondents have presently raised several objections against the extension of the stay order inter alia on the ground that the petitioner had failed to comply with the Rule 3 of the Supreme Court, in that he has failed to annex a certified copy of the proceedings in High Court and the Magistrate's Court. As a matter of fact, the petitioner in this application has referred to his inability to produce the copy of the proceedings and the sought the permission to do so in due course. The petitioner has later produced the certified copies of the relevant proceedings and therefore the objection raises with regard to noncompliance of the Supreme Court Rules fails.

The next objection raised against the extension of the stay order and maintainability of the revision application is the failure on the part of the party of the 2nd party petitioner-petitioner to exercise uberrima fides and suppression of material facts.

Having considered this ground urged by the party of the 1st part – respondent-respondents, I am of the view that no such grounds have been prima facie established.

The other ground urged by the party of 1st part –respondent-respondents is that no exceptional circumstances have been averred in the application. As the Court has already come to the conclusion that as the exceptional circumstances have been averred in the petition and this question too should be gone into at the conclusion. The last ground raised against the maintainability of the application is that as the party of the 2nd party –petitioner-petitioner, has other alternative remedies and therefore is not entitled to maintain the application. The last ground also needs to be gone into at the conclusion of the argument into the revision application.

Considering all the circumstances relevant to the issuance of the interim relief, Court considers that the objections raised against the