IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA.

In the matter of an application under Article 138(1) of the Constitution of the Democratic Socialist Republic of Sri Lanka.



Jayalaththinige Mangala Dilukumari, No. 232, "Kumari Niwawa", 6th Lane,

Uda-Siri Gama, Lunuwila.

Applicant

CA(PHC)APN No.124/2012

HC Chilaw Case No.HCA 43/08

MC Marawila Case No. 69749

Vs.

Kulathunga Kankanamlage Asela, C/O Mary Violet Dambakele Yaya, Karawitagara, Chilaw.

Respondent.

And

Kulathunga Kankanamlage Asela, C/O Mary Violet Dambakele Yaya, Karawitagara, Chilaw.

Respondent-Appellant

Vs.

Jayalaththinige Mangala Dilukumari, No. 232, "Kumari Niwawa", 6th Lane, Uda-Siri Gama, Lunuwila.

Applicant-Respondent.

AND NOW BETWEEN

Kulathunga Kankanamlage
Asela, C/O Mary Violet
Dambakele Yaya, Karawitagara,
Chilaw.



Respondent-Appellant-
Petitioner.

Vs.

Jayalaththinige Mangala
Dilukumari, No. 232, "Kumari
Niwawa", 6th Lane, Uda-Siri
Gama, Lunuwila.

Applicant-Respondent-
Respondent.

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

Counsel : Palitha Abeysinghe for the Petitioner and Thushani Machado for the Respondent.

Argued on: 06.11.2013

Written Submissions filed on:27.11.2013

Decided on:20.01.2014

A.W.A. Salam, J

This is a revision application filed by the Respondent-Appellant-Petitioner (Petitioner) to have the order of the learned Magistrate dated 29.08.2008 and the judgment of the High Court Judge dated 28.11.2011 set aside and revised. The impugned judgment of the learned High Court Judge has been entered upon the Petitioner preferring an appeal against the order of maintenance delivered by the learned Magistrate under Maintenance Act No 37 of 1999. Admittedly, the Petitioner did not prefer an appeal against the judgment of the High Court to the Supreme Court. Instead, he has filed the present revision

application in this Court. A preliminary objection was raised by the Applicant-Respondent-Respondent as regards the maintainability of the appeal, in that the learned counsel for the respondent took up the position that the petitioner is not entitled to file a revision application in this court as against the express Provision relating to the procedure for appeal laid down in respect of orders made under the Maintenance Act. In other words, the learned counsel emphasized that the power of revision cannot be invoked indirectly against the right of appeal available to the Supreme Court. The principle on which the learned counsel relied on was that what cannot be directly achieved cannot be indirectly attempted at.



Having considered the submissions made in this regard by both parties, I am of the opinion that there is substance in the argument advanced on behalf of the respondent. As such, I am not inclined to endorse to the view expressed on behalf of the respondent. In the circumstances, the revision application filed by the petitioner stands dismissed subject to costs.

Judge of the Court of Appeal

Sunil Rajapaksha, J.

I agree.

Judge of the Court of Appeal

NR/-