

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

CA(PHC)208/04

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HC Balapitiya 149/02

MC Elpitiya 74344

H.D. Hewage Weerasinghe,  
Dharmarama Mawatha,

Palihena, Pitigala.

Respondent-Respondent-  
Appellant.

Vs.

Indipalage Chandrika.

Applicant-Appellant-Respondent.

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

Sunil Rajapaksha, J.

Counsel : Eshara Wellala for the Respondent-Respondent-  
Appellant ad Sisira K. Siriwardane for the Respondent.

Argued on :14.11.2013

Decided on :28.01.2014

A.W.A. Salam, J.

This is an appeal preferred by the Respondent-Respondent-Appellant (hereinafter referred to as the Appellant) against the judgment of the High Court dated 09.03.20004 delivered in the

exercise of its appellate jurisdiction over an order entered by the learned Magistrate in terms of the Maintenance Act No.37 of 1999. A preliminary objection was raised by the Applicant-Appellant-Respondent (hereinafter referred to as the Respondent) as regards the maintainability of the appeal, in that she took up the position that the Appellant is not entitled to maintain the appeal as against the express Provisions relating to the procedure laid down in respect of appeals to be preferred against the judgment of the High Court delivered in the exercise of its appellate jurisdiction over the orders entered in terms of the Maintenance Act.

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It is settled law that the right of appeal is a Statutory right and must be expressly created and granted by Statute. In terms of the Maintenance Act an appeal shall lie to the Supreme Court from the judgment of the High Court pronounced in the exercise of appellate jurisdiction under the Maintenance Act. Even though the Appellant has obtained leave from the High Court to prefer an appeal against the judgment pronounced in the exercise of appellate jurisdiction by the High Court, he had failed to comply with the rules laid down in regard to the mode of referring an appeal, namely to file an appeal within a period of six weeks of the impugned order. In the circumstances, it is my considered opinion that the appeal preferred by the Appellant to this Court cannot be maintained. The preliminary objection is therefore upheld and the appeal dismissed subject to costs.

JUDGE OF THE COURT OF APPEAL.

Sunil Rajapaksha, J.

I agree.

JUDGE OF THE COURT OF APPEAL.

NR/-