

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

CA(PHC) 47/2004

HC Ratnapura 4/2001

MC Ratnapura 6069

Asst. Labour Commissioner,
Narahenpita, Colombo.

Complainant.

Vs.

Hapugastanne Plantations Limited.

Palm Garden, Ratnapura.

Respondent.

Vs.

Hapugastanne Plantations Limited.

Palm Garden, Ratnapura.

Respondent-Appellant.

Vs.

AND NOW BETWEEN

Hapugastanne Plantations Limited.

Palm Garden, Ratnapura.

Respondent-Appellant-Appellant.

Vs.

Asst. Labour Commissioner,
Narahenpita, Colombo.

Complainant-Respodent-Respondent.

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

Sunil Rajapaksha, J.

Counsel : Daphne Peiris Vissundara for the Respondent-Appellant
and Nayomi Kahawita SC for the Complainant
Respondent-Respondent.

Argued on : 23.07.2013

Written Submissions filed on: 20.01.2014

Decided on : 05.03.2014

A.W.A. Salam, J.

The Complainant Respondent-Respondent filed a certificate under Section 8(1) of the Payment of Gratuity Act against the Respondent-Appellant in the Magistrate's Court to recover a sum of Rs. 913, 913/- which amount the Respondent-Appellant had defaulted to pay. The learned Magistrate by order dated 14.12.2000 directed that the sum mentioned in the certificate be recovered from the defaulter as if it is a fine imposed by Court. Against the said order, the Respondent-Appellant preferred an appeal to the Provincial High Court by petition dated 29.12.2000. The petition is at folio 56 to 58 of the brief. In the said petition, the Petitioner (Respondent-Appellant) clearly identified himself as the accused-appellant and classified the petition as the petition of appeal. The petition of appeal has been signed by the appellant in his capacity as the accused-appellant. The learned High Court Judge by his judgment dated 14.11.2003 considered the petition of appeal on its merits and came to the conclusion that the order of the learned Magistrate requires no intervention by way of exercise of the appellate jurisdiction. Consequently, the learned High Court Judge dismissed the petition of appeal. The judgment of the learned High Court Judge is found at folio 38-47 of the brief. Being aggrieved by the said judgment of the Provincial High Court the Respondent-Appellant has preferred the instant purported appeal to this Court.

When the matter of the appeal was taken up for argument the learned State Counsel raised a preliminary objection, as to the maintainability of the appeal, in that she pointed out that the judgment of the learned

High Court Judge is appealable only to the Supreme Court with the leave of the High Court or the Supreme Court first had and obtained. In terms of Section 9(a) of the High Court of the Provisions (Special Provisions) Act a final order, judgment, decree or sentence of a High Court established under Article 154(p) of the constitution in the exercise of the appellate jurisdiction vested in it by paragraph 3(b) of Article 154(p) of the Constitution may be appealed therefrom to the Supreme Court.

In the case of Wickramasekara vs O.I.C Police Stationn Ampara 2004 volume 1 SLR 258, it was decided that the Court of Appeal has no jurisdiction to entertain an appeal from a judgment of the High Court pronounced in the exercise of its appellate jurisdiction.

The learned Counsel for the Respondent-Appellant has sought to argue that this is a revision application filed against the judgment of the learned High Court Judge. On a perusal of the record of the respective High Court it is quite clear as stated above that it is a petition of appeal that has been filed in this Court. In the circumstances, I have no option but to up hold the preliminary objection. Accordingly, the appeal preferred by the Respondent-Appellant is dismissed.

JUDGE OF THE COURT OF APPEAL.

Sunil Rajapaksha, J.

I agree.

JUDGE OF THE COURT OF APPEAL.

NR/-