

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

C.A. (PHC) APN No.140/2013

H.C.Matara No.Rev.59/2013

M.C. Morawaka No.21865

Porage Siripala Samansiri,
Moragala,
Pothdeniya,
Urubokke.

**Registered Owner -
Applicant -Petitioner**

Vs.

1. Vallibal Finance Ltd,
No.310,
Galle Road,
Colombo -03.

2. Vallibal Finance Ltd,
(Matara Branch)
No. 274A,
Anagarika Dharmapala Mw,
Matara.

3. Hon. Attorney General
Attorney General's Department,
Colombo 12,

4. Officer - in- Charge,
Police Station,
Urubokke.

1,2,3,4, Respondents

C.A. (PHC)APN No.140/2013

H.C.Matara No.Rev.59/2013

M.C. Morawaka No.21865

BEFORE : K.T.CHITRASIRI, J. &
W. M.M. MALINIE GUNARATNE, J.

COUNSEL : Razik Zarook P.C. with Rohana Deshapriya &
Chanakya Liyanage for the petitioner.
Anoop de Silva SSC for the Complainant-
respondent-respondent & for the A.G.

ARGUED AND

DECIDED ON : 30th October, 2014

K.T.CHITRASIRI, J.

Heard both Counsel in support of their respective cases.

This is an application seeking inter alia to set aside the judgment dated 17th September 2013 of the learned High Court Judge of Matara and then to direct the learned High Court Judge to hear and determine the revision application bearing No. 59/2013 filed in that High Court. Learned President's Counsel for the petitioner submits that the learned State Counsel has erroneously informed the High Court on

the 28th August, 2013 that no order had been made to issue notices on the respondents when the High Court has issued notices on them pursuant to the order made on 09th May, 2013. In fact those notices that were issued on the respondents pursuant to the order made on the 09th May 2013 directing them to be present in Court on 19th June 2013 had been served on them and thereafter they all were represented when the matter came up before the learned High Court Judge. Accordingly, learned President's Counsel submitted that it is wrong to have informed Court that on the 28th August 2013 that 6th notices have not been issued on the respondents by them. Learned Senior State Counsel too concedes that the submissions made by the State Counsel before the High Court is erroneous.

However, when the matter was taken up on the 28th August, 2013, the learned High Court Judge having given an opportunity for the State Counsel to make submissions on the merits of the application, had fixed the matter for the order to be delivered on the 17th September, 2013. Significantly, it is apparent that the learned High Court Judge has not given an opportunity for the Counsel who appeared for the petitioner and for the Counsel appeared for the 1st and the 2nd respondents, to present their respective cases. Thereafter, the impugned

order was delivered on the 17th September, 2013 refusing the main application of the petitioner.

Those facts have not been disputed. Therefore, it is clear that the learned High Court Judge has made the final decision in the application made to the High Court having heard only the State Counsel who appeared for the 3rd and the 4th respondents. The journal entry made on the 28th August 2013 shows that the learned State Counsel also has moved time to file objections. (Vide at page 4 of the document marked P).

The above circumstances show that the learned High Court Judge has failed to give an opportunity for the parties, particularly for the petitioner to present his case. Therefore, it is our view that the learned High Court Judge was in error when he made the final order without giving an opportunity for the petitioner to present his case.

For the aforesaid reasons, we set aside the judgment dated 17th September, 2013 of the learned High Court Judge. The learned High Court Judge of Matara is directed to issue notice on the parties and to proceed with the application of the petitioner affording everybody an

opportunity to present their respective cases and to make an order according to law.

For the aforesaid reasons, the application of the petitioner is allowed.

Application allowed.

JUDGE OF THE COURT OF APPEAL

W. M.M. MALINIE GUNARATNE, J.

I agree.

JUDGE OF THE COURT OF APPEAL

Kwk/=