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

CA PHC APN 24/2014

Selvi Rajan
No: 3/2,76,
W.A. Silva Mawatha,
Colombo 06.

1st Respondent Petitioner

Vs.

Kamalani De Silva
Secretory,
Ministry of Justice,
Colombo 12.

Petitioner Respondent

Rajan Kurupaiya

2nd Respondent Respondent

C.A. (PHC) APN No.24/2014

13.03.2015

BEFORE : **K.T.CHITRASIRI J.**

: **W.M.M.MALINIE GUNARATNE J.**

D.P.Kumarasinghe P.C. with M.Kumarasinghe
for the 1st Respondent-Petitioner
Romesh De Silva P.C. with Sugath Caldera
for the 2nd Respondent- Respondent
M.Jayasinghe S.C. for the Petitioner-Respondent

ORDER

When this matter was taken up for argument on 01.12.2014, learned President's Counsel for the 2nd Respondent having raised a preliminary objection, submitted that this Court has no jurisdiction to hear and determine this revision application particularly in view of the Divisional Bench decision of this Court delivered in the case of **Weeratunga v. Sepala Ekanayake and others. [CA (PHC) APN 204/2006]** In support of his contention, he relied upon two other decisions and those are namely, **Stephan Gunaratne v. M.T.I.Sampath and others [CA (PHC) APN 54/2013 - C.A.Minutes dated 23.09.2013]** and **Senanayake v. Koehn. [2002 (3) SLR 381]**

The aforesaid Divisional Bench decision in **Weeratunga v. Sepala Ekanayake and others** (supra) is on the question of the revisionary power of this Court if that revision application is filed to canvass a decision that was made by the Provincial High Court exercising its appellate powers. The question of law raised in that application is as follows:

Q: having failed to exercise the right to file an appeal in terms of Section 9 of the High Court of the Provinces (Special Provisions) Act No.19 of 1990, Could a person invoke the revisionary jurisdiction of the Court of Appeal referred to in Article 138 of the Constitution of the Republic of Sri Lanka, in order to canvass a decision made by a Provincial High Court exercising its appellate powers?.

This Court by the majority decision answered the above question of Law in the negative form and decided that the Court of Appeal does not have revisionary jurisdiction to revise or set aside a decision made by a Provincial High Court exercising its appellate powers. Learned President's Counsel relying upon a sentence found in the body of the said judgment has argued that the majority decision in that application is to prevent this Court taking up all revision applications filed in the Court of Appeal. The sentence relied upon by the learned President's Counsel in that judgment is that this Court has only the appellate power and not the revisionary jurisdiction.

Interpretation to the said judgment cannot be given by reading one single sentence found therein, in isolation. It has to be decided by considering the

question of law that was raised and also by looking at the entirety of the judgment. The aforesaid question of law clearly restricted to the jurisdictional issue of this Court as to the maintainability of revision applications in which a decision of a High Court is being challenged where that High Court has exercised appellate powers. Moreover, upon careful consideration of the full text of the majority judgment, it is clear that the decision therein is to restrict the issue to the cases where the High Court has exercised appellate powers. Therefore, it is clear that the majority decision in the aforesaid revision application in the case of **Weeratunga v. Sepala Ekanayake and others** (supra) is applicable only to the matters where the Provincial High Court Judge has exercised appellate powers.

The revision application at hand is to revise and/or to set aside the order dated 20.12.2013 of the learned High Court Judge wherein the learned Judge has exercised original jurisdiction. It is evident by the application dated 07.06.2012 filed in the High Court [P1marked with the petition filed in this Court] by the Petitioner-Respondent. That application made to the High Court had been under the provisions contained in the Civil Aspects of International Child Abduction Act No.10 of 2001 having invoked the jurisdiction of the Provincial High Court in terms of Article 154(P) of the Constitution. Therefore, it is clear that the Provincial High Court in Colombo, in this instance, has exercised not the appellate jurisdiction but its original jurisdiction. Therefore, the decision in **Weeratunga v. Sepala Ekanayake and others** (supra) cannot be made applicable to the issue at hand.

I will now turn to consider the other two judgments referred to by the learned President's Counsel for the 2nd Respondent, in order to determine whether those could be considered as decisions that are applicable under the rule of *stare decisis.* The issue in the case of **Stephan Gunaratne v. M.T.I.Sampath and others** (supra) had arisen in a revision application filed in this Court to canvass a decision of the Civil Appellate High Court of the Sabaragamuwa Province. In that application, even though the High Court Judge in Ratnapura has exercised appellate powers, it was over a decision in a civil action pronounced by a District Judge to which the provisions of specially enacted law are applicable. In that decision A.W.A.Salam, J has referred to the provisions contained in the recently enacted Act No.54 of 2006 by which the appellate power over the decisions of the District Courts have been given to the High Courts of the Provinces. It is not an action filed, invoking jurisdiction under Article 154 (P) of the Constitution. Therefore, the aforesaid decision in **Stephan Gunaratne v. M.T.I.Sampath and others** (supra) is clearly not applicable to the objection now before this Court.

The remaining decision namely, **Senanayake v. Koehn** (supra) referred to by the learned President's Counsel had been made in a revision application filed in this Court in order to canvass a decision of the High Court established under and in terms of the Act No.10 of 1996. In Section 5 of the said Act No.10 of 1996, it is clearly stated that any person aggrieved by a decision of the High Court exercising civil jurisdiction [Commercial High Court] should file an appeal in the Supreme Court for relief. Therefore, the decision in **Senanayake**

v. Koehn (supra) had been decided in view of the specific forum jurisdiction created under the said Act No.10 of 1996. No such provision is found in the Act No.10 of 2001, under which the original application had been filed in this instance. Hence, it is clear that the decision in **Senanayake v. Koehn** (supra) also is not relevant to the issue at hand.

In the circumstances, the objection raised on behalf of the 2nd respondent relying upon the authorities referred to above do not apply to this application. In the circumstances, it is our view that this Court has jurisdiction to hear and determine this application despite the three decisions referred to by the learned President's Counsel for the 2nd Respondent.

For the aforesaid reasons, the preliminary objection raised on behalf of the 2nd Respondent is over-ruled. Accordingly, the matter is to be fixed for argument.

JUDGE OF THE COURT OF APPEAL

W.M.M.MALINIE GUNARATNE

I agree

JUDGE OF THE COURT OF APPEAL