

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

In the matter of an application for re-listing of case No. 1249/2005

In the matter of application under Section 16(1) of the Recovery of Loans by Banks (Special Provisions) Act No. 4 of 1990.

Seylan Bank Limited (Presently Known as Seylan Bank PLC)

Seylan Tower,
No. 90, Galle Road
Colombo 03.

Petitioner

C.A No. 1249/2005(Rev)

D.C. Colombo Case No. 7048/Spl

Vs

Makewita Appuhamilage Dona
Chandralatha
No. 648/4, Kaduwela Road
Malambe.

Respondent

And Between

Seylan Bank Limited (Presently Known as Seylan Bank PLC)

Seylan Tower,
No. 90, Galle Road

Colombo 03.

Petitioner-Petitioner

Vs

Makewita Appuhamilage Dona
Chandralatha
No. 648/4, Kaduwela Road
Malambe.

Respondent-Respondent

And Now

Makewita Appuhamilage Dona
Chandralatha
No. 648/4, Kaduwela Road
Malambe.

Through her Power of Attorney
Lokugonaduwege Priyanka Hemamali
Perera

No. 648/4, Muwanhelawatte
Thalangama North
Battaramulla.

Respondent-Respondent-Petitioner

Vs

Seylan Bank Limited (Presently Known as
Seylan Bank PLC)
Seylan Tower,
No. 90, Galle Road
Colombo 03.

Petitioner-Petitioner-Respondent

BEFORE

: Deepali Wijesundera J.

M.M.A. Gaffoor J.

COUNSEL

: Manohara De Silva PC for the
Petitioner.

Palitha Kumarasinghe PC with
Sajeewani Siriwardena for the
Petitioner Petitioner Respondent.

ARGUED ON

: 03rd June, 2015

DECIDED ON

: 13th November, 2015

Deepali Wijesundera J.

The respondent respondent petitioner (herein after referred to as the petitioner) has made the instant application to set aside the judgment entered in this ^{case} ~~matter~~ dated 10/11/2006 and to relist the ^{case} ~~matter~~ for argument.

The petitioner stated that notices issued by this court was not received by the petitioner and that the records of the Registry of the Court of Appeal shows that the notices have been returned, therefore the petitioner was not aware of the existence of the revision application filed by the petitioner petitioner respondent (herein after referred to as the respondent). The petitioner has filed documents marked Y1 and Y2 to

prove his argument, but there is no returned envelop with the endorsement of the post office to say the notice could not be served for a particular reason, when notices are returned the envelop is filed with the record ^{along} with the relevant endorsement.
^

The argument of the respondent was that the address given in the notices was the address given by the petitioner in the District Court and also to the Bank. Respondent argued that the petitioner has evaded receiving notice. The respondent also stated that the instant application has been filed by the petitioner's power of attorney holder who has no *locus standi* to make this application.

The respondent argued that under *Sec. 771 of the Civil Procedure Code* there is no provision for relisting in a revision application. The respondents cited the judgments in **Jinadasa Vs Sam Silva 1994 1 SLR 232, Kalawane Dhammadassi Thero Vs Mawella Thero 1957 NLR 400** and stated that sufficient ^{cause} ~~case~~ has to be shown to rehear a case.

The respondent also stated that there was no prayer for relisting in the petition and cited the judgments in **Surangi Vs Rodrigo (2003) 3 SLR 35, National Development Bank Vs Rupasinghe and others 3**

SLR 92. The respondent further stated that there was no valid affidavit filed by the petitioner who was in a fit position to sign an affidavit since the power of attorney was given due to ill health which made it difficult for the petitioner to ~~come~~^{travel} to court. The respondent also stated that the power of attorney holder and the Principal both resided in the same jurisdiction therefore the power of attorney had no *locus standi*.

The petitioner's counsel stated that although two sets of notices were sent to the petitioner and returned the Registry has failed to journalize it, therefore they have filed documents marked X1, X2, Y1 and Y2 in proof that the notices were not received.

The petitioner citing the judgment in **Sivapathalingam Vs Sivasubramaniam 1990 (1) SLR 378** ^{and} stated that a court whose act has caused injury to a suite has an inherent power to make restitution and that no party should be injured by an act of court.

The petitioner further submitted that this is a case where the petitioner succeeded in the District Court by judgment date 13/06/2005, and where the Court of Appeal allows an application setting aside an

order of the District Court it should ensure that the other party is noticed and heard.

The petitioner made this application on the basis that the petitioner did not have any notice of the Revision application filed by the respondent as the notices were returned to the registry, but the petitioner has not stated why the notices have been returned since they have been sent to the given address in the District Court case and also to the respondent bank. Documents marked as Y1 and Y2 are photocopies of some handwritten documents which can not be accepted as a valid document. There is no entry to say why the notices have been returned. The usual procedure is to file the relevant envelop with the notices to the case ^{record} heard with the endorsement of the post office stating the notices could not be served for a particular reason.

Section 771 of the Civil Procedure Code states thus:

When an appeal is heard *ex parte* in the absence of the respondent, and judgment is given against him, he may apply to the Court of Appeal to rehear the appeal; and if he satisfies the court that the notice of appeal was not duly served, or that he was prevented by sufficient cause from attending when the appeal was called on for hearing, the court may rehear the appeal on such terms as to costs or otherwise as the court thinks fit to impose upon him.

Although there is no specific provision in the Civil Procedure Code and the Supreme Court rules for relisting of an application for Revision the court may exercise its inherent jurisdiction in limited exceptional circumstances to set aside its own considered orders, on questions of law. In the instant application the petitioner failed to state why the notices sent twice to the given address were not received. If the petitioner received communications to the address stated in the District Court case and to the respondent Bank why were the notices sent by this court not received. Although the documents Y1 and Y2 indicate the notices were returned no return notice had been filed in the record and no entry had been made to say so.

For the afore stated reasons we see no merit in the application of the petitioner to relist the application for Revision. The application for relisting is refused.

JUDGE OF THE COURT OF APPEAL

M.M.A. Gaffoor J.

I agree

JUDGE OF THE COURT OF APPEAL