

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

In the matter of an Application for the exercise of Your Lordships Court's revisionary powers under and by virtue of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka, against the Order of the High Court of the Western Province (Exercising Civil Jurisdiction – holden at Colombo) dated 19th January 2015 in case bearing No. H. C.(Civil) 60/2014/CO.

Ceylinco Insurance PLC,
“Ceylinco House”,
No.69, Janadhipathi Mawatha,
Colombo 01.

Petitioner

Court of Appeal Revision Application VS.
No. CA (PHC)APN/18/2015
High Court Case
No. HC/Civil/60/2014/CO

1. Ceylinco Life Insurance Limited,
106, Havelock Road,
Colombo 05.
2. Ceylinco General Insurance Limited,
“Ceylinco House”, 3rd Floor,
No.69, Janadhipathi Mawatha,
Colombo 01.

Respondents

AND THEN

Ceylinco Insurance PLC,
“Ceylinco House”,
No.69, Janadhipathi Mawatha,
Colombo 01.

Petitioner**VS.**

1. Ceylinco Life Insurance Limited,
106, Havelock Road,
Colombo 05.
2. Ceylinco General Insurance Limited,
“Ceylinco House”, 3rd Floor,
No.69, Janadhipathi Mawatha,
Colombo 01.

Respondents**AND**

Global Rubber Industries (Pvt) Ltd.
No.28, Joseph's Lane,
Colombo 04.

Shareholder-Respondent**AND NOW**

Global Rubber Industries (Pvt) Ltd.
No.28, Joseph's Lane,
Colombo 04.

Shareholder-Respondent-Petitioner

VS.

Ceylinco Insurance PLC,
“Ceylinco House”,
No.69, Janadhipathi Mawatha,
Colombo 01.

Petitioner-Respondent

1. Ceylinco Life Insurance Limited,
106, Havelock Road,
Colombo 05.

1st Respondent-Respondent

2. Ceylinco General Insurance Limited,
“Ceylinco House” 3rd Floor,
No.69, Janadhipathi Mawatha,
Colombo 01.

2nd Respondent-Respondent

BEFORE: **W.M.M. Malinie Gunaratne, J. and**
 P.R. Walgama, J.

COUNSEL: S.A. Parathalingam P.C. with Nishkan. Parathalingam
 for the Petitioner.

Supported on 14.05.2015.

Written submissions filed on : 12.08.2015

Decided on: 18.11 2015

Malinie Gunaratne, J.

The Petitioner-Respondent has instituted an action bearing No. HC/Civil/60/2014/CO in the Commercial High Court of Colombo, seeking the reliefs set out in the plaint. On 19.01.2015 the learned High Court Judge delivered his Judgment / Order granting the relief prayed for by the Petitioner-Respondent.

The Petitioner has filed a leave to appeal application against the Judgment/Order in the Supreme Court (as per paragraph 30 of the Petition). Having done that the Petitioner has filed this revision application in this Court seeking to set aside the Order of the learned High Court Judge dated 19.01.2015.

When this matter came up for support on 14.05.2015, the view of the Court was that this Court has no jurisdiction to exercise the Revisionary powers, in respect of orders or judgments of the Commercial High Court.

The learned President's Counsel made oral submissions as regards the said matter pertaining to the jurisdiction of this Court and moved permission to file written submissions also.

I have carefully considered the submissions of the learned President's Counsel. In the course of his submissions, the learned President's Counsel for the Petitioner contended that, since the final appeal will take a long time to be listed and in view of the urgency of the matter and in view of the existing exceptional circumstances and the fact that grave, irremediable damage and prejudice has been caused to the Petitioner and other shareholders of the Petitioner-Respondent as a consequence of the said

Order. He further contended, that the exclusive revisionary jurisdiction is vested with the Court of Appeal as per Article 138 of the Constitution.

The learned President's Counsel has completely disregarded the change made by the legislature by enacting Act No.10 of 1996 as far as High Court orders made in the exercise of powers vested in the High Court, under the Act No. 10 of 1996. By the enactment of Act No. 10 of 1996, it is clear that in any civil matter dealt with in the High Court, the appeal lies only to the Supreme Court. This seems to be the clear intention of the legislature with regard to matters dealt in the High Court.

The right of appeal from judgments, orders of the High Court is dealt with under Section 5 of the said Act. The said Section 5 reads thus:-

“ (1) Any person who is dissatisfied with any judgment pronounced by a High Court established by Article 154P of the Constitution, in the exercise of its jurisdiction under Section 2, in any action proceeding or matter to which such person is a party may prefer an appeal to the **Supreme Court** against such judgment, for any error in fact or in law.

(2) Any person who is dissatisfied with any order made by a High Court established by Article 154 of the Constitution, in the exercise of its jurisdiction under Section 2, in the course of any action proceeding or matter to which such person is, or seeks to be a party, may prefer an appeal to the **Supreme Court** against such order, for the correction of any error in fact or law with the leave of the Supreme Court first had and obtained”.

In *Australanka Exporter Pvt. Ltd. Vs. Indian Bank* (2001) 2 SLR 156, it was held that the appellate jurisdiction in respect of judgments and orders

of the High Court of the Provinces made in the exercise of its civil jurisdiction was vested exclusively in the Supreme Court.

In *Senanayake and Others Vs. Kohen and Others* (2002) 3 SLR 381, Justice Amaratunga had made the following observation...:

“It is not proper for the Court of Appeal to examine the legality of the judgment of the Commercial High Court even for the limited purpose of safeguarding itself that the Petitioner is entitled to the relief prayed for. If the Court ventures into such an exercise it is an indirect usurpation of the exclusive jurisdiction conferred on the Supreme Court by the legislature”.

In the case of *Merchant Bank of Sri Lanka, vs.J.P. Wijewardena and Others* 2010 (B.L.R) 233, it was held that, the right of appeal from judgments/orders of the High Court is vested exclusively in the Supreme Court and this Court cannot exercise even revisionary powers.

Being aggrieved by the said Order, appellants made an application for special leave to appeal in the Supreme Court. In that case, dismissing the appeal it was held that the judgment of the Court of Appeal is correct in law as it has held that the exclusive right of appeal from an order or judgment of the High Court exercising civil jurisdiction is vested with the Supreme Court. In that case Suresh Chandra J. observed (other two judges agreeing) “... if revisionary jurisdiction to the Court of Appeal is given then it would give the party applying for revision in a situation as in the present case a favourable position by granting an additional opportunity of review as against a party who comes within a purview of the civil jurisdiction of the High Court regarding other matters as they will be entitled only to the right to appeal to the Supreme Court”.

“.....this would give the party in such circumstances two opportunities of review of the preliminary judgment when the clear intention of the Legislature is that there should be only an appeal to the Supreme Court from any judgment or order of the High Court in the exercise of its Civil jurisdiction in terms of Section 5(1) and 5(2)”.

I am of the view that the cases cited by the learned President’s Counsel have no relevance to the question at issue.

This Court is bound by the authorities of the Supreme Court referred to above. Moreover, there is a clear statutory provision in Act No.10 of 1996.

Therefore, taking into consideration all the facts, relevant authorities and submissions made in this case, the Court refuses to issue notice on the Respondents.

Accordingly, the Petition is dismissed.

JUDGE OF THE COURT OF APPEAL

P.R. Walgama J.

I agree

JUDGE OF THE COURT OF APPEAL

Petition is dismissed.