

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

In the matter of an Application for Revision  
and/or Restitutio in Integrum under Article  
138 of the Constitution of the Democratic  
Socialist Republic of Sri Lanka.

Pothpitiyage Don Edward Prematilleke,  
“Priyawasa”,  
Remunegoda,  
Kalutara.

**Petitioner**

**CA Revision Application  
No. CA/PHC/APN/144/2014  
Provincial High Court of  
Kalutara Certiorari  
Writ Application No.16/2002  
Arbitration No. 1131**

**Vs.**

01. Commissioner of Co-operative  
Development (Western Province)  
Department of Cooperative Development  
(Western Province)  
P.O.Box 444,  
Duke Street,  
Colombo 01.

02. W.H. Piyadasa,  
Arbitrator,  
21/11, Hegalla Road  
Welipillawa,  
Horana.

03. The Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

04. Seemasahitha Remunegoda  
Sekasuruwam Ha Nayaganudenu  
Pilibanda Samupakara Samithiya,  
Remunegoda,  
Kalutara.

**Respondents**

**AND BETWEEN**

Pothpitiyage Don Edward Prematilleke,  
"Priyawasa",  
Remunegoda,  
Kalutara.

**Petitioner-Petitioner**

01. Commissioner of Co-operative  
Development (Western Province),  
Department of Co-operative  
Development (Western Province),  
P.O.Box 444,  
Duke Street,  
Colombo 01.

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Sekasuruwam Ha Nayaganudenu  
Pilibanda Samupakara Samithiya,  
Remunegoda,  
Kalutara.

**Respondents-Respondents**

**BEFORE : W.M.M. Malinie Gunaratne, J.**

**P.R. Walgama, J.**

**COUNSEL : D.M.G. Dissanayake with M.D.J. Bandara  
for the Petitioner - Petitioner.**

**R. Pathiranage, D.S.G.  
for the 1<sup>st</sup> to 4<sup>th</sup> Respondents.**

Argued on : 12.03.2015

Decided on : 27.07.2015

**Malinie Gunaratne, J.**

The Petitioner was the Treasurer of the 4<sup>th</sup> Respondent, Seemasahitha Remunegoda Sakasuruwam Ha Nayaganudenu Pilibanda Samupakara Samithiya during the period 1986 – 1998. A letter dated 14.06.1998 was served on the Petitioner under the hand of the 4<sup>th</sup> Respondent, suspending the Petitioner's Committee membership. A Committee Meeting was held on 10.10.1999 and it was decided to recover a sum of Rs.97,001/17 together with an interest of 16% per annum, from the Petitioner and he was served a letter of demand dated 26.10.1999.

The said Committee has further decided to hold an arbitration, if he fails to comply with the said decision of the Committee. The 4<sup>th</sup> Respondent appointed the 2<sup>nd</sup> Respondent to hold an arbitration to which the award dated 14.08.2000 was made.

Thereafter the Petitioner made an appeal against the said arbitration award, to the 1<sup>st</sup> Respondent, which was dismissed and the award affirmed.

Thereafter the Petitioner instituted the Writ Application bearing No. 16/2002 against the said award dated 14.08.2000 in Kalutara High Court. The learned High Court Judge dismissed the said application on 23.08.2006.

Being aggrieved by the said Order the Petitioner lodged an appeal bearing No. CA/PHC/269/2006 against the said order. Due to some procedural defects, on 13.10.2014 the appeal was dismissed. Thereafter the Petitioner has instituted this revision application.

When this matter was called on 12.03.2015 to support for interim relief referred to in sub paragraph (3) of the prayer to the petition, the learned Deputy Solicitor General objected to the Petitioner's application and raised the following preliminary objections on the maintainability of this application before considering the application for notice being issued on the respondent.

- (a) There is a delay and / or laches on the part of the Petitioner in that the order of the learned High Court Judge sought to be challenged by these proceedings is dated 23.08.2006 and this application has been filed on or about 09.12.2014, over 08 years later.

(b) The Petitioner has not pleaded or established any exceptional circumstances warranting the exercise of revisionary powers.

On the aforesaid Preliminary Objections, both parties have filed written submissions with case law authorities and have also tendered oral submissions when the matter was called on 12.03.2015.

I will now consider the Preliminary Objections raised by the learned Deputy Solicitor General. As set out before, the first Preliminary Objection is namely, undue delay in filing this application. The learned Counsel for the Petitioner submitted that there is no delay in filing the present petition as proceedings before Court on the material issue was alive until 13.10.2014, on which date the Court of Appeal entered judgment dismissing the appeal due to procedural defects.

The learned Deputy Solicitor General for the Respondent contended that the Petitioner has filed this Revision Application after 08 years from the order of the High Court and therefore he is not entitled to any relief due to laches.

I will turn to consider the authorities in regard to the first preliminary objection, namely the delay of filing the application. In the case of Attorney General vs. Kunchihambu 46 NLR 401, it was held the delay of three months was to disentitle the Petitioner for relief. In Camillus Ignatious vs. Officer in Charge of Uhana Police Station (Rev) CA 907/89 M.C. Ampara 2587 held that a mere delay of 04 months in filing a Revision Application was fatal to the prosecution of the revision application before the Court of Appeal.

In *Nandawathie vs. Gunawathie* CA 769/2000 District Court Mount Lavinia 33/92/P it was held that the delay of three (03) and a half years was considered to be fatal. Similarly it was held by Amartunga J. in the *Attorney General vs. Herath*, CA Revision 2060/2004, S.C. Colombo 6842/M C.A. minutes of 12<sup>th</sup> November 2004, that revision will not be available where there is a delay of (9) nine years.

Delay would normally be a ground upon which a revision application could be referred. Therefore, in every case where there is a delay the applicant should explain the reason for the delay (*Gnanapandithan vs. Balanayam* 1998 (1) SLR 391).

The Petitioner has filed this application after 08 years from the order of the High Court. The inordinate delay has not been explained by the Petitioner to the satisfaction of this Court. Moreover the Petitioner has not disclosed exceptional circumstances why the application for revision should be entertained by this Court after a lapse of nearly (08) years from the original High Court order.

In *Dissanayake vs. Fernando* 71 NLR 356, it was held, it is essential that the reason for the delay in seeking relief should be set out in the petition. The Petitioner has failed to account for the delay. Accordingly, the long period of inaction and failure to seek relief on the part of the Petitioner was fatal to an application in revision.

I will now consider the next objection namely, failure to show Exceptional Circumstances when filing this revision application. The Counsel for the Petitioner has submitted, that the Petitioner has caused to file this application based on the questions of law set out in paragraph 21 of the

Petition which constitutes exceptional circumstances. He has further submitted, that although the phrase “exceptional circumstances exist” has not been used in the Petition, the questions of law raised in Paragraph 21 of the Petition do constitute exceptional circumstances on the face of it.

The learned Deputy Solicitor General contended that the Petitioner’s application should be dismissed in limine since the Petitioner has not pleaded or established exceptional circumstances necessitating the indulgence of Court to exercise its powers in revision. He further contended, in the present case the Petitioner, has not indicated to Court that any special circumstances exist which could invite this court to exercise its powers of revision.

In support of Deputy Solicitor General’s argument the attention of this Court has been drawn to several cases.

The trend of authority clearly indicates that the revisionary powers of the Court of Appeal will be exercised if the exceptional circumstances exist only.

The object of the power of revision as stated by Sansoni Chief Justice in *Mariam Beebee vs. Seyed Mohamed* 68 NLR 36 is the due administration of justice. “The Court will not hesitate to use its revisionary powers to give relief where a miscarriage of justice has occurred”. (In the words of Soza J. in *Somawathie vs. Madawala and Others* 1983 (2) SLR 15).

In *Atukorale vs. Saminathan* 41 NLR 165 Soertsz J. stated, that the right of the Court to revise any order made by an original court will be exercised only in exceptional circumstances.

In *Caderamanpulle vs. Ceylon Paper Sacks* 2001 (3) SLR 172, the court has held the existence of exceptional circumstances is a pre-condition for the exercise of the powers of revision and the absence of such circumstances in any given situation results in refusal of granting remedies. In *Ameen vs. Rasid* (Supra) Abraham C.J. has explained the rationale for insisting on the existence of exceptional circumstances for the exercise of revisionary jurisdiction. According to Abraham C.J., revision of an appealable order is an exceptional procedure and a person seeking this method of rectification must show why this extraordinary method is sought rather than the ordinary method of appeal.

Thus, the existence of exceptional circumstances is a process by which the method of rectification should be adopted. In *Perera vs. Silva* (Supra) Hutchinson C.J. has stated, that if such selection process is not available, then revisionary jurisdiction of the court will become a gateway for every litigant to make a second appeal in the garb of a revision application to make an appeal in situations where the legislature has not given the right of appeal.

Furthermore, in *Dharmaratne and Another vs. Palm Paradise Cabanas Ltd.* 2003 (3) SLR 24, Gamini Amartunga J. stated, that the practice of Court to insist on the existence of exceptional circumstances for the exercise of revisionary powers has taken deep root in our law and has got hardened into a rule which should not be lightly disturbed.

On a consideration of the above authorities, it is abundantly clear, the revisionary powers of the Court of Appeal will be exercised if the exceptional circumstances exist only.



It is now pertinent to peruse the petition and written submissions of the Petitioner in order to determine whether the Petitioner has pleaded or established such exceptional circumstances. It is abundantly clear that the Petitioner has not specifically or expressly pleaded such exceptional circumstances.

In *Biso Menika vs. Ranbanda and Others* CA 95/98 – CAM 09.01.2002 and followed by *Urban Development Authority vs. Ceylon Entertainers Ltd.* And another (*Supra*) the rigid rule was formulated in order to justify the exercise of revisionary jurisdiction of the Court of Appeal, on examination of either the Petition or Affidavit which must reveal a specific plea as to the existence of special circumstances.

The contention of the learned Counsel for the Petitioner is that though the phrase “exceptional circumstances exist” has not been used in the Petition, the questions of law raised in Paragraph (21) of the Petition do constitute exceptional circumstances on the face of it.

I disagree with the submissions of the learned Counsel for the Petitioner that the averments in Paragraph 21 of the Petition purporting to set out exceptional circumstances is factually and legally unsupportable.

Due to the aforesaid reasons, this Court has no alternative but to conclude that the Petitioner failed to substantiate presence of exceptional circumstances by way of illegality or error on the face of the record. Accordingly his plea for invoking of discretionary revisionary powers of this Court must necessarily fail.

Therefore taking into consideration the entirety of the submissions adduced by both parties, this Court upholds the Preliminary Objections raised by the Respondents, and conclude that this is not a fit and proper case to invoke the discretionary revisionary powers of this Court.

Accordingly the interim relief sought for is refused and I dismiss the Petition.

**JUDGE OF THE COURT OF APPEAL**

P.R. Walgama, J.

I agree

**JUDGE OF THE COURT OF APPEAL**

Petition dismissed.