

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

In the matter of an application for  
Revision in terms of Article 138 of  
the Constitution of the Democratic  
Socialist Republic of Sri Lanka.

Abdul Hafeel Ahamed Abbas,  
No. 573, Sudarma Mawatha,  
Wanawasala, Kelaniya.

MC Maligakanda Case No. 29570/14  
HC Colombo Case No. HCRA 237/14  
CA (PHC) APN 77/2015

**Petitioner**

Brown and Company PLC  
No. 481, T.B. Jaya Mawatha,  
Colombo 10.

**Respondent**

*And*

01. Qamardeen Ahamed Abbas,  
No. 03, Dematagoda Place,  
Colombo 09.
  
02. Mohamed Ibrahim Jawad,  
No. 334/2/1, Bopanna,  
I.D.H. road, Gothatuwa.

**Intervenient Party**

*And*

Brown and Company PLC  
No. 481, T.B. Jaya Mawatha,  
Colombo 10.

**Respondent – Petitioner**

Abdul Hafeel Ahamed Abbas,  
No. 573, Sudarma Mawatha,  
Wanawasala, Kelaniya.

**Petitioner – Respondent**

01. Qamardeen Ahamed Abbas,  
No. 03, Dematagoda Place,  
Colombo 09.

02. Mohamed Ibrahim Jawad,  
No. 334/2/1, Bopanna,  
I.D.H. road, Gothatuwa.

**Intervient Party**

**Respondents – Respondents**

Abdul Hafeel Ahamed Abbas,  
No. 573, Sudarma Mawatha,  
Wanawasala, Kelaniya.

Petitioner – Respondent – Petitioner

***Vs.***

Brown and Company PLC  
No. 481, T.B. Jaya Mawatha,  
Colombo 10.

**Respondent – Petitioner –  
Respondent**

01. Qamardeen Ahamed Abbas,  
No. 03, Dematagoda Place,  
Colombo 09.

02. Mohamed Ibrahim Jawad,  
No. 334/2/1, Bopanna,  
I.D.H. road, Gothatuwa.

**Intervient Party**

**Respondent – Respondent –  
Respondents**

**Before : W.M.M.Malinie Gunarathne, J**

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

**Counsel : Ashan Fernando for the Petitioner.**

**: M.V.M. Ali Shabry, PC with Erusha Kalidasa and  
H.Hameed for the Respondent – Petitioner –  
Respondent.**

**Argued on : 02.10.2015**

**Decided on: 03.03.2016**

**CASE – NO – CA (PHC) APN – 77/2015 – JUDGMENT – 03.03.2016**

**P.R.Walgama, J**

The question in this appeal is whether the Court below was correct in its reasoning and conclusion.

The Petitioner, by his petition dated 10.07.2014 had reported to the Learned Magistrate of a land dispute and claimed relief in terms of Section 68(1) of the Primary Court Procedure Code Act.

It is alleged by the Petitioner that on 16.05.2014, some employees of the Respondent Company has forcibly entered the land in suit, more fully described in the schedule thereto, and had demolished the building standing thereon.

Although the Petitioner had complained to the police, they had not taken any action regarding his complaint. It is the contention of the Petitioner that he had been in possession of the said property two months prior to the dispossession and more fully he was in possession over 30 years in the said land.

Following are the facts as tersely stated in the petition of the Petitioner;

That by virtue of Deed bearing No. 1180, incorporated under the name of Meera Mohideen & Company Ceylon Limited became the owner of the subject land. The said property is depicted in plan No. 966 dated 22.05.1990.

It is the categorical position of the Petitioner that he too has been in possession of the building assessment No. 35/2 which is within lot 1 of the plan marked as P11.

As per averment 17 of the said petition a development has taken place regarding the land in issue.

There had been negotiations for the sale of the subject land to the Respondent company, and pursuant to the above the Respondent Company has paid and the Petitioner has accepted a sum of Rs.1 million as an advance by way of a cheque. Further it is to be noted that as per document marked P42(A) the Respondent Company has agreed to pay the balance Rs.10 million, and the premises to be hand over by the Petitioner to the Respondent.

It also contended by the Petitioner that as per document marked P37, the Respondent agreed to pay a further sum of Rs.90 lacks as an advance for lot 4. But nevertheless the Respondent

Company without any response had forcibly entered the disputed land and had demolished the building standing thereon.

As a comprehensive response to the afore said the Respondent Company has asserted thus;

That the demolition of the said building took place in pursuant to the Petitioner agreeing to accept 100 lacks from the Respondent and the said premises were transferred to the Respondent Company by Meera Mohideen (Ceylon) private Company by Deed bearing No. 508, which is marked as 1V1.

It is the categorical position of the Respondent Company that the Petitioner never had any right to the said premises in issue and the Respondent Company agreed to pay him a sum of Rs.10 million to give up his possession over the disputed land. Therefore it is contended by the Respondent that after 17.03.2014 the Petitioner did not have any possession of the land in issue. Therefore it is said that there is no forcible dispossession of the Petitioner from the subject land.

Magistrate after perusing the relevant documents and the affidavits thereto had arrived at the determination that the Petitioner should be placed in possession of the said suit land.

Being aggrieved by the said impugned order of the Learned Magistrate the Respondent-Petitioner-Respondent has come by way of Revision seeking to set aside the said order and as an interim relief to stay the order the learned Magistrate dated 11.11.2014.

The Learned High Court Judge in dealing with the application of the Respondent – Petitioner – Respondent has preliminary dealt

with the issuance of the stay order. In that it is stated as stated in the prayer to petition warrants a stay order to stay the execution of the afore said order of the Learned Magistrate, if not the purpose of the Petitioner – Respondent's application will render nugatory.

Being aggrieved by the said order of the Learned High Court Judge dated 24.11.2014 the Petitioner – Respondent – Petitioner lodged the present application in Revision in this Court and sought the relief inter alia;

For an issuance of a stay order to stay the execution of the above order dated 24.11.2014 and the subsequent stay order marked as C7(A).

This Court after hearing the arguments of both counsel, allowed them to file written submission in respect of their case.

In the written submissions of the Respondent Company it is reiterated the following;

That the property in suit belongs to a Company where the petitioner's father was the original owner.

Further the said Company has entered in to an agreement to sell the property to the Respondent.

It is alleged that the Petitioner did not have title to the said property, but was occupying a portion of the property and had agreed with the Respondent to give up possession on payment of Sum of Rs.10,000,000, by the Respondent.

The Respondent has paid a sum of Rs.1,000,000/ out of Rs.10,000,000/.

It is categorically stated by the Respondent that the Respondent Company has already paid a sum of Rs.56 million to the original owner to vit. Meera Mohideen Company.

The Respondent Company also give an undertaking to pay the Petitioner the balance money of Rs.9 million.

The Respondent alleges that the Petitioner filed a private plaint in terms of Section 66(1)(b) of the Primary Court Procedure Act, and the petitioner has not even averred that there is a breach of peace or as to afore said dispute of that there is a likely hood of a occurrence of the breach of the peace.

In the said backdrop it is asserted by the Respondent Company that the Magistrate's afore said order is erroneous and should be set aside.

The Respondent Company by way of preliminary objection has raised the following;

That the Petitioner is guilty of laches

AND

The Petitioner has failed to disclose any exceptional circumstances which warrants to exercise the revisionary jurisdiction of this Court.

It is apparent that the Learned High Court Judge hand down the said judgment on 24.11.2014, and the Petitioner has lodged the present application on 17.07.2015, which is 8 months later without a reasonable explanation.

Further the Respondent attacks the maintainability of this revision application on the basis that the said application does not disclose any exceptional circumstances which warrants the exercise of the revisionary powers of this court.

The above rationale was embedded in many decided cases in the Supreme Court. In all the cases cited by the Respondent Company will fortify the argument raised by the Respondent.

In response to the above objection, as to the undue delay in making this revision application it is stated by the Petitioner the said delay was due to the obtaining the certified copies of the proceedings.

It is the contention of the Petitioner, that the question of delay is a relative term and should be dealt according to the circumstances of the case. The Petitioner has adverted Court to the case of VANIK INCORPORATION .VS. JAYASEKARA (1997)(2) SLR- 365- to justify the course of procedure adopted by the Petitioner to set aside the said impugned order of the High Court. In essence it is said that the Revisionary powers could be exercised where there has been a positive miscarriage of justice.

It is alleged by the Petitioner that the Learned Magistrate has given an order complying with the Section 72 of the Primary Court Procedure Act, where as the Learned High Court Judge has violated the above section in his determination as stated above. In the above setting it is alleged that there will be a serious miscarriage of justice if the effect is given to the order of High Court Judge.



But it is seen from the facts placed before Court that the Respondent Company has already paid a sum of Rs.54 million to the original owner of the said company and has agreed with the Petitioner to pay 10 million, and out of the said amount the Respondent paid 1 million to the Petitioner.

For the reasons stated herein before this court is of the view that the Learned High Court Judge's impugned order is not tainted with error.

In view of the conclusion I have reached it becomes necessary to dismiss the Petitioner's application forthwith.

Application is dismissed costs fixed at Rs.10,000/.

**JUDGE OF THE COURT OF APPEAL**

W.M.M.Malinie Gunarathne, J  
I agree,

**JUDGE OF THE COURT OF APPEAL**