

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

In the matter of an application in  
terms of Section 4(1)(c) read with  
Section 2(1) of the Maintenance Act  
No: 37 of 1999.

Thilaka Wadasinghe  
Liyanarathnage  
37, Somaweera Chandrasiripura,  
Mampe, Piliyandala.

**Court of Appeal Case No: PHC/86/09**

High Court Colombo Case No: HCRA/29/07

Magistrate's Court Colombo Case No:3828/03/04

**Applicant**

***Vs.***

Hudson Samarasinghe,  
255/B/11,  
Torrington Gardens,  
Torrington Mawatha,  
Colombo 07.

**Respondent**

***And***

In the matter of an application in  
terms of Article 154P of the  
Constitution read with the High

Court of the Provinces (Special Provisions) Act,

Hudson Samarasinghe,  
255/B/11,  
Torrington Gardens,  
Torrington Mawatha, Colombo 07.

**Respondent – Petitioner**

**Vs.**

Thilaka Wadasinghe  
Liyanarathnage  
37, Somaweera Chandrasiripura,  
Mampe, Piliyandala.

**Applicant – Respondent**

**AND NOW**

In the matter of an application for revision in terms of Article 138(1) of the constitution and Section 11(1) of the High Court of the Provinces (Special Provisions) Act No 19 of 1990.

Hudson Samarasinghe,  
255/B/11,  
Torrington Gardens,  
Torrington Mawatha, Colombo 07.

**Respondent – Petitioner –  
Petitioner**

**Vs.**

Thilaka Wadasinghe  
Liyanarathnage  
37, Somaweera Chandrasiripura,  
Mampe, Piliyandala.

**Applicant – Respondent –  
Respondent**

**Before : P.R.Walgama, J  
: L.T.B. Dehideniya, J**

**Counsel : Kuwera de Soyza with Sumedhe  
Mahawanniarachchi and K. Galagedara for the  
Respondent – Petitioner – Petitioner.  
: Upul Jayasuriya with Sadamal Rajapaksha for  
the Applicant – Respondent – Respondent.**

**Argued on : 15.02.2016**

**Decided on: 27.05.2016**

CASE- NO- CA (PHC)-APN- 86/2009- ORDER- 27/05/2016

**P.R.Walgama, J**

The instant order concerns an application made by the Respondent to resolve the matter as to the

maintainability of the Petitioner's application as this Court has no jurisdiction to maintain the same.

Before dwelling on the threshold issue it is vital to consider the background which led to the afore said application of the Petitioner.

The Respondent- Petitioner by his petition has invoke the revisionary jurisdiction of this Court to have the impugned orders of the Learned High Court Judge and the Learned Magistrate to be vacated.

The Applicant- Respondent- Respondent instituted action in the Magistrate Court of Colombo, claiming maintenance for her and for her adult son.

In pursuant to the receipt of summons the Respondent- Petitioner, appeared in court and object to the Petitioner's application in terms of section 4 (1)(b) of the Maintenance Act No. 37 of 1999, as the application for maintenance of an adult offspring could be made only by the person himself unless he or she is incapable of making such application.

The Learned Magistrate by his order dated 14<sup>th</sup> December 2004, overruled the objection and held that the Respondent can have and maintain the action as it is.

Being aggrieved by the said order of the Learned Magistrate, the Petitioner , a revision application was

filed in the High Court of Colombo, and the Learned High Court by his order dated 12.02.2007 had revised the said impugned order of the Magistrate and held that the Respondent could not have coupled the son's application for maintenance in her application and thus ordered that these two applications should be dealt separately.

In pursuant to the said order of the Learned High Court Judge the Petitioner filed objections in the Magistrate Court to the Respondent's application for maintenance challenging the alleged marriage between him and the Respondent, on the basis that the same court found him guilty for bigamy for entering in to a marriage with the Respondent, as the first marriage was never dissolved. Therefore it is common ground that there is no valid marriage between the Petitioner and the Respondent, and the subsequent marriage was a nullity.

The Learned Magistrate after hearing both parties arrived at the conclusion and determination, made order on 12<sup>th</sup> February 2007, wherein it was held that the alleged marriage between the Petitioner and the Respondent is valid and as such the Respondent is entitled to maintain her application for maintenance.

Being aggrieved by the said order of the Petitioner filed a revision application to have the above order

set aside. But as per judgment dated 10.06.2009, the Learned High Court Judge has dismissed the Petitioner's application, and as a result of which the Petitioner has filed a Special leave to Appeal application in the Supreme Court.

Nevertheless it is alleged by the Petitioner that when the said application was supported in the Supreme Court the Counsel for the Respondent had objected to the said application on the basis that the judgment challenged therein was made by the Learned High Court Judge by exercising its revisionary jurisdiction and therefore there is no provision to file a Special Leave to Appeal application in the Supreme and proper course of action is to file an appeal in the Court of Appeal.

As a result of the afore said, the Petitioner was compelled to come by way of a revision application as the appealable period had expired for the ~~petitioner~~ petitioner to preferred an appeal.

When this matter was taken up for argument the counsel for the Respondent raised a preliminary objection to the application of the Petitioner;

That the Petitioner has failed to comply with the provisions of section 14(2) of the Maintenance Act No. 37 of 1999 which states thus;

“ Any person dissatisfied with an order made by a High Court in the exercise of its appellate jurisdiction under this section, may prefer an appeal therefrom to the Supreme Court, on a question of law, with the leave of the High Court and where such leave is refused, with the special leave of the Supreme Court had and obtained.”

It is contended by the Petitioner that an appeal to the High Court under the Maintenance Act is available only against an order awarding maintenance made under Section 2 or 11 of the above Act.

✓ The categorical position of the Petitioner is that the impugned order which is been challenged is an order as to the maintainability of the Respondent's claim for maintenance and not to revise any order of maintenance.

Therefore it is said that the Learned Magistrate's order was not an appealable order and it is by way of a revision the petitioner has come to the High Court to have the said order set aside.

✓ It is also alleged by the Respondent that the Petitioner has failed to adduce exceptional circumstances to invoke the revisionary jurisdiction of this court as well as in the High Court.

It is vital to note the Article 154 P (3)(B) of the Constitution which states thus;

Every such High Court shall

“ notwithstanding any thing in Article 138 and subject to any law, exercise appellate any revisionary jurisdiction in respect of convictions, sentences and orders entered or imposed by Magistrate Courts and Primary Courts within the province.”

The substantive principle of law regarding the above position was authoritatively laid down in case of RUSTOM .VS. HAPANGAMA AND COMPANY- 1978-79-(2) 225

“The power by way of revision conferred on the Appellate Court are very wide and can be exercised whether an appeal has been taken against an order of the original court or not. However, such powers would be exercised only in exceptional circumstances and as to what such exceptional circumstances are dependent on the facts of each case”.

It is salient to note that Article 154 P (6) of the Constitution has expressly recognized the exercise of the Appellate jurisdiction over the final order, judgment, or sentence of any such Court , in the exercise of its jurisdiction under paragraph 3(b), 3(c)



or (4) may appeal therefrom to the Court of Appeal in accordance with Article 138.

Nevertheless it is position of the Petitioner that in the first instance as he appealed to the supreme court by special leave to appeal, and later on he moved to withdraw the said application and by that time the appealable period has lapsed, and as such the Petitioner had no other option other than to make this revision application to this Court.

Therefore it is contended by the Petitioner that as the impugned judgment is ex facie incorrect and as there was a necessity to obtain a stay order are sufficient grounds to invoke the revisionary jurisdiction of this court.

It is apparent that our Superior Courts had allowed and had entertained revision applications even when a right of appeal was available to the petitioner. To buttress the above position the counsel for the Petitioner has cited the following cases;

RANASINGHE AND OTHERS .VS. L.B. FINANCE LTD  
[2005 (2) S.L.R.- 393- has observed thus;

“that it is settled law that the superior courts have the power to revise an order made by an original court even an appeal has been taken”

Therefore in the above factual matrix it is abundantly clear that the Learned Magistrate has made a perverse order when he rendered that the petitioner should pay maintenance to the Respondent. The Learned High Court Judge by his order dated 10.06.2009 has affirmed the said impugned order of the Magistrate.

It is the stance of the Respondent <sup>that</sup> the instant ~~the~~ revision application is in respect of payment of maintenance therefore the petitioner should have complied with the Section 14(1) of the Maintenance Act.

In that it is said that in the instant matter the Petitioner has failed to prefer an appeal to the High Court as provided in section 14(1) of the Maintenance Act No. 37 of 1999, instead the Petitioner has preferred a revision application to the High Court.

To cap it all it is stated by the Respondent if the petitioner is to challenge the order invoking the revisionary jurisdiction one must establish the existence of exceptional circumstances for the High Court as well as this court to exercise ~~ed~~ the same. ~~✓~~

Therefore it is reiterated by the Respondent that the Petitioner should have acted in terms of Section 14 (2) and preferred an appeal to the Supreme Court without making the present application by revision.

The counsel for the Respondent rest his argument on the basis that the impugned orders from the Magistrate AND the Learned High Court Judge relates to the orders made on payment of maintenance. But it is seen from the said impugned orders that the said orders relate\$ only to the~~the~~ issue whether the Respondent is entitled to maintain her application for maintenance despite the fact that the Petitioner's first marriage has not been dissolved, and disregarding the fact that he was charged for bigamy and convicted in the Case No. 56041/01/93.

Therefore a mere cursory glance at the afore said situation, it is apparent that the Learned Magistrate's order is an incidental one which does not fall within the purview of Section 14 (1) of the afore said Maintenance Act.

Hence in the above setting it is abundantly clear that the Petitioner's first marriage has not been dissolved, at the time, the marriage with the Petitioner took place. As a result the Petitioner was charged in the said Magistrate Court case and convicted.

In the said back drop the marriage between the Petitioner and the Respondent is null and void. Nevertheless the Learned Magistrate by the said impugned order pronounced that the Respondent

could proceed with her application for maintenance, even when there is no valid marriage in existence between the Petitioner and the Respondent.

Hence this court is of the view that a tread bear evaluation by the Court below of the factual and legal matrix emerged in this application, we are compelled to arrive at the irresistible conclusion that the preliminary objection of the Respondent should stand rejected.

Thus the preliminary objections are over ruled, and matter is fixed for argument accordingly.

**JUDGE OF THE COURT OF APPEAL**

L.T.B. Dehideniya, J  
I agree,

**JUDGE OF THE COURT OF APPEAL**