

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

Court of Appeal Case No.
CA (PHC) APN 119/2015
High Court of Colombo Case No.
Revision Application 56/ 2015
Magistrate Court of Colombo
Case No. 11303/09/M/14

Yajanthiran Vinifreeda Prebha (nee
Amalathasan Vinifreeda Prebha),
No. 146/5, Arethus Lane, Wellawatta,
Colombo 06.

Applicant – Respondent - Petitioner

Vs.

Vettivelu Yajanthiran,
No. 34, Lux Etolies Hotel,
Chetty Street Lane, Nallur,
Jaffana.

Respondent - Petitioner - Respondent

Before : Malinie Gunarathne J.
L.T.B. Dehideniya J.

Counsel : T.Thambaiyah for the Applicant Respondent Petitioner
Anuja Premarathne with D.Dharmarathne instructed by
N.Kaneshayogan for the Respondent Petitioner Respondent

Supported on : 19.01.2016

Written Submissions of the Respondent Petitioner Respondent filed on : 15.02.2016

Written Submissions of the Applicant Respondent Petitioner filed on : 16.03.2016

Decided on : 01.06.2016

L.T.B. Dehideniya J.

This is a revision application against an order of the Learned High Court Judge of Colombo. The facts of the case are briefly as follows. The Applicant - Respondent - Petitioner (the Petitioner) instituted action in the

Magistrate Court Colombo praying maintenance for her two children and herself from the Respondent – Petitioner - Respondent (hereinafter called and referred to as the Respondent). The parties entered in to a settlement at the Magistrate Court in relation to the application for the interim relief. Later the Respondent filed an application in the Magistrate Court seeking to set aside the settlement on several grounds, was refused by the learned Magistrate. The learned Magistrate later made the interim order permanent. Being aggrieved by the said order the Respondent moved in revision in the High Court of Colombo. The Learned High Court Judge set aside the order of the learned Magistrate and ordered to calculate the amount paid as the interim payment and to set off that amount against the future payments to be paid by the Respondent consequent to a fresh order for interim payment of maintenance to be made by a Magistrate Court. Being aggrieved by the said order, the Petitioner presented this revision application.

The Petitioner moved to support the application with notice to the Respondent. At the stage of support, the counsel for the Respondent raised a preliminary objection on the maintainability of this application. The objection is as follows;

“The exceptional circumstances have not been averred and there is other relief available to the Petitioner which the Petitioner has not exhausted and the revision lies only on the exceptional circumstances where there is no other remedy available and already the learned Magistrate has granted the relief in terms of paragraph “d” of the petition which is the substantive relief that has been prayed for in this petition and therefore this application is misconceived in law and cannot be maintained.”

This objection has several limbs. First limb is that the exceptional circumstances not averred in the petition. The Petitioner, in the paragraph

17 and 18 of the petition, aver the exceptional circumstances. The Learned High Court Judge's determination to set off the moneys already paid towards the maintenances of the children for the money to be paid in future in consequence to an order of the Magistrate is averred as exceptional circumstances.

The second limb of the objection is that there are other reliefs available to the Petitioner and has not been exhausted and the revision lies only on exceptional circumstances where there are no other remedies available. The revisionary jurisdiction of this Court is not limited to instances where there is no other remedy available. Even if the right of appeal is available, the revisionary jurisdiction can be invoked if the exceptional circumstances exist.

Rustom v. Hapangama & CO. [1978-79] 2 Sri L R 225

(1) The powers 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 where an appeal lay and as to what such exceptional circumstances are is dependent on the facts of each case.

Buddhadasa Kaluarachchi V. Nilamani Wijewickrama and another [1990] 1 Sri L R 262

(5) The Court of Appeal has the power to act in revision, even though the procedure by way of appeal is available, in appropriate cases.

Mallika De Silva V. Gamini De Silva [1999] 1 Sri L R 85

2. Where the Order of Court is wrong ex facie it would be quashed by way of revision even though an appeal may lie against such order.

S.A.D.T. Jayathilaka Vs Peoples' Bank, and others SC Appeal 92/2011 SC minutes 02.04.2014 at page 4

Assuming for the purpose of argument the appeal is the proper remedy, a question will arise as to whether a party could invoke the revisionary jurisdiction of the High Court. The Courts have held that even in cases where appeal is available if exceptional circumstances are present Court could act in revision.

Ranjith Samarasinghe V. k Wilbert CA (PHC) 127/99 CA minutes 28.03.2011

When an alternative remedy is available a party dissatisfied with an order of a lower Court can invoke the revisionary jurisdiction of the superior Court only upon establishment of exceptional circumstances.

It is the settled law that even if there is an alternative remedy is available, the revisionary jurisdiction of this Court can be invoked on exceptional circumstances.

Bank Of Ceylon V Kaleel and others [2004] 1 Sri L R 284

(1) The court will not interfere by way of revision when the law has given the plaintiff-petitioner an alternative remedy (s. 754(2)) and when the plaintiff has not shown the existence of exceptional circumstances warranting the exercise of revisionary jurisdiction.

Per Wimalachandra, J.

"In any event to exercise revisionary jurisdiction the order challenged must have occasioned a failure of justice and be manifestly erroneous which go beyond an error or defect or irregularity that an ordinary person would instantly react to it - the

order complained of is of such a nature which would have shocked the conscience of court."

In the present case the learned High Court Judge ordered to calculate the payments made so far for the maintenance of children and to set off them against the future payments to be made in consequence to an order of the Magistrate Court. This order shocks the conscience of Court. The payments made were for the maintenances of the two children. The moneys paid have been utilized for that purpose and now the Court orders the Petitioner, the Applicant of the maintenance application, to pay them back. Setting off against future payment is paying them back. Can a Court make an order to pay back the money paid to her for the maintenance of her children in a maintenance application? On the face of the record, exceptional circumstances exist.

The other part of the preliminary objection is that the Magistrate Court has already made an order and therefore this application cannot be maintained. As I pointed out earlier, the order of the Learned High Court Judge was challenged on impracticability that the Petitioner has to pay back the money spend on the maintenance of the two children.

Under these circumstances, I overrule the preliminary objection and fix this case for support.

Judge of the Court of Appeal

Malinie Gunarathne J.

I agree.

Judge of the Court of Appeal