

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

Kosala Bandara Bakmeewewa,
No.27/3, Thelawala Road,
Rathmalana.

And two others

Defendants - Petitioners

Court of Appeal Case No.
CA (PHC) APN 97/07

High Court of Colombo
Exercising Civil Jurisdiction
Case No. HC/Civil/34/2005(1)

Vs.

L.B. Finance PLC,
No.275/75, Prof. Stanly Wijesundaea
Mawatha,
Colombo 07.

Plaintiff - Respondent

Before : Malinie Gunarathne J.

: L.T.B. Dehideniya J.

Counsel : Manohara de Silva PC with Nimal Hippola for the Defendants
Petitioners.

Anuruddha Nanayakkara for the Plaintiff - Respondent.

Argued on : 20.01.2016

Decided on : 13.06.2016

L.T.B. Dehideniya J.

The plaintiff Respondent (hereinafter called and referred to as the Respondent) instituted action in the High Court of Western Province exercising civil jurisdiction (commonly known as the Commercial High Court) against the Defendants Petitioners (hereinafter called and referred to as the Petitioners). The parties arrived at a settlement and the Petitioner agreed to pay a sum of money by way of installments. The Petitioner being failed to comply the terms of settlement, the Court issued a writ of execution to recover the money due. Being aggrieved by the said order, the Petitioner presented this revision application to this Court seeking relief.

At the argument stage, we directed the parties to address Court on the jurisdiction of this Court on revision applications from the Commercial High Court. In the written submissions of the Respondent it was brought to our notice that this issue has been taken up as far back as 10.02.2010, but due to certain unavoidable circumstances such as the retirement of a Judge, re constitution of the benches and awaiting for the decision of a divisional bench, the issue was not finalized.

The Respondent referred to the journal entry dated 25.11.2014 and submitted that this Court has made an order on 25.11.2014 that this Court has no jurisdiction to entertain this revision application. The Court has not come to a final decision on the issue of jurisdiction but it observed that there is an issue. Therefore we cannot rely on the said journal entry alone to come to a conclusion.

The Commercial High Court was established under the authority of the High Court Special Provisions Act No. 10 of 1996. Section 2 of the Act empowers to establish a High Court exercising civil jurisdiction. The section 2 (1) reads thus;

2. (1) Every High Court established by Article 154P of the Constitution for a Province shall, with effect from such date as the

Minister may, by Order published in the Gazette appoint, in respect of such High Court have exclusive jurisdiction and shall have cognizance of and full power to hear and determine, in the manner provided for by written law, all actions, applications and proceedings specified in the First Schedule to this Act, if the party or parties defendant to such action resides or reside, or the cause of action has arisen, or the contract sought to be enforced was made, or in the case of applications or proceedings under the Companies Act, No. 17 of 1982 the registered office of the Company is situated, within the province for which such High Court is established.

The Act specifically provide for the procedure for appeals from the judgments and orders of the High Court. The right of appeal was given by subsection (1) to the party aggrieved by a judgment and sub section (2) provides for an appeal after obtaining leave if aggrieved by any order. The appeal in either case, only to the Supreme Court. The section reads thus;

5. *(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. (Emphasis added.)*

*(2) Any person who is dissatisfied with any order made by a High Court established by Article 154P 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 in law, with*

the leave of the Supreme Court first had and obtained. (Emphasis added.)

(3) In this section, the expressions "judgment" and "order" shall have the same meanings respectively, as In section 754 (5) of the Civil Procedure Code (Chapter 101).

The Commercial High Court is a first instance Court exercising original civil jurisdiction on certain matters. The Legislature thought it fit to vest the appellate jurisdiction from the Commercial High Court to the Supreme Court. it has been held in the case of *Swasthika Textile Industries Ltd. v. Thanthrige Dayarathne* [1993] 2 Sri L R 348 at 352 that;

In dealing with The Agrarian Services (Amendment) Bill (Supreme Court S.D. Nos. 2/91 and 4/91; determined on 7.2.91) this Court referred to important principles governing the jurisdiction of courts and tribunals exercising the judicial power of the people, and the interpretation of Article 154P (3);

1. Apart from jurisdictions constitutionally vested and entrenched, directly or indirectly, Parliament may, by ordinary legislation, abolish, alter or transfer jurisdictions ; Parliament may create a new jurisdiction or transfer an existing jurisdiction, so long as such jurisdiction is vested in as person or body constitutionally entitled to exercise the judicial power of the people ;

2. The appellate and revisionary jurisdiction of the Court of Appeal under Article 138 (1) is not entrenched, as it is "subject to the provisions of the Constitution or of any law "; it may therefore be abolished, amended or transferred. By contrast, its jurisdictions under Articles 140 and 141 are entrenched; but for the proviso

inserted by the First Amendment, its jurisdiction under Article 140 cannot be transferred even to the Supreme Court;

The contention of the Counsel for the Petitioner is that the jurisdiction of a Court cannot be excluded unless it is expressly provided. He cites *Brindra* and submits that a statute should not be interpreted to exclude the jurisdiction of Court unless it expressly does so. The section 5 of the High Court Special Provisions Act No 10 of 1996 expressly provides that the appellate jurisdiction from the Commercial High Court is vested in the Supreme Court.

In the case of *Sunil Chandra Kumara v. Veloo* [2001] 3 Sri L R 91 Jayasinghe, J. referred to *Kulatunga, J in Gunaratne v. Thambinayagam* [1993] 2 Sri L R 359 with approval and observed at page 99 that;

"The learned Counsel for the Petitioner submitted that particularly in the background of legislative provisions existing prior to the 13th amendment (viz the Courts Ordinance, the Administration of Justice Law, Article 138 of the Constitution and the relevant Statutes on Civil and Criminal Procedure), the expression "appellate jurisdiction" (as opposed to "original jurisdiction") would ordinarily include the power to review decisions by way of appeal, revision or restitutio in integrum; that Article 154 P (3) (b) enacted by 13th amendment vested "appellate jurisdiction" in the High Court limited to appeal and revision of the decisions of the Magistrate's Courts and Primary Courts; that Section 3 of Act No. 19 of 1990 extended the exercise of such jurisdiction to orders made by Labour Tribunals and orders made under Section 5 and 9 of the Agrarian Services Act No. 58 of 1979; and that in the context the expression the "appellate jurisdiction" in Section 9 of the Act should not be limited to an appeal

made "eo nomine" but should be interpreted to include the power of review by way of revision."

In the present case the Petitioner moved this Court to act in revision or restitutio in integrum which is also an extra ordinary remedy exercised by the appellate courts to correct the errors. In the case of Sunil Chandra Kumara v. Veloo (*supra*) it was observed that the remedy of restitutio in integrum is also a remedy that comes within the appellate jurisdiction.

This Court has held in several case that the appellate jurisdiction in respect of orders and judgments of the Commercial High Court is vested in the Supreme Court. Australanka Exporters Pvt Ltd V. Indian Bank [2001] 2 Sri L R 156 is a case where the plaintiff instituted hypothecary action in the Commercial High Court of Colombo, to recover a sum of money lent to the Defendant, as the Defendant defaulted, the matter went ex parte and decree was entered against the Defendant. The Application to purge default was dismissed. Thereafter the Defendant sought to revise the said Order of the High Court by way of a revision application filed in this Court and Raja Fernando J. held that Appellate jurisdiction in respect of Judgments and orders of the High Court of the Provinces made in the exercise of its civil jurisdiction is vested exclusively in the Supreme Court.

In the case of Senanayake and others v. Koehn and others [2002] 3 Sri L R 381 the petitioner-respondent instituted action under sections 210 and 211 of the Companies Act in the Commercial High Court seeking certain relief. The High Court granted the relief prayed for. An appeal was lodged against that order in the Supreme Court. The respondent-petitioner moved the Court of Appeal in revision to make order staying the operation of the judgment; there was no prayer to revise the judgment. Gamini Amarathunga J observed at page 387 that "*It is, therefore, my considered view that it is not proper for this court to examine the legality of the*

judgment of the Commercial High Court even for the limited purpose of satisfying itself that the petitioner is entitled to the relief prayed for.”

It has been held by my sister Malinie Gunarathne J in the revision application of the Global Rubber Industries (Pvt) Ltd. v. Ceylinco Insurance PLC and others CA (PHC) APN 18/2015 CA minutes dated 18 11 2015 that this Court has no jurisdiction in respect of orders of the Commercial High Court.

My view is that this Court has no appellate jurisdiction including revisionary jurisdiction and restitutio in integrum in respect of orders and judgments of the High Court Exercising Civil Jurisdiction established under the High Court Special Provisions Act No. 10 of 1996.

Accordingly I dismiss this revision application. Under the circumstances of this case, I order no costs.

Judge of the Court of Appeal

Malinie Gunarathne J.

I agree.

Judge of the Court of Appeal