

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

Jayasinghe Kodithuwakkulage Nuwan
Patirana,
252/2, Thannawatta Mawatha, Rathnapura.

1st Party Petitioner Respondent

**Court of Appeal Case No.
CA (PHC) 15/2016**

**High Court of Rathnapura
Case No. HCR/RA 53/2005**

**Magistrate Court of
Rathnapura Case No. 30720**

Vs.

Sujith Harshana Manamperi
Goonawardena,
Palmgarden Estate, Rathnapura.

2nd Party Petitioner Respondents

Tiran Dimuth Koralage,
Palmgarden Estate, Rathnapura.

3rd Party Petitioner Respondent

Officer in Charge,
Police Station, Rathnapura

Appellant Respondent Respondent

Before : P.R. Wlgama J.
: L.T.B. Dehideniya J.

Counsel : Appellant is absent and unrepresented.
Maithree Wickramasinghe PC with Rakitha Jayathunga for the
2nd and 3rd Party Petitioner Respondents

Argued on : 12.02.2016

Decided on : 14.07.2016

L.T.B. Dehideniya J.

This is an appeal from an order of the Learned High Court Judge of Rathnapura refusing notice in a revision application filed against an order of the learned Magistrate in a case filed under part VII of the Primary Court Procedure Act. The Counsel for the 2nd Party Respondent (hereinafter called and referred to as the 2nd Respondent) and the 3rd Party Respondent (hereinafter called and referred to as the 3rd Respondent) raised a preliminary objection that no appeal lies against the impugned order.

His argument is that under Article 154 (6) of the Constitution, an appeal from a Provincial lies to the Court of Appeal only against a “final order, judgment or sentence” of that Court. The Counsel relies on the judgment of a Divisional Bench of the Supreme Court in the case of Chettiar v. Chettiar SC Appeal No. 101A and 101B/2009 SCM 10.06.2010, and submits that the refusing to issue notice in a revision application is not a final order and therefore, no appeal lies.

Article 154 P (3) b of the Constitution conferred revisionary and appellate jurisdiction in respect of convictions, sentences and orders entered or imposed by Magistrate Courts and Primary Courts to the Provincial High Court. In this Article the appellate or revisionary jurisdiction of the Provincial High Court is not limited to final orders, but an appeal or a revision lies from any order imposed or entered by Magistrate Court or Primary Court. The Article reads thus;

154P (3) Every such High Court shall

- (a) *exercise according to law, the original criminal jurisdiction of the High Court of Sri Lanka in respect of offences committed within the Province;*
- (b) *notwithstanding anything in Article 138 and subject to any law, exercise, appellate and revisionary jurisdiction in respect of **convictions, sentences and orders** entered or imposed by Magistrates Courts and Primary Courts within the Province; (emphasis added)*
- (c) *exercise such other jurisdiction and powers as Parliament may, by law, provide.*

Article 154 P (6) of the Constitution conferred appellate and revisionary jurisdiction on the Court of Appeal from the Provincial High Court only on final orders, judgments or sentences of that Court. The Article reads thus;

*154P (6) Subject to the provisions of the Constitution and any law, any person aggrieved by a **final order, judgment or sentence** of any such Court, in the exercise of its jurisdiction under paragraphs (3)(b) or (3)(c) or (4), may appeal there from to the Court of Appeal in accordance with Article 138 (emphasis added)*

The words used in 154 P (3) (b) is “*convictions, sentences and orders*” and the words used in 154 P (3) is “*final order, judgment or sentence*”. Any order of a Primary Court or Magistrate Court is made appealable to the Provincial High Court but only the final orders of the Provincial High Court are made appealable to the Court of Appeal.

Similar categorization of orders and final orders is available in section 754 of the Civil Procedure Code. An appeal is available to a person dissatisfied with any judgment and a person who is dissatisfied with an order has to obtain

leave of the Court of Appeal (Provincial High Court) and present the appeal. Order and the judgment are defined in the section itself. The section reads;

754. (1) *Any person who shall be dissatisfied with any judgment pronounced, by any original court in any civil action, proceeding or matter to which he is a party may prefer an appeal to the Court of Appeal against such judgment for any error in fact or in law.*

(2) *Any person who shall be dissatisfied with any order made by any original court in the course of any civil action, proceeding, or matter to which he is or seeks to be a party, may prefer an appeal to the Court of Appeal against such order for the correction of any error in fact or in law, with the leave of the Court of Appeal first had and obtained.*

(3)

(4)

(5) *Notwithstanding anything to the contrary in this Ordinance, for the purposes of this Chapter -*

"judgment" means any judgment or order having the effect of a final judgment made by any civil court; and

"order" means the final expression of any decision in any civil action, proceeding or matter which is not a judgment.

There was a conflict of views taken by the superior courts in determining whether a pronouncement of Court is a final judgment or an order. This issue has been finally decided by a Divisional Bench consisting of five judges of the Supreme Court including the Chief Justice. In the case of Chettiar v. Chettiar SC Appeal No. 101A and 101B/2009 SCM 10.06.2010 Dr. Shirani Bandaranayake CJ. cited the case of Salaman v Warner (1891) 1 Q.B. 734 where Fry, L.J. observed;

I think the true definition is this. I conceive that an order is “final” only where it is made upon an application or other proceeding which must, whether such application or other proceeding fail or succeed, determine the action. Conversely I think that an order is “interlocutory” where it cannot be affirmed that in either event the action will be determined.

Her Ladyship Dr. Bandaranayake CJ. held that “Considering all the decisions referred to above, the aforesaid statement clearly has expressed the true meaning that could be given to a judgment and an order in terms of section 754(5) of the Civil Procedure Code.”

In the present case, the Learned High Court Judge has refused to issue notice in a revision application. This appeal is against that decision. If the Court decided to issue notice, it will not determine the case. The action/proceeding has to be proceeded. Therefore, according to the principle of law pronounced in the case of Chettiar v Chettiar (supra) the decision of the High Court not to issue the notice is not a final order. Accordingly no appeal lies.

I like to place on record the fact that we did not have the opportunity of hearing the Appellant in this case. The Appellant was absent and unrepresented at the argument.

Under these circumstances, I uphold the preliminary objection and dismiss the appeal.

Judge of the Court of Appeal

P.R.Walgama J.

I agree.

Judge of the Court of Appeal