

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

Court of Appeal Case No.
CA (PHC) APN 61/2011

High Court of Batticaloa Case
No. HCB/WRIT/561/2010

Sivalingam Somasundaram,
No. 336, Kumara Kovil Road,
Batticalola
And 5 others

Petitioners Appellants

Vs.

1. Dr. S. Amalanathan,
Commissioner of Co-Operative
Development and Registrar of Co-
Operative Societies,
Eastern Province Health Ministry
Complex, Court Road, Trincimalee.
2. S. Kirupairajasingham,
Assistant Commissioner of Co-
Operative Development,
Batticaloa
3. Batticaloa Multi Purpose Co-
Operative Societies Ltd.
No. 68, Baily Cross Street,
Batticaloa.
4. Thavaraj Kanthan,
Manianbapillaiyar Koovil Veethy,
Koolavadi, Batticaloa.
And 6 others

Respondents Respondents.

Before : H.C.J.Madawala J.

L.T.B. Dehideniya J.

Counsel : S. Mandaleswaran for the Petitioners Appellants

Chayac Sri Nammuni SC for the 1st and 2nd Respondents Respondents.

M.P. Ganeswaran for the 3rd Respondent Respondent.

4 to 10 Respondents Respondents absent and unrepresented.

Argued on : 21.07.2016

Decided on : 07.09.2016

L.T.B. Dehideniya J.

The Petitioners Appellants (Hereinafter called and referred to as the Appellants) are the members of the 3rd Respondent - Respondent Society (Hereinafter called and referred to as the 3rd Respondent) and the 4 to 10 Respondents Respondents were the members of the Board of Directors of the said Society. The petitioners filed this application in the High Court of Batticaloa seeking a mandate in the nature of a writ of certiorari to quash the decision of the 1st Respondent Respondent (Hereinafter called and referred to as 1st Respondent) communicated to the Petitioners by letter No. EP/15/HCB/Writ/560/10 dated 22.11.2010. The Learned High Court Judge dismissed the application on the basis that the Petitioners have not disclosed the fact that they have filed an action prior to this action on the same facts. Further the Learned High Court Judge ordered each Petitioner to pay Rs. 5,000/- as costs of the action. The appeal is against that decision.

While the appeal is pending before this Court, the ground situation has changed. The period of office of the 4 to 10 Respondents has come to an end. A new Board of Directors was elected.

Under this circumstance, the Petitioners submitted to Court that they do not intend to proceed the appeal on merits but they moved this Court to set aside the order to pay the costs. The learned SC submitted that the 1st and the 2nd Respondents do not insist on costs and consented to set aside the order of cost in relation to 1st and 2nd Respondents. 4 to 10 Respondents were absent and unrepresented at the argument. The 3rd Respondent submitted that the present Board of Directors has not consented to waive the cost.

The petitioners instituted this action on the basis that the meeting of the General Body of the 3rd Respondent, called by the 1st Respondent on 31.10.2010, while the 3rd Respondent was taking steps to convene a General Meeting on 14.11.2010, is bad in law and therefore the communication of the 1st Respondent is also bad in law. This application was dismissed by the Learned High Court Judge in the early stages of the case. The Learned High Court Judge has not ordered the costs as exemplary costs.

Under these circumstances, we are of the view that the costs ordered by the Learned High Court Judge should be set aside. Accordingly we set aside the order of the Learned High Court Judge to pay costs and allow the petitioners to withdraw the appeal.

Appeal dismissed subject to the above variation.

Judge of the Court of Appeal

H.C.J.Madawala J.

I agree.

Judge of the Court of Appeal