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

1990 අංක 19 දරණ පළාත්බද මහාධිකරණ (විශේෂ) විධිවිධාන පනතේ විධිවිධාන යටතේ මධ්‍යම පළාතේපළාත්බදමහාධිකරණයේ අංක:ප්‍රති/113/2005 දරණ නඩුවේ නියෝගයට විරුද්ධව ඉදිරිපත් කරනු ලබන අභියාචනා පෙත්සමයි.

CA (PHC) No.252/2006
HC Kandy Case No-113/05(Rev)
PC Nuwara Eliya Case No. 22785

<u>ප්‍රාථමික අධිකරණයේදී</u>

1- රාමනාදන් ආරුමුගම් තොන්ඩමන්
පාර්ලිමේන්තු මංත්‍රී
සී.ඩබ්.සී. කාර්‍යාලය,
නුවරඑළිය

2- මුත්තු සිවලිංගම්
පාර්ලිමේන්තු මංත්‍රී
සී.ඩබ්.සී. කාර්‍යාලය,
නුවරඑළිය

3- වේලුසාමි රාධා ක්‍රිෂ්නන්
පළාත් සභා මන්ත්‍රී
කදපොල,නුවරඑළිය

<u>1 වන පාර්ශවයේ වගඋත්තරකරුවන්</u>

එදිරිව

1- එම්. විනයාගසුන්දරම්
ශාන්ත ලෙනාඩ් වත්ත,මැදවත්ත,
රාගල

2- ආර්.ලෝගනාදන්
අංක 21,ලේඩි මැකලම් ඩ්‍රයිව්
නුවරඑළිය

3- ලෙච්චුමනන් නඩරාජා
අංක 21,ලේඩි මැකලම් ඩ්‍රයිව්
නුවරඑළිය

<u>2 වන පාර්ශවයේ වගඋත්තරකරුවන්</u>

<u>මහාධිකරණයේදී</u>

1- සුප්පයියා සතාසිවම්
   අංක 12/16 ග්ලේන් පෝල් පාර,
   නුවරඑළිය
2- ආරුමුගම් විජයකුමාර්
   අංක 21,ලේඩි මැකලම් ඩ්‍රයිව්
   නුවරඑළිය

2 වන පාර්ශවයේ වගඋත්තරකාර පෙත්සම්කරුවන්

එදිරිව

1- රාමනාදන් ආරුමුගම් තොන්ඩමන්
   පාර්ලිමේන්තු මංත්‍රී
   සී.ඩබ්.සී. කාර්‍යාලය,
   නුවරඑළිය
2- මුත්තු සිවලිංගම්
   පාර්ලිමේන්තු මංත්‍රී
   සී.ඩබ්.සී. කාර්‍යාලය,
   නුවරඑළිය
3- වේලුසාමි රාධා ක්‍රිෂ්නන්
   පළාත් සභා මන්ත්‍රී
   කදපොල,නුවරඑළිය

2 වන පාර්ශවයේ වගඋත්තරකාර වගඋත්තරකරුවන්

දැනට
1- රාමනාදන් ආරුමුගම් තොන්ඩමන්
   පාර්ලිමේන්තු මංත්‍රී
   සී.ඩබ්.සී. කාර්‍යාලය,
   නුවරඑළිය
2- මුත්තු සිවලිංගම්
   පාර්ලිමේන්තු මංත්‍රී
   සී.ඩබ්.සී. කාර්‍යාලය,
   නුවරඑළිය
3- වේලුසාමි රාධා ක්‍රිෂ්නන්
   පළාත් සභා මන්ත්‍රී
   කදපොල,නුවරඑළිය

1 වන පාර්ශවයේ වගඋත්තරකාර වගඋත්තරකාර අභියාචකයින්

එදිරිව

1- සුප්පයියා සතාසිවම්
අංක 12/16 ග්ලේන් පෝල් පාර,
නුවරඑළිය

2- ආරුමුගම් විජයකුමාර්
අංක 21,ලේඩි මැකලම් ඩ්‍රයිව්
නුවරඑළිය

2 වන පාර්ශවයේ වගඋත්තරකාර
පෙත්සම්කාර වගඋත්තරකරුවන්

Before : **H.C.J. Madawala , J**
&
L.T.B. Dehideniya, J

Counsel : Avindra Rodrigo with A. Fernando for the Appellant.

Decided on : 14 / 10 /2016

H. C. J. Madawala , J

This appeal dated 14/12/2006 is preferred by the Appellant to set aside and dismiss the orders of the Learned High Court Judge of the Central Province bounden in Kandy in the Revision Application No 113/05. When this matter came up for argument on 30/6/2016 the Appellant represented by Counsel made oral submissions and forwarded a photo copy of the Case Dias v. Wanigaratne reported in 2005 SLR Vol 1 p 225.

The Petitioner has filed a Revision Application in the Provincial High Court of Uva Province to revise the order dated on 9/12/2003 of the Judge of the Primary Court of Nuwara Eliya in case No 22785. Under Article 154(P) sub section (2)(b) of the

Constitution, the High Court of Uva Province did not have jurisdiction and the said case record was transferred to the Central Province Provincial High Court since Nuwara Eliya falls within the Central Province that has the revisionary jurisdiction over an order made by the Nuwara Eliya Primary Court.

It was contended that there is no provision in law to transfer an application for revision filed in one Provincial High Court to another Provincial High Court.

The Learned High Court Judge of the Central Province holden in Kandy by his order dated 22/8/2006 had decided that the Provincial High Court of Uva did not have jurisdiction to here and determine this revision application which has been transferred to the Provincial High Court of Central Province and it is the Provincial High Court of Central Province that has jurisdiction to here and determine same.

The officer-in-charge of Nuwara Eliya police filed a complaint under Section 66 of the Primary Court Procedure Act stating that a dispute relating to possession in respect of premises bearing No 21, Lady McCullums Drive Nuwara eliya had arisen between the two parties and requested court to adjudicate relating to the same under the provisions of the said Act. The Primary Court, after inquiry, made order on 31/8/2000 that the 1st Petitioner S. Sithasivam and his party are entitled to possession of the said premises and made further order prohibiting all disturbance of such possession otherwise than under the authority of an order or decree of a competent Court. While the 1st Petitioner and his party were thus in exclusive possession of the said premises on 4/6/2003 he has been forcibly dispossessed in contravention of the order made by the Primary Court on 31/8/2000. The Petitioners state that the Ceylon Workers Congress prior to that dispossession complained of now, has filed an action in the District Court of Colombo bearing Case No. 6184/ Spl against the 1st Petitioner and his Ceylon Workers Alliance and had obtain an interim injunction against the 1st Petitioner and Ceylon Workers alliance from carrying on Trade Union activities at the said premises 21, Lady McCullums Drive.

The said order of the District Court of Colombo was challenged by way of Leave to Appeal in CALA application No. 182/2003 by the 1st Petitioner and the Court of Appeal finally made a determination suspending the operation of the interim injunction granted by the District Court in the said case until any contrary order is made by the Court of Appeal. The Petitioner by way of petition and affidavit dated 21/01/2004 filed an application for restoration of the said Premises. Petitioners moved court that the Respondents had acted in violation of its order and have forcibly ejected the Petitioners from there lawful possession and moved that court be pleased to punish the Respondents for contempt of Court under Section 73 of the said Act. The Respondents without filing any objections or without showing any cause against the contempt of court charge raised a preliminary objection against the court proceedings any further with the said matters.

Further the Learned Primary Court Judge made order on 9/12/2003 had stated that since 2 years and 11 months had passed since the date of the original order and the Respondent according to the said order have originally handed over possession to the Petitioners and a long period of time has passed since then and in the Circumstances the court cannot grant the relief prayed for to restore possession or act under section 73 of the said act and dismissed the Petitioners application.

Being aggrieved by the said determination of the Learned Magistrate dated 9/12/2003 the Petitioners appeal against the said order by way of revision on the following grounds of appeal;

(a) The said order is contrary to law and against the weight of evidence adduced in this case.

(b) The Learned Judge totally misdirected himself in not making a determination commanded by the law for him to do i.e on the

application made to restore the Petitioners to possession and punish the Accused who have by violence dispossessed the Petitioners by unlawful means specifically for the reason that in the original order dated 31/8/2000 the Primary Court has prohibited all disturbance of possession of the Petitioner otherwise than under the authority of and order or decree of a competent court under 68(3) of the said act.

(c) *Instead the Learned Magistrate has misdirected himself in not administering justice according to law and has legitimized the unlawful and illegal dispossession of the premises by the Respondents which was original given to the Petitioners by the Primary Court which possession is synonymous with possession under the authority and supervision by the Primary Court and therefore contempt of its authority and those who had violated should have been punished and the Petitioners should have been restored to possession forthwith especially when the Respondents have not justified their possession with any court authority to evict the Petitioners by lawful means.*

(d) *It is respectfully and humbly submitted that the law relating to this dispute is very clear and the Supreme Court has held in the case No 49/2002 Kayas Vs. Nazeer and two others that the Primary Court activities the fiscal under Sec 76 to eject a person who was placed in possession by Primary Court and who has been dispossessed while such order is in force under 68(3) and 68(4) by using the inherent powers of court arising from a conviction for violating the orders*

made under Sec 68(1) and (2) independent of any discretion to restore possession of that person. The said judgment of the Supreme Court is binding on the Primary Court and has been not followed and disregarded in utter contempt of the Supreme Court authority.

It was submitted by the Petitioners that as there was sufficient material available on the record to have made a determination in favour of the Petitioners restoring them to the possession they held however the Learned Judge has misdirected himself and when he should have convicted those who have committed contempt and acted in violation of the Primary Court order made originally on 31/8/2000 he has failed to do so.

Further it was submitted that the erroneous order made by the Learned Judge has;

(a) *Resulted in miscarriage of justice to the Petitioner,*

(b) *Irreparable damage and irremediable mischief would be caused to the Petitioners unless they are restored to possession they held previously.*

(c) *In the aforementioned premises the Petitioners humbly submit that they have been denied a fair and impartial inquiry occasioning failure of justice entitling to humbly request the intervention of your Lordships court acting in revision to forthwith order the Learned Primary Court Judge to proceed with the trial of contempt proceedings as well as order that the Petitioners be restored to possession.*

Accordingly moved court to act in revision and set aside the order of the Learned Judge dated 9/12/2003 and to make a determination that the Petitioners be ordered to be restored to possession of the premises which is situated at No 21, Lady McCullum Drive Nuwara Eliya and make order to the Primary Court Judge to proceed to hear the contempt charge filed against the Respondents and for cost.

When considering the appeal that has been tendered to court, we find in the caption of the petition for the Appellant that he had not indicated the Article and section that he is invoking the jurisdiction of this court. In the petition it is stated as follows,

> "1990 අංක 19 දරණ පළාත්බද මහාධිකරණ (විශේෂ) විධිවිධාන පනතේ විධිවිධාන යටතේ මධ්‍යම පළාතේ පළාත්බද මහාධිකරණයේ අංක:ප්‍රති/113/2005 දරණ නඩුවේ නියෝගයට විරුද්ධව ඉදිරිපත් කරනු ලබන අභියාචනා පෙත්සමයි."

Further in the prayer of the petition he had only prayed for the dismissal of the Revision Application and has failed to indicate the date of the order of the Learned High Court Judge that he wants court to set aside. However on a perusal of the record in this case we find that there are two orders made by the Learned High Court Judge namely, order dated 22/8/2008 and order dated 24/11/2006.

On a perusal of the petition we find that,

(a) the Appellant had contended the jurisdiction of the Provincial High Court of Badulla and had stated that it had no power to transfer the Revision Application to the Provincial High Court of Kandy and accordingly,

(b) it was contended that the Learned High Court Judge had no power to hold an inquiry and make an order and,

(c) the final order made in this Revision Application is contrary to the facts and law made in this application.

The Learned High Court Judge of Central Province of Kandy in his order dated 24/11/2006 has ordered the Primary Court Judge of Nuwara Eliya to re hear and determine this case a fresh.

On a perusal of the record it is observed that the Learned High Court Judge of the Central Province Provincial High Court of Kandy has made his order dated 24/11/2006. The Learned High Court Judge of Central Province in Kandy has ordered to re hear and determine this case a fresh. According to journal entry on the 14th of the December 2006 the Appellant has filed this appeal against the order of the Learned High Court Judge. We find that the petition of appeal has been tendered to court after14 days has lapsed.

According to the provisions of the Code of Criminal Procedure Act No. 15 of 1979 Section 331 read as follows,

> 331. (1) *"An appeal under this chapter may be lodged by presenting a petition of appeal or application for leave to appeal to the registrar of the High Court within fourteen days from the date when the conviction, sentence or order sought to be appealed against was pronounced."*

Section 331 sub section 2 read as follows,

> *331. (2) "In computing the time within which an appeal may be preferred, the day on which the judgment or final order appealed against was pronounced shall be included, but all Sundays and public holidays shall be excluded."*

In the present case the order of the High Court Judge has been delivered on 24th of November 2006 on a Friday and the petition of appeal has been tendered to court on 14th of December 2006 on a Thursday. When applying the above Section 331(2) of the Code of Criminal Procedure Act No. 15 of 1979, it is seen that the 14 days ends

on the 12th of December 2006. As such 14 days has lapsed and there is a delay of 2 days. Hence we hold that the petition of appeal is out of time and therefore we dismiss this appeal without cost.

Accordingly as the petition of appeal is out of time, we do not intend to make any order as to the merit of this case.

Hence we dismiss this appeal without cost.

Judge of the Court of Appeal

L.T.D.Dehideniya, J

I agree.

Judge of the Court of Appeal