

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

**CA Application (Contempt) No. 02/2017**

1. Moragodage Paul Saliya Pinto,

2. Philomina Daphne Pinto,

Both of:

No.438/A1, City Terrace,  
Vihara Mawatha,  
Kaduwala.

**PETITIONERS**

**Vs.**

1. Hatton National Bank PLC,  
No.479, T. B. Jayah Mawatha,  
Colombo 10.

And 15 others

**RESPONDENTS**

C.A 02/2017(Contempt)

Before : Vijith K Malalgoda PC. J. (P/CA)&  
S. Thurairaja, PC.

Counsel : Manohara de Silva PC. for the Petitioner.

Argued &

Decided on : 21.03.2017

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Vijith K Malalgoda PC. J.(P/CA)

Learned President's Counsel appearing for the petitioner before this Court supports against the respondents for acting in violation of a stay order said to have issued by the Civil Appellate High Court of Colombo and the said order is produced before this Court at page 286. According to the said order, the Civil Appellate High Court had made the said order on 27.05.2013 until the final determination of the said case. As revealed before this Court, the final determination of this case was made in the year 2016 and said proceedings are also available in this brief in page 383 and as observed by Court, the said order was not in favour of the petitioners but was in favour of the respondents. However, the petitioner whilst relying on the fiscal order marked P1 submits that the possession of the premises in concerned was handed over to the respondents by the fiscal on 22.02.2014 in contrary to the stay order given by the Civil Appellate High Court and therefore submits that the said act by the respondents was in contempt to the order made by the Civil Appellate High Court of the Western Province. However, when going through the said document P1 we observe that the

fiscal when visited the said premises had questioned the 1<sup>st</sup> petitioner who was present to the premises and at that time the petitioner had brought to the notice of this Court that there is a stay order in operation but however the petitioner has failed to satisfy the fiscal of the utterances he made by submitting any documents to prove to the effect that there is a stay order in operation at that time. At the same time the possession was handed over to the respondents on 22.02.2014 and going through the papers filed before this Court and considering the submissions made by the learned President's Counsel, we observe that the petitioners since that date had not taken any steps at least to complain of the said conduct of the respondents before the same Court that is the Civil Appellate Court of the Western Province until they come before this Court today after three years of the said Act.

In the said circumstances this Court is not inclined at this stage to act under the provisions of the Article 105 of the Constitution and to issue summons on the respondents. Application is accordingly dismissed but we make no order with regard to costs.

PRESIDENT OF THE COURT OF APPEAL

S. Thurairaja PC. J.

I agree.

JUDGE OF THE COURT OF APPEAL

Jmr/-