

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

In the matter of an Appeal against an  
order of the Provincial High Court in the  
exercise of its revisionary jurisdiction.

C A (PHC) / 77 / 2016

Provincial High Court of

Western Province (Colombo)

Case No. HCRA 69 / 2012

Magistrate's Court Nugegoda

Case No. 84192/66

Peduru Arachchige Somawathie

Seethalatha

No. 10/4,

Dhammarathana Mawatha

Madiwela,

Kotte.

**2<sup>ND</sup> PARTY - PETITIONER -**

**APPELANT**

Vs

Officer in Charge,

Minor Offences Branch,

Police Station,

Mirihana.

**COMPLAINANT- RESPONDENT-**

**RESPONDENT**

Aruni Gunasekera

118/2,

Kandewatte Road

Nugegoda.

**1<sup>ST</sup> PARTY - PETITIONER -**

**RESPONDENTS**

1. Nandani Jayaweera

No. 118/6,

Kandawatte Road,

Nugegoda

2. Dewamullage Indika Amali Perera

No. 1184/18,

Kandawatte Road,

Nugegoda

3. Kaluarachchige Lionel Perera

No. 118/5,

Kandawatte Road

Nugegoda.

4. Balachandra Arachchige Dona

Hemarangi Ranasinghe

No. 118/7,

Kandawatte Road

Nugegoda.

5. Dewamullage Padmaseeli Perera

118/7,

Kandawatte Road

Nugegoda.

6. Mahathelge Jilson Joseph Peiris

118/3,

Kandawatte Road

Nugegoda.

7. Charlotte Perera

No. 118/10,

Kandawatte Road

Nugegoda

**1<sup>ST</sup> PARTY - INTERVENIENT**  
**RESPONDENT RESPONDENT**  
**RESPONDENTS.**

**Before:      K K Wickremasinghe J**

**P. Padman Surasena J**

Counsel; Ranjan Suwandarathne PC with Ranjith P Perera for the 1<sup>st</sup>  
Party - Petitioner - Appellant.

Priyantha Alagiyawanna for the 1<sup>st</sup> Party Respondent  
Respondent.

Supported on:            2017-07-17.

Decided on :            2017 - 08 - 03.

ORDER**P Padman Surasena J**

The 2<sup>nd</sup> Party Petitioner Appellant<sup>1</sup> is the appellant in the instant case before this Court. This appeal appears to have not been listed in Court presumably as the briefs are not yet prepared. It is in such circumstances that the 2<sup>nd</sup> Party Petitioner Appellant (hereinafter sometimes called and referred to as the 'Appellant') has filed a petition and an affidavit along with a motion in this Court seeking an interim order staying all further proceedings in the Magistrate's/Primary Courts case No. 84192/66 until the final determination of this appeal.

Learned Primary Court judge by his order dated 2012-05-21 had ordered to demolish the boundary wall constructed by the Appellant.

The application for revision filed in the Provincial High Court holden at Colombo to revise the order made by the learned Primary Court Judge had been dismissed by its judgment dated 2016-03-17.

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<sup>1</sup> Referred to as the 2nd Party Petitioner in the caption of the petition.

This Appeal has been preferred against the judgment dated 2016-03-17 Judgement delivered by the learned High Court Judge of the Provincial High Court of the Western Province Holden at Colombo in the said revision application.

It is the submission of the learned President's Counsel for the Appellant that this appeal would be nugatory if the order of the learned Primary Court Judge is carried out.

The judgment in the case of Jayantha Gunasekara V Jayatissa Gunasekara and others<sup>2</sup> what a divisional bench of this Court had held is that mere lodging in the Court of Appeal, an appeal against a judgment of the High Court in the exercise of its revisionary power in terms of article 154 P (3) (b) of the Constitution, does not automatically stay the execution of the order of the High Court. A passage which would be relevant here from that judgment is as follows. "... Obviously, to put off the execution process until the appeal is heard would tantamount to prolong the agony and to let

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<sup>2</sup> 2011 (1) Sri L R 284.

the breach of peace to continue for a considerable length of time. This in my opinion cannot be the remedy the Parliament has clearly decided upon. Hence I am confident that the construction we are mindful of placing by this judgment would definitely suppress the mischief and subtle inventions and evasions for continuance of the mischief. ...”

The preliminary objection that the learned counsel for the Respondents has raised is with regard to the maintainability of this application on the basis that the Appellant had not furnished any material pertaining to the case.

Admittedly all what the Appellant has filed in Court with regard to this application is a petition and an affidavit. Thus, we are inclined to accept the submission by the learned counsel for the Respondents that he is handicapped to respond to this application without any material pertaining to the case. Therefore, it is clear that this Court is not in a position to evaluate such an application without any material pertaining to the case under its scrutiny.



For the foregoing reasons, this Court decides to uphold the preliminary objection raised by the Respondent and proceed to refuse the application for interim relief.

**JUDGE OF THE COURT OF APPEAL**

**K K Wickremasinghe J**

I agree,

**JUDGE OF THE COURT OF APPEAL**