

IN THE COURT OF APPEAL OF THE

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

C A (CHC) APN / 137 / 2017

High Court of Colombo

Case No. HC/Civil 23 / 2015

Informatics International Lanka (Pvt)

Ltd,

No. 104,

Kithulwaththa Road,

Colombo 08.

PETIONER - PETITIONER

-Vs-

IFS AB of

Teknikrinjen 5

S 583 30 Linkoping

Sweden.

And 14 others.

RESPONDENT - RESPONDENTS

Before: K K Wickremasinghe J

P. Padman Surasena J

Counsel : Faisz Musthapha PC with S P Sriskantha and
Thushani Machado for the Petitioner - Petitioner.

Supported on: 2017-09-13.

Decided on : 2017 - 09 - 15

JUDGMENT

P Padman Surasena J

This Court reserved its order for 2017-09-15 after it heard the submissions made by the learned President's Counsel who supported this case on 2017-09-13, for notices as well as for interim relief.

It would be convenient to commence this brief order with the expectations of the Petitioner - Petitioner (hereinafter sometimes referred to as the Petitioner) from this case. They are set out in the prayers of the petition summary of which is as follows;

- a) Issue notice on the Respondent – Respondents (hereinafter sometimes referred to as the Respondent)
- b) Call for, inspect and examine the record of the Colombo High Court Case bearing No. HC/Civil 23/2015/CO
- c) Call for, inspect and examine the record of the Colombo High Court Case bearing No. HC/Civil/WP 149/2015/ARB
- d) Grant an interim order staying further proceedings in Colombo High Court Case bearing No. HC/Civil/WP 149/2015/ARB
- e) Allow the instant application of the Petitioner
- f) Set aside the order dated 2016-04-26, of Colombo High Court Case bearing No. HC/Civil 23/2015/CO
- g) Grant the reliefs sought by the Petitioner in Colombo High Court Case bearing No. HC/Civil 23/2015/CO
- h) Grant costs, and
- i) Grant such other and further reliefs as this Court shall seem fit.

The above set of prayers make it clear that the Petitioner in this application seeks to challenge firstly the order dated 2016-04-26, of Colombo High Court in the Case bearing No. HC/Civil 23/2015/CO and secondly the progress of further proceedings in Colombo High Court Case bearing No. HC/Civil/WP 149/2015/ARB.

At the outset, this Court has to observe the followings;

- I. This application has been made under Article 145 and not under 138 of the Constitution.
- II. Colombo High Court Case bearing No. HC/Civil/WP 149/2015/ARB relates to enforcement proceedings of an arbitral award.
- III. The supreme Court has rejected the application filed by the Petitioner seeking leave to appeal against the order dated 2016-04-26, of Colombo High Court Case bearing No. HC/Civil 23/2015/CO
- IV. A copy of the Supreme Court Order has not been produced before this Court, as it has not been received by the Petitioner yet.

Revisionary jurisdiction of this Court is an extraordinary jurisdiction, which this Court exercises on its discretion. When a party has a right of appeal it is exercised only on exceptional circumstances.¹

The Petitioner in this case has chosen to go before the Supreme Court exercising his right of appeal and had not thought of invoking revisionary jurisdiction of this court until the Supreme Court decided to reject his application.

The Petitioner also seeks in the same proceedings to stay by way of interim relief, further proceedings of Colombo High Court Case bearing No. HC/Civil/WP 149/2015/ARB. In contradistinction to this prayer, the Petitioner in the written submissions² has taken up the position that he 'is not seeking to revise any order judgment or decree of the High Court in pursuance to any arbitration proceedings which falls under the Arbitration Act'.³

Thus, this Court is unable to find any acceptable basis to justify as to why the Petitioner attempts to halt the progress of Colombo High Court Case

¹ Rustom V Hapaṅgama [1978-79-80] Sri. L. R. Vol. 4, 352

² Undated, hand delivered on 2017-09-14.

³ Paragraph 15 of his written submissions.

No. HC/Civil/WP 149/2015/ARB by way of a stay order to be obtained in this proceeding.

The above circumstances prompt this Court to refrain from entertaining this application which is to invoke its extraordinary and discretionary revisionary jurisdiction.

For the foregoing reasons this Court decides to refuse issuing notices on the Respondents. The Application must stand dismissed.

JUDGE OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL