

**IN THE COURT OF APPEAL OF THE**

**DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

In the matter of an application for  
revision against an order of Provincial  
High Court pronounced in exercising its  
revisionary jurisdiction.

C A (PHC) APN 162 / 2017

Provincial High Court of

Western Province (Awissawella)

Case No. 20 / 2012 Rev

Primary Court Awissawella

Case No. 50726/66

Othnapitiya Muhamdiramlage  
Hasantha Wajira Prabhashana,  
Othnapitiya,  
No 194 B,

Pasal Mawatha,

Eheliyagoda.

**RESPONDENT - RESPONDENT**

**- PETITIONER**

-Vs-

Ganegoda Witharamalage Upali

Senevirathne,

No 77,

Ganegoda,

Getaheththa.

**PETITIONER - PETITIONER -**

**RESPONDENT**

**Before: P. Padman Surasena J (P/CA)**

**K K Wickremasinghe J**

Counsel; Ranga Dayananda for the Respondent - Respondent - Petitioner.

Supported on : 2017 – 11 – 14

Decided on : 2018 - 01 - 24

ORDER

**P. Padman Surasena J (P/CA)**

The Respondent - Respondent - Petitioner (hereinafter sometimes referred to as the Petitioner) had filed this application seeking a revision of the order made by the Provincial High Court of Western Province holden in Awissawella dated 2014-03-18. It is an order directing the learned Primary Court Judge to enforce the order made by the Primary Court in respect of an information filed in terms of section 66 (1) of the Primary Courts Procedure Act No.44 of 1979 (hereinafter referred to as the Act).

It is the Petitioner - Petitioner - Respondent (hereinafter sometimes referred to as the Respondent) who had instituted this case in the Primary Court of Awissawella in terms of section 66 (1) (b) of the Act.

Learned Primary Court Judge by his order dated 2012-12-07 had concluded that the Petitioner is entitled to the possession of the disputed property.

Upon an application being made by the Respondent to the Provincial High Court seeking a revision of the said order, learned Provincial High Court Judge by his order dated 2014-03-18 had proceeded to set aside the order of the learned Primary Court Judge and directed the Petitioner not to obstruct the possession of the property by the Respondent.

The Petitioner has appealed against the said order of the Provincial High Court and the said appeal has been assigned the number CA (PHC) 59/2014 by this Court<sup>1</sup>.

In the meantime learned Primary Court Judge had refused an application by the Respondent to have the order of the Provincial High Court dated 2014-03-18 enforced. Admittedly there is no order from any Court staying further proceedings of this case.

Upon a revision application filed by the Respondent the Provincial High Court by its order dated 2017-08-10, had directed the Primary Court to enforce the order of the Provincial High Court dated 2014-03-18 on the basis that the mere filing of an appeal against it does not stay the operation of the said order.

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<sup>1</sup> Paragraph 6 of the Petition.

It is clear from the above facts that the sole purpose of this revision application is to get the enforcement proceedings in the Primary Court stayed. This is apparent even from the averments contained in the application filed before this Court.

It is to be observed that the Petitioner at no stage has challenged the order dated 2017-08-10 pronounced by the Provincial High Court directing the Primary Court to enforce the order dated 2014-03-18.

What the Petitioner has chosen to challenge in this proceeding is the judgment of the Provincial High Court pronounced on 2014-03-18. It is only after more than three and half years that the Petitioner had suddenly entertained an idea to file a revision application despite the fact that an appeal on the same issue is pending before the same Court. The Petitioner has not explained the delay in filing this application.

It is trite law that when there is a right of appeal provided for by law, it is mandatory that an applicant in a revision application must show the existence of exceptional circumstances for the intervention of the revisionary forum. However the Petitioner in this instance has not shown any of such circumstances.

Another observation this Court has to make is that the Petitioner, although seeking to obtain a stay order from this Court, has failed to fulfil the obligation placed on him by rule 2 (1).<sup>2</sup> This Court, in the case of E Haffmann-La Roche Ltd. and A. Baur & Co. (Pvt) Ltd. Vs. National Medicines Regulatory Authority and four others<sup>3</sup> held as follows,

“ .. It could also be seen that Rule 2(1) is a rigid one and that any petitioner supporting an application for interim relief must do so with notice to the respondents. This meaning could be gathered from the presence of the word 'shall' in Rule 2(1). It clearly indicates that giving notice to the respondents is mandatory and stands as a pre requisite to supporting an application for interim relief. Any applicant for interim relief must therefore necessarily comply with it. It is not open for anyone to deviate from that provision... ”

It is to be noted that the Supreme Court did not grant leave to appeal against the above order. It has dismissed the said application for leave to appeal.<sup>4</sup>

Section 74 (2) of the Primary Courts Procedure Act has specifically taken away the right of appeal against any determination or order made under the provisions of its part VII. The primary object of proceedings under that

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<sup>2</sup> Court of Appeal (Appellate Procedure) Rules 1990.

<sup>3</sup> C A (Writ) Application No. 98/ 2016, CA minutes dated 2016-06-22.

<sup>4</sup> SC SPL. LA. No. 106/2016, decided on 2016-07-28

part is to prevent breach of peace amongst the parties disputing the claims for possession of lands. The Court when exercising this jurisdiction would take only a preventive action. The order that would be made is of a provisional nature pending final adjudication of rights in a civil Court.

In any case, this Court in the case of Jayantha Gunasekara V Jayatissa Gunasekara and others<sup>5</sup> had held 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. It would be appropriate to quote the following passage from that judgment. It is as follows;

".... Obviously, to put off the execution process until the appeal is heard would tantamount to prolong the agony and to let 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

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<sup>5</sup> 2011 (1) Sri L R 284.

definitely suppress the mischief and subtle inventions and evasions for continuance of the mischief. ...”

For these reasons one cannot find fault with the order made by the Provincial High Court directing the Primary Court to enforce the order of the Provincial High Court. It is to circumvent the said order that the Petitioner has filed the instant application. It is the view of this Court that in these circumstances it should not issue notices on the Respondents.

Therefore this Court refuses to issue notices on the Respondents. The revision application must stand dismissed without costs.

**PRESIDENT OF THE COURT OF APPEAL**

**K K Wickremasinghe J**

I agree,

**JUDGE OF THE COURT OF APPEAL**