

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

In the matter of an appeal against  
judgment of Provincial High Court  
exercising its revisionary jurisdiction.

C A (PHC) / 98 / 2012

Provincial High Court of

Sabaragamuwa Province (Rathnapura)

Case No. HCRA 13 / 2008

Magistrate's Court Palmadulla

Case No. 29727

P.M.C. Mangalanath,

Panawenna,

Kahawatta.

**RESPONDENT - PETITIONER -**

**APPELLANT**

-Vs-

1. General Manager,  
Road Development Authority,  
Sethsiripaya,  
Battaramulla.

**APPLICANT - RESPONDENT -  
RESPONDENT**

2. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**RESPONDENT - RESPONDENT**

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

**K K Wickremasinghe J**

Counsel; Padmika Mahanama for the Respondent - Petitioner - Appellant.

Manohara Jayasinghe SC for the Respondent - Respondent.

Argued on : 2017 - 11 - 02

Decided on : 2018 - 02 - 15

### JUDGMENT

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

The Applicant - Respondent - Respondent (hereinafter sometimes referred to as the 1<sup>st</sup> Respondent) had issued a quit notice on the Respondent - Petitioner - Appellant (hereinafter sometimes referred to as the Appellant), in terms of section 3 of the State Lands (Recovery of Possession) Act (hereinafter sometimes referred to as the Act).

As the Appellant had failed to respond to the said quit notice, the 1<sup>st</sup> Respondent had thereafter made an application under section 5 of the Act to the Magistrate's Court of Palmadulla seeking an order to evict the Appellant from the land described in the schedule to the said application.

Learned Magistrate after an inquiry had pronounced the order dated 2008-01-07 evicting the Appellant from the said land on the basis that he had failed to produce any permit or due authority to remain in the said land.

Being aggrieved by the said order of the learned Magistrate, the Appellant had filed a revision application in the Provincial High Court of Sabaragamuwa Province holden in Rathnapura seeking a revision of the order of the learned Magistrate.

Perusal of the proceedings of the Provincial High Court relating to this case shows that when the Provincial High Court has taken this case for argument on 2012-04-24 the Appellant had not been ready for the argument. Learned Provincial High Court Judge had observed that the Appellant had failed to prosecute his application with due diligence.

However he had refixed the argument for another date that is 2012-04-27. Learned Provincial High Court had observed that even on that date (that is i.e. 2012-04-27) that the Appellant was not ready for the argument. It is on that basis that the learned Provincial High Court had dismissed the said revision application. Perusal of the petition of appeal filed by the Appellant addressed to this Court shows that it is against the order dated 2012-04-27 that the instant appeal has been lodged.

This Court observes that the Appellant has not taken any steps to have the said order of dismissal varied by the Provincial High Court itself by making an application for relisting.

Perusal of the petition of appeal dated 2012-05-10 addressed to this Court shows that the expectation of the Appellant is for this Court to decide on the merits of this case.

Perusal of the written submission filed by the Appellant shows that it does not set out any legal basis for this Court to set aside the order of the learned Provincial High Court Judge.

Rule 3 (13)<sup>1</sup> states as follows:

" .... It shall be the duty of the petitioner to take such steps as may be necessary to ensure the prompt service of notice, and to prosecute his application with due diligence. .."

This Court sees no acceptable reason as to why the Appellant could not have complied with this rule. Our courts have consistently held that the compliance of these rules are mandatory. Therefore, the order of dismissal

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<sup>1</sup>Court of Appeal (Appellate Procedure) Rules 1990.

made by the learned Provincial High Court Judge is an order he ought to have made in such circumstances.

For the foregoing reasons, this Court decides to dismiss this appeal with costs.

Appeal is dismissed with costs.

**PRESIDENT OF THE COURT OF APPEAL**

**K K Wickremasinghe J**

I agree,

**JUDGE OF THE COURT OF APPEAL**