

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

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

C A (PHC) APN / 170 / 2017

Provincial High Court of

North Western Province (Kurunegala)

Case No. HCR 49 / 2016

Primary Court Kurunegala

Case No. 79308 / 66

1. H A Prasanji Thusitha Kumara Dias

No. 421,

Malkaduwawa,

Kurunegala.

RESPONDENT - PETITIONER -

PETITIONER

2. N L D G Uthika Dias

No. 421,

Malkaduwawa,

Kurunegala.

Intervient - petitioner -petitioner

Vs

1. Hettiarachchige Dias

2. Jasinthu Hewage Kallyanawathie Dias

Both of No. 82,

Malkaduwawa circular road,

Kurunegala.

COMPLAINANT - RESPONDENT -

RESPONDENTS

Before: P. Padman Surasena J (P C/A)

K K Wickremasinghe J

Counsel; Luxman Perera PC with Upendra Walgampaya and T Ratnayake
for the Respondent - Petitioner -Petitioner.

Supported on: 2017 - 12 - 05.

Decided on : 2018 - 06 - 07

ORDER

P Padman Surasena J

The Petitioners and the Respondents of this application are two rival parties in the instant case which is a proceeding instituted under section 66 (1) (b) of the Primary Courts Procedure Act.

Learned Primary Court Judge having inquired into the complaint, had pronounced its order.

Being aggrieved by the said order made by the learned Primary Court Judge, the Petitioners had filed an application for revision in the Provincial High Court of North Western Province holden in Kurunegala seeking a revision of the order of the Primary Court.

The Provincial High Court after hearing refused the said revision application by its order dated 2017-11-07.

Learned counsel for the Petitioner conceded at the outset that an appeal has also been filed in respect of the same matter i.e. against the said judgment of the Provincial High Court. It was his submission that the purpose of filing this revision application despite the pending appeal is to obtain the interim relief prayed for in the prayers of this petition.

In the case of Jayantha Gunasekara V Jayatissa Gunasekara and others¹ this Court 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

¹ 2011 (1) Sri L R 284.

automatically stay the execution of the order of the High Court. A passage from that judgment which would be relevant here 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 definitely suppress the mischief and subtle inventions and evasions for continuance of the mischief. ..."

Since there is an appeal, pending before this Court it is open for the parties to have their rights adjudicated by this Court in that appeal.

When there is a right of appeal provided for by law, an applicant in a revision application must show the existence of exceptional circumstances for any intervention by a revisionary Court. This Court cannot accept the grounds urged in the petition as exceptional circumstances as they are mere grounds of appeal upon which the petition of appeal may have been lodged.

In these circumstances, this Court sees no basis to issue notices on the Respondents.

The revision application should stand dismissed.

PRESIDENT OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL