

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

In the matter of an application for revision of an order of the Provincial High Court of the Southern Province (holden in Galle)

Benthota Multi-purpose Co-operative Society Limited, Elpitiya Road,  
Bentota.

**Petitioner**

**C.A. (PHC) APN No. 46/2018**

**PHC Galle Application No: Writ 38/2018**

Vs

1. Commissioner/ Registrar of Cooperative Development, Southern Province,  
No. 147/3, Pettigalawata,  
Galle.
2. Assistant Commissioner of Cooperative Development – Galle,  
Assistant Commissioner's Office,  
No.111, Pettigalawata,  
Galle.

3. I.G. Wimal Dharamsiri,  
Co-Operative Development Officer  
(Head Office),  
No. 147/3, Pettigalawata,  
Galle.
  
4. N.T. Thanuja Nilanthi,  
Cooperative Development Assistant  
Commissioner's Office,  
No.111, Pettigalawata,  
Galle.
  
5. Jeewanthi Gunasekara,  
Co-operative Development Officer,  
Cooperative Development Assistant  
Commissioner's Office, No.111,  
Pettigalawata,  
Galle.

**Respondents**

**Before : P. Padman Surasena, J (P/CA)**  
**: A.L. Shiran Gooneratne, J**

Counsel : Chandana Wijesooriya Instructed by  
Wathsala Dulanjani for the Petitioner.

Decided on : 04.04.2018

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

The petitioner in paragraph 8 of the petition has admitted that he has filed a notice of appeal in order to exercise his right of appeal to this court against the impugned order pronounced by the Provincial High Court. This means that the grievances of the petitioner could be adjudicated by this court in the appeal to be filed by the petitioner.

When this court inquired from the learned counsel for the petitioner as to the necessity of the instant revision application his reply was that it is to obtain an interim relief suspending the relevant decision.

Then this court looked for exceptional circumstances. The learned counsel for the petitioner drew the attention of this court to

paragraph 06 of the petition. When this court peruses the averments in paragraph 06, it contains the followings:

- i. The said order is contrary to the facts and the circumstances of this case;
- ii. The learned Judge of the Provincial High Court erred in law by failing to consider that the 1<sup>st</sup> Respondent had no power to authorize the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents by "Pe 12" without withdrawing the earlier decision enumerated in "Pe 3" (attachment to the settlement marked "Pe 4a") as per the said settlement in the court marked "Pe 4a" in PHC (Galle) Writ Application No.2/2009;
- iii. The learned Judge of the Provincial High Court erred in law by failing to appreciate that the 1<sup>st</sup> Respondent was concluded by his earlier decision and could not have exercised powers under section 46(1) of the Act without withdrawing or cancelling the earlier decision marked "Pe 3" and thereby the said decision was *ultra vires*;

- iv. the learned Judge of the Provincial High Court erred in law misdirected himself by holding that the 1<sup>st</sup> Respondent had not violated the said settlement marked "Pe 4a" in PHC(Galle)Writ Application No.2/2009;
- v. the learned Provincial High Court Judge failed to appreciate that the 1<sup>st</sup> Respondent authorized the panel officers by "Pe 12" to inspect in to the books of the Petitioner without cancelling or revoking earlier the decision enumerated in "Pe 7" authorizing the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents to inspect the books of the Petitioner, purportedly in terms of section 46 (1) of the Act;
- vi. the learned Provincial High Court Judge misdirected himself by holding that the Petitioner has suppressed the gazette No.1589/19 referred to in "Pe 9" by which the 2<sup>nd</sup> Respondent had been authorized to act under section 46(1), whereas the contention of the Petitioner was that the said decision enumerated in "Pe 7" could not have taken without complying with the said terms of settlement marked "Pe 4a" in PHC Galle Writ Application No.2/2009;

- vii. the learned Provincial High Court Judge has misdirected himself by holding that the contention of the Petitioner to the effect that the 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> Respondent had failed to conclude the said inspection within the period of time they were authorized on the basis that there had been an extension of time by "Pe 16",
- viii. the Learned Provincial High Court Judge failed to appreciate that the entire endeavor on the part of the Respondent was out of malice towards the Petitioner, its Chairman and the Board of Directors;
- ix. the said order is accordingly palpably wrong;
- x. the said order has caused grave miscarriage of justice.

This court is of the view that all the above averments could best be described as grounds of appeal and not as exceptional circumstances. It is trite law that the petitioner is required to plead exceptional circumstances clearly in the petition.

Further, although the petitioner has stated in paragraph 7 of the petition that grave and irreparable loss could be caused to the petitioner because the respondents are going ahead with the said purported inspection and the submission of their report, the petitioner has failed to explain why or how such grave and irreparable loss would be caused to him.

It is the view of this court that this court can only ascertain the legality, propriacy and regularity of the proceedings in a revision application. The grounds for revision are restricted in that sense.

However, since the petitioner has stated that he has taken steps to exercise his right of appeal, it is open for him to vindicate his rights from this court through that appeal which will invariably have a scope wider than the aforementioned grounds for revision.

This court also observes that although the petitioner has prayed for an interim relief, he has failed to give adequate notice to the respondents. The registered postal article receipt, the petitioner has annexed to the petition, shows that the petitioner had posted the

notice to the respondents only on 02.04.2018. This court further observes that the impugned judgment had been delivered by the High Court on 26.02.2018. Therefore, in any case this court is not in a position to consider an interim relief of the petitioner as he has not sufficiently complied with Rule 2(1) of the Court of Appeal (Appellate Procedure) Rules 1990.

In these circumstances, it is the view of this court that no practical purpose would be served by entertaining this application. (In view of the appeal the petitioner is expecting to file in this court and this court's inability to grant interim relief). Therefore, this court decides to refuse to issue notices on the respondents. Application is dismissed without costs.

**PRESIDENT OF THE COURT OF APPEAL**

**A.L. Shiran Gooneratne, J**

I agreed

**JUDGE OF THE COURT OF APPEAL**

Na/-