

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

Ranthun Mudiyansele
Samudra Dilhani Abeyratne,
No. 690/5/28,
Kulasewana Road,
Kottawa.
Defendant-Petitioner

CASE NO: CA/18/2017/RI

DC COLOMBO CASE NO: DDV/299/2014

Vs.

Samaradiwakara Rajapaksha
Mohottilage Suranga Ravihansa
Chandrathilaka,
No. 276/4/1A,
Gamsabha Road,
Gothatuwa,
Buluwala Postal.
Plaintiff-Respondent

Before: Mahinda Samayawardhena, J.

Counsel: Shantha Jayawardena for the Defendant-Petitioner.

Written Submissions on: 19.07.2018

Decided on: 25.07.2018

Samayawardhena, J.

This is a peculiar application filed by the defendant-petitioner against the plaintiff-respondent for *restitutio in integrum* for the limited purpose of restoring her marital status pending determination of the District Court ongoing inquiry into her application for setting aside the *ex parte* divorce judgment which she alleges to have been obtained by the respondent by fraud without serving summons on her.

In the first place, if the petitioner thinks that she is entitled to seek such interim relief pending inquiry, she must first make the application before the Court where the inquiry is pending and not before this Court. Even though the petitioner in her written submissions drawing attention to proceedings of the District Court dated 28.10.2015 states that the District Court refused to suspend the decree absolute pending inquiry, I find no such order being made in those proceedings.

On that ground alone, this application shall be dismissed.

However, for curiosity, let me consider, in brief, why the petitioner makes this unusual application. At paragraph 4.1 of the written submissions she gives three reasons. The first one is her inability to claim maintenance from the respondent. I do not see any dire need for her to claim maintenance in a desperate great hurry, as, according to her own evidence, she is employed (and a graduate). The second one is in the event of the respondent's death pending inquiry her inability to claim rights of inheritance as the wife of the respondent. This is highly hypothetical, and in case the respondent dies pending inquiry her application to set aside the *ex parte* judgement will not die. The third one is the likelihood of the

respondent contracting another marriage pending inquiry. As per the proceedings of the District Court dated 28.10.2015 the respondent has given an undertaking by signing the case record not to contract another marriage pending inquiry.

There is no legal or factual basis whatsoever for this application.

I unhesitatingly refuse to issue notice on the respondent.

Application is dismissed.

Judge of the Court of Appeal