

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

In the matter of an Appeal under the High Court of Provinces (Special Provisions) Act No. 19 of 1990 against an Order of the High Court, Gampaha made under Article 154P (3)(b) of the Constitution of the Democratic Socialist Republic of Sri Lanka .

Subasingha Arachchige Pushpa
Chandralatha.

No.299/1,
Suriyapaluwa,
Kadawatha.

Respondent-Petitioner-Appellant

C.A.(PHC)Appeal No. 184/2016

P.H.C. Gampaha Case No. 29/2015

M.C. Mahara Case No. 65065

Vs.

Wickramachchige Susantha
Chandrasiri,
Chairman,
Mahara Urban Council,
Lower Karagahamuna, Kadawatha,

**Applicant -Respondent-
Respondent**

Pedi Kankanamge Anusha
Niranganie,
No.299/2,
Suriyapaluwa, Kadawatha.

**Intervenient Respondent-
Respondent**

BEFORE : JANAK DE SILVA, J. &
ACHALA WENGAPPULI, J.

COUNSEL : Kaminda de Alwis with Wasantha Herath
for the Respondent-Petitioner-Appellant
Chathura Galhena with Manoja
Gunawardena for the Applicant –
Respondent-Respondent.
Yajeesh Tennakoon for the Interventient-
Petitioner-Respondent.

WRITTEN SUBMISSIONS

TENDERED ON : 25-09-2018 & 14-12.2018(by the Appellant)
05-10-2018 (by the Applicant-Respondent)
14-09-2018 (by the Interventient-
Respondent)

DECICED ON : 16th January, 2019

ACHALA WENGAPPULI, J.

This is an appeal lodged against an order made by the Provincial High Court of the Western Province holden in *Gampaha* by which the revision application of the Respondent-Petitioner-Appellant (hereinafter referred to as the “Appellant”) was dismissed.

In instituting action before the Magistrate's Court of *Mahara*, the Applicant-Respondent-Respondent (hereinafter referred to as the "Respondent") under Section 28A(3) of the Urban Development Authority Act of 41 of 1978 as amended, upon her failure to comply with the directions issued and served on the Appellant, sought an order of demolition of the unauthorised construction carried out by her.

The Magistrate's Court has authorised the demolition of the said unauthorised structure since the Appellant had failed to satisfy the Court that she had a valid permit to affect such development activity in spite of the several opportunities that were made available to her.

She had then unsuccessfully challenged the validity of the said order before the Provincial High Court.

At the hearing of the instant appeal, learned Counsel for the Respondent raised preliminary objections as to the maintainability of the appeal of the Appellant on the following basis:-

- a. The Appellant has not named the Chairman of the *Mahara Pradeshiya Sabha* a party to the action,
- b. The Appellant has incorrectly made her appearance through a registered Attorney as "Petitioner-Respondent-Appellant" whereas she should be "Respondent-Petitioner-Appellant",

- c. Prayer of her petition of appeal is incomplete/incorrect since the Appellant only sought to set aside the order of the Provincial High Court and not the order of demolition by the Magistrate's Court.

The parties invited this Court to pronounce its order on the preliminary objections upon written submissions.

In relation to the first preliminary objection, the Respondent contended that the Appellant has named "Chairman, *Mahara* Urban Council" whereas the Respondent is in fact "Chairman, *Mahara Pradesheeya Sabha*". In reply, the Appellant submitted that the reference to "Chairman, *Mahara* Urban Council" is a mistake made inadvertently and the Respondent is not "materially prejudiced" with the said error in the caption. It is further submitted that the Appellant had correctly named the "Chairman, *Mahara Pradesheeya Sabha*" in her revision application before the Provincial High Court and relied on the dicta of the judgment of the Supreme Court in SC Appeal No. 50 of 2008 - decided on 29.06.2011.

The second preliminary objection raised by the Respondent is based on the description of the Appellant as "Petitioner-Respondent-Appellant" in her proxy whereas she should have described her as the "Respondent-Petitioner-Appellant". The Appellant sought counter this objection on the basis that the defective proxy filed by her describing her as "Petitioner-

Respondent-Appellant” is a curable defect as the judicial precedents reveal.

These two preliminary objections refer to procedural defects the appeal of the Appellant suffers. No doubt the Respondent is entitled to raise them and challenge the validity of the appeal of the Appellant although these objections referred to be treated as of purely technical in nature.

This Court, nonetheless, must consider the nature of the defect and the importance that should be attached to it in view of the prejudice such defect could cause to any other party to that appeal.

The judgement of the Supreme Court in *Elias v. Gajasinghe S.C.* Appeal No. 50/2008 – decided on 28-06-2011 refers to a matter where the dispute was whether the first power of attorney was adequate to file action against both defendants or whether the second power of attorney could cover up what was not there in the first power of attorney.

Their Lordships concluded that the said objection is;

“... highly technical matter which has delayed the dispensation of justice in this case regarding a matter which needed quick disposal. For the proper dispensation of justice, raising of technical objections should be discouraged and parties should be encouraged to seek justice by dealing with the merits of cases. Raising of such technical objections and

dealing with them and the subsequent challenges on them to the superior courts takes up so much time and adds up to the delay and the backlog of cases pending in Courts. Very often the dealing of such technicalities become only an academic exercise with which the litigants would not be interested. The delay in dispensation of justice can be minimized if parties are discouraged from taking up technical objections which takes up valuable judicial time. What is important for litigants would be their aspiration to get justice from courts on merits rather than on technicalities. As has often been quoted it must be remembered that Courts of law are Courts of justice and not academies of law."

In the light of the above observation, we hold that these two objections could not be taken as the ones upon which the Appellant should be denied of her right access to justice.

The third preliminary objection is in relation to reliefs prayed in the petition of appeal. In raising his objection, the Respondent contended that the Appellant only sought to set aside the order of the Provincial High Court and without a specific prayer to set aside the order of demolition made by the Magistrate's Court and therefore the prayer to the petition of appeal of the Appellant is incomplete/incorrect.

In meeting this contention, the Appellant replied that when she prayed for allowing of her revision application as a relief from this Court,

the remedy against the order of demolition is automatically covered and therefore the objections are liable to be overruled.

Perusal of the petition addressed to the Provincial High Court reveals that the Appellant has sought multiple reliefs from it including interim, declaratory and in the form of final relief, setting aside the order made by the Magistrate's Court. In these circumstances, this Court reluctantly accepts the Appellant's submissions that she has prayed for the setting aside of the order of the Magistrate's Court.

Clearly the draftsman of the petition of appeal had no clear comprehension of the reliefs that should be sought from this Court and as a result, in view of the objection raised by the Respondent, the Appellant now had to rely on a obscure prayer to make up for the deficiency. It is unfortunate to note that the Appellant's main contention before the Provincial High Court is also that her claim was not adequately placed before the Court below and she remits the cause of that lapse on her legal representative.

However, having considered the submissions of the parties for and against the preliminary objections, we are of the view that they are of very technical nature and are curable without causing any prejudice to the Respondent.

It is appropriate at this juncture to refer to the following dicta of Amerasinghe J in *Fernando v. Sybil Fernando and Others* (1997) 3 Sri L.R.1

"Judges, do not blindly devote themselves to procedures or ruthlessly sacrifice litigants to technicalities, although parties on the road to justice may choose to act recklessly. On the contrary, as the indispensable vehicle for the attainment of justice, civil procedural law has a protective character. In its protective character, civil procedural law represents the orderly, regular and public functioning of the legal machinery and the operation of the due process of law."

In the circumstances, we are of the view that the three preliminary objections raised by the Respondent should be overruled and thereafter proceed to fix this appeal for hearing on its merits.

Preliminary objections are overruled.

JUDGE OF THE COURT OF APPEAL

JANAK DE SILVA, J.

I agree.

JUDGE OF THE COURT OF APPEAL