

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

K. Janaka Prasanna Kumara  
Perera,  
No. 242,  
Main Street,  
Colombo 11.  
Defendant-Petitioner

**CASE NO: CA/RI/198/2007**

**HC (CIVIL) CASE NO: 145/1998 (1)**

Vs.

Merchant Bank of Sri Lanka  
Limited.,  
No. 28,  
St. Michael's Road,  
Colombo 3.  
Plaintiff-Respondent

Before: Mahinda Samayawardhena, J.

Counsel: Jagath Wickramanayake for the Defendant-  
Petitioner.  
Romesh de Silva, P.C., for the Plaintiff-  
Respondent.

Decided on: 15.03.2019

Samayawardhena, J.

The petitioner filed this application for *restitutio in integrum* against the respondent under Article 138(1) of the Constitution seeking to set aside the Judgment of the Commercial High Court dated 01.09.2003 and a declaration that the auction sale held thereon is void.

Commercial High Court was set up by High Court of the Provinces (Special Provisions) Act, No. 10 of 1996.

According section 5 of that Act, against the Judgments and Orders of the Commercial High Court, there is only one direct appeal to the Supreme Court. Section 5(1) and (2) of that Act reads as follows:

*5(1) Any person who is dissatisfied with any judgement pronounced by a High Court established by Article 154P of the Constitution, in the exercise of its jurisdiction under section 2, in any action, proceeding or matter to which such person is a party may prefer an appeal to the Supreme Court against such judgement, for any error in fact or in law.*

*(2) Any person who is dissatisfied with any order made by a High Court established by Article 154P of the Constitution, in the exercise of its jurisdiction under section 2 in the course of any action, proceeding or matter to which such person is, or seeks to be, a party, may prefer an appeal to the supreme Court against such Order for the*

*correction of any error in fact or in law, with the leave of the Supreme Court first had and obtained.*

This Court has no appellate jurisdiction to set aside Judgments or Orders of the Commercial High Court by way of final appeal, revision or *restitutio in intergrum*. That is vested exclusively in the Supreme Court.

This has been emphasized in a series of cases including *Merchant Bank of Sri Lanka v. Jatila Punyasiri Wijayawardena*, SC Appeal 81/2010, decided on 15.02.2012, *Australanka Exporters (Pvt) Limited v. Indian Bank [2001] 2 Sri LR 156*, *Senanayake v. Koehn [2002] 3 Sri LR 381*, *Kosala Bandara Bakmeewewa v. The Finance PLC, CA (PHC) APN 97/2007* decided on 13.06.2016.

It is significant to note that Article 138(1) of the Constitution does not confer unrestricted, unfettered, absolute power for revision and *restitutio in integrum* on the Court of Appeal against Judgments and Orders of the High Courts. That Article reads:

*The Court of Appeal shall have and exercise subject to the provisions of the Constitution or of any law, an appellate jurisdiction for the correction of all errors in fact or in law which shall be committed by the High Court, in the exercise of its appellate or original jurisdiction or by any court of First Instance, tribunal or other institution and sole and exclusive cognizance, by way of appeal, revision and *restitutio in integrum*, of all causes, suits, actions, prosecutions, matters and things of which such High Court,*

*Court of First Instance, tribunal or other institution may  
have taken cognizance:*

“*Any law*” underlined above encompasses the Laws introduced  
by Act No. 10 of 1996.

Application of the petitioner is dismissed with costs.

Judge of the Court of Appeal