

**In the Court of Appeal of the Democratic Socialist Republic of Sri Lanka**

**CPA/APN Appeal No: 132/2018**  
High Court of Panadura Revision  
Application No: HC/REV/27/2018  
M.C. Panadura Case No: 28909

**In the matter of an application for revision under Article 154P of the Constitution of the Democratic Socialist Republic of Sri Lanka read with High Court of the Provinces (Special Provisions) Act, No. 19 of 1990 and Primary Courts' Procedure Act, No. 44 of 1979**

**and now between**

Dinesh Kesara Gunasekara  
No. 63/1" Jayawardhana Avenue,  
Dehiwala.

**2<sup>nd</sup> Party Respondent-Petitioner-Petitioner**

Vs.

Thilakarathna Mudiyanseelage Thilakarathna  
No. 513, Timbirigasyaya Road,  
Colombo 05.

**1<sup>st</sup> Party Respondent-Respondent-Respondent**

Officer-In-Charge,  
Miscellaneous Complaint Division,  
Police Station,  
Pananadura

**Plaintiff-Respondent-Respondent**

**Before:** Prasantha De Silva, J.  
S.U.B. Karalliyadde, J.

**Counsel:** Mr. P. Peramunagama, AAL with Mr. Ranga Peiris, AAL for the  
2<sup>nd</sup> Party Respondent-Petitioner-Petitioner.  
Mr. D.M. Heshan Pietersz, AAL for the 1<sup>st</sup> Party Respondent-Respondent-Respondent.

### **Written Submissions**

**tendered** : on 12.06.2020. by the 2<sup>nd</sup> Party Respondent-Petitioner-Petitioner  
on 27.01.2021. by the 1<sup>st</sup> Party Respondent-Respondent-Respondent

**Argued on** : 08.02.2021.

**Decided on** : 29.04.2021.

### **S.U.B. Karalliyadde, J.**

This is a revision application against the order made by the learned High Court Judge of Panadura in a revision application filed against an order made under Section 68 of the Primary Courts' Procedure Act, No. 44 of 1979 (hereinafter referred to as the Act) by the learned Magistrate of Panadura.

On 20.05.2015, Officer-In-Charge of the Miscellaneous Complaint Division of Panadura Police Station filed an information in the Magistrate's Court under Section 66 of the Act pertaining to a dispute between the 1<sup>st</sup> Party Respondent-Respondent-Respondent (hereinafter referred to as the 1<sup>st</sup> Respondent) and the 2<sup>nd</sup> Party Respondent-Petitioner-Petitioner (hereinafter referred to as the 2<sup>nd</sup> Respondent) over the possession of a hotel known as Lihiniya Beach Hotel. The 1<sup>st</sup> Respondent has alleged, *inter alia*, that he is the owner of that hotel, the 2<sup>nd</sup> Respondent is a guest of it since January 2015, though, he paid the hotel charges at the beginning later he defaulted the hotel charges, he repeatedly requested from the 2<sup>nd</sup> Respondent to settle the arrears, ultimately, without settling arrears the 2<sup>nd</sup> Respondent requested from him to accompany the 2<sup>nd</sup> Respondent and drop him to a hotel nearby, on 22.03.2015. the 1<sup>st</sup> Respondent accompanied the 2<sup>nd</sup> Respondent to that hotel and left him there, on the same day the 2<sup>nd</sup> Respondent forcibly re-entered into the 1<sup>st</sup> Respondent's hotel which is in dispute with the assistance of police dispossessing him from the hotel, even though, the 1<sup>st</sup> Respondent was dispossessed from the property, his brother, Amarasena who was employed by the 1<sup>st</sup> Respondent as the Manager of the hotel continued to manage and control the hotel on behalf of the 1<sup>st</sup> Respondent, the 2<sup>nd</sup> Respondent, on

10.04.2015. chased away Amarasena also from the hotel and taken over the possession of the hotel.

The 2<sup>nd</sup> Respondent, admitting the fact that he came to the hotel as a guest has alleged *inter alia*, that he had negotiated with the 1<sup>st</sup> Respondent to purchase the hotel for Rs. 11 million and paid Rs. 8 million, the parties entered into an agreement (marked as 2෩5) on 10.02.2015. to execute the notarial deed for the property once the non-vesting and street line certificates made available to the 2<sup>nd</sup> Respondent, on the day, which the agreement was signed the 1<sup>st</sup> Respondent delivered the possession of the hotel to the 2<sup>nd</sup> Respondent, on that day onwards the 2<sup>nd</sup> Respondent is possessing the property, on 22.03.2015, the 1<sup>st</sup> Respondent abducted him when he was in the hotel, after making a complaint to the police about the abduction the police intervened and restored the 2<sup>nd</sup> Respondent in possession of the hotel.

It has been admitted by both the Respondents that the 2<sup>nd</sup> Respondent was in possession of the hotel on 20.05.2015, the day on which the information was filed before the Magistrate's Court by the police. In addition to the affidavits, counter-affidavits and the documents filed by both parties, oral evidence has been led before the Magistrate's Court on document marked as "2 ෩ 5" as the 1<sup>st</sup> Respondent denied it. After holding a lengthy inquiry, leading evidence of witnesses, the learned Magistrate, acting as the Primary Court Judge, by the order dated 02.10.2018. has concluded that the 1<sup>st</sup> Respondent is entitled to the possession of the hotel. Having aggrieved by that order, the 2<sup>nd</sup> Respondent filed revision application bearing No. HC/REV/27/2018 in the Provincial High Court of the Western Province holden at Panadura. The learned High Court Judge, on 01.11.2018. made an order refusing to issue notices of the revision application on the 1<sup>st</sup> Respondent and affirmed the order of the learned Magistrate. By the revision application before this Court, the 2<sup>nd</sup> Respondent seeks to revise the said orders of the learned Magistrate and the High Court Judge on the basis that those orders are against the law and the facts of the case and therefore, a miscarriage of justice/ failure of justice has been caused to him.

If a dispute between the parties reported to the primary court for the possession of a property where the breach of the peace is threatened or likely, in terms of section 68 (1) of the Act the Court should decide as to which party was in actual possession of the property

on the date of filing the information under section 66. When the dispute relates to right of possession of a property, if the primary court judge is satisfied that the person who had been in possession of the property has been dispossessed within a period of two months prior to the information was filed, in terms of Section 68 (3) of the Act, he should decide as to which party is entitled to the possession of the property.

In the instant action the respective parties are not at variance, that the 2<sup>nd</sup> Respondent was in possession of the hotel on the date of filing the information in Court on 20.05.2015. The position of the 1<sup>st</sup> Respondent is that the 2<sup>nd</sup> Respondent had occupied a room in the hotel since January 2015 and even though, he was accompanied and dropped him to a nearby hotel with his consent on 22.03.2015. by the 1<sup>st</sup> Respondent, on the same day with the assistance of police the 2<sup>nd</sup> Respondent forcibly reentered into the hotel in dispute and acquired possession of the hotel ejecting the 1<sup>st</sup> Respondent. The position of the 2<sup>nd</sup> Respondent is that after executing the document marked as “2 3 5” on 10.02.2015, the 1<sup>st</sup> Respondent placed him in possession of the hotel and from that date onwards until he was forcibly dispossessed by the 1<sup>st</sup> Respondent on 22.03.2015. he was in the exclusive possession of the hotel. Accordingly, both parties claim that they have independently possessed the property until dispossessed by the opposing party on 22.03.2015. Since the information has been filed on 20.05.2015. and the position of both parties has been that they lost the possession on 23.05.2015, the learned Magistrate has correctly held that the Court should make a determination under Section 68 (3) of the Act.

The parties do not dispute the fact that on the date of filing the information, the 2<sup>nd</sup> Respondent was in possession of the hotel. The 1<sup>st</sup> Respondent claims *inter alia*, that he was in possession of the hotel, the 2<sup>nd</sup> Respondent had occupied a room in the hotel as a guest and after the 2<sup>nd</sup> Respondent had defaulted to pay the hotel charges the he had accompanied the 2<sup>nd</sup> Respondent at his request to a nearby hotel on 22.03.2015 and dropped him there. The 2<sup>nd</sup> Respondent claims *inter alia*, that he was in possession of the hotel since 10.02.2015. and he was forcibly dispossessed by the 1<sup>st</sup> Respondent on 22.03.2015. from the hotel. Therefore, irrespective of the fact whether the 1<sup>st</sup> Respondent accompanied the 2<sup>nd</sup> Respondent at his request to a nearby hotel and dropped him there as alleged by the 1<sup>st</sup> Respondent or the 2<sup>nd</sup> Respondent was forcibly dispossessed from the hotel as alleged by

the 2<sup>nd</sup> Respondent, it is relevant that on 22.03.2015, the 2<sup>nd</sup> Respondent has lost the possession. The next important fact which the learned Magistrate had to consider was whether the 2<sup>nd</sup> Respondent had been dispossessed from the exclusive possession of the hotel or from a room of the hotel. If there has been evidence that the 2<sup>nd</sup> Respondent had been dispossessed by the 1<sup>st</sup> Respondent from the hotel, the determination of the learned Magistrate should be that the 2<sup>nd</sup> Respondent is entitled to the exclusive possession of the hotel and if the evidence has been that he had been dispossessed from a room of the hotel the determination should be that he is entitled to the possession of that particular room.

To establish the position of the 2<sup>nd</sup> Respondent that he was in exclusive possession of the hotel till 22.03.2015. from 10.02.2015. he has relied on “2 ට 5” which is an informal document to demonstrate the fact that the 2<sup>nd</sup> Respondent had paid money to the 1<sup>st</sup> Respondent to purchase the property and placed him in possession of the hotel. But the 1<sup>st</sup> Respondent has denied the execution of that document. Therefore, the attesting witnesses and the Notary Public who had allegedly been attested and executed the said document have been called to give evidence before the Magistrate’s Court and they have denied the attestation and the execution of that document. For that reason, the learned Magistrate has correctly held that the authenticity and the execution of “2 ට 5” document has not been proved and therefore, that document should not be considered when determining the rights of the parties.

In addition to the document marked as “2 ට 5”, the 2<sup>nd</sup> Respondent has tendered a copy of a police complaint dated 13.03.2015. made against a lady alleging that she is occupying a room in the hotel without paying the hotel charges. The 1<sup>st</sup> Respondent also has tendered a copy of a police complaint dated 18.03.2015. which has also been lodged against a lady alleging that she is staying in a room of the hotel without paying hotel charges. Further, the 2<sup>nd</sup> Respondent has tendered a police statement dated 16.03.2015. made by him which states that after he took over the possession of the hotel on 10.02.2015, he continued to obtain the services of the 1<sup>st</sup> Respondent’s brother, Amarasena as the manager of the hotel and for the reason that Amarasena had cheated on him he asked Amarasena on 14.03.2015. to resign and leave the hotel. The 2<sup>nd</sup> Respondent has further stated in that statement that on the day which his services were terminated, the 1<sup>st</sup> Respondent came with a gang of

people and threatened him over the sacking of Amarasena from the hotel. Nevertheless, on 18.03.2015, a statement has been made by the 1<sup>st</sup> Respondent to the police stating that the 2<sup>nd</sup> Respondent borrowed Rs. 50,000/- from his brother, Amarasena and when he asked to return the money a bogus complaint has been made by the 2<sup>nd</sup> Respondent to the police. When determining the rights of the parties the learned Magistrate has considered the said police complaints of the 2<sup>nd</sup> Respondent and the counter-complaints of the 1<sup>st</sup> Respondent.

The 1<sup>st</sup> Respondent, with his affidavit has tendered an affidavit as an annexure (marked as X<sub>10</sub>) given by an owner of a hotel situated close to the hotel in dispute. The author of that affidavit has affirmed that at the request of the 1<sup>st</sup> Respondent, the guests of the hotel of the 1<sup>st</sup> Respondent used the swimming pool of his hotel up till the second week of April 2015 on payment of money by the 1<sup>st</sup> Respondent for using the pool by the guests. In the annexed affidavits (marked as X<sub>11</sub> and X<sub>12</sub>) to the affidavit and the counter-affidavit of the 1<sup>st</sup> Respondent which were given by two sanitary labourers states that they have worked in the hotel in dispute under the 1<sup>st</sup> Respondent from February 2014 to March 2015. The affidavit marked as X<sub>13</sub> given by the gardener of the disputed hotel states that he has worked for about one year till 22.03.2015. at the hotel for the 1<sup>st</sup> Respondent and his brother, Amarasena. The chef of the hotel in dispute has given the affidavit marked as X<sub>16</sub> to the effect that he has worked in the hotel from January 2013 till 10.04.2015. under the 1<sup>st</sup> Respondent. The 1<sup>st</sup> Respondent has tendered an affidavit (marked as X 21) given by the lady against whom he had made the hereinbefore mentioned police complaint on 18.03.2015. which states that she had stayed in a room of the hotel in dispute managed by the 1<sup>st</sup> Respondent with her mother and the 2<sup>nd</sup> Respondent had occupied the adjoining room as a guest of the hotel and on 04.03.2015, the 1<sup>st</sup> Respondent had asked both of them to pay the arrears of hotel charges.

Even though, the 2<sup>nd</sup> Respondent in his counter-affidavit has barely denied the facts stated in the affidavit of the 1<sup>st</sup> Respondent and annexed affidavits tendered by the 1<sup>st</sup> Respondent he has neither dealt with the facts stated in those affidavits separately nor given any reasons as to why he denies those affidavits or the facts stated in those affidavits.

When weighing the above stated evidence, the Court could come to the conclusion that the 1<sup>st</sup> and the 2<sup>nd</sup> Respondent had been in possession of the hotel and a room of the hotel

respectively to the 22.03.2015, the day on which both parties allege that they had been dispossessed by the opposing party and when the police intervened and restored the 2<sup>nd</sup> Respondent back in possession on that day, he had been restored in possession exclusively in the hotel ejecting the 1<sup>st</sup> Respondent from the possession of the hotel. Therefore, I hold that the 1<sup>st</sup> Respondent is entitled to the possession of the hotel and the 2<sup>nd</sup> Respondent is entitled to the possession of a room of the hotel.

The wisdom of the legislature by enacting the provisions in Part VII of the Act is preventing the breaches of peace arising from land disputes. Therefore, if the Court holds that the 2<sup>nd</sup> Respondent is entitled to possess a room in the hotel which the 1<sup>st</sup> Respondent is entitled to possess, there would be practical difficulties in exercising their rights and the threat to the maintenance of peace between the parties would continue. Therefore, it is appropriate to conclude that the party who has the title to the property is entitled to possess the property. According to the decision of *Ramalingam Vs. Thangarajah* (1982) 2 S.L.R. 693, when the evidence about possession is clearly balanced, the primary court judge could consider the evidence about the title and come to the conclusion that the party who has the title to the property is entitled to the possession of it until the rights of the parties are determined by a competent court.

In the instant case, the 2<sup>nd</sup> Respondent has admitted the paper title of the 1<sup>st</sup> Respondent and the 1<sup>st</sup> Respondent has produced his title deeds of the property (marked as X and X<sub>1</sub>) and the Certificate of Business Registration of the hotel (marked as X<sub>2</sub>) issued in his name under the Companies Act.

After considering all the above stated facts, I hold that the determination of the learned Magistrate that the 1<sup>st</sup> Respondent is entitled to possess the property in dispute, Lihiniya Beach Hotel and the order made by the learned High Court Judge refusing to issue notices on the revision application on the 1<sup>st</sup> Respondent are according to the facts of the case and the law. Even though, the manner which this Court has analysed the evidence of the case is different in the manner which the learned Magistrate has analysed the evidence, there is no difference between the conclusions of both Courts. Therefore, no prejudice has been caused to the parties in the manner which the evidence has been analysed by the learned Magistrate. Considering all the above stated facts, I hold that the impugned order dated

02.10.2018. of the learned Magistrate is according to the facts of the case and the law and therefore, the order dated 01.11.2018. of the learned High Court Judge on the revision application refusing to issue notices on the 1<sup>st</sup> Respondent is according to the law. For the reason that the 2<sup>nd</sup> Respondent has failed to satisfy this Court that a positive miscarriage of justice or failure of justice has been caused to him for this Court to intervene to rectify the orders of the Magistrate's Court and the High Court to make sure due administration of justice, I hold that exceptional circumstances do not exist for this Court to exercise its revisionary jurisdiction. Therefore, I affirm the impugned orders of the learned Magistrate and the High Court Judge and dismiss the revision application. The 2<sup>nd</sup> Respondent will pay Rs. 10 000/= as the cost of this Court to the 1<sup>st</sup> Respondent.

**JUDGE OF THE COURT OF APPEAL**

I agree.

**Prasantha De Silva J.**

**JUDGE OF THE COURT OF APPEAL**