

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

*In the matter of an application for invoking the
inherent powers of the Honourable Court of
Appeal .*

Kamal Priyadarshana Pannila Vithanage,
34/1, Sri Wimalasiri Road
Kalubowila,
Dehiwala.

Petitioner

Vs.

Court of Appeal
Contempt of Court Application
No :
CA/ COC/8/19

Ms. Vayoma Paranagama Attorney-at-Law
Deputy Chief Legal Officer,
Seylan Bank PLC,
No 90, Galle Road,
Colombo 03.

1st Respondent

Ms. Udayani Madanayake Attorney-at-Law
Legal Officer,
Seylan Bank PLC,
No 90, Galle Road,
Colombo 03.

2nd Respondent

Mr. Shanaka De Livera Attorney-at-Law
Senior Counsel,
No 39/6, Shrubbery Gardens,
Colombo 04.

3rd Respondent

Mrs. Samanda De Livera Attorney-at-Law,
Registered Attorney
No 39/6, Shrubbery Gardens,
Colombo 04.

4th Respondent

Mr. Priyan De Livera Attorney-at-Law
Registered Attorney,
No 33 1/1, Shrubbery Gardens,

Colombo 04.

5th Respondent

Mr. Sithumini Wijayarathne Attorney-at-Law
Professional Assistant – De Livera
Associates,
115/1, Kahantota Road,
Malabe.

6th Respondent

And now between

Kamal Priyadarshana Pannila Vithanage,
34/1, Sri Wimalasiri Road,
Kalubowila,
Dehiwala.

Petitioner-Petitioner

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Malabe.

6th Respondent-Respondent

BEFORE : Menaka Wijesundera J
Neil Iddawala J

COUNSEL : Petitioner-Petitioner appearing in person.

Supported on : 11.11.2021

Decided on : 01.12.2021

Iddawala – J

This application invites this Court to invoke its inherent powers to set aside an order of the Court of Appeal itself. The impugned order was delivered by the then President of the Court of Appeal, His Lordship Justice A.H.M.D.Nawaz on 04.03.2020 which refused to issue notice on the respondents thereby dismissing the application of the petitioner. Aggrieved by the said dismissal, the petitioner has preferred the present application

requesting this court to set aside the order dated 04.03.2020 and issue notice on the respondents.

The facts of the case are as follows. An application for contempt of court was filed on 10.07.2019 before the Court of Appeal on the basis that the respondents committed fraud in the Commercial High Court of Colombo with the objective of obtaining an *ex parte* order against the petitioner. The petitioner averred that the said respondents forged/fabricated a lease agreement thereby representing the same to be a valid lease agreement signed between the petitioner and the Seylan Bank. The petitioner claimed that the said lease agreement was filed in an *inter parte* proceeding in which the lease agreement was only signed by the petitioner and not the Seylan Bank. Yet, unknown to the petitioner, the same lease agreement has been subsequently utilised in an *ex parte* proceeding against the petitioner where it has been purportedly signed by both the petitioner and the Seylan bank. Later, the petitioner got the *ex parte* decree set aside and the case is currently pending before the Commercial High Court. The main contention of the petitioner was that a lease agreement which was unsigned by the Seylan Bank has been retrospectively signed by an officer of the bank thereby forming the basis of a case pending before the Commercial High Court. While that case is pending, the petitioner has filed a contempt of court application against the respondents involved in the said 're-signing', stating that the subsequent insertion of a signature in the lease agreement amounts to contempt of court as the act of forging/fabrication was intended to deliberately mislead and subvert the course of justice.

The said application for contempt of court was supported by the petitioner (appearing in person) before the Court of Appeal and the presiding bench consisting of His Lordship Justice Yasantha Kodagoda P/CA (as he was then) allowed the petitioner to make submissions. During this stage the respondents were represented by their counsel Romesh De Silva PC. However, prior to a determination being made as regards to the issuing of notices on the respondents, His Lordship Justice Yasantha Kodagoda was elevated to the Supreme Court.

Therefore, the case was re-fixed for support before the next President of the Court of Appeal, His Lordship Justice A.H.M.D.Nawaz. On the re-fixed date (04.03.2020), the petitioner made his submissions, whereby considering all evidence presented before the court such application was dismissed whilst giving reasons for such dismissal. The

petitioner averred that he was granted a very limited time (30 minutes) to support his application. Upon such dismissal, the petitioner has requested for an order which has not been made available to him. Pursuant to a motion filed by the petitioner, the said order was made available to him after the expiration of six months since the date of dismissal. As such, the petitioner was prevented from appealing the said order.

Hence, the petitioner has filed this instant application, praying for the order dated 04.03.2020 to be set aside. The petitioner supported the present application citing that he was denied of a fair hearing before the Court of Appeal when the Bench was re-constituted and that the delay of six months has caused a miscarriage of justice. Thus, the petitioner invites this court to invoke its inherent powers.

The primary issue to be determined by this Court is whether it has jurisdiction to revise an order by itself. In *Hettiarachchi v Seneviratne, Deputy Bribery Commissioner and others* (1994) 3 SLR 293 it was held that *“it is a well-established rule in general a Court cannot re-hear, review, after or vary its own judgement once its delivered. The rationale of that rule is that there must be finality to litigation... it may, of course, have limited power to clarify its judgement and to correct accidental slips or omissions...”*

Similarly, in *Peiris and others v Chandrasena and others* 1999 3 SLR 153 it was held that *“In any action, after the judgment is pronounced, the Court cannot dismiss it because after the entering of judgment the Court may be said to be functus officio, for it has accomplished the purpose and fulfilled its function of making a determination in regard to the merits of rival claims of parties.”*

In the case of *Sivapathalingam v Sivasubramaniam* (1990) 1 SLR 378 held that *“The authorities undoubtedly make clear that a court whose act has caused injury to a suitor has an inherent power to make restitution. That power I am of the view is exercisable by a court of original jurisdiction as the cases show and in the case of a superior court such as the Court of Appeal there can be no doubt whatever that that power is exercisable in that way.... It is the duty of the courts, and it is in their interests to ensure that public confidence in them and in the orders and judgment made by them is maintained and remains undamaged. If an order of the Court, which ultimately has standing behind it the coercive power of the State, causes damage without justification, it becomes the duty of the Court itself to undo that damage if for no other reason, at least in the interest of the credibility of the courts as an institution”*

In light of the above contention, it is the considered view of this Court, that the petitioner has failed to satisfy the court as to the 'damage' caused by the order of this Court dated 04.03.2020. When considering the said order, the reasons for the dismissal of the application has been clearly set out. Furthermore, the petitioner has been allowed a hearing on both occasions (pre and post reconstitution of the bench) and this Court cannot pass judgment on the allocation of time on each instance as it is based on the discretion of the Court. In the petition, the petitioner himself has admitted that the six months delay in receiving the order had prevented the petitioner from appealing against the said order. That means he admits, this is an appealable order. He would have had an opportunity to contemplate other avenues rather than filing this petition in this Court.

As such the application of the petitioner is hereby dismissed.

JUDGE OF THE COURT OF APPEAL

Menaka Wijesundera J.

I agree.

JUDGE OF THE COURT OF APPEAL