

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST**

**REPUBLIC OF SRI LANKA.**

In the matter of a Revisionary  
Application under Article 138 of  
the Constitution.

The Democratic Socialist Republic  
Sri Lanka.

**Plaintiff**

Court of Appeal Revisionary  
Application No:

**CA/PHC/APN/21/2021**

High Court of Ratnapura Case No:

**HC 92/2013**

Vs.

Dellaboda Radage Prabath  
Deleepa,

C/O P. Chaminda, Mugamkanda,  
Ratnpura.

**Accused**

**AND NOW BETWEEN**

Dellaboda Radage Aron,

C/O P.Chaminda, Mugamkanda,

Ratnapura.

**Substituted Petitioner**

Vs.

Delbada Radage Prabath Deleepa,

C/O P. Chaminda, Mugamkanda,  
Ratnapura.

**1<sup>st</sup> Convicted Respondent**

The Democratic Socialist Republic  
of Sri Lanka.

**2<sup>nd</sup> Respondent**

Before – Menaka Wijesundera J.

Neil Iddawala J.

Counsel – Shiral D. Wanniarachchi

for the petitioner.

Argued On – 25.01.2022

Decided On – 07.03.2022

**MENAKA WIJESUNDERA J.**

The instant application for revision has been filed to set aside the judgment of the learned **High Court Judge of Ratnapura dated 14.1.2020.**

The instant application for revision has been filed by the petitioner on behalf of the 1<sup>st</sup> respondents on the **8<sup>th</sup> of March 2021, which is more than one year after the impugned judgment. But the petitioner has not invoked the right of appeal and the reason for not exercising the right of appeal is also not stated.**

**The Counsel for the petitioner does not explain the reason for the delay of over 1 year and 3 months.**

It is a well-founded principle that if a revision application is filed the party filling the same must satisfy Court that there is an exceptional miscarriage of justice which shocks the conscious of Court. Delay is considered to be a fatal error if it is not explained to the satisfaction of Court and it has been held so by this bench in the matter of, **CA/PHC/APN 78/2021. The one and only reason given by the Counsel for the petitioner for filling the instant application is that the sentence being excessive. But that does not satisfy this Court to invoke its revisionary powers.**

**As such this Court is unable to accept the submissions of the Counsel for the petitioner for the reason that,**

**1) Delay not explained,**

**2) The right of appeal not being exercised not explained,**

**3) Exceptional miscarriage of justice in the impugned judgment not sufficiently explained**

**Hence as the petitioner is seeking to invoke a discretionary power of Court this Court sees no justifiable reason to issue notice to the respondents.**

**As such the instant application is dismissed in limine.**

**Judge of the Court of Appeal.**

**I agree.**

**Neil Iddawala J.**

**Judge of the Court of Appeal.**