

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

In a matter of an Application for Revision
under and in terms of Article 138 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka

CA Revision Application No: 0025/17
Board of Quazis Case No: 47/17/R/CMB
Quazi Court of Dumbara Case No: CM 2647

Sideek Noorul Hidaya
No. 41/1, Wanguwakade,
Madawala Bazaar.
*Presently at No. 72/1, Bangalagedara,
Mosque Road,
Madawala Bazaar.*

Applicant

Vs

Marjan Mohamed Jazil
No. 41, Wanguwakade,
Madawala Bazaar.

Respondent

AND BETWEEN

Marjan Mohamed Jazil
No. 41, Wanguwakade,
Madawala Bazaar.

Respondent – Petitioner

Vs

Sideek Noorul Hidaya
No. 41/1, Wanguwakade,
Madawala Bazaar.
Presently at No. 72/1, Bangalagedara,

*Mosque Road,
Madawala Bazaar.*

Applicant-Respondent

AND NOW BETWEEN

Marjan Mohamed Jazil
No. 41, Wanguwakade,
Madawala Bazaar.

Respondent - Petitioner-Petitioner

Sideek Noorul Hidayah
No. 41/1, Wanguwakade,
Madawala Bazaar.
Presently at No. 72/1, Bangalagedara,
Mosque Road,
Madawala Bazaar.

Applicant-Respondent-Respondent

Before: **M. T. Mohammed Laffar, J. and
S. U. B. Karalliyadde, J.**

Counsel: **S. S. Nafrees for the Respondent-Petitioner-Petitioner.**

Nasreen Nashkodh for the Applicant-Respondent-Respondent.

Argued on: **10.03.2022**

Decided on: **09.05.2022**

Mohammed Laffar, J

This is an Application filed by the Respondent-Petitioner-Petitioner (hereinafter referred to as the Petitioner) seeking to revise and set aside the Order of the Board of Quazi dated 16-09-2017 and the Order of the learned Quazi of Dumbara dated 03-05-2014.

Factual matrix in a nutshell.

The Applicant-Respondent-Respondent [wife] (hereinafter referred to as the Respondent) instituted proceedings against the Petitioner [husband] before the learned Quazi of Dumbara seeking maintenance for the children¹. After inquiry, the learned Quazi ordered to pay a sum of Rs. 2,500/- to each child as maintenance. On 23-11-2013, before the learned Quazi, the Petitioner paid a sum of Rs. 30,000/- out of the arrears of Rs, 90,000/- and agreed to pay the balance amount of Rs. 60,000/- as school fees. Since the Petitioner defaulted in paying the maintenance, in terms of section 64 of the Muslim Marriage and Divorce Act No. 13 of 1951 (as amended), the learned Quazi filed a Certificate of enforcement in the Magistrate's Court of Teldeniya for the recovery of the same.

Being aggrieved by the Certificate filed by the learned Quazi, the Petitioner invoked the revisionary jurisdiction of the Board of Quazi in case No. 47/17/R/CMB. On 16-09-2017, the Board of Quazi, having heard the submissions of the learned Counsel for the Petitioner dismissed the revision Application.

Being aggrieved by the said Order of the Board of Quazi, the Petitioner is invoking the revisionary jurisdiction of this Court on the grounds set out in paragraphs 16 and 17 of the Petition, which reads thus;

- a. There is no Application made before the Quazi.
- b. There is no inquiry held before the Quazi.
- c. There is no Order made by the Quazi.
- d. The learned Quazi failed to issue a show-cause letter to the Petitioner before filing a Certificate in the Magistrate's Court of Teldeniya for the recovery of the arrears of maintenance.

¹ Four Children.

legal impediments.

It is settled law that apex Courts exercise the powers of revision only in exceptional circumstances. Revisionary jurisdiction is an extraordinary jurisdiction of this Court and it is exercised only upon the discretion of Court.

In **Thilagaratnam Vs. E.A.P. Edirisingha (1982-1SLR-P56-CA)**, it was observed that

“Though the Appellate Courts' powers to act in revision were wide and would be exercised whether an appeal has been taken against the order of the original court or not, such powers would be exercised only in exceptional circumstances. There were no exceptional circumstances in this case to justify exercise of the Court's powers of revision.”

In **Cadaman Pulle Vs. Ceylon Paper Sacks Ltd., (2001-3SLR-P112)**, it was held that

“No exceptional circumstances are disclosed why his application for revisionary relief should be entertained after the lapse of nearly two years. The existence of exceptional circumstances is a pre-condition for the exercise of the powers of revision.”

Amaratunga, J., in the case of **Dharmaratne Vs. Palm Paradise cabanas Ltd., (2003-3SLR-P24-CA)**, observed that,

“Existence of exceptional circumstances is the process by which the court selects the cases in respect of which the extraordinary method of rectification should be adopted, if such a selection process is not there revisionary jurisdiction of this court will become a gateway of every litigant to make a second appeal in the garb of a Revision Application or to make an appeal in situations where the legislature has not given a right of appeal.”

The Supreme Court, in the case of **Rasheed Ali Vs. Mohamed Ali (1981-1SLR-P262-SC)**, held that

“The powers of revision vested in the Court of Appeal are very wide and the Court can in a fit case exercise that power whether or not an appeal lies. Where the law does not give a right of appeal and makes the order final, the Court of Appeal may nevertheless exercise its powers of revision, but it should do so only in exceptional circumstances. Ordinarily the Court

will not interfere by way of review, particularly when the law has expressly given an aggrieved party an alternate remedy such as the right to file a separate action except when non-interference will cause a denial of justice or irremediable harm..... The fact that a Judge's order is merely wrong is not a sufficient ground for exercising the powers of revision.”

In the light of the foregoing determinations, it is settled law that the existence of exceptional circumstances is a pre-condition for the exercise of the powers of revision. The practice of Court to insist upon the existence of exceptional circumstances for the exercise of revisionary powers has taken deep root in our law and has crystalized into a rule which should not be lightly disturbed. The Petitioner in the instant Application has not established exceptional circumstances warranting the exercise of revisionary powers of this Court, and therefore, the Application is liable to be dismissed on this ground alone.

Besides, in terms of section 62 (1) of the Muslim Marriage and Divorce Act No. 13 of 1951 (as amended), any party aggrieved by any Order of the Board of Quazis on any appeal may, with the leave of the Court of Appeal first had and obtained, appeal to that Court from such Order. Thus, it is manifestly clear that the legislature has provided the right to appeal against any Orders of Board of Quazis to the Court of Appeal.

The right to appeal is a statutory right and must be expressly created and granted by a statute. Merits or demerits cannot be considered at the commencement of the appeal and all matters can be considered only at the argument. The right to appeal is a right provided by the legislature.

Revision is an extraordinary and discretionary remedy granted by Court under special circumstances. It is not available as a right. The Petitioner in a Revision Application only seeks the indulgence of Court to remedy a miscarriage of justice. He does not assert it as a right.

If the Petitioner had not availed himself of the right to appeal which was available to him, and invoking the revisionary jurisdiction of this Court, there is a duty cast upon the Petitioner to satisfy this Court as to why he did not invoke the appellate jurisdiction. Failing which, the Petitioner cannot proceed with the Application for revision. An Application for revision is available

where the failure to exercise the right to appeal is explained to the satisfaction of the Court.

In **Naroch Vs. Shrikanthan**² it was observed that

“The judgment had been delivered in the presence of the Attorney-at-Law for the parties, the petitioner had not taken any steps to have the said judgment canvassed by way of an appeal. The petitioner had not indicated to court that any special circumstances exist which would invite this court to exercise its powers of revision, since the petitioner had not availed himself of the right of appeal which was available to him.”

In paragraph 24 of the Petition, the Petitioner states that he could not prefer an appeal due to financial difficulties and was unable to obtain certified copies of the record. Financial difficulty is not an acceptable ground for not exercising the right to appeal available to him and to invoke the revisionary jurisdiction of this Court. An appeal can be lodged even without necessary documents, with the permission of Court to tender the same subsequently.

In the circumstances, it is the view of this Court that the Petitioner in this Application failed to put forward any acceptable reasons for not invoking the appellate jurisdiction of this Court under section 62 (1) of the Muslim Marriage and Divorce Act No. 13 of 1951 (as amended).

Observation (facts).

It is averred in the statement of objections of the Respondent that the Petitioner left the country for his benefit and neglected to maintain the children. As such, the Respondent filed an Application for maintenance in the Quazi Court of Dumbara in case No. CM 2647. After inquiry, having considered the financial capacity of the Petitioner, the learned Quazi ordered to pay a sum of Rs. 2500/- per month to each child as maintenance. On 23-11-2013, the Petitioner paid a sum of Rs. 30,000/- out of the arrears of the amount of Rs. 90,000/- and has agreed to pay the balance amount of Rs. 60,000/- as school fees. These facts are borne out from the proceedings before the learned Quazi marked P2/R1.

² 1997 (1) SLR p286.

Moreover, this Court has taken cognizance of the fact that, in terms of the affidavit filed by the Petitioner, he could not initially participate at the inquiry before the learned Quazi and later stages appeared before the Quazi ³, and therefore, the Petitioner is precluded from taking up the position that an inquiry was not held before the learned Quazi. It is pertinent to be noted that the Petitioner has not taken up any objections as set out in paragraphs 16 and 17 of the Petition either before the learned Quazi or the Board of Quazi.

In these respects, it is abundantly clear that the grounds upon which the Petitioner invokes the revisionary jurisdiction of this Court are devoid of merits.

Besides, in paragraph 2 of the Petition, it is asserted that the Petitioner and the Respondent were blessed with three children out of their matrimonial life. In paragraph 11 of the Petition, it is averred that they have only three children, whereas the names of four children have been mentioned therein. Hence, it appears to this Court that the Petitioner has suppressed material facts to this Court as to the children born out of their marriage. It is settled law that a person who wishes to invoke the revisionary jurisdiction of Court should come before Court with clean hands and should disclose all material facts in his Application.

In terms of section 64 of the Muslim Marriage and Divorce Act No. 13 of 1951 (as amended), the Quazi is empowered to make an Application supported by a Certificate to the Magistrate's Court for the recovery of any amount due from any person against whom an Order was made, which reads thus;

(1) Any sum claimed in any proceedings under section 47 (other than proceedings for the recovery of mahr or kaikuli) and allowed by the Quazi, or on appeal, by the Board of Quazis, or, in the case of a further appeal, by the Court of Appeal, may in case of default of payment be recovered as though it were a fine imposed under this Act, on an Application made to the Magistrate having jurisdiction in the area within which the person liable to pay such sum is for the time being resident.

(2) Every application under subsection (1) shall be made by the Quazi and shall be supported by a certificate under his hand

³ Paragraph 10 of the affidavit.

stating the amount of the sum due, the name of the person liable to pay such sum, the name or names of the person or persons entitled thereto, and whether the proceedings in which the order requiring the payment was made were inter panes or ex pane.

(3) Every sum referred to in subsection (1) may be recovered as a fine notwithstanding that such sum exceeds the amount of the maximum fine which the Magistrate may in his ordinary jurisdiction impose, and when recovered shall be remitted to the Quazi for payment in due course to the person thereto entitled.

It is pertinent to be noted that, in terms of the aforesaid provisions of law, the Quazi is not bound to issue show-cause notice to the Petitioner pertaining to the Application made under section 64 of the Act. Hence, the position taken up by the Petitioner in paragraph 17 of the Petition is also devoid of merits.

For the above reasons, I see that there is no basis to interfere with the Orders of the Board of Quazi dated 16-09-2017 and the Order of the learned Quazi of Dumbara dated 03-05-2014. Accordingly, the said impugned Orders have been affirmed and the Application is dismissed with costs fixed at Rs. 50,000/- payable to the Respondent by the Petitioner.

The Registrar is directed to dispatch copies of this Order to the learned Quazi of Dumbara and Board of Quazi.

Application dismissed.

Judge of the Court of Appeal

S. U. B. Karalliyadde, J.

I agree.

Judge of the Court of Appeal