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

CA (PHC) APN Case No:
**CPA/130/2019**

High Court of Colombo Case No:
HCRA 55/2016

Fort Magistrate Case No:
3701/2015

In the matter of an Application for Revision under Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Chakrawarthige Ariyadasa Fernando,
No. 57, Muhandiram Road,
Colombo 03.

**Petitioner**

**Vs.**

1. Kawindra Dassanayake
2. Pathiraja Mudalie Dayananda Udesiri Gamini Perera.

   250, 1st Floor, New Block,
   Liberty Plaza,
   Colombo 03.

**Respondents**

**AND NOW**

Chakrawarthige Ariyadasa Fernando,
No. 57, Muhandiram Road,
Colombo 03.

**Petitioner-Petitioner**

**Vs.**

1. Kawindra Dassanayake
2. Pathiraja Mudalie Dayananda Udesiri Gamini Perera.

   250, 1st Floor, New Block,
   Liberty Plaza,
   Colombo 03.

**Respondent-Respondents**

**AND NOW BETWEEN**

Pathiraja Mudalie Dayananda Udesiri Gamini Perera
No. 6B/573, Sudarma Mawatha,
Salmal Uyana, Wanawasala,
Kelaniya.

**Respondent-Respondent-Petitioner**

**Vs.**

1. Chakrawarthige Ariyadasa Fernando,
   No. 57, Muhandiram Road,

Colombo 03.

**Petitioner-Petitioner-Respondent**

2. Kawindra Dassanayake
   250, 1st Floor, New Block,
   Liberty Plaza,
   Colombo 03.

**Respondent-Respondent-Respondent**

**Before:** **Prasantha De Silva, J.**

**K.K.A.V. Swarnadhipathi, J.**

Counsel: Shehan De Silva and Charith Thuduwage for the Respondent-Respondent-Petitioner.
A. Rajapakse for the Petitioner-Petitioner-Respondent.

Written Submissions Tendered on: 29.09.2020 by the Petitioner-Petitioner-Respondent.
29.09.2020 by the Respondent-Respondent-Petitioner.

Argued on: 08.02.2022

Decided on: 19.10.2022

**Prasantha De Silva, J.**

**Order**

The Petitioner-Respondent-Respondent [hereinafter referred to as the 1st Respondent] in this appeal had entered into an agreement dated 03.06.2002 with the Liberty Plaza Management Corporation to rent out C/E/4, a store room.

The 1st Respondent had been using the said store room until 2015, despite the Management Corporation repeatedly informing the 1st Respondent to handover the possession as they would not be extending the period of the agreement.

The said agreement had expired on 02.06.2003 and was not renewed. The 1st Respondent had not handed over the possession of the premises in dispute but paid rent up to year 2012 instead. Thereafter, the 1st Respondent had issued a cheque on 15.10.2015 for a sum of Rs. 58,350/- as payment of the rent and it had not been accepted by the Management Corporation of Liberty Plaza.

It was the contention of the 1st Respondent that he has been in possession of the said store room until an incident occurred on 28.10.2015, where the Petitioner and the Respondent-Respondent-Respondent [hereinafter referred to as the 2nd Respondent] allegedly broke into the store room, removed his belongings worth Rs. 975,000/- and changed the padlocks of the said store room disturbing the possession and causing a breach of peace.

Regarding the allegations leveled against the Petitioner by the 1st Respondent, it was submitted on behalf of the Petitioner that he was informed when he returned to office on 25.09.2015 that an inspection of the entire Liberty Plaza premises would be carried out with the participation of security officers of the building. As per this inspection, it had been observed that a room or space in the ground floor was open and in it were only debris of other shops. There had been pieces of glass and wood, aluminum strips and other shards. Since such an open space would raise security concerns and could be used for social vices, the outer area of the room was cleared and afterwards this room had been closed and padlocked by the security officers. The space in question C/E/4 was not used either by the 1st Respondent or the Liberty Plaza Management Corporation as it is a common area although Liberty Plaza Management Corporation has the legal ownership. However, it was revealed that the Management Corporation had leased out the storeroom in the common area to the 1st Respondent.

Petitioner further states, neither this particular incident nor any subsequent occurrence caused a breach of peace in any manner, or cause any threat to the breach of peace. However, as per the Petitioner, the 1st Respondent had then made a misrepresentation of facts to the police and lodged a false complaint alleging that the storage space had been broken into and that goods worth Rs. 975,000/- which were supposedly there were stolen. However, even the debris and goods that were cleared from the said space have been handed over to the police along with the key to the padlock.

The learned High Court Judge had observed that the 1st Respondent had made a complaint to the Police Station of Colpetty on 28.10.2015 stating that the Petitioner and the 2nd Respondent unlawfully and forcefully broke into the said premises and removed goods worth Rs. 975,000/- and acquired possession of the said premises.

"තමා 28.10.2015 දින නඩුවට අදාල ස්ථානයට යන විට එහි අගුලු ගලවා දමා භාණ්ඩ ඉවත් කර අලුතින් ඉබි යතුරු දමා තිබූ බවයි. එකී ස්ථානයේ රු. 975 000/- වටිනා භාණ්ඩ තිබූ බවටද පැමිණිලි කර ඇත."

Furthermore, the Police had reported facts to the Magistrate under B 3379/15, *inter alia;*

"පෙත්සම්කරුට [1st Respondent] අයත් ගබඩා කාමරයේ දොර අගුල කඩා භාණ්ඩ ඉවත් කර අලුතින් දොර අගුලු දැමූ බවට පෙත්සම්කරු පැමිණිලි කර ඇත. ඒ පිළිබඳව ගොඩනැගිල්ලේ සුපවයිසර් ගාමිණී යන අයගෙන් දුරකතනයෙන් විමසූ අවස්ථාවේදී කාමරය දුන්නේ නැති නිසා ඉඩ්බා කඩා කාමරය ගත් බවට ඔහු පෙත්සම්කරුට දැන්වූ බවද වාර්තා කර ඇත."

After 21 days from the said complaint, the Police informed Court that certain stolen goods were recovered but in the 'B report' it was mentioned that none of the goods were taken into custody. Although it was alleged that the 1st Respondent had made a misrepresentation of facts to the Police and lodged a false complaint, Petitioner had not substantiated the said contention.

It was revealed that the Police had investigated the complaint made by the 1st Respondent regarding theft of articles and had reported facts to the Magistrate of Fort in B 3379/15. Thus, it clearly shows that there was a breach of peace threatened or likely to be threatened owing to the dispute between the Petitioner and the 1st Respondent.

Moreover, the learned Magistrate had entertained the information filed under Section 66(1) (b) being satisfied that there was a breach of peace or a likelihood of such breach as established by the 1st Respondent.

In these circumstances, it is observable that the main issue to be determined in this matter in terms of Section 68(1) of the Primary Courts' Procedure Act is as to who was is possession of the disputed premises on the date on which information was filed under Section 66(1) (b) of the Act. However, when there is an allegation of forcible dispossession, the Court can act under Section 68(3) and make a determination as to whether such dispossession has been affected within two months prior to the filing of the information.

It was the contention of the 1st Respondent that the Petitioner's claim is entirely based on forcible dispossession. Thus, in such circumstances, Section 68(3) of the Act applies

and as such, the learned Magistrate has quite correctly proceeded to inquire into whether requisites of Section 68(3) have been met.

The learned Magistrate has stated in the Order dated 18.03.2016:

> "පෙ1 ලෙස ලකුණු කරමින් පෙත්සම්කරු සහ liberty plaza ගොඩනැගිල්ලේ කලමනාකරන කටයුතු සිදුකරන liberty plaza management corporation අතර එළැඹී කුලී ගිවිසුම ඉදිරිපත් කර ඇත. එම ගිවිසුම අනුව 2002.06.03 වන දින සිට පෙත්සම්කරුට එහි භුක්තිය හිමිවී ඇති අතර ගිවිසුම වර්ෂයක කාලයකින් අවසන් විය යුතුය. කෙසේ වෙතත් පෙත්සම්කරු විසින් ගිවිසුම අවසන් වීමෙන් පසුවත් භුක්තියේ සිටි බවට ඔප්පු කරන පිණිස ලේඛන ඉදිරිපත් කර ඇත. ඒ අනුව ඉදිරිපත් කර ඇති පෙ4 ලේඛනය අනුව 2011.10.25 දින 2010 අප්‍රේල්, මැයි මස සඳහා පෙත්සම්කරු කුලී ගෙවා ඇත. ඒ අනුව 2012 මැයි මස සිට 2013 අප්‍රේල් දක්වා කාලය සඳහා කුලී ගෙවන ලද එවැනි රිසිට් පතක් පෙ5 ලෙසත් සලකුණු කර ඉදිරිපත් කර ඇත. පෙ6 ලෙස ලකුණු කරමින් 2011 මැයි මස සිට 2012 අප්‍රේල් දක්වා කුලී ගෙවන ලද රිසිට් පතක් ඉදිරිපත් කර ඇත."

It appears that after the termination of the agreement පෙ1, the Liberty Plaza Management Corporation had accepted rent from the 1st Respondent and 1st Respondent had paid rent by පෙ4, පෙ5 and පෙ6. However, they were not made as monthly payments but for a period of two months by පැ4 and for a period of 10 months by පැ5 and පැ6.

> "ඉහත සඳහන් කරන ලද පරිදි පෙත්සම්කරු විසින් ඉදිරිපත් කර ඇති සාක්ෂි මගින් කුලී ගෙවමින් භුක්තියේ සිටි කාලය තහවුරු කිරීමට සමත්ව ඇත්තේ දින දක්වා පමණි. ඉන්පසුව පෙත්සම්කරු එහි භුක්තියේ සිටි බවට පිළිගත හැකි සාක්ෂියක් ඉදිරිපත් කර නැත. පෙ12 දක්වා වූ අනෙකුත් ලේඛන ඊට පූර්වයෙන් වූ කාලය සඳහායි. එහෙත් පෙත්සම්කරු විසින් ඔහුගේ දිවුරුම් ප්‍රකාශය සඳහන් කර ඇති පරිදි වගඋත්තරකරුවන්ට කුලී ගෙවීම සඳහා යවන ලද චෙක් පතක ඡායා පිටපතක් පෙ17 වශයෙන් සලකුණු කර ඉදිරිපත් කර ඇත. පෙත්සම්කරු සඳහන් කර ඇත්තේ රු 58,350/- චෙක්පතක් වගඋත්තරකරුවන්ට යවන ලද නමුත් චෙක් පත බාර නොගෙන ආපසු යවා ඇති බවත් ය."

The learned Magistrate had concluded stating that a cheque for Rs. 58,350/- sent to the Petitioner does not prove that the 1st Respondent had been in possession of the disputed premises in question. However, in view of the evidence placed before the Magistrate, the learned High Court Judge had come to the conclusion that the 1st

Respondent had established his possession to the disputed premises until 01.05.2013 since the 1st Respondent paid rent for 2012 May–2013 April by P5.

The Court observes that the 1st Respondent had sent a cheque for Rs. 58,350/-. Thus, it is reasonable to presume that the 1st Respondent was in possession of the disputed premises when taking into consideration why the 1st Respondent had paid rent to the Petitioner.

The complaint made to Police by the 1st Respondent stated;

> "කාමරය දුන්නේ නැති නිසා ඉඩ්බෝ කඩා කාමරය ගත් බව ගාමිණී යන අය දුරකතනයෙන් පවසා ඇති බව පෙනේ."

This establishes the possession of the 1st Respondent to the disputed premises.

Since the disputed premises was used for the purpose of storage facility, it was revealed by evidence placed before the Magistrate that the 1st Respondent was in possession of the disputed premises two months prior to the filing of the information and that he was dispossessed from the premises in question.

Therefore, I hold that the Order of the Magistrate is erroneous. However, the learned High Court Judge had come to the correct findings of fact and law. Hence, the Order to have the 1st Respondent restored to possession of the disputed premises is well founded.

Thus, we set aside the Order of the learned Magistrate dated 18.03.2016 and affirm the Order of the learned High Court Judge dated 10.10.2019 and dismiss the application of the Respondent-Respondent-Petitioner with cost fixed at Rs. 30,000/-.

**JUDGE OF THE COURT OF APPEAL**

**K.K.A.V. Swarnadhipathi, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**