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

In the matter of an application for Contempt of Court under Article 105 (3) of the Constitution read with Chapter LXV of the Civil Procedure Code.

CA (Contempt) Application No: COC 01/2021
SP/HCCA/GA/LA No: 41/2020
DC Galle Case No: SP/3864

Allianz Insurance Lanka Limited
No. 675, Dr. Dannister De Silva Mawatha,
Colombo 09.

Petitioner

Vs.

1. K.A.N.W. Chathurangani
   Alias Kehelamby Arachchige Nishari Wathsala Chathurangani
   'Thakshila', Mayakaduwa,
   Imaduwa.

2. M.M. Sanjaya alias Sanjaya Mahawaththa
   'Thakshila', Mayakaduwa,
   Imaduwa.

Respondents

Before: **D.N. Samarakoon, J.**
B. Sasi Mahendran, J.

Counsel: Ronald Perera PC with Chandimal Mendis for the Petitioner
Kaushalya Nawaratne with Bhagya Herath for the Petitioner

Supported On: 06.10.2022

Written Submissions On: 23.03.2022 (by the Petitioner)
24.01.2022 (by the 1st and 2nd Respondents)

Order On : 18.10.2022

B. Sasi Mahendran, J.

This Order deals with the preliminary objections raised by the Respondents on the maintainability of this application.

The Petitioner, Allianz Insurance Lanka Limited, invoking this Court's jurisdiction to punish for contempt of court under Article 105(3) of the Constitution, filed this application against the Respondents alleging that the Respondents were in contempt of court by their wilful refusal to abide by the interim orders of the High Court of Civil Appeal of the Southern Province holden in Galle dated 8th December 2020 ("X6") (which were subsequently extended) and the Orders of the District Court of Galle ("Y") which restrained the Respondents from carrying out certain acts.

Before we address the preliminary objections a brief narrative of the events in their chronological order that led to these contempt proceedings is necessary.

The 1st Respondent is the holder of a 'Motor Insurance Policy' (bearing No. LP 8001500149) issued to her by the Petitioner Company in respect of a vehicle bearing No. SP- CAD 8916, owned by her. A claim made on the insurance policy, following an accident on 5th October 2020, was rejected by the Petitioner Company since an inquiry revealed that the vehicle was used by an unauthorized third party for purposes other than private and domestic purposes for which it had been obtained (vide documents marked "P4" and

"P5" on pages 194 and 195 of the Brief). Consequently, as alleged by the Petitioners, the 2nd Respondent (the 1st Respondent's husband) commenced a smear campaign against the Petitioner Company.

The Petitioner Company instituted an action in the District Court of Galle (bearing No. SP/3864) by Plaint and Affidavit dated 26th November 2020 ("X3") praying, inter alia, to restrain the Respondents from defaming the Petitioner Company. The matter was supported on 01st December 2020 ("X4") for the grant of enjoining orders ("ඒ", "ඕ", "ග", "ජ", "ඩ") prayed for in the Plaint. These orders were as follows:

"(ඒ) අතුරු ඉංජන්ක්ෂන් තහනම සඳහා වූ පරීක්ෂණය පිළිබඳව සුදුස්සක් කරනතුරු පැමිණිලිකරුට අපහාසාත්මක වන ප්‍රකාශ පළකිරීමෙන් /ප්‍රදශර්නය කිරීමෙන්/ දැමීමෙන්/ ඒවා පළකිරීමට, දැමීමට හෝ ප්‍රදශර්නය කිරීමට සැලැස්වීමෙන් සහ/හෝ ප්‍රකාශ කිරීමෙන් 1 වන සහ/හෝ 2 වන විත්තිකරුවන්, ඔවුන්ගේ සේවකයන්, නියෝජිතයන් බලයලත් තැනැත්තන් හෝ විත්තිකරුවන්ගේ උපදෙස් මත ක්‍රියා කරන යම් තැනැත්තෙකු වළක්වාලන වාරණ නියෝගයක් ලෙසත්:

(ඕ) අතුරු ඉංජන්ක්ෂන් තහනම පිළිබඳ පරීක්ෂණය පිළිබඳව සුදුස්සක් කරනතුරු පැමිණිලිකරුට අපහාසාත්මක වන අංක LP 8001500149 දරන ඉහත කී රක්ෂණ ඔප්පුවට අදාළ යම් ප්‍රකාශයක් කිරීමෙන් සහ/හෝ පළකිරීමෙන් සහ/හෝ පළකිරීමට සැලැස්වීමෙන් 1 වන සහ/හෝ 2 වන විත්තිකරුවන්, ඔවුන්ගේ සේවකයන්, නියෝජිතයන් බලයලත් තැනැත්තන් හෝ විත්තිකරුවන්ගේ උපදෙස් යටතේ හෝ උපදෙස් මත ක්‍රියා කරන යම් තැනැත්තෙකු වළක්වාලන වාරණ නියෝගයක් ලෙසත්:

(ග) අතුරු ඉංජන්ක්ෂන් තහනම පිළිබඳ පරීක්ෂණය පිළිබඳව සුදුස්සක් කරනතුරු පැමිණිලිකරුට අපහාසාත්මක වන ප්‍රකාශ ප්‍රදශර්නය කිරීමෙන් සහ/හෝ අපහාසාත්මක වන බැනර් සහ/හෝ පෝස්ටර් ප්‍රදශර්නය කිරීමෙන් සහ/හෝ එවැනි අත් පත්‍රිකා බෙදාහැරීමෙන් සහ/හෝ අන්තජර්ාලයේ වෙබ් අඩවිවල එවැනි ප්‍රකාශ පළකිරීමෙන් 1 වන සහ/හෝ 2වන විත්තිකරුවන් ඔවුන්ගේ සේවකයන් , නියෝජිතයන්, බලයලත් තැනැත්තෙකු හෝ විත්තිකරුවන්ගේ උපදෙස් යටතේ හෝ ඒවා මත ක්‍රියා කරන යම් තැනැත්තෙකු වළක්වාලන වරණ නියෝගයක් ලබාදෙන ලෙසත්;

(ජ) අතුරු ඉංජන්ක්ෂන් තහනම පිලිබඳ විමසීම සම්බන්ධයෙන් සුදුස්සකු කරනතුරු පැමිණිලිකරුට හෝ එහි සේවකයන්ට, නියෝජිතයන්ට සහ/හෝ සේවනියුක්තයන්ට තජර්නය කිරීමෙන් ඔවින් බියගැන්වීමෙන් සහ/හෝ පැමිණිලිකරුට එරෙහිව අන්තජර්ාලය හරහා බියගැන්වීමේ ක්‍රියා සිදුකිරීමෙන් 1 වන සහ/හෝ 2 වන විත්තිකරුවන් ඔවුන්ගේ සේවකයන්, නියෝජිතයන් බලයලත් තැනැත්තන් හෝ විත්තිකරුවන්ගේ උපදෙස් යටතේ සහ/හෝ ඒ මත ක්‍රියා කරන යම් තැනැත්තෙකු වළක්වාලන වරණ නියෝගයක් ලබාදෙන ලෙසත්:

(ඩ) අතුරු ඉංජන්ක්ෂන් තහනම පිලිබඳ විමසීම සම්බන්ධයෙන් සුදුස්සකු කරනතුරු පැමිණිලිකරුට හානියක් තජර්නයක් සහ පැමිණිලිකරුගේ කීර්ති නාමයට අලාභයක් සිදුකිරීම සඳහා පැමිණිලිකරුට එරෙහිව

රැස්වීම් සම්මන්ත්‍රණ, විරෝධතා සහ රැලි පැවැත්වීමට මහජනතාව රැස්කිරීමෙන් සහා/හෝ රැස්කිරීමට කටයුතු සැලැස්වීමෙන් 1 වන සහ/හෝ 2 වන විත්තිකරුවන් ඔවුන්ගේ සේවකයන්, නියෝජිතයන් බලයලත් තැනැත්තන් හෝ විත්තිකරුවන්ගේ උපදෙස් යටතේ සහ/හෝ ඒවා මත ක්‍රියා කරන යම් තැනැත්තෙකු වළක්වාලන වරණ නියෝගයක් ලබාදෙන ලෙසත්"

The learned Additional District Judge refused to grant the enjoining orders but directed the notice of interim injunction (returnable on 18th December 2020) be served on the Respondents. One significant reason for the refusal was the lack of evidence to ascertain with certainty that the smear campaign on social media was in fact carried out by the Respondents themselves. The relevant part of the Order (found on pages 102-104 of the Brief) reads:

"සමාජ මාධ්‍ය ජාලා අදාළ ප්‍රචාරණ කටයුතු සිදු කොට ඇති බව පෙනී යන අතර ඊට අදාලව අන්තජර්ාලයේ විසිරී ඇති ගිණුම් වංචනික නොවූ, ව්‍යාජ නොවූ (Fake Accounts) ගිණුම් ද යන්නට තහවුරු කර ගත හැකි කිසිදු ලේඛනයක් ඉදිරිපත්ව නොමැත. 01, 02 විත්තිකරුවන් විසින් පවත්වාගෙන යනු ලබන ගිණුම් ඔවින්ගේම ගිණුම් බවට තහවුරු වන ආකාරයෙන් විදුලි සංදේශ නියාමන කොමිසම හෝ ඒ සම්බන්ධ පුද්ගලික ආයතන මගින් ඉදිරිපත් කරන ලද ලේඛනයක් හෝ කරුණු ද ඉදිරිපත්ව නොමැත. කරුණු එසේ හෙයින් 01,02 විත්තිකරුවන්ට එරෙහිව මෙම අවස්ථාවේ වාරණ නියෝගයක් නිකුත් නොකරමි."

Being aggrieved by this Order, the Petitioner Company preferred a leave to appeal application to the High Court of Civil Appeal of the Southern Province holden in Galle (bearing No. SP/HCCA/GA/LA/41/2020) by Petition and Affidavit dated 03rd December 2020 ("X5"). The Petitioner Company prayed to vary and/or set aside the Order dated 01st December 2020; to grant the enjoining orders prayed for in the Plaint dated 26th November 2020 ("X3"), and the following interim orders:

"e) grant an interim order preventing the 1st and/or the 2nd Defendants [the Respondents], their servants, agents, authorized persons, or anyone acting under and/or upon the instructions of the Defendants from publishing/ displaying/posting/ cause to post or display any publication and/or making statements that are defamatory of the Plaintiff until the inquiry into the Interim Injunction in the District Court is disposed of and/or until final determination of this Application;

f) To grant an interim order preventing the 1st and/or the 2nd Defendants, their servants, agents, authorized persons, or anyone acting under and/or upon the instructions of the Defendants from making and/or publishing and/or caused to publish any statements pertaining to the aforesaid Insurance Policy Number LP 8001500149 that are defamatory

of the Plaintiff until the inquiry into the Interim Injunction in the District Court is disposed of and/or until final determination of this Application;

g) To grant an interim order preventing the 1st and/or the 2nd Defendants, their Servants, agents, authorized persons, or anyone acting under and/or upon the instructions of the Defendants from displaying and/or publishing banners and/or posters and/or distributing leaflets and/or posting on internet web sites statements that are defamatory of the Plaintiff until the inquiry into the Interim Injunction in the District Court is disposed of and/or until final determination of this Application;

h) To grant an interim order preventing the 1st and/or the 2nd Defendants, their Servants, agents, authorized persons, or anyone acting under and/or upon the instructions of the Defendants from intimidating/ threatening and/or any acts of cyber bullying the Plaintiff or it's servants, agents and/or employees until the inquiry into the Interim Injunction in the District Court is disposed of and/or until final determination of this Application;

i) To grant an interim order preventing the 1st and/or the 2nd Defendants, their Servants, agents, authorized persons, or anyone acting under and/or upon the instructions of the Defendants from assembling and/or causing to assemble persons to conduct any meetings, conferences, protests and/or rallies against the Plaintiff until the inquiry into the Interim Injunction in the District Court is disposed of and/or until final determination of this application."

This application was supported on 8th December 2020. The learned Civil Appellate Court Judges ordered that notice be issued to the Respondents (returnable on 15th December 2020) and granted the interim orders prayed for. Further, the learned Judges instructed the learned District Judge to issue the enjoining orders prayed for in the Plaint ("ඒ", "ඕ", "ග", "ජ", "ඩ" - Vide "X6" on page 57 of the Brief). Thus, by letter dated 9th December 2020 (Page 92 of the Brief) the Registrar of the District Court, Galle is informed of this direction by the Registrar of the Civil Appellate High Court. On 9th December 2020, the learned Additional District Judge extended the enjoining orders "ඒ", "ඕ", "ග", "ජ", "ඩ" (Vide "Y1" - Journal Entry No. 3 dated 9th December 2020 on page 1213 of the Brief), granted by the Civil Appellate Court, until the conclusion of the inquiry for the interim injunction.

Thereafter on 14th December 2020, the Learned Counsel for the Petitioner Company filed a motion at the Civil Appellate Court claiming that the Respondents were

evading receipt of the interim order. This motion was supported on 15th December 2020. The learned High Court Judges directed the Fiscal to issue notice by substituted service and, additionally, directed the Registrar to communicate the interim order to the Respondents over the telephone to the numbers given in the motion dated 14th December 2020, owing to the urgency of the matter (Page 59 of the Brief). The interim orders were extended until the 6th of January 2021, when the matter was next fixed to be mentioned.

On 6th January 2021, the Respondents entered an appearance at the Civil Appellate Court. An Order was made to which Counsel for both parties consented, to extend the operation of the interim orders until the interim injunction inquiry at the District Court is concluded (Vide "X10" - Journal Entry No. 7 dated 6th January 2021 on page 6 of the Brief and page 62 of the Brief).

In the meantime, on the 18th of December 2020, when this matter was called in the District Court, the learned Additional District Judge ordered that the enjoining orders be served on the Respondents by substituted service and for this case to be mentioned on the 4th of January 2021 ("Y2" on pages 1214/1215 of the Brief). On 4th January, the Respondents moved for time to file objections with regard to the interim injunction. The said statement of objections of both Respondents ("X-13A"), along with their joint affidavit ("X-13B"), was filed on 11th January 2021. The operation of the enjoining orders was extended on each occasion by the learned District Judge.

The following facts were revealed in the written submissions of the Respondent, and for reasons unbeknown to us were not brought to our attention in the written submissions of the Petitioner Company. Those facts are that the District Court, following the inquiry for an interim injunction (which was disposed of by way of written submissions as agreed to by both parties), issued the interim injunctions prayed for in the Plaint i.e., prayers (f), (g), (h) and (i). Being aggrieved by this, the Respondents filed a leave to appeal application in the Civil Appellate Court in Galle (bearing No. SP/HCCA/GA/LA/21/2021). Having supported the application on the 22nd of March 2021, the Civil Appellate Court issued an Order to stay the operation of the said interim injunctions. Being aggrieved by this Order, the Petitioner Company filed a leave to appeal application at the Supreme Court (bearing No. SC/HCCA/LA/151/2021). A stay order had been issued under Rule 43 of the Supreme Court Rules. The matter is, at the time of this Order, still pending before the Supreme Court.

This application to punish for contempt was filed on 17th February 2021. The Petition, in paragraph 23, sets out the incidents of contempt complained of. This is reproduced as follows (without stating the contents of the statements made online):

"Despite the aforesaid, however, as from the date of the grant of the interim orders by the High Court on 08.12.2020 (X-6) and the District Court acting in pursuance and compliance thereof, and which said interim/enjoining orders presently stand operative and in continuance until the conclusion of the interim injunction inquiry pending before the District Court of Galle Case No: SP/3864, the 1st and/or 2nd Respondents have acted contemptuous to and in breach of the said interim orders (X-6) and enjoining orders issued by the District Court against them, and had engaged themselves in the following acts, on the following dates, to wit:

a) As morefully detailed in paragraphs 5(a) to (e) of the Affidavit dated 16.12.2020 affirmed to by Sugunatheeran Thananchayan – Chief Claims Officer of the Petitioner (X-8B);
b) The 2nd Respondent in the capacity of an 'Admin/Moderator' of a self-styled public facebook group called 'ලිසිං, රක්ෂණ, බැංකු ණය හා මූල්‍ය ආයතනවලින් අසාධාරණයට ලක්වුවන්ගෙ සංසදය' had on **17.12.2020**, published on the said group comprising 1139 members, the following messages/ statements which are false and per se and by innuendo defamatory of the Petitioner. The said publication had generated 7 comments, 12 likes and 9 shares to wit:
c) On **19.12.2020**, the 2nd Respondent had published in his facebook account, the following statement which is per se and by innuendo defamatory of the Petitioner, generated 19 comments, 19 likes and 1 share, to wit:
d) On **23.12.2020**, the 2nd Respondent had published in his facebook account, the following statement which is per se and by innuendo, defamatory of the Petitioner, generated 14 comments, 42 likes and 1 share, to wit:
e) On **30.12.2020**, the 2nd Respondent had published in his facebook account, the following statement which is per se and by innuendo, defamatory of the Petitioner, generated 9 comments, 80 likes and 22 shares, to wit:
f) On or about 5th December 2020, the 2nd Respondent had started an online petition campaign against the Petitioner ostensibly addressed to H.E. the President in change.org captioned 'Allianz ආයතනයේ රක්ෂණ වන්දි නොගෙවීමට එරෙහිව' which is per se and by innuendo, defamatory of the Petitioner, and which had been signed by 166 persons, to wit:……."

The Petitioner Company prays for the issuance of a rule or summons on the 1st and 2nd Respondents to show cause why they should not be punished for their wilful acts of defamation in breach of the interim orders and/or enjoining orders; to issue a charge sheet and charge the Respondents for the offence of contempt of Court; to impose a suitable punishment.

When this matter was supported in this Court, notice was issued to the Respondents. Counsel for the Respondents, as mentioned above, raised preliminary objections to the maintainability of this application. These include:

1. The Court of Appeal lacks jurisdiction to hear this matter; the appropriate forum is the District Court.
2. The incidents prayed for by the Petitioner, do not constitute contempt.
3. The Petition is ex-facie erroneous, and the Petition does not contain a charge sheet/ draft charge sheet.
4. The Petition cannot be maintained against the 1st Respondent as the Petition does not disclose any contemptuous conduct on her part.

This Court is bound to give a ruling on these objections before considering the issuing of summons on the Respondents.

'Contempt of Court', although an amorphous term, it is a vital instrument in the arsenal of the Judiciary to prevent a mockery of the due administration of justice. As recently held by his Lordship Arjuna Obeyesekere J. in Kahapola Arachchige Prabath Anurada Nilupul Fernando v. Urban Council, Kesbewa & Others CA Contempt 05/2018 decided on 08.11.2019:

"The law of contempt as a whole is concerned with the upholding of the due administration of justice, and perceptions the public ought to have regarding Courts of law. It is obvious that disregard of a court order not only deprives the other party of the benefit of that order, but also impairs the effective administration of justice. The need for society to preserve the rule of law and protect the rights of its citizens as well as those of the State lies at the heart of contempt…."

Lord Simon in Attorney General v. Times Newspapers Ltd [1973] 3 All ER 54 observed:

"The law of contempt of court is a body of rules which exists to safeguard another, quite different, institution of civilised society. It is the means by which the law vindicates

the public interest in due administration of justice—that is, in the resolution of disputes, not by force or by private or public influence, but by independent adjudication in courts of law according to an objective code. The alternative is anarchy".

Oswald's, 'Contempt of Court' (3rd edition on page 6) notes:

"To speak generally, Contempt of Court may be said to be constituted by any conduct that tends to bring the authority and administration of the law into disrespect or disregard, or to interfere with or prejudice parties litigant or their witnesses during the litigation."

We are also mindful that before taking steps to issue summons a Court must form an opinion as to the existence of sufficient grounds. The learned judge must be satisfied that there are sufficient grounds to issue summons. (Vide Media Image v. Dissanayake (2006) 3 SLR 215).

In the case of Upali Dharmasiri Welaratne v. Wesley Jayaraj Moses SC Appeal No. 65/2003 decided on 27.05.2009, his Lordship Marsoof J. laid down the following as being the required elements for a finding of civil contempt:

"(1) The existence of an undertaking or order;

(2) knowledge of the undertaking or order;

(3) ability to comply with the undertaking or order; and

(4) willful or contumacious disobedience of the undertaking or order."

This Court will now examine the merits of the objections raised.

Objection 1: This Court lacks jurisdiction; the appropriate forum is the District Court

The authority of this Court to punish for contempt of court is Constitutionally vested by virtue of Article 105(3). This Article reads:

(3) The Supreme Court of the Republic of Sri Lanka and the Court of Appeal of the Republic of Sri Lanka shall each be a superior court of record and shall have all the powers of such court including the power to punish for contempt of itself, whether committed in the court itself or elsewhere, with imprisonment or fine or both as the court may deem fit.

The power of the Court of Appeal shall include the power to punish for contempt of **any other court**, tribunal or institution referred to in paragraph (1)(c) of this Article, whether committed in the presence of such court or elsewhere:

Provided that the preceding provisions of this Article shall not prejudice or affect the rights now or hereafter vested by any law in such other court, tribunal or institution to punish for contempt of itself.

The judgment of this Court in Mary Jean Varma v. Dr. Chrisantha Nicholas Anthony Nonis CA Application No. 11/2016 decided on 24.01.2017 is relied on by the Respondents to substantiate this objection. The judgment of his Lordship Padman Surasena J. citing the proviso to Article 105(3) observed that Section 18 of the Judicature Act must operate independently. The High Court has power to take cognizance of and summarily try the offence of contempt, as the matter in dispute was still pending before the High Court:

"The case record containing all the relevant material as well as all the relevant parties are already before the said High Court. If the Respondents have violated the interim orders granted by the High Court thus committing an offence of contempt, the question arises as to why the said High Court cannot deal with this case particularly when it has been specifically vested with such power by the legislature. Similarly, the question as to why in those circumstances this court should entertain this case when it is clearly a matter which should come under the purview of the High Court."

Further, his Lordship observed that certain pragmatic considerations such as the function of the Court of Appeal are to, as the name suggests, deal with 'appeals'; if litigants around the island opted to file in this Court, the twelve judges of the Court, at the time, would be inundated; and as the matter was before the High Court, the High Court judge would be well-versed and better appraised of the facts, and thus in a better position to deal with the offence of contempt.

His Lordship also referred to the judgment of Metthananda v. Kushan Fernando [2006] 1 SLR 290. In that case, his Lordship Imam J. observed that as the evidence of the witnesses was incomplete, the District Court, which was dealing with a case of false evidence by affidavits, would be the best forum to determine the truth or falsehood of the evidence. This is not so in the instant case.

It was also held that since Section 183(B) of the Civil Procedure Code utilizes the power conferred on the District Court in terms of Section 55(1) of the Judicature Act to

punish contempt, the special procedure thus created by the legislature to deal with contempt of court arising out of giving false statements by way of affidavits or otherwise must be trodden. In the present case, there is no specific procedure laid down and so the litigant can opt to apply to this Court.

That aside, what can be gleaned from these judgments is that the option at which forum one intends to file contempt proceedings is at the litigant's option (unless a specific procedure is laid out). However, the Court of Appeal exercising its discretion can determine whether to entertain the application. That discretion is guided by pragmatic considerations such as those laid down by his Lordship Surasena J. above. It must be noted that the number of judges in this Court has since been increased by the Twentieth Amendment to the Constitution.

Nonetheless, with great respect, we are unable to follow the decision of this Court in Mary Jean Varma (supra). This is because of the following decisions which are steadfast that the Court of Appeal does not have a choice whether to entertain the application.

In Merryl Perera v. Abeysuriya [1983] 2 SLR 293 his Lordship Samarakoon C.J. (with their Lordships Ratwatte J. and Victor Perera J. agreeing) held:

"Article 105(3) of the Constitution does not confer any discretion on the Court of Appeal. The Appellant had the right to make this application to the Court of Appeal and the Court being clothed by the Constitution to make the order prayed for had a duty to make the order if the facts were established to its satisfaction. It could not have refused to entertain the petition. A similar situation arose at a time when the District Court and the Court of Requests had concurrent jurisdiction over certain matters…….

We are dealing with a Constitutional provision and not with ordinary Statute Law. The former must command the greater respect. The Court of Appeal erred in refusing to grant the application for the issue of summons and in dismissing the application."

This decision was followed in this Court's judgment in Cornel & Co. Ltd. v. Mitsui & Co. Ltd. [1998] BLR Vol. VII Part II p. 39. His Lordship Wigneswaran J. held:

"When the question of contempt of a court of first instance is brought to the notice of the Court of Appeal and it is clothed with the jurisdiction to hear and if need be punish those who have committed contempt it would be churlish to place obstacles before the petitioner thereby shirking the responsibility of the Court of Appeal. It is probably the comprehension of this fact that induced the Supreme Court to state in *Merryl Perera* v.

Abeysuriya that Article 105(3) of the Constitution does not confer any discretion on the Court of Appeal. In other words this Court is expected to handle an application dealing with contempt whatever be the difficulties it may face, administrative or otherwise. Earlier the Court of Appeal in its order in *Merryl Perera*'s case had enumerated the following difficulties the Court of Appeal would face in the event of it being called upon to deal with contempt applications in respect of which the Court of Appeal and District Court had parallel jurisdictions:-

(i) The resulting over-burdening of the Court of Appeal with numerous applications

(ii) Heavy expense an inconvenience to Respondents; and

(iii) If encouraged it will end in the Court of Appeal performing the functions of the Original Court on the basis that the Court of Appeal had parallel jurisdiction.

None of these difficulties stood in the way of the Supreme Court in declaring that Article 105(3) of the Constitution does not confer any discretion on the Court of Appeal."

The judgment of Cornel (supra) was referred to with approval in the judgment of this Court in Croos v. Dabrera [1999] 1 SLR 205.

In the instant case, an allegation is made that the Respondents have acted in violation of the orders issued by two Courts. It is well established that Article 105(3) confers extensive authority on the Court of Appeal to deal with contempt arising out of not only its own Court but also from Courts of the first instance (Vide Chandradasa Nanayakkara v Liyanage Cyril [1984] 2 SLR 193). In a matter such as this, involving multiple proceedings, a forum such as this Court will be beneficial in viewing the proceedings holistically.

Further, as alluded to in the aforesaid decisions, the authority vested on this Court is by the Constitution itself, and not ordinary law sanctioned by the Constitution. In other instances, for example, such as revisionary jurisdiction and writ jurisdiction (limited to the Provincial Council list) the Constitution has given parallel jurisdiction to the Provincial High Courts by Article 154P. Yet, with the jurisdiction to punish for contempt, that jurisdiction has not been directly conferred on those Courts by the Constitution itself. Instead, it is indirect by way of ordinary legislation with Constitutional sanction.

Therefore, the objection that the Court of Appeal lacks jurisdiction must be overruled.

Objection 2: The incidents prayed for by the Petitioner, do not constitute contempt.

The incidents complained of as constituting the offence of contempt take place between the 5th of December 2020 and the 30th of December 2020. These acts complained of, are allegedly in violation of the interim orders issued by the Civil Appellate Court (first issued on 8th December 2020 and then subsequently extended) and carried out by the District Court (on 9th December 2020 and subsequently extended).

Contravening or acting in breach of enjoining orders are punishable as such acts constitute contempt. Section 663 of the Civil Procedure Code makes this a punishable offence. Obedience is required notwithstanding any defect in the issuance of the order. Such was the position taken as far back as 1899 when his Lordship Lawrie J. Silva v. Appuhamy 4 NLR 178 held:

"An injunction granted by a competent court must be obeyed by the party whom it affects until it is discharged, and that disobedience can be punished as for a contempt of court, notwithstanding irregularity in the procedure."

In Regent International Hotels v. Cyril Gardiner [1978-79-80] 1 SLR 278 his Lordship Samarakoon C.J. held:

"The fundamental rule is that an injunction remains operative until dissolved by the Court and the duty of obedience to it continues till it is dissolved. Until the Enjoining Order is dissolved on a proper application to Court the duty of obedience exists. ***Any party who disregards it does so at his peril. Every act done in contravention of the Enjoining Order as long as it is operative constitutes a breach of it and therefore a contempt of Court****. No doubt there may be a series of such acts after the initial disobedience but this is a matter that may be taken into account in mitigation of sentence. As long as the Enjoining Order exists the party who has obtained it is entitled to make successive attempts to have it obeyed and obstructions of each of such attempts constitutes an offence. To hold otherwise would in effect be, to hold that the enjoining order ceases to have any force after the initial disobedience and thereby the law and the Court that issue it will be brought to naught. If the contemnor is doubly vested he has only himself to blame."*

The case of Cornel (supra) underscores the importance of such obedience as "maintaining of the Court's proper authority and efficiency too since the credibility and efficiency of the entire judicial system is at stake."

In the English case of Howitt Transport v. Transport and General Workers' Union [1973] ICR 1, Sir John Donaldson held:

"…orders of any court must be complied with strictly in accordance with their terms. It is not sufficient, by way of answer to an allegation that a court order has not been complied with, for the person concerned to say that he "did his best." The only exception to that proposition is where the court order itself only orders the person concerned to "do his best." But if a court order requires a certain state of affairs to be achieved, the only way in which the order can be complied with is by achieving that state of affairs."

The issue before this Court, as raised by the Respondents, is not whether the acts complained of were committed by the Respondents, but whether the Respondents were aware of these orders. The Respondents flatly deny any knowledge. The incidents complained of have taken place on:

1. 17th December 2020 – Publication on the Facebook Group
2. 19th December 2020 – Publication on 1st Respondent's Facebook Account
3. 23rd December 2020- Publication on 1st Respondent's Facebook Account
4. 30th December 2020- Publication on 1st Respondent's Facebook Account
5. On or about 5th December 2020- Creation of an Online Petition

As borne out by the Journal Entries of the Civil Appellate Court, the learned Judges ordered substituted service of summons and communication of the interim orders by telephone on the 15th of December 2020. Additionally, the Journal Entry dated 15th December 2020 ("X9" on page 3 of the Brief) states that the summons was not served for the following reason:

"2020.12.15

ගරු සිවිල් අභියාචනා මහාධිකරණ විනිසුරු තුමන්ලා වෙත,

පැමි. පෙත්. නී. තරංගා ලක්මාලි උක්වත්ත මිය

1. වාරණ නොයෝගයක් නි/කර ඇත.

11. 1,2 වි/වග කැඳවීම් නොතීසි නි/කර ඇත.

එම නොකිසි "ගෙදර සාමාජිකයන් මෙය භාර ගැනීම ප්‍රතික්ෂේප කරයි" යනුවෙන් සඳහන්ව ඇත." [emphasis added]

The Journal Entry dated the same, states that the 2nd Respondent was informed of these orders by telephone by the Registrar of the Civil Appellate Court. The 1st Respondent's mobile phone was switched off when the Registrar tried to contact her on two occasions.

However, the Respondents allege that the orders of the Civil Appellate Court were not read out over the telephone call. The Respondents claim that they only came to know the exact nature of the orders on the 6th of January 2021.

The relevant Journal Entries ("Y3" dated 04th January 2021 on page 5 of the Brief) and a letter to the Registrar of the Civil Appellate Court by the Counsel for the Respondents dated the same day (on page 71 of the Brief) note that the Respondents had obtained summons by substituted service (no date is specified as to when it was in fact received). The relevant Journal Entry ("Y3") reads:

"1,2, විත්.වග. නීතිඥවරුන් වන සඳරුවන් සේනානායක මයා සහ නීතිඥ සංජය මහවත්ත මයා එක්ව මෝෂන් පත්‍රයක් ඉදිරිපත් කරමින් නඩුවේ 2 වන විත්තිකාර වගඋත්තරකරු වෙත **ආදේශිත ක්‍රමයට නොකිසි අලවා භාර දී තිබූ නමුදු** එකී වගඋත්තරකරුවන් වෙත ලබා දීමට නියමිත නඩු ගොනුවේ පිටපත් ලබා දී නොමැති හෙයින් එම නඩු ගොනුව 2 වන විත්ති. වග. වෙත රෙජිස්ට්‍රාර් වරිය ඉදිරියේ ලබා දීමට කටයුතු කරන මෙන් ඇයද සිටි.

නියෝගය-

1. ගොනු කරන්න

2. නිකුත් කරන්න." [emphasis added]

As this Journal Entry (and the letter on page 71) indicate, although the summons was served by substituted service, the Respondents did not possess a copy of the Brief. Thus, there is no denying that summons was served sometime between the 15th of December 2020 and the 4th of January 2021. In this regard, the Fiscal Report dated 18th December 2020 is relevant. It states that the notice was served by substituted service on 16th December 2020 (vide page 74 of the Brief).

Having regard to Section 114 (illustration (d)) of the Evidence Ordinance it appears to us that the facts presented give rise to the presumption that the summons was served on the Respondents.

In the case before the District Court, the Journal Entries indicate that summons was ordered to be served by substituted service on 18th December 2020. The Journal Entry dated 04th January 2021, states that summons had been served by substituted service. The Counsel for Respondents appeared on that day. We are unaware due to the lack of material to know of the exact date when the summons was served.

If the Respondents were not aware of the existence of the orders, then their acts cannot be in contempt. The second element, listed out by his Lordship Marsoof J. in Upali Dharmasiri Welaratne (supra) i.e. knowledge of the order is absent. One cannot be in breach of orders that one was unaware of.

Borrie and Lowe's, 'The Law of Contempt' (Third edition on page 562) note-

"The defendant must be shown to have had proper notice of the terms, for it is an established principle that a 'person cannot be held guilty of contempt in infringing an order of the court of which he knows nothing'."

On the material before us, we cannot presume that the Respondents were ignorant of the orders.

This objection must be overruled. We are of the view that prima facie there are sufficient grounds, in this case, to serve summons on the 2nd Respondent for the charges from 17th December to 30th December 2020.

With respect to the incidents complained of in the Affidavit of the Head of Claims of the Petitioner Company dated 27th September 2022, incidents that did not fall within the ambit of the original complaint can be filed anew if desired. Yet, as those acts may have taken place while the interim injunctions were stayed by the Civil Appellate High Court, they will not amount to contempt, if that is the case.

It must be noted that much time would have been saved had the procedure clearly established by law been followed by the learned Judges of the Civil Appellate Court. Section 757(2) of the Civil Procedure Code provides that upon filing a leave to appeal application, the Registrar of the Court ought to issue a notice of the application to each

Respondent together with copies of the Petition and Affidavit. It appears that the notice was issued only on 8th December 2020 when the application was supported and leave to appeal was granted.

Objection 3: The Petition is ex-facie erroneous, and the Petition does not contain a charge sheet/ draft charge sheet.

The Respondents cannot claim that they were unaware of the charges before this Court since the Petition laid out the proposed charges. The charge sheet proper would be issued on the issuance of summons. In an Order dated 14.12.2021 in CA/COC/0009/2019, his Lordship Sampath Abayakoon J. reiterated the same:

"A complainant is only required to tender the summons and the chargesheet if and when the Court decides to proceed with the application of a complainant in terms of Article105 (3) of the Constitution. Therefore, it is not a pre-requisite that the summons and the chargesheet shall be filed along with the complaint."

Objection 4: The Petition cannot be maintained against the 1st Respondent

As alluded to above, prior to the issuing of summons in a matter of contempt of court, the Court must be satisfied that sufficient grounds exist against the contemnor. In Jayaratne v. Sirimavo Bandaranaike, 69 NLR 194 his Lordship H.N.G. Fernando J. (as he then was) observed that the practice of the Court had been that a Rule Nisi for contempt of Court is only issued if there is available evidence which can lead the Court to conclude that an offence appears to have been committed. This was reiterated in the case of Media Image v. Dissanayake (supra) by his Lordship Justice Wimalachandra.

This is not a new position taken up by the Respondents. In their Statement of Objections before the District Court, the Respondents have pleaded for the removal of the 1st Respondent. We are of the view that there is no material for this application to be maintained against the 1st Respondent.

Therefore, we uphold the fourth objection (regarding the maintainability of the application against the 1st Respondent) and overrule the other objections namely that this Court does not have jurisdiction and that incidents of contempt had not been made out. We grant permission to the Petitioner to prepare the charge sheet only against the 2nd Respondent for the alleged acts of contempt committed against the authority of the Court between 17th December 2020 to 30th December 2020.

Hence, this Court directs the Petitioner Company to file summons, the charge sheet, and the list of witnesses and productions relied on by it, to be served on the 2nd Respondent.

The Registrar is directed to take necessary steps to serve summons along with the charge sheet to the 2nd Respondent.

JUDGE OF THE COURT OF APPEAL

D. N. SAMARAKOON, J.

I AGREE

JUDGE OF THE COURT OF APPEAL