

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

In the matter of an Application for Restitution,
in the nature of Restitutio in Integrum under
the provisions of Article 138 of the Constitution
of the Democratic Socialist Republic of Sri
Lanka

Aluthwala Juwanwadusarath Ranjan,
Nagahagoda, Nindana.

Case No. RII 09 2022

PLAINTIFF PETITIONER

D.C. Balapitiya Case No. 2767/L

1. Uththamawadu Kamal Garupasiri,
Nagahagoda, Nindana and others.

**SUBSTITUTED DEFENDANT
RESPONDENTS**

Before: Hon. Justice D. N. Samarakoon
Hon. Justice Sasi Mahendran

Counsel: J. M. Wijebandara with Madushika Konara for plaintiff petitioner
instructed by C. Dayananda
Harith de Mel for defendant respondents

Written Submissions on: 17.06.2022 by the 1st substituted defendant
respondent

Date: 15.11.2022

D.N. Samarakoon, J.

The plaintiff petitioner has instituted the present application in year 2022. On 25.08.2016, the plaintiff's action against the 1B defendant has been taken up for trial. The plaintiff was giving evidence. After the recording of 5 pages of proceedings, it transpired that the plaintiff is unable to read a document shown to him, without the aid of spectacles and further trial was adjourned for 26.01.2017.

On that day, the terms of settlement have been entered. There was no recital or narration as to that the parties wish to settle the case, etc., except in the brief "order", the learned district judge has stated that the plaintiff and the defendant agree to settle the dispute.

The plaintiff has thereafter made an application to the district court itself, to set aside the settlement. In evidence recorded on 14.06.2018 at page 5, the plaintiff has said,

Q. The settlement has been recorded on 26.01.2017?

A. Yes

Q. Was there a discussion between you and the defendant with regard to a settlement before that?

A. No.

Q. Was there a discussion between you and your Attorney at Law prior to 26.01.2017?

A. No.

As per the Written Submissions filed by the defendant respondent in this Court dated 17.06.2022, with regard to preliminary objections, objecting to the issue of formal notice in this application, it is stated that the petitioner made the

aforesaid application to the district court on restitutio in integrum and the said Court held that it has no such jurisdiction.

The preliminary objections are as enumerated below,

- (a) There are no exceptional circumstances,
- (b) Alternative remedies are not exhausted by the petitioner,
- (c) Circumstances pleaded cannot be tried by the Court of Appeal,
- (d) The petitioner is guilty of severe laches,

Thereafter, the respondent has submitted with regard to the facts of the case.

This Court, on 20.05.2022, heard parties only with regard to preliminary objections togetherwith the question whether formal notice should be issued and hence the merits of each party's case will not be considered at this stage.

The preliminary objection in (a), that there are no exceptional circumstances, cannot be considered, without considering the facts of the case. Hence that cannot be considered at this stage.

Regarding (b) alternative remedies not being exhausted, the respondent, among other things, has cited **Perera vs. Wijewickreme, (1912)** in which case it was held that, "Restitutio in integrum is not granted in Ceylon if the applicant has any other remedy **equally effectual** open to him".

However, that case being one decided by the Supreme Court of Ceylon is 110 years old. The power to exercise the jurisdiction of restitutio in integrum is presently enshrined in Article 138 of the Constitution as an exclusive jurisdiction of the Court of Appeal. Hence it cannot be logically equated with any other remedy.

What is in (c) is also a contention to be considered with the merits of the case. Whether circumstances pleaded can be tried or whether there is any remedy this Court can grant, without "trying", those, as in a trial, is a matter for mature considerations and cannot be decided at this stage.

The other question in (d) is severe laches. Although the settlement was entered in 2017, the application of the petitioner to set aside the settlement has continued until the order dated 05.10.2021 was made by the district court, as it expressly stated in its last paragraph, without going into the merits.

The petitioner has come before this Court in this application on 07.03.2022, within approximately 5 months. Having considered the circumstances of the application and the petitioner being in the area of Balapitiya and the practical circumstances in obtaining legal advice, this Court holds that the petitioner comes within the statement of **Manchinahamy vs. Muniweera (1950) 52 NLR 410**, that relief by way of restitutio in integrum should be sought for with the utmost promptitude.

In the circumstances, preliminary objections are overruled and satisfied on a prima facie basis that there is a matter to be looked into, this Court issues formal notice on the respondent.

Judge of the Court of Appeal

Hon. Sasi Mahendran, J.

I agree.

Judge of the High Court of Civil Appeal