

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

*In the matter of an Application for Revision
in terms of Article 138 of The Constitution.*

Court of Appeal No:

CA/MCR/0007/22

Assistant Commissioner of Labour,

Colombo-West.

COMPLAINANT

Vs.

MC - Mt. Lavinia

Case No: 4921/S/10 (Labour)

HC (Civil) 25/2011/CO

Tera Net Lanka (Private) Limited,

85/1/2, Galle Road,

Dehiwela.

ACCUSED

AND NOW BETWEEN

Johnpillai Prince James,

34, Singapura Road, Welikanda.

PETITIONER

Vs.

Tera Net Lanka (Private) Limited,
85/1/2, Galle Road,
Dehiwela.

ACCUSED-RESPONDENT

Assistant Commissioner of Labour,
Colombo-West.

COMPLAINANT-RESPONDENT

1. The Liquidator,
85/1/2, Galle Road,
Dehiwela.

2. Kanagaratnam Kuganathan,
31-5/4, Arethusa Lane,
Wellawatte,
Colombo 06.

RESPONDENTS

Before : Sampath B. Abayakoon, J.

: P. Kumararatnam, J.

Counsel : Vijithsingh for the Petitioner.

Mentioned on : 21-02-2023

Decided on : 03-04-2023

Sampath B. Abayakoon, J.

This is an application by the petitioner in terms of Article 138 of The Constitution invoking the revisionary jurisdiction of this Court. The petitioner is seeking to set aside an order dated 16-12-2016 pronounced by the learned High Court Judge of the Commercial High Court of Colombo in Case No. H.C.(Civil)/25/2011/CO.

Apart from the above, the petitioner has sought to get several orders made by the learned Magistrate of Mt. Lavinia in M.C. Mt. Lavinia Case No. 4921/S/10 (Labour) set aside as well.

According to the averments of the petition, the Commissioner of Labour has initiated proceedings against Tera Net Lanka (Private) Limited in order to recover Rs. 378,790.00 in terms of section 50 (c) (2) of the Shop and Office Employees (Regulation of Employment and Remuneration) Act No. 19 of 1954, as amended by subsequent amendments made thereto.

When this matter was taken up before the learned Magistrate of Mt. Lavinia, the above-mentioned respondent company has informed the Court that the company is under liquidation and proceedings have been initiated before the Commercial High Court of Colombo in terms of the Companies Act.

After considering the legal provisions applicable to such a situation, the learned Magistrate of Mt. Lavinia has refused to proceed with the application by the Commissioner of Labour informing the complainant to move the matter before the relevant Commercial High Court.

It appears that subsequent to an application made by the Commissioner of Labour to the Commercial High Court in the above-mentioned case, the Commercial High Court Judge of Colombo by his order dated 16-12-2016, pronounced in terms of section 279 (1) of the Companies Act, has allowed the Commissioner of Labour to proceed with the case initiated by him in M.C. Mt. Lavinia Case No. 4921/S/10 (Labour)

It was subsequent to the above order pronounced by the Commercial High Court of Colombo; the learned Magistrate of Mt. Lavinia has proceeded to recover the said amount from the petitioner.

It is therefore clear that what the petitioner is seeking to challenge primarily is an order pronounced by the Commercial High Court of Colombo in 2016, and several orders made by the Magistrate of Mt. Lavinia subsequent to that.

Although this Court has previously accepted this application and issued notice to the respondents, and also issued a stay order, subjected to the petitioner depositing the amount mentioned in the certificate filed by the Commissioner of Labour, it is the view of this Court that it becomes necessary to consider whether this Court has the jurisdiction to determine on an order pronounced by the Commercial High Court of Colombo before proceeding any further in this matter.

When this matter was considered before the Court, the learned Counsel for the petitioner insisted that this Court has the jurisdiction to revise an order pronounced by the Commercial High Court.

He relied on an order pronounced by another division of this Court in CA Application No. CA/RII/0006/2022 decided on 30th March 2022. This is an application purportedly for restitutio in integrum/revision under Article 138 of The Constitution. It has been held that despite the appellate power being vested in the Supreme Court in a matter of this nature, still the Court of Appeal can proceed with the application made to the Court in the case considered. However, it is the view of this Court that the mentioned decision has no binding effect on this Court. The learned Counsel for the petitioner was also given permission to file written submissions, on this question of jurisdiction.

Since the petitioner has combined the orders pronounced by the Magistrate Court as well as an order by the Commercial High Court of Colombo, I would now proceed to consider the basis upon which the petitioner has filed a revision application directly to this Court against an order by the learned Magistrate of Mt. Lavinia.

It appears that the petitioner has filed this application before the Court on the basis that this Court has parallel appellate and revisionary jurisdiction to that of a High Court of the Provinces, and there exists no bar for him to initiate proceedings either in the Court of Appeal or in the relevant Provincial High Court.

The forum jurisdiction of the Court of Appeal has been spelt out in Article 138(1) of The Constitution of the Democratic Socialist Republic of Sri Lanka.

For matters of clarity, I would now reproduce the relevant article.

138(1). The Court of Appeal shall have an exercise subject to the provisions of the constitution or any law, an appellate jurisdiction for the correction of all errors in fact or law in which shall be (committed by the High Court, in the exercise of its appellate or original jurisdiction or by any Court of First Instance), tribunal or other institution and sole and exclusive cognizance, by way of appeal, revision and restitutio integrum, of all causes, suits, actions, prosecutions, matters and things (of which such High Court of First Instance), tribunal or other institution may have taken cognizance.

(The emphasis is mine)

Provided that no judgement, decree or order of any Court shall be reversed or varied on account of any error, defect or irregularity, which has not prejudiced the substantial rights of the parties or occasioned a failure of justice.

138(2). The Court of Appeal shall also have an exercise all such powers and jurisdiction, appellate and original, as Parliament may by law vest and ordain.

The above-cited Article 138(1) of The Constitution has clearly provided that the jurisdiction conferred by the said Article is subject to the provisions of the constitution or any other law.

With the enactment of the 13th Amendment to The Constitution, a system of Provincial High Courts was established. Article 154P (3) of The Constitution which provides for the jurisdiction of the relevant High Court of the Province reads as follows.

154P (3). Every High Court shall-

- (a) Exercise according to law, the original criminal jurisdiction of the High Court of Sri Lanka in respect of offences committed within the province;**
- (b) Notwithstanding anything in Article 138 and subject to any law, exercise, appellate and revisionary jurisdiction in respect of convictions, sentences and orders entered or imposed by Magistrate Courts and Primary Courts within the province; (The emphasis is mine.)**
- (c) Exercise such other jurisdiction and powers as Parliament may, by law, provide.**

Therefore, it is clear that the Article 154P of The Constitution shall prevail over Article 138 of The Constitution when it comes to the appellate and revisionary jurisdiction with regard to convictions, orders entered or imposed by Magistrate or Primary Courts within the province where the relevant Provincial High Court has jurisdiction.

It is my considered view that since The Constitution, which is the Supreme Law of this country has provided clear and unambiguous provisions in relation to the jurisdiction of a Provincial High Court of a province, the petitioner has no basis to invoke the discretionary power of revision of this Court vested in terms of Article 138 of The Constitution without first placing his grievance before the relevant Provincial High Court.

As the primary purpose of the application before this Court by the petitioner is to challenge an order pronounced by the Commercial High Court of Colombo in

the year 2016, as the prayer of the petition suggests, I will now consider whether this Court has any jurisdiction to interfere with an order pronounced by the Commercial High Court of Colombo.

The legislature in its wisdom has brought into operation, the High Court of the Provinces (Special Provisions) Act No. 10 of 1996 which has been certified on 8th May 1996. The Court established under the provisions of the Act is the High Court now commonly referred to as the Commercial High Court.

The Preamble of the Act provides that it is an Act to provide for the exercise, by High Courts established by Article 154P of The Constitution, of jurisdiction to hear and determine certain civil actions and matters.

It is clear from the averments of the petition that the matter before the Commercial High Court is a matter where the said High Court has exclusive jurisdiction to hear and determine in terms of section 2(1) of the Act.

Since the petitioner has come before this Court by way of a revision application, seeking to challenge an order pronounced by the Commercial High Court on 16-12-2016, it becomes necessary to draw my attention to the provisions with regard to the right of appeal provided for in the relevant Act for a person dissatisfied with such an order pronounced.

The relevant section 5(2) of the Act reads as follows.

5(2). Any person who is dissatisfied with any order made by a High Court established by Article 154P of The Constitution, in the exercise of its jurisdiction under section 2 in the course of any action, proceeding or matter to which such person is, or seeks to be, a party, may prefer an appeal to the Supreme Court against such order for the correction of any error in fact or in law with the leave of the Supreme Court first had and obtained.

It is the view of this Court that the petitioner has no basis to come before this Court on a matter where it is the Supreme Court which has the exclusive jurisdiction to hear and determine.

It is my view that when the legislature has conferred exclusive jurisdiction to the Supreme Court, the Court of Appeal is not empowered to exercise its jurisdiction of revision, which would be against the intentions of the legislature.

In the case of **Australanka Exporters Pvt Ltd Vs. Indian Bank (2001) 2 SLR 156**, it was held that the appellate jurisdiction in respect of judgments and orders of the High Court of the Provinces made in the exercise of its original civil jurisdiction is vested in the Supreme Court.

In the case of **Merchant Bank of Sri Lanka Limited Vs. Wijewardena and others, S.C. Appeal 81/2010 decided on 15-02-2012;**

Per Suresh Chandra, J.

“By the enactment of Act No 10 of 1996 it is clear that in any civil matter dealt within the High Court, the right of appeal lies only to the Supreme Court. This seems to be the clear intention of the legislature with regard to the matters dealt in the High Court. When the above special provisions are being considered in the High Court, if revisionary jurisdiction of the Court of Appeal is given then it would give the party applying for revision in a situation as in the present case a favorable position by granting an additional opportunity to review as against a party who comes within the purview of the of the civil jurisdiction of the High Court regarding other matters as they will be entitled only to the right of appeal to the Supreme Court. This would be due to the fact that if the revisionary jurisdiction of the Court of Appeal is allowed then, if need be, the party would have the option go further to the Supreme Court by way of canvassing the judgment of the Court of Appeal in such instances. This would give the party in such circumstances two opportunities of review of the preliminary judgment when the clear intention of the legislature is that there should be only an appeal

to the Supreme Court from any judgment or order of the High Court in the exercise of its civil jurisdiction in terms of sections 5(1) and 5(2).”

Accordingly, it is the view of this Court that both the applications, seeking to challenge the order pronounced by the Commercial High Court as well as the orders pronounced by the Magistrate Court of Mt. Lavinia, are misconceived in law.

Hence, I find no basis for the petitioner to proceed any further in this application, although this Court has previously granted an interim order in this regard.

Therefore, the application of the petitioner is hereby dismissed.

The Registrar of the Court is directed to communicate this order to the relevant High Court as well as the Magistrate Court of Mt. Lavinia for relevant action.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree.

Judge of the Court of Appeal