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

In the matter of an Appeal in terms of Article 154P (6) of the Constitution of the Democratic Socialist Republic of Sri Lanka read together with the Provisions of the High Court of the Provinces (Special Provisions) No.19 of 1990.

Inspector of Police,
Police Station
Ganemulla

Complainant

Vs.

Court of Appeal Application
No: **CA (PHC) 140/2017**

High Court of Gampaha
No: **HCR Gampaha 136/15**
(Revision)

Magistrate's Court of
Gampaha
No :**27249/2015/P.C.**

1. Rathgamahewage Susantha Ajith
   No.203/3, School Lane,
   Galahitiyawa,
   Ganemulla

2. Rathgamahewage Ariyasena
   No.203/3, School Lane,
   Galahitiyawa,
   Ganemulla

1st Party

Melitus Charles Kulasekara
No.167, Mornington,
Ganemulla.

2nd Party

AND BETWEEN

Melitus Charles Kulasekara
No.167, Mornington,
Ganemulla

2nd Party-Petitioner

Vs.

Inspector of Police
Police Station
Ganemulla

Complainant –Respondent

1. Rathgamahewage Susantha Ajith
   No.203/3, School Lane,
   Galahitiyawa,
   Ganemulla

2. Rathgamahewage Ariyasena
   No.203/3, School Lane,
   Galahitiyawa,
   Ganemulla

1st Party-Respondents

And Now Between

Melitus Charles Kulasekara
No.167, Mornington,
Ganemulla

2nd Party Petitioner-Appellant

Vs.
Inspector of Police
Police Station,
Ganemulla

Complainant-Respondent-Respondent

1. Rathgamahewage Susantha Ajith
   No.203/3, School Lane,
   Galahitiyawa,
   Ganemulla

2. Rathgamahewage Ariyasena
   No.203/3, School Lane,
   Galahitiyawa,
   Ganemulla

1st Party Respondent-Respondents

BEFORE	:	D.N. Samarakoon J Neil Iddawala J
COUNSEL	:	Dr.Sunil Abeyratne for the Appellant Petitioner S.A.D.S. Suraweera for the Respondent
Argued on	:	16.03.2023
Written Submissions on	:	09.05.2023
Decided on	:	30.05.2023

Iddawala – J

This is an appeal filed by the 2nd party petitioner appellant (*hereinafter referred to as the appellant*) against the order dated 01.08.2017 delivered by the Provincial High Court of Western Province holden in Gampaha which acted in revision against the order dated 30.07.2015 delivered by the learned Magistrate of Gampaha.

The facts of the case are as follows. The 1st Party 1st respondent (*Hereinafter referred to as the respondent*) lodged a complaint against the appellant in the Police Station of Ganemulla on 24.01.2015 stating that the appellant is using the respondent's 10 feet road way (which does not belong to the appellant) way to enter the appellant's land. The inquiry by the Police commenced on 26.01.2015 and 12.02.2015 respectively and in the meantime the road in question was barricaded by the respondent to prevent the appellant from using it. Thereafter, the appellant made a complaint to the Police Station on 20.03.2015 against such action of the respondent. An inquiry was held in respect of the said complaint made by the appellant. However, as the appellant has claimed prescriptive rights over the disputed road way which was blocked by the respondent, a direction by senior police officer was made to settle the matter by filing a Section 66 application in the Primary Court.

Consequently, with respect to the right of way over the disputed road, the complainant respondent Inspector of Police had filed a Section 66 application on 31.03.2015 in the Magistrate Court bearing No.27249/2015/PC under Section 66 (1) of Primary Courts' Procedure Act no.44 of 1979 against the respondent and the appellant.

After the filing of the affidavits and the counter affidavits by the petitioner and the respondents, the learned Magistrate by the order dated 30.07.2015, held that the petitioner does not have a right of way over the disputed road. The learned Magistrate has made his order under Section 69 of the Primary Courts' Procedure Act.

It is the contention of the appellant that the learned Magistrate has failed to consider the inherited rights of the appellant over the land and that he has prescriptive rights over the roadway. Therefore, aggrieved by the said order of the learned Magistrate dated 30.07.2015, the appellant filed a revision application in the High Court of Gampaha

against the order of the Magistrate Court claiming that the learned Magistrate has arrived at an erroneous conclusion.

However, by the order dated 01.08.2017, the learned High Court Judge of Gampaha dismissed the petition of the appellant after careful consideration of the facts and circumstances of the case which included the delay in filing the revision application. The appellant averred that he was abroad during the time of the delivery of the learned Magistrate's order and that he filed for revision at the first opportunity after returning to Sri Lanka. However, in the exercise of the discretionary power vested within the High Court with regards to revision applications, it was observed by the learned High Court Judge that the appellant had the ability to appoint a power of attorney to file the said revision application without delay and in the absence of such actions, the revision application cannot be maintained. Thereby, the appellant has filed an appeal before this court to revise the order of the learned High Court judge dated 01.08.2017.

Hence, this Court is called upon to determine whether the learned High Court Judge's dismissal of the revisionary application of the appellant, on the basis of undue delay is in any way illegal or irregular. To that end, one must first examine the legislative rationale behind the applicable provisions of the Primary Courts' Procedure Act.

A matter to be highlighted at this point is that the order of the Primary (Magistrate) Court cannot be impugned as per Section 74 (2) of the Primary Courts' Procedure Act, therefore, an appeal against such order cannot be made. This is however, despite the availability of revisionary jurisdiction under Article 154P of the Constitution which is aimed at preventing a blatant miscarriage of justice and or for the due administration of justice. - (**Abeywardena vs. Ajith de Silva** 1998 1 Sri LR 134: **Sharif and Others Vs. Wickramasuriya and Others** 2010 1 S.L.R 255)

At the outset of this matter, the application of revisionary powers of a court has to be brought to the limelight. The revisionary powers of a court are wide and extensive, albeit its application is restricted to instances where flagrant violations of justice has resulted in exceptional circumstances which a court must consider judiciously. When circumstances out of the ordinary transpire which results in a miscarriage of justice, it is the duty of the court, whether it be the High Court or any other apex court to interfere to rectify such errors. However, the nature of such remedies is absolutely discretionary.

The above observation is reflected in the case of **Kulatilake v Attorney General** (2010) 1 SLR 212 at page 215 where it was held that *"Court would exercise the revisionary jurisdiction, it being an extraordinary power vested in Court specially to prevent miscarriage of justice being done to a person and or for the due administration of justice."*

In the case of **Siripala v Lanerolle & another** 2012 1 SLR 105, in a similar instance concerning Section 66 of the Primary Courts' Procedure Act, it was held that a "*revisionary power is a discretionary power and its exercise cannot be demanded as of right unlike the statutory remedy of an appeal*"

Moreover, In the case of **Abdul Hassan Mohamed Kaleel v Mohamed Kaleel Mohamed Imithiyas** CA/PHC/APN/141/16 CA Minute dated 25.01.2017 at page 6 His Lordship Justice L. T. B. Dehideniya. after considering several authorities expressed the view that; *"Thus the existence of exceptional circumstances is the process by which the Court selects the cases in respect of which this extra-ordinary method of rectification should be adopted. If such a selection process is not there, revisionary jurisdiction of this Court will become a gateway for 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 right of appeal"* [..] (*emphasis added*)

The above statement brings to light the essence of invoking the revisionary jurisdiction of a court which is to ensure a mechanism to revise and rectify an order where there are exceptional circumstances or a gross violation of the law and rights of the parties involved. However, such a mechanism should not be perceived as a gateway for the litigants to make appeals where the legislature has not provided such a right of appeal as is the case in matters falling within the ambit of Section 66 of the Primary Courts' Procedure Act.

The rationale behind such a deprivation of right of appeal is the lack of finality in the orders delivered by the Primary Court in matters affecting land. The sole purpose and the intention of the legislature under Section 66 is to provide the parties a momentary remedy which resolves the conflicts among the parties, thereby preventing breach of peace. Therefore, the law has not provided for a right of appeal as the order of the Primary Court is temporary and in order to obtain a permanent remedy, the parties

must take up their applications before a suitable civil court. Hence, even if the matter is appealed and taken up before an apex court, still the nature of the remedy is temporary unless the matter is separately argued before an appropriate court.

Be that as it may, in the instant case the parties have sought the revisionary jurisdiction of the High Court which is a discretionary remedy. Therefore, in exercising such revisionary powers, the Court ought to bear in mind the lack of finality of the order which is being impugned and the lack of a right of appeal for such matters.

Having mentioned that, it is pertinent at this juncture to examine the intention and the purpose of the law promulgated under Section 66 (1) of the Primary Courts' Procedure Act which reads as follows;

> (1) *Whenever owing to a dispute affecting land a breach of the peace is threatened or likely-*
>
> *(a) the police officer inquiring into the dispute- (i) shall with the least possible delay file an information regarding the dispute in the Primary Court within whose jurisdiction the land is situate and require each of the parties to the dispute to enter into a bond for his appearance before the Primary Court on the day immediately succeeding the date of filing the information on which sittings of such court are held; or*
>
> *(ii) shall, <u>if necessary, in the interests of preserving the peace</u>, arrest the parties to the dispute and produce them forthwith before the Primary Court within whose jurisdiction the land is situate to be dealt with according to law and shall also at the same time file in that court the information regarding the dispute; or […]* (*emphasis added*)

The law promulgated under Section 66 (1) of the Primary Courts' Procedure Act was introduced in lieu of the previous law which was embedded in the Administration of Justice Law no. 44 of 1973, under Section 62. The primary goal of the aforementioned law was to provide the community with a quick recourse in instances of conflict and disharmony of the society. The law as espoused above provides first-aid or a first instance remedy to breach of peace in the community affecting land. The legislature intended such matters to be resolved as expeditiously as possible as the application of

Section 66 and the remedies provided therein, by the Court are temporary. Therefore, as breach of peace or a likelihood of breach of peace is a matter of great concern to a society, the law has provided such a mechanism to dissipate disputes and conflicting situations by curtailing the opportunity for such matters to escalate.

The intention of the legislature is clearly elucidated at the second reading debate on the Primary Courts' Procedure Bill in parliament, (Hansard dated 22.06.1979 Column 944) which stipulates that the time period intended for purposes of filing complaints, counter objections and inquiry is three months with regards to matters directed to Primary Courts. The rationale behind such a legislative prescription was to ensure the dissolution of disputes at the earliest without reaching escalation. Therefore, it is evident that the legislative intention behind Section 66 of the Primary Courts' Procedure Act was to conclude the matters directed to Primary Courts within 03 months which is in the interest of maintaining peace in the society.

The aforementioned observation is supported by the following dictum in, **Perera et al v Gunetilike et al** 4 NLR.181 p, where His Lordship Bonser C.J. held that:

> *"In a country like this any attempt of parties to use force in the maintenance of their rights should be promptly discouraged, slight brawls readily blossom into riots with grievous hurt and murder as the fruits. It is therefore all the more necessary that courts should be strict in discountenancing all attempts to use force in the assertion of such civil rights as are in dispute in the present case."* [Emphasis added].

Therefore, it is clear that the application of Section 66 of the Primary Courts' Procedure Act maintains peace in the society without allowing minor disputes to mature into larger violations of the law. Hence, it is the view of this Court that time is of the essence with regards to matters concerning breach of peace in the society and that in the interest of justice such matters must be concluded expeditiously.

Furthermore, in the case **Jayantha Gunasekara v Jayatissa Gunasekara & Others,** 2011 1 SLR 284, His Lordship Justice Salam, after an appreciation of the judgment delivered by Sharvananda J. in **Kanagasabai v Mylvaganam** 1978 N.L.R. 280 which held the following: *"The primary object of the jurisdiction so conferred on the Magistrate is the prevention of a breach of the peace arising in respect of a dispute affecting land.*

The section enables the Magistrate temporarily to settle the dispute between the parties before the Court and maintain the status quo until the rights of the parties are decided by a competent civil Court. ***All other considerations are subordinated to the imperative necessity of preserving the peace****. ……..The action taken by the Magistrate is of a purely preventive and provisional nature in a civil dispute, pending final adjudication of the rights of the parties in a civil Court. The proceedings under this section are of a summary nature and it is essential that they should be disposed of as expeditiously as possible"* delineated the following as "salient points that are in favor of expeditious execution of orders" in Section 66 matters: *"It is quite clear, that the intention of the legislature in enacting Part VII of the PCPA is to preserve the peace in the society.* ***If an unusual length of time (sometimes more than a decade) is taken to execute a temporary order for the prevention of peace, the purpose of the legislation would definitely be defeated*** *and the intention of the Legislature in introducing the most deserving action of the era in the nature of sui generis would be rendered utterly ridiculous"* (*emphasis added*)

The above deliberations bear testimony to the importance of adhering to the prescribed time period as matters related to Section 66 concerns breach of peace in the society and the role of the Magistrate in such matters has been expounded as that of a preventive nature. Therefore, if the parties are not satisfied with the given remedies by the Magistrate Court, the parties may resort to seeking redress at a suitable forum which will provide a permanent remedy for the conflicting rights of the parties. Hence, in light of the temporary nature of the remedies provided by the Primary Court and the urgency in resolving disputes effected by land to prevent the breach of peace in the society, the expeditious conclusion of matters under Section 66 is of paramount importance.

Therefore, the contention of the appellant that the delay in filing the revision application was due to his engagements abroad cannot be accepted as a viable reason given that the very rationale behind the applicable provisions of the Primary Courts' Procedure Act is to provide expedient and temporary relief to a civil dispute that would otherwise escalate to a breach of peace.

It can be further observed that delay is a subjective matter. The facts constituting delay could vary according to the circumstances of the case and the intention of the

legislation. In the matter at hand, under Section 66 of the Primary Courts' Procedure Act, the intended time period for the conclusion of the matter, as expounded above, is three months. Furthermore, given the temporary nature of the order and the requirement of resolving disputes at the earliest possible opportunity, time is of the essence.

Moreover, based on the travel records made available to this Court, it cannot be established with clarity that the appellant was indeed stationed abroad during the time period concerned. It is the onus of the party to prove to the satisfaction of the Court that the reasons averred for delay are reasonable and justifiable. In the instant matter, the appellant has failed to satisfy the court with cogent evidence that the said delay was caused due to justifiable reasons.

Further, the learned High Court Judge has carefully deliberated over the facts of the case in arriving at the final determination. It was the observation of the learned High Court Judge that the case can be dismissed on the sole ground of delay. Hence, it is the view of this Court that the learned High Court Judge has correctly dismissed the revision application of the appellant and such dismissal even solely upon delay does not lead to a miscarriage of justice, as I explained. Therefore, this Court has no reason to interfere with the order dated 01.08.2017 delivered by the learned High Court Judge of Gampaha.

Appeal dismissed.

Neil Iddawala

JUDGE OF THE COURT OF APPEAL

D.N. Samarakoon- J

I agree.

JUDGE OF THE COURT OF APPEAL

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

In the matter of an Appeal in terms of Article 154P (6) of the Constitution of the Democratic Socialist Republic of Sri Lanka read together with the Provisions of the High Court of the Provinces (Special Provisions) No.19 of 1990.

Inspector of Police,
Police Station
Ganemulla

Complainant

Vs.

Court of Appeal Application
No: **CA (PHC) 140/2017**

High Court of Gampaha
No: **HCR Gampaha 136/15**
(Revision)

Magistrate's Court of
Gampaha
No :**27249/2015/P.C.**

1. Rathgamahewage Susantha Ajith
   No.203/3, School Lane,
   Galahitiyawa,
   Ganemulla

2. Rathgamahewage Ariyasena
   No.203/3, School Lane,
   Galahitiyawa,
   Ganemulla

1st Party

Melitus Charles Kulasekara
No.167, Mornington,
Ganemulla.

2nd Party

AND BETWEEN

Melitus Charles Kulasekara
No.167, Mornington,
Ganemulla

2nd Party-Petitioner

Vs.

Inspector of Police
Police Station
Ganemulla

Complainant –Respondent

1. Rathgamahewage Susantha Ajith
   No.203/3, School Lane,
   Galahitiyawa,
   Ganemulla

2. Rathgamahewage Ariyasena
   No.203/3, School Lane,
   Galahitiyawa,
   Ganemulla

1st Party-Respondents

And Now Between

Melitus Charles Kulasekara
No.167, Mornington,
Ganemulla

2nd Party Petitioner-Appellant

Vs.
Inspector of Police
Police Station,
Ganemulla

Complainant-Respondent-Respondent

1. Rathgamahewage Susantha Ajith
   No.203/3, School Lane,
   Galahitiyawa,
   Ganemulla

2. Rathgamahewage Ariyasena
   No.203/3, School Lane,
   Galahitiyawa,
   Ganemulla

1st Party Respondent-Respondents

BEFORE	:	D.N. Samarakoon J Neil Iddawala J
COUNSEL	:	Dr.Sunil Abeyratne for the Appellant Petitioner S.A.D.S. Suraweera for the Respondent
Argued on	:	16.03.2023
Written Submissions on	:	09.05.2023
Decided on	:	30.05.2023

Iddawala – J

This is an appeal filed by the 2nd party petitioner appellant (*hereinafter referred to as the appellant*) against the order dated 01.08.2017 delivered by the Provincial High Court of Western Province holden in Gampaha which acted in revision against the order dated 30.07.2015 delivered by the learned Magistrate of Gampaha.

The facts of the case are as follows. The 1st Party 1st respondent (*Hereinafter referred to as the respondent*) lodged a complaint against the appellant in the Police Station of Ganemulla on 24.01.2015 stating that the appellant is using the respondent's 10 feet road way (which does not belong to the appellant) way to enter the appellant's land. The inquiry by the Police commenced on 26.01.2015 and 12.02.2015 respectively and in the meantime the road in question was barricaded by the respondent to prevent the appellant from using it. Thereafter, the appellant made a complaint to the Police Station on 20.03.2015 against such action of the respondent. An inquiry was held in respect of the said complaint made by the appellant. However, as the appellant has claimed prescriptive rights over the disputed road way which was blocked by the respondent, a direction by senior police officer was made to settle the matter by filing a Section 66 application in the Primary Court.

Consequently, with respect to the right of way over the disputed road, the complainant respondent Inspector of Police had filed a Section 66 application on 31.03.2015 in the Magistrate Court bearing No.27249/2015/PC under Section 66 (1) of Primary Courts' Procedure Act no.44 of 1979 against the respondent and the appellant.

After the filing of the affidavits and the counter affidavits by the petitioner and the respondents, the learned Magistrate by the order dated 30.07.2015, held that the petitioner does not have a right of way over the disputed road. The learned Magistrate has made his order under Section 69 of the Primary Courts' Procedure Act.

It is the contention of the appellant that the learned Magistrate has failed to consider the inherited rights of the appellant over the land and that he has prescriptive rights over the roadway. Therefore, aggrieved by the said order of the learned Magistrate dated 30.07.2015, the appellant filed a revision application in the High Court of Gampaha

against the order of the Magistrate Court claiming that the learned Magistrate has arrived at an erroneous conclusion.

However, by the order dated 01.08.2017, the learned High Court Judge of Gampaha dismissed the petition of the appellant after careful consideration of the facts and circumstances of the case which included the delay in filing the revision application. The appellant averred that he was abroad during the time of the delivery of the learned Magistrate's order and that he filed for revision at the first opportunity after returning to Sri Lanka. However, in the exercise of the discretionary power vested within the High Court with regards to revision applications, it was observed by the learned High Court Judge that the appellant had the ability to appoint a power of attorney to file the said revision application without delay and in the absence of such actions, the revision application cannot be maintained. Thereby, the appellant has filed an appeal before this court to revise the order of the learned High Court judge dated 01.08.2017.

Hence, this Court is called upon to determine whether the learned High Court Judge's dismissal of the revisionary application of the appellant, on the basis of undue delay is in any way illegal or irregular. To that end, one must first examine the legislative rationale behind the applicable provisions of the Primary Courts' Procedure Act.

A matter to be highlighted at this point is that the order of the Primary (Magistrate) Court cannot be impugned as per Section 74 (2) of the Primary Courts' Procedure Act, therefore, an appeal against such order cannot be made. This is however, despite the availability of revisionary jurisdiction under Article 154P of the Constitution which is aimed at preventing a blatant miscarriage of justice and or for the due administration of justice. - (**Abeywardena vs. Ajith de Silva** 1998 1 Sri LR 134: **Sharif and Others Vs. Wickramasuriya and Others** 2010 1 S.L.R 255)

At the outset of this matter, the application of revisionary powers of a court has to be brought to the limelight. The revisionary powers of a court are wide and extensive, albeit its application is restricted to instances where flagrant violations of justice has resulted in exceptional circumstances which a court must consider judiciously. When circumstances out of the ordinary transpire which results in a miscarriage of justice, it is the duty of the court, whether it be the High Court or any other apex court to interfere to rectify such errors. However, the nature of such remedies is absolutely discretionary.

The above observation is reflected in the case of **Kulatilake v Attorney General** (2010) 1 SLR 212 at page 215 where it was held that *"Court would exercise the revisionary jurisdiction, it being an extraordinary power vested in Court specially to prevent miscarriage of justice being done to a person and or for the due administration of justice."*

In the case of **Siripala v Lanerolle & another** 2012 1 SLR 105, in a similar instance concerning Section 66 of the Primary Courts' Procedure Act, it was held that a "*revisionary power is a discretionary power and its exercise cannot be demanded as of right unlike the statutory remedy of an appeal*"

Moreover, In the case of **Abdul Hassan Mohamed Kaleel v Mohamed Kaleel Mohamed Imithiyas** CA/PHC/APN/141/16 CA Minute dated 25.01.2017 at page 6 His Lordship Justice L. T. B. Dehideniya. after considering several authorities expressed the view that; *"Thus the existence of exceptional circumstances is the process by which the Court selects the cases in respect of which this extra-ordinary method of rectification should be adopted. If such a selection process is not there, revisionary jurisdiction of this Court will become a gateway for 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 right of appeal"* [..] (*emphasis added*)

The above statement brings to light the essence of invoking the revisionary jurisdiction of a court which is to ensure a mechanism to revise and rectify an order where there are exceptional circumstances or a gross violation of the law and rights of the parties involved. However, such a mechanism should not be perceived as a gateway for the litigants to make appeals where the legislature has not provided such a right of appeal as is the case in matters falling within the ambit of Section 66 of the Primary Courts' Procedure Act.

The rationale behind such a deprivation of right of appeal is the lack of finality in the orders delivered by the Primary Court in matters affecting land. The sole purpose and the intention of the legislature under Section 66 is to provide the parties a momentary remedy which resolves the conflicts among the parties, thereby preventing breach of peace. Therefore, the law has not provided for a right of appeal as the order of the Primary Court is temporary and in order to obtain a permanent remedy, the parties

must take up their applications before a suitable civil court. Hence, even if the matter is appealed and taken up before an apex court, still the nature of the remedy is temporary unless the matter is separately argued before an appropriate court.

Be that as it may, in the instant case the parties have sought the revisionary jurisdiction of the High Court which is a discretionary remedy. Therefore, in exercising such revisionary powers, the Court ought to bear in mind the lack of finality of the order which is being impugned and the lack of a right of appeal for such matters.

Having mentioned that, it is pertinent at this juncture to examine the intention and the purpose of the law promulgated under Section 66 (1) of the Primary Courts' Procedure Act which reads as follows;

> (1) *Whenever owing to a dispute affecting land a breach of the peace is threatened or likely-*
>
> *(a) the police officer inquiring into the dispute- (i) shall with the least possible delay file an information regarding the dispute in the Primary Court within whose jurisdiction the land is situate and require each of the parties to the dispute to enter into a bond for his appearance before the Primary Court on the day immediately succeeding the date of filing the information on which sittings of such court are held; or*
>
> *(ii) shall, <u>if necessary, in the interests of preserving the peace</u>, arrest the parties to the dispute and produce them forthwith before the Primary Court within whose jurisdiction the land is situate to be dealt with according to law and shall also at the same time file in that court the information regarding the dispute; or […]* (*emphasis added*)

The law promulgated under Section 66 (1) of the Primary Courts' Procedure Act was introduced in lieu of the previous law which was embedded in the Administration of Justice Law no. 44 of 1973, under Section 62. The primary goal of the aforementioned law was to provide the community with a quick recourse in instances of conflict and disharmony of the society. The law as espoused above provides first-aid or a first instance remedy to breach of peace in the community affecting land. The legislature intended such matters to be resolved as expeditiously as possible as the application of

Section 66 and the remedies provided therein, by the Court are temporary. Therefore, as breach of peace or a likelihood of breach of peace is a matter of great concern to a society, the law has provided such a mechanism to dissipate disputes and conflicting situations by curtailing the opportunity for such matters to escalate.

The intention of the legislature is clearly elucidated at the second reading debate on the Primary Courts' Procedure Bill in parliament, (Hansard dated 22.06.1979 Column 944) which stipulates that the time period intended for purposes of filing complaints, counter objections and inquiry is three months with regards to matters directed to Primary Courts. The rationale behind such a legislative prescription was to ensure the dissolution of disputes at the earliest without reaching escalation. Therefore, it is evident that the legislative intention behind Section 66 of the Primary Courts' Procedure Act was to conclude the matters directed to Primary Courts within 03 months which is in the interest of maintaining peace in the society.

The aforementioned observation is supported by the following dictum in, **Perera et al v Gunetilike et al** 4 NLR.181 p, where His Lordship Bonser C.J. held that:

> *"In a country like this any attempt of parties to use force in the maintenance of their rights should be promptly discouraged, slight brawls readily blossom into riots with grievous hurt and murder as the fruits. It is therefore all the more necessary that courts should be strict in discountenancing all attempts to use force in the assertion of such civil rights as are in dispute in the present case."* [Emphasis added].

Therefore, it is clear that the application of Section 66 of the Primary Courts' Procedure Act maintains peace in the society without allowing minor disputes to mature into larger violations of the law. Hence, it is the view of this Court that time is of the essence with regards to matters concerning breach of peace in the society and that in the interest of justice such matters must be concluded expeditiously.

Furthermore, in the case **Jayantha Gunasekara v Jayatissa Gunasekara & Others,** 2011 1 SLR 284, His Lordship Justice Salam, after an appreciation of the judgment delivered by Sharvananda J. in **Kanagasabai v Mylvaganam** 1978 N.L.R. 280 which held the following: *"The primary object of the jurisdiction so conferred on the Magistrate is the prevention of a breach of the peace arising in respect of a dispute affecting land.*

The section enables the Magistrate temporarily to settle the dispute between the parties before the Court and maintain the status quo until the rights of the parties are decided by a competent civil Court. ***All other considerations are subordinated to the imperative necessity of preserving the peace****. ……..The action taken by the Magistrate is of a purely preventive and provisional nature in a civil dispute, pending final adjudication of the rights of the parties in a civil Court. The proceedings under this section are of a summary nature and it is essential that they should be disposed of as expeditiously as possible"* delineated the following as "salient points that are in favor of expeditious execution of orders" in Section 66 matters: *"It is quite clear, that the intention of the legislature in enacting Part VII of the PCPA is to preserve the peace in the society.* ***If an unusual length of time (sometimes more than a decade) is taken to execute a temporary order for the prevention of peace, the purpose of the legislation would definitely be defeated*** *and the intention of the Legislature in introducing the most deserving action of the era in the nature of sui generis would be rendered utterly ridiculous"* (*emphasis added*)

The above deliberations bear testimony to the importance of adhering to the prescribed time period as matters related to Section 66 concerns breach of peace in the society and the role of the Magistrate in such matters has been expounded as that of a preventive nature. Therefore, if the parties are not satisfied with the given remedies by the Magistrate Court, the parties may resort to seeking redress at a suitable forum which will provide a permanent remedy for the conflicting rights of the parties. Hence, in light of the temporary nature of the remedies provided by the Primary Court and the urgency in resolving disputes effected by land to prevent the breach of peace in the society, the expeditious conclusion of matters under Section 66 is of paramount importance.

Therefore, the contention of the appellant that the delay in filing the revision application was due to his engagements abroad cannot be accepted as a viable reason given that the very rationale behind the applicable provisions of the Primary Courts' Procedure Act is to provide expedient and temporary relief to a civil dispute that would otherwise escalate to a breach of peace.

It can be further observed that delay is a subjective matter. The facts constituting delay could vary according to the circumstances of the case and the intention of the

legislation. In the matter at hand, under Section 66 of the Primary Courts' Procedure Act, the intended time period for the conclusion of the matter, as expounded above, is three months. Furthermore, given the temporary nature of the order and the requirement of resolving disputes at the earliest possible opportunity, time is of the essence.

Moreover, based on the travel records made available to this Court, it cannot be established with clarity that the appellant was indeed stationed abroad during the time period concerned. It is the onus of the party to prove to the satisfaction of the Court that the reasons averred for delay are reasonable and justifiable. In the instant matter, the appellant has failed to satisfy the court with cogent evidence that the said delay was caused due to justifiable reasons.

Further, the learned High Court Judge has carefully deliberated over the facts of the case in arriving at the final determination. It was the observation of the learned High Court Judge that the case can be dismissed on the sole ground of delay. Hence, it is the view of this Court that the learned High Court Judge has correctly dismissed the revision application of the appellant and such dismissal even solely upon delay does not lead to a miscarriage of justice, as I explained. Therefore, this Court has no reason to interfere with the order dated 01.08.2017 delivered by the learned High Court Judge of Gampaha.

Appeal dismissed.

Neil Iddawala

JUDGE OF THE COURT OF APPEAL

D.N. Samarakoon- J

I agree.

JUDGE OF THE COURT OF APPEAL