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

In the matter of an application for Revision under and in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal Case No:
CA (CPA): 124 /21

PHC Case No:
NCP/HCCA/Anuradhapura/FA/13/2019

D.C. of Polonnaruwa Case No:
473/DR/2011

1) People's Bank,
No. 75, Sri Chiththampalam,
A. Gardner Mawatha,
Colombo – 02

PLAINTIFF

Vs

1) Sudu Abeygedara Indika Premadasa,
No. 1/235, Palugasdamana,
Polonnaruwa.

2) Gannoruwe Wele Gedara Erandika Karunathilaka,
No. 1/235, Palugasdamana,
Polonnaruwa.

3) Ranketh Gedara Gnanawathie,
No. 1/235, Palugasdamana,
Polonnaruwa.

4) Palle Assaddume Gedara Ariyadasa,
Ajith Stores, 3rd Post,
Palugasdamana.

5) Gannoruwe Wele Gedara Karunadasa,
Ranga Workshop,
Wasundara Mawatha,
New Town.

RESPONDENTS

AND BETWEEN

1) Sudu Abeygedara Indika Premadasa,
No. 1/235, Palugasdamana,
Polonnaruwa.

2) Gannoruwe Wele Gedara Erandika Karunathilaka,
No. 1/235, Palugasdamana,

Polonnaruwa.

3) Ranketh Gedara Gnanawathie,
No. 1/235, Palugasdamana,
Polonnaruwa.

4) Palle Assaddume Gedara Ariyadasa,
Ajith Stores, 3rd Post,
Palugasdamana.

5) Gannoruwe Wele Gedara Karunadasa,
Ranga Workshop,
Wasundara Mawatha,
New Town.

DEFENDANT-APPELLANTS

Vs

1) People's Bank,
No. 75, Sri Chiththampalam
A. Gardner Mawatha,
Colombo - 02,

PLAINTIFF-RESPONDENT

AND NOW BETWEEN

1) Sudu Abeygedara Indika Premadasa,
No. 1/235, Palugasdamana,
Polonnaruwa.

2) Gannoruwe Wele Gedara Erandika
Karunathilaka,
No. 1/235, Palugasdamana,
Polonnaruwa.

3) Ranketh Gedara Gnanawathie,
No. 1/235, Palugasdamana,
Polonnaruwa.

4) Palle Assaddume Gedara Ariyadasa,
Ajith Stores, 3rd Post,
Palugasdamana.

5) Gannoruwe Wele Gedara Karunadasa,
Ranga Workshop,
Wasundara Mawatha,

New Town.

DEFENDANTS-APPELLANTS-PETITIONERS

Vs

1) People's Bank,
No. 75, Sri Chiththampalam Mawatha,
Colombo – 02.

PLAINTIFF-RESPONDENT-RESPONDENT

Before:	**Prasantha De Silva, J.** **K.K.A.V. Swarnadhipathi, J.**
Counsel:	Mr. T Damunupola AAL, with Ms. Ushani Bambuwala AAL and Hiranya Damunupola AAL for the Defendant-Appellant-Petitioners Kapila Liyanage AAL with Sandamali Nisansala AAL for the Plaintiff-Respondent-Respondent
Written Submissions: filed on	Written submissions filed on 03/03/2023 by Defendant-Appellant-Petitioners Written submissions filed on 24/04/2023 and 24/11/2023 by Plaintiff-Respondent-Respondent
Delivered on:	05.06.2023

Prasantha De Silva J.,

ORDER

The 1st,2nd,3rd,4th, and 5th Defendant-Appellant-Petitioners have invoked the revisionary jurisdiction of this court seeking to have the Judgment dated 01.10.2021 pronounced by High Court of the North Central Province (Civil Appeal) holden in Anuradhapura in the case

bearing No. NCP/HCCA/ANP/FA/13/2019 and Order dated 12.10.2018 of the District Court of Polonnaruwa in the case bearing No.473/DR/2011 revised or set aside.

The aforesaid 1st Defendant-Appellant-Petitioner (hereinafter referred to as the 1st Petitioner) is a rice miller engaged in business in Polonnaruwa. The 2nd Defendant-Appellant-Petitioner (hereinafter referred to as the 2nd Petitioner) is the wife of the 1st Petitioner, and the 3rd Defendant-Appellant-Petitioner (hereinafter referred to as the 3rd Petitioner) is the mother of the 1st Petitioner. The said 1st, 2nd, and 3rd Petitioners had obtained a pledged loan of Rs 10 million from the Plaintiff-Respondent-Respondent Bank (hereinafter referred to as Respondent). The 4th and 5th Defendant-Appellant-Petitioners (hereinafter referred to as the 4th Petitioner and 5th Petitioner respectively) had signed as personal guarantors to the aforesaid loan obtained by the 1st, 2nd, and 3rd Petitioners.

1st Petitioner had stated that he was able to settle to the Respondent Bank only an amount of approximately 7 million by February 2011 due to reasons mentioned in paragraphs 7 and 8 of the petition. Thereafter, Respondent Bank instituted action bearing no 473/008/2011 by way of summary procedure for recovery of Rs.4,452,923.92 against the Petitioners under the Debt Recovery (Special Provisions Act) No. 2 of 1990 as amended.

Subsequently, a Decree Nisi was entered against petitioners ex parte on 07.06.2011 by the District Court of Polonnaruwa. Thereafter, the 1st Petitioner moved for a settlement to liquidate the debt in instalments. Consequently, the settlement decree between the parties was entered before the District Court of Polonnaruwa.

However, the 1st petitioner had failed to comply with the terms of settlement entered upon due to fluctuation of market prices of paddy and natural disasters such as flooding and droughts.

When the matters remained as such, the Respondent Bank made an application to the District Court of Polonnaruwa for the execution of a writ on the settlement decree for the balance amount of Rs.2,000,757. Thereafter, the Petitioners made an application to reschedule the terms of settlement. Nevertheless, the learned District Judge by his Order dated 12.10.2018 refused the application of the Petitioners sought to reschedule the terms of settlement and had ordered to carry out the writ of execution obtained by Respondent Bank by bank order dated 25.05.2018.

Being aggrieved by the said Order, the 1st,2nd,3rd,4th, and 5th Petitioners preferred an appeal to the Provincial High Court (Civil Appeal) of North Central Province holden in Anuradhapura. Consequent to the filing of written submissions, the learned High Court Judge

delivered the Judgment on 01.10.2021, held against the 1st-5th Petitioners by dismissing their petition of appeal dated 10.12.2018.

Being aggrieved by the said Judgment, the said Petitioners had made an application by way of revision seeking to revise or set aside the Judgment dated 01.10.2021 of the High Court of Civil Appeal of the North Central province holden in Anuradhapura in case bearing No. NCR/HCCA/FA/13/29 and the Order dated 10.12.2018 pronounced by the District Judge of Polonnaruwa in case bearing No. 473/DR/2011.

However, the learned High Court Judge sitting in the High Court of Civil Appeal had dismissed the said appeal by judgment dated 01.10.2021.

Being aggrieved by the said judgment, the Defendant-Appellant-Petitioners made this application by way of revision to revise or set aside the judgment of the learned High Court Judge dated 01.10.2021.

It is observable that the impugned judgment was pronounced by the learned Provincial High Court Judge exercising Appellate jurisdiction established by Article 154P of the constitution read with Section 5A of the High Court of the Provinces (special provisions) Amendment Act No. 54 of 2006.

It is significant to note that the Defendant-Appellant-Petitioners [hereinafter referred to as the Petitioners] had not preferred an application by way of leave to appeal to the Supreme Court. Instead, the Petitioners filed this instant revision application on 14/11/2021 in the Court of Appeal.

When this case came up before us on 18.01.2023 preliminary objection was raised on behalf of the Plaintiff-Respondent-Respondent that this Court has no jurisdiction to entertain the revision application filed by the 1st-5th Petitioners.

The said Preliminary objection has been raised by the Respondent with regard to the maintainability of the revision application filed against the judgment pronounced by the Provincial High Court exercising civil appellate jurisdiction under section 5A of the High Court of Provinces (Special Provisions) Act No. 19 of 1990 as amended by Amendment Act No. 54 of 2006.

It is pertinent to note that Act No. 19 of 1990 provides for the Provincial High Court to exercise jurisdictions over orders made by the Magistrate court, labour tribunals, Agrarian Service Tribunal, and orders made under the Primary Court Procedure Act.

Pursuant to section 5C of the said Act an appeal lies directly to the Supreme Court with leave first being obtained against the judgment or order of the Provincial High Court exercising

civil appellate jurisdiction under section 5A of the said Act. Thus, it appears that a specific remedy is provided by the said Act itself.

A plain reading of section 11(1) of the said Act that a revision lies against 'all causes, suits, actions, prosecution, matters, and things of which such High Court may have taken cognizance.

It is significant to note that no jurisdiction was granted over matters that the District Court has taken cognizance of civil matters. Therefore, it is my considered view that the powers of Revision granted to the Court of Appeal in respect of the matters of which the High Court has taken cognizance does not include judgments and orders from the District Courts for which an appeal lie directly to the Supreme Court.

Furthermore, the Court of Appeal and the Provincial High Court exercise concurrent jurisdiction with regard to matters dealt with by the Provincial High Court exercising civil appellate jurisdiction against the orders and judgments of the District Courts, vide Article 138 of the Constitution and Section 5A of the Act No. 19 of 1990 High Court of Provinces (Special Provinces) as amended by Act No. 54 of 2006 read with Article 154P of the Constitution.

The relevant Constitutional provisions and statutory provisions set out in Act No. 09 of 1990 has been analysed in detail below.

The Article 138 of the Constitution sets out the jurisdiction of the Court of Appeal, including the revisionary jurisdiction, Article 138 has been reproduced below,

Article 138. (1) 'The Court of Appeal shall have and exercise subject to the provisions of the Constitution or of any law, an appellate jurisdiction for the correction of all errors in fact or in law 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 in integrum, of all causes, suits, actions, prosecutions, matters and things [of which such High Court, Court of First Instance], tribunal or other institution may have taken cognizance.'

Provided that no judgment, 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.

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

[emphasis added]

It should be noted here that the revisionary jurisdiction which is set out in Article 138(1) of the Constitution is limited by Article 138(2) of the Constitution, which states that the jurisdiction of the Court of Appeal is subjected to laws introduced by the Parliament. The plain text of Article 138(2) clearly stated that the revisionary jurisdiction of the Court of Appeal is subject to the limitations introduced by the parliament by way of statutes. The question that this court then needs to answer is whether Article 154P and the subsequent Act No. 19 of 1990 have introduced limitations to the jurisdiction set out in Article 138 of the Constitution.

In this regard, Petitioner cited a recent Supreme Court decision in the case of ***Wijesiri Gunawardane & Others v. Chandrasena Muthukumarana & Others*** [SC Appeal No. 111/2015 with SC Appeal No. 113/2015 and SC Appeal No. 114/2015, Decided on 27.05.2020, at para 7] where Aluwihare PC. J. emphasized that;

> "Section 9 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended, does not oust the Revisionary jurisdiction of the Court of Appeal in respect of decisions made by a Provincial High Court exercising its appellate powers. Therefore, the revisionary jurisdiction of the Court of Appeal referred to in Article 138 of the Constitution of the Republic of Sri Lanka can be invoked in order to canvass a decision made by a Provincial High Court exercising its appellate powers."

Aluwihare PC. J. has also stated that,

> "At the outset, it must be borne in mind that the Revisionary Jurisdiction of the Court of Appeal is a Constitutional mandate. Its genesis lies in Article 138 of the Constitution."

In the said case the Appellants have filed a revision application in the Court of Appeal against judgments made by the High Courts of the respective Provinces, whereupon the applications were dismissed in limine on the basis that the Court of Appeal is not vested with revisionary jurisdiction over judgments and orders made by the High Court in the exercise of its appellate powers.

The Supreme Court in the above case held that,

> "Thus, it is clear that the existence of a right of appeal does not uniformly and blanketly result in undermining the revisionary jurisdiction. The right of appeal is no doubt, a determining factor that the Court takes into account when considering a revisionary application. However, having recourse to an appeal does not ipso facto

act as an ouster of the revisionary jurisdiction. On the contrary, it is the Court's prerogative to decide, at its discretion, to refuse a revisionary application where it appears that the existence of a parallel right of appeal does not give rise to an exceptional circumstance. Thus, where these jurisdictions are separate but complementary to each other, a negation, or the express provision of right of appeal does not result in ousting-the-revisionary-jurisdiction.

Particularly in relation to the revisionary jurisdiction, which exists to remedy a miscarriage of justice, greater care must be exercised when employing the maxim. As I (Aluwihare PC. J.) observed earlier, the revisionary jurisdiction of the Court of Appeal is a Constitutional mandate which, undoubtedly is subject to the provision of statutory law. Nevertheless, owing to its genesis in the Constitution, any restriction or modification which the Legislature seeks to introduce must be introduced by way of express wording. The omission to refer to 'revisionary jurisdiction' in Section 9 of Act No. 19 of 1990 cannot be taken as reducing the Court of Appeal's plenitude of powers under Article 138. Nothing less than an express removal of these powers would be required to achieve such a result."

It should be noted that, Aluwihare PC. J. has based his above reasoning on an interpretation of Article 138 of the Constitution and Section 9 and Section 11 of Act No. 19 of 1990.

Section 9 of the High Court of Provinces (Specia Provisions) Act No. 19 of 1990 is reproduced below,

Section 9: Subject to the provisions of this Act or any other law, any person aggrieved by

(a) a final order, judgment, decree, or sentence of a High Court established by Article 154P of the Constitution in the exercise of the appellate jurisdiction vested in it by paragraph (3) (b) of Article 154P of the Constitution or section 3 of this Act or any other law, in any matter or proceeding whether civil or criminal which involves a substantial question of law, may appeal therefrom to the Supreme Court if the High Court grants leave to appeal to the Supreme Court ex mere moto or at the instance of any aggrieved party to such matter or proceedings: ...

(b) a final order, judgment, or sentence of a High Court established by Article 154P of the Constitution in the exercise of its jurisdiction conferred on it by paragraph (3) (a), or (4) of Article 154P of the Constitution may appeal therefrom to the Court of Appeal.

The Petitioner in this case has contended that the plain reading of the above section clearly indicates that only the Appellate jurisdiction has been vested with the Supreme Court with

regard to final orders, judgments, decrees, or sentences of a Provincial High Court established under Article 154P of the Constitution and not revisionary jurisdiction.

Furthermore, it was submitted by the Petitioner that the Appellate and Revisionary jurisdiction are two separate concepts. Thus, when the legislature specifically granted only the Appellate jurisdiction to the Supreme Court, it does not oust and/or undermine the revisionary jurisdiction of the Court of Appeal with regard to the final order, judgment, decree, or sentence of a High Court established by Article 154P of the Constitution.

The above reasoning of the Petitioner is rooted in the analysis given by Aluwihare PC. J. in the case of ***Wijesiri Gunawardane & Others v. Chandrasena Muthukumarana & Others*** [supra]. Here I will primarily note that the Court of Appeal is bound by the precedence of the Supreme Court, however, the Court of Appeal is allowed a distinguish judgment of a Supreme Court on a point of law based on an interpretation of different statutory provisions and case law which may have not been brought to the attention of the Supreme Court at the time of making such judgment.

It is worthy to note that, there are several judgments pronounced by the Court of Appeal which has not been considered by the Aluwihare PC. J. in his judgment. I will now revisit those judgments to understand the full scope of Act No. 19 of 1990.

In ***G.K.D. Stephan Gunaratne v Maddumage Thushara Indika Sampath*** CA (PHC) APN 54/2013 decided on 23.09.2013, A. W. A. Salam J. held that,

> 'It is well-settled law that a thing that cannot be done directly, cannot be allowed to be done indirectly. The petitioner to the present application in my opinion is seeking to impugn the judgment delivered by the learned High Court Judge in an indirect manner than provided for in the law, which he cannot achieve directly by reason of his right to challenge the propriety of the said judgment in the Supreme Court by way of a direct appeal. Further, if the petitioner is held to enjoy such a right, a judgment pronounced on the revision application would be appealable to the Supreme Court in terms of Article 127 of the Constitution. This would undoubtedly lead to absurdity and above all, the petitioner will have a second bite at the cherry, which is not available to a person who has already exercised the right of appeal to the Supreme Court.'

In the case of ***Rizleigh Bertram Grand v. Portia Kekulwala C***A/RI/06/2016, Samayawardena J. affirmed the above judgment and held further that if a party is allowed to come before Court of Appeal by way of revision,

> '...section 5C becomes meaningless, and the intention of the legislature will blatantly be defeated, as any party dissatisfied with any Judgment or Order of the High Court of Civil Appeal can come before this Court by way of revision and/or *restitutio in integrum*. Then the party dissatisfied with the Judgment or Order of the District Court will have three appeals—first to the High Court of Civil Appeal, second to the Court of Appeal, and third to the Supreme Court. That was obviously never the intention of the legislature. One of the main objectives of setting up High Courts of Civil Appeal is to curb laws delays in civil litigation and not to expand it.'

Based on the above reasons, His Lordship affirmed the dicta of Justice Salam

> 'Hence, I hold that the Court of Appeal has no appellate jurisdiction to set aside Judgments or Orders of the High Court of Civil Appeal by way of final appeal, revision, or restitutio in intergrum. That is vested exclusively in the Supreme Court.'

Justice Samayawardena's judgment also sheds light to the purpose of introducing Act No. 54 of 2006, which has not been considered in the judgment of Aluwihare PC. J. In ***Rizleigh Bertram Grand v. Portia Kekulwala*** it is stated that Act No. 54 of 2006 was introduced to confer appellate and revisionary jurisdiction to the Provincial High Courts against the judgments and orders of the District Courts of the relevant provinces.

I have set out the relevant amending provisions below which have not been analysed in the judgment of Aluwihare PC. J in ***Wijesiri Gunawardane & Others v. Chandrasena Muthukumarana & Others*** [supra].

The Court draws attention to sections 5A, 5B, and 5C of Act No. 19 of 1990 as amended by Act No. 54 of 2006 below;

Section 5A: (1) A High Court established by Article 154P of the Constitution for a Province, shall have and exercise appellate and revisionary jurisdiction in respect of judgments, decrees, and orders delivered and made by any District Court, Family Court, or Small Claims Court within such Province and the appellate jurisdiction for the correction of all errors in fact or in law, which shall be committed by any such of a District Court, of a Family Court or of a Small Claims Court, as the case may be.

(2) The provisions of sections 23 to 27 of the Judicature Act, No. 2 of 1978 and sections 753 to 760, and sections 765 to 777 of the Civil Procedure Code (Chapter 101) and of any written law applicable to the exercise of jurisdiction referred to in subsection (1) by the Court of Appeal, shall be read and construed as including a reference to a High Court established by Article154P of the Constitution for a Province and any person aggrieved by any judgment,

decree or order of a District Court, of a Family Court or of a Small Claims Court, as the case may be, within a Province, may invoke the jurisdiction referred to in that subsection, in the High Court established for that Province: Provided that no judgment or decree of a District Court or of a Family Court, as the case may be, shall be reversed or varied by the High Court on account of any error, defect or irregularity, which has not prejudiced the substantial rights of the parties or occasioned a failure of justice

Section 5B: The jurisdiction of a High Court of a Province referred to in section 5A, shall be ordinarily exercised at all times by not less than two judges of that Court, sitting together as such High Court

Section 5C: (1) An appeal shall lie directly to the Supreme Court from any judgment, decree or order pronounced or entered by a High Court established by Article 154P of the Constitution in the exercise of its jurisdiction granted by section 5A of this Act, with leave of the Supreme Court first had and obtained. The leave requested shall be granted by the Supreme Court, where in its opinion the matter involves a substantial question of law or is a matter fit for review by such Court.

(2) The Supreme Court may exercise all or any of the powers granted to it by paragraph (2) of Article 127 of the Constitution, in regard to any appeal made to the Supreme Court under subsection (1) of this section.

Section 5D: (1) Where any appeal or application in respect of which the jurisdiction is granted to a High Court established by Article 154Pof the Constitution by section 5A of this Act is filed in the Court of Appeal, such appeal or application, as the case may be, may be transferred for hearing and determination to an appropriate High Court as may be determined by the President of the Court of Appeal and upon such reference, the said High Court shall hear and determine such appeal or the application, as the case may be as if such appeal or application was directly made to such High Court.

(2) The President of the Court of Appeal in consultation with the Chief Justice, may issue directions from time to time pertaining to appeals, applications in revision and restitutio in integrum pending in the Court of Appeal on the date of the coming into operation of this section, to be removed for hearing and determination to an appropriate High Court established by Article 154P of the Constitution. Any such direction may be made by reference to the year in which the appeal or application, as the case may be, was filed in the Court of Appeal and such High Court shall be vested with jurisdiction to hear and determine such appeal or application, as the case may be, in accordance with the provisions of section 5A of this Act, as if such appeal or application was filed directly in such High Court.

Section 5C deals with appeals from the Judgments and Orders of the Provincial High Court exercising appellate and revisionary jurisdiction. According to this section, there is only one direct appeal to the Supreme Court and this appeal also is subject to leave being first obtained from the Court.

Generally, courts are expected to follow the plain meaning of the statute, however, in this case, there seems to be a lacuna in statutory construction as to whether revisionary jurisdiction was intended to remain with the Court of Appeal or not under section 5C of the Act. Therefore, this court will have to look beyond the literal interpretation of the statute, towards the purpose of introducing the Amendment Act No. 54 of 2006.

In the case of ***Chairman and Members of Debt Conciliation Board v Ranepura Devage Hector Jayasiri*** [SC Appeal No.134/14 SC Minutes 14.07.2020] court in interpreting an Amendment to the Debt Reconciliation Act - Amendment Act No. 29 of 1999 interpreted the Act based on the purpose of the Amending Act, which was to prevent weaker borrowers from corrupt lenders.

> It is true that the court in interpreting statutes must give life to the intention of the legislature. In doing so, if the language is plain, the court must give effect to them. If the words are not capable of limited construction, apply the words as they stand. It is also correct to say that this amendment was brought to strengthen the weak borrower against the hitherto corrupt lender and to counter his subterfuges. **Thus, there is no doubt that in constructing the provisions of the amending Act Judges should suppress the mischief and advance the remedy.**

In the same manner, the purpose of the Amendment Act No. 54 of 2006 was to transfer the appellate and revisionary jurisdiction vested with the Court of Appeal to the Provincial High Court.

Under section 5A (1), both appellate and revisionary jurisdiction over civil appeals from District Courts, Primary courts, and Small Claims courts have been vested with the Provincial High Court within which such courts are located. It should particularly be noted that revisionary jurisdiction is a special remedy allowed to the Court of Appeal under Article 138 of the Constitution which has now been assigned to the Provincial High Court.

In terms of section 5B (2) of Act No. 19 of 1990, the procedure to be followed for an appeal or a revision application to the Provincial High Court is to be the same as an appeal to the Court of Appeal. In fact, according to section 5A (2) statutory provisions which refer to the appellate procedure in **any written law applicable to the exercise of the jurisdiction referred to in subsection (1) by the Court of Appeal, shall be read and construed as including a**

reference to a High Court established by Article154P. This indicates that the Provincial High Court and Court of Appeal had parallel and concurrent jurisdiction under section 5A (2) of the Act No. 54 of 2006 and that the appellate and revisionary jurisdiction of the Court of Appeal was transferred to the Provincial High Court.

It is noteworthy that, Justice Salam in ***Stephan Gunaratne v. Thushara Indika Sampath*** CA/PHC/APN/54/2013 also referred to a similar purpose of the Act No. 54 of 2006,

> Appreciably, Section 5A of Act No 54 of 2006 quite specifically states that all relevant written laws applicable to an appeal, in the Court of Appeal, are applicable to the High Court as well. This undoubtedly demonstrates beyond any iota of doubt that the **scheme provided by Act No 54 of 2006** to facilitate an appeal being heard by the Provincial High Court is **nothing but a clear transfer of jurisdiction and in effect could be said that as far as appeals are concerned both the High Court and the Court of Appeal rank equally and are placed on par with each other.**

Furthermore, it ought to be mentioned that the Provincial High Courts which were introduced by the 13th Amendment to the Constitution under Article 154P of the Constitution were based on the High Court system which existed in India. In India High Courts are established for each state of the Union of India and such a High Court has appellate and revisionary jurisdiction. It should also be noted that there is no Court of Appeal in India. In light of this, the appeals from the High Court lie directly to the Supreme Court similar to the Sri Lankan statutory framework under Act No. 19 of 1990. Therefore, the purpose of introducing the Provincial High Courts similar to the system in India, is to provide parallel jurisdiction to the Court of Appeal and currently, this has been done with regard to civil appeals from the District Court.

Here I would also revisit Justice Salam's interpretation of the jurisdiction of the Court of Appeal where it was stated that,

> 'Prior to 1978, an appeal from a District Court had to be preferred to the (then) Supreme Court. The Court of Appeal as is presently constituted being the creation of the 1978 Constitution was conferred with exclusive civil appellate jurisdiction with a special right of appeal to the Supreme Court, at the instance of an aggrieved party, subject to the leave of the Court of appeal or the Supreme Court first had and obtained.'

This same understanding of the Court of Appeal jurisdiction has now been permeated to the Provincial High Court, where the Provincial High Court is provided with civil appellate jurisdiction with a direct appeal to the Supreme Court after leave being obtained first under Act No. 54 of 2006.

Having explained the nature of the jurisdiction of the Provincial High Court under Act No. 54 of 2006 based on the purpose of introducing such an Act, I will now look to interpret the specific provisions of the Act being section 5A and section 5C of the Act.

Under section 5C of the Act, appeal from the judgments and orders of the Provincial High Court lies directly to the Supreme Court after obtaining leave. This is not a mere direct appeal either, Supreme Court had to grant leave first. Furthermore, under section 5C (1), the leave is to be granted if,

i. in its opinion the matter involves a substantial question of law or
ii. is a matter **fit for review** by such Court.

It is noteworthy that 'Review' is a term that is similar to revision, according to Black's Law Dictionary, the term review means,

> A reconsideration; second view or examination; **revision**; consideration for purposes of correction. Used especially for the examination of a cause by an appellate court, and of a second investigation of a proposed public road by a jury of viewers.

A literal meaning of the term 'review' suggests that the leave to appeal was to be granted if there is a question of law to be answered or if the matter is fit to be reviewed by the court. This Act essentially empowered the Supreme Court to consider appeals if the judgment was fit to be reviewed, i.e., revised by the court. I would go so far as to state that, the Act essentially requires Supreme Court to allow appeals even if grounds exist which would be ordinarily considered as grounds for a revision application even though the Supreme Court is not empowered with revisionary jurisdiction in a traditional sense.

In interpreting section 5C, it states that an **'appeal'** lies **'directly'** to the Supreme Court. Term 'directly' [emphasis added] indicates by-passing any other court (being the Court of Appeal). The statute is clear in its phrasing that any judgement or order of the Provincial High Court exercising civil appellate jurisdiction should be directly appealed to the Supreme Court and not any other court. It seems to me that, the reason for legal draftsman to only use the world '**appeal**' and not **'revision'** is because a revision cannot lie to the Supreme Court as the Supreme Court does not have revisionary jurisdiction in a strict sense. Instead, the draftsmen has expanded the grounds of appeal by including the phrase 'if fit for review' by the Supreme Court.

According to Maxwell on Interpretation of Statues 11th Edition page 221
"Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the enactment, or to some inconvenience or absurdity,

hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence'.

Any other interpretation of section 5C which would allow for a revision application to be filed in the Court of Appeal against a judgement of the Provincial High Court exercising civil appellate jurisdiction would lead to undue hardship to litigants and give rise to absurdity as explained below. Therefore, a purposive interpretation of section 5C is preferable. I have elucidated on the purpose of section 5C in detail above, which is to transfer the civil appellate jurisdiction of the Court of Appeal to the Provincial High Court and to broaden the grounds of appeal to allow the Supreme Court to grant leave for appeal if the case is 'fit for review' (analysed above).

It is to be noted if litigants are allowed to file a revision application in the Court of Appeal against a judgment or order given by the Provincial High Court exercising revisionary jurisdiction it would lead to unnecessary duplication of court proceedings. This could result in a revision application being filed in the Court of Appeal while an appeal is pending in the Supreme Court. It would also have the effect of the Court of Appeal being given an opportunity to overrule a judgment of the Supreme Court if the revision application is successful while the appeal to the Supreme Court is not, which is an unintended absurdity.

It would also give three different appeals from a judgment or order by the District Court, firstly appeal or revision application to the provincial High Court and an appeal to the Supreme Court, secondly a revision application filed in the Court of Appeal, and thirdly an appeal from such revision application from the Court of Appeal to the Supreme Court.

In the case ***G.K.D. Stephan Gunaratne v Maddumage Thushara Indika Sampath*** [supra], Justice Salam stated that,

> **It is well settled law that a thing which cannot be done directly, cannot be allowed to be done indirectly.** The petitioner to the present application in my opinion is seeking to impugn the judgment delivered by the learned High Court Judge in an indirect manner than provided for in the law, which he cannot achieve directly by reason of his right to challenge the propriety of the said judgment in the Supreme Court by way of a direct appeal. Further, if the petitioner is held to enjoy such a right, a judgment pronounced on the revision application would be appealable to the Supreme Court in terms of article 127 of the Constitution. This would undoubtedly lead to absurdity and above all, the petitioner will **have a second bite at the cherry**, which is not available to a person who has already exercised the right of appeal to the Supreme Court.

This is an application of the legal maxim, '*quando aliquid prohibeuteur ex director, prohibetur et per obliquum*'[1] (thing which cannot be done directly, cannot be allowed to be done indirectly) as the Petitioners will now be able to exercise two appeals to the Supreme Court from a judgment in the District Court which is generally allowed. As rightfully stated by Justice Salam this is akin to allowing multiple bites from the same Cherry.

It is highly unlikely that parliament or the legislative draftsmen intended to manifestly complicate the appeal process when the Provincial High Courts have been introduced to reduce and simplify the court process not to complicate it even further. According to the legal maxim '*Boni judicis est lites dirimere, ne lis ex lite oritur, et interest republicae ut sint fines litium*'[2], it is the duty of a good judge to prevent litigations, that suit may not grow out of suits, and it concerns the welfare of the State that an end be put to litigation. It would be contrary to the practice of a good judge to interpret statutes in a manner that would give rise to unnecessary complications in the judicial process.

I would also mention here that allowing an appeal or a revision application from a judgment or order from the Provincial High Court would also lead to, Court of Appeal having revisionary jurisdiction over an instance where the Provincial High Court exercises its revisionary jurisdiction. In effect, Court of Appeal would lie in revision of a revision application. Seeing as Revisionary jurisdiction is to be exercised in exceptional circumstances, allowing a revision application on a revision application would be conceptually contradictory to the spirit of a revision application.

In fact, under Act No. 19 of 1990, revision is allowed only if substantial rights of the parties are prejudiced, or injustice has occurred (section 11 of the Act). It is observable that the legislature provided two instances to appeal against the judgments of the District Court,

1. firstly, parties are given access to appellate and revisionary jurisdiction of the Provincial High Court; and,
2. secondly parties are allowed an appeal to the Supreme Court with leave being obtained,

It is unlikely that substantial rights of the parties will be prejudiced or that an injustice will occur to litigants by not allowing a revision application in the Court of Appeal.

[1] Senanayake N., Legal Maxims and Phrases (1st Edition) 2002, pp, 173
[2] Senanayake N., Legal Maxims and Phrases (1st Edition) 2002, pp, 47-48

I will now briefly consider the application of section 11(1) of the Act No. 19 of 1990, (Section 11 has been reproduced below)

Section 11 (1) The Court of Appeal shall have and exercise, subject to the provisions of this Act or any other law, an appellate jurisdiction for the correction of all errors in fact or in law which shall be committed by any High Court established **by Article 154P of the Constitution in the exercise of its jurisdiction under paragraph (3)(a), or (4) of Article 154P of the Constitution and sole and exclusive cognizance by way of appeal, revision and restitutio intergrum of all causes, suits, actions, prosecutions, matters and things of which such High Court may have taken cognizance**

Provided that, no judgment, decree, or order of any such High 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.

The Section 11 of the Act was introduced by Act No. 19 of 1990 and the scope of section 11 was limited by Act No. 54 of 2006. I would consider that section 11(1) is not applicable to the instant case as the instant case is an exercise of the civil appellate ad revisionary jurisdiction introduced by Act No. 54 of 2006. Therefore, section 5C governs the appeal process as opposed to sections 9 and 11 of the Act no 19 of 1990.

I will now distinguish the analysis of Aluwihare PC. J. in ***Wijesiri Gunawardane & Others v. Chradsena Muthukumarana & Others*** [supra] where it was held that the lack of reference to 'revision' in Section 9 of the Act, would mean that the revisionary jurisdiction of the Court of Appeal has not been restricted. On the basis that, to restrict a constitutionally granted power to the Court of Appeal, it would require an express provision to that effect as constitutional provisions cannot be impliedly overturned by mere statutory provisions.

It should be noted that this would ordinarily be the case and Aluwihare PC. J's analysis of constitutional interpretation is absolutely correct. However, the scope of Article 138 of the Constitution is different to that of other Constitutional provisions - as Article 138 itself states that, the application of the jurisdiction of the Court is subject to 'any law' and Article 154P has Constitutionally restricted the appellate and revisionary jurisdiction of the Court of Appeal. As noted above, Act No. 54 of 2006 is such a law that has limited the jurisdiction of the Court of Appeal, as held by Samayawardena J. in ***Rizleigh Bertram Grand v. Portia Kekulwala*** [supra].

> "It is significant to note that Article 138 does not confer unrestricted, unfettered, absolute power for revision and restitutio in integrum on the Court of Appeal against

Judgments and Orders of the (Provincial) High Courts. If I may repeat, it says: "The Court of Appeal shall have and exercise subject to the provisions of the Constitution or of any law, an appellate jurisdiction….

Any law" encompasses the laws introduced by Act Nos. 19 of 1990 and 54 of 2006."

[emphasis is mine]

Since Aluwihare PC. J has not taken into consideration sections 5A, and 5C of the Amending Act No. 54 of 2006 and the purpose of such amendment, the Court of Appeal need not follow the judicial precedence of W*ijesiri Gunawardane & Others v. Chradsena Muthukumarana and Other*s [supra].

Moreover, in ***Ramanathan Chettiar Vs. Wickramarachchi and others,*** [reported in 1978 - 1979 (2) SRI L.R.395, at pages 410 and 411] *Soza J with Tambiah J agreeing,* sitting in the Court of Appeal observed thus:

'The doctrine of stare decisis is no doubt an indispensable foundation upon which to decide what is the law and its application to individual cases. It provides at least some degree of certainty upon which individuals can rely in the conduct of their affairs as well as a basis for orderly development of legal rules. Certainty in the law is no doubt very desirable because there is always the danger of disturbing retrospectively the basis on which contracts, settlements of property, and fiscal arrangements have been entered into. While the greatest weight must be given to these considerations, certainty must not be achieved by perpetuating error or by insulating the law against the currents of social change. . ..... However, ..., a decision given per incuriam by the former Supreme Court is, if I may say so respectfully, not absolutely binding on the present Court of Appeal.'

Therefore, in the event a decision of the Supreme Court has not considered the relevant provisions of a particular statute or has not responded to previous case law applicable to such matter, then this court is allowed to distinguish such judgments and follow the statutory provisions as held by *Chitrasiri J.,* in the case of ***W. Jane Nona Kumbuuka & Others v H. D. Chalo Singho*** [CA No. 499/98 (F) & A 499/98 (F), CAM 25.07.2013].

In view of the aforesaid analysis of the relevant statutory provisions, it clearly manifests that it would be a paradox to permit Court of Appeal to exercise revisionary jurisdiction against the same jurisdiction that Court of Appeal has been entrusted, as the Provincial High Court exercises the same jurisdiction as the Court of Appeal. As Court of Appeal cannot lie in

revision of its own judgments, this court should not lie in revision of the Provincial High Court's judgments in exercises of its civil appellate jurisdiction provided by Act No. 54 of 2006 which is an exercise of the same jurisdiction as this Court.

In light of the foregoing, the preliminary objection raised by the Respondent regarding the jurisdiction of this court has been upheld. Therefore, I hold that this court does not have jurisdiction to interfere with the judgment of the Provincial High Court of North Central Province exercising appellate jurisdiction dated 01 October 2021. As such Order of the learned Judge of the District Court of Polonnaruwa in the case bearing No.473/DR/2011 dated 12.10.2018 which has been affirmed in the judgment of the learned High Court Judge in Case No. NCP/HCCA/ANP/FA/13/2019 remains in effect.

Hence, the Appeal is dismissed with cost.

JUDGE OF THE COURT OF APPEAL

K.K.A.V. Swarnadhipathi, J.
I agree.

JUDGE OF THE COURT OF APPEAL