

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

In the matter of an application in terms of
Article 105 (3) of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

Hiniduma Liyanage Indunil Loku Bandara
No. 24/14, Purana Vihara Road,
Balapokuna, Colombo 06.

Plaintiff

CA Case No: COC 04/2019

DC Colombo Case No: DLM 138/14

Vs.

1. Nalani Lokubandara Jayasuriya
24/14B, Purana Vihara Road,
Balapokuna,
Colombo 06

2. Jayasuriya Pilapitiyage Suharda
Lokubandara
N. 24/14B, Purana Vihara Road,
Balapokuna,
Colombo 6

Defendants

AND BETWEEN

1. Nalani Lokubandara Jayasuriya,
24/14B, Purana Vihara Road,
Balapokuna,
Colombo 6.

1st Defendant Complainant Petitioner

Vs.

Hiniduma Liyanage Indunil Loku Bandara
No. 24/14, Purana Vihara Road,
Balapokuna, Colombo 06.

Presently at 24/24, 2nd Lane,
Siddhartha Foot Path, Colombo 6.

Plaintiff Accused Respondent

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

Counsel: Anuja Pramathna, PC with Asha Rathnayake for the 1st Defendant-
Complainant-Petitioner
Harindra Dhammage with Sudesh Madanayaka for the Plaintiff-Accused-
Respondent

Written

Submissions: 23.05.2023 (by the Plaintiff-Accused-Respondent)

On 26.05.2023 (by the (1st Defendant -Complainant-Petitioner)

Inquiry On : 14.12.2021,19.01.2022,06.10.2022,04.11.2022,26.01.2023 and 03.04.2023

Decided On : 28.06.2023

B. Sasi Mahendran, J.

The 1st Defendant-Complainant-Petitioner (hereinafter referred to as “the Petitioner”) filed this application in terms of Article 105(3) of the Constitution seeking *inter alia* for the Plaintiff-Accused-Respondent (hereinafter referred to as “the

Respondent”) to be punished for the offence of Contempt of Court. The charges, reproduced verbatim, for the purpose of clarity are as follows:

- a. “You Hiniduma Liyanage Indunil Loku Bandara, being the Plaintiff in the District Court of Colombo Case No. DLM 138/14 willfully and deliberately and intentionally violated the scope of the specific judgment delivered by the learned District Judge of Colombo in Case No. DLM 138/14 on 31.07.2018 directly or indirectly in violation of the said specific judgment by which you the Plaintiff in the District Court of Colombo Case No.138/14 on 27th August, 2018 when you came together with your sister Shanthi on 27th August,2018 and scolded the old and feeble 1st Defendant in the said case by using bad language and also attempted to assault the said feeble 1st Defendant and to squeeze her neck and claimed that you are entitled to the entire house owned by the 1st Defendant and also threatened that the 1st Defendant will be chased out from the said premises together with the boarders and after waiting for about 45 minutes and went back threatening the 1st Defendant by stating that you will come back again in one weeks time;
- b. You Hiniduma Liyanage Indunil Loku Bandara, being the Plaintiff in the District Court of Colombo Case No. DLM 138/14 willfully and deliberately and intentionally violated the scope of the specific Judgment delivered by the learned District Judge of Colombo in Case No. DLM 138/14 on 31.07.2018 directly or indirectly in violation of the said specific judgment when on or around 3rd September 2018 the 1st Defendant in the said case went out of the house around 9.00 am and came back around 8.30 pm and upon her return she observed that the padlock of the gate has been broken and when she attempted to enter the premises in question she further observed that the lock of the main door has been changed and also CCTV wires were cut and disconnected and the grill gate situated within the property also broke open by you the Plaintiff;
- c. You Hiniduma Liyanage Indunil Loku Bandara, being the plaintiff in the District Court of Colombo case no. DLM 138/14 willfully and deliberately and intentionally violated the scope of the specific Judgment delivered by the learned District Judge of Colombo in case no. DLM 138/14 on 31.07.2018 directly or indirectly in violation of the said specific judgment on 6th Sept. 2018 when you came to the premises in question in the evening around 7.30 pm, and started breaking the padlocks of the

rooms and the house and forcibly took the refrigerator used by the boarders to your custody.”

The Respondent appeared upon being summoned and submitted her statement of objections and denied the claim against her. Thereafter, the charge sheet was read over and the Respondent pleaded not guilty to all charges in the said charge sheet.

The Petitioner led the evidence of five witnesses. She gave evidence as well. The Respondent refrained from calling any witnesses to testify on her behalf and remained silent. Subsequently, both parties filed their respective submissions.

The following facts are relevant to consider this application:

The Respondent filed an action in the District Court of Colombo (Case bearing No. DLM/138/2014) seeking, *inter alia*, a Judicial Declaration against both her mother-in-law and husband (1st and 2nd Defendants, respectively) to safeguard her matrimonial rights within the matrimonial home.

After the trial, the District Court entered the Judgment in favour of the Respondent granting the relief under prayer (ඉ) of the Plaint. The relevant portion of the judgment reads:

"..... ඒ අනුව පැමිණිල්ලේ උපලේඛනගත දේපල වන අංක 24/14/B, පුරාණ විහාර පාර, බලපොකුණ, කොළඹ 06 යන ස්ථානය 02 වන වින්තිකරු සහ පැමිණිලිකාරිය අතර ඇතිකර ගත විවාහයේ වෛවාහික නිවස වශයෙන් දෙපාර්ශ්වයම සලකා කටයුතු කර ඇති බව තහවුරු වන බැවින් පැමිණිල්ලේ ආයාචනයේ (ඉ) වේදය මගින් ඉල්ලා ඇති පරිදි පැමිණිලිකාරියට පැමිණිල්ලේ උපලේඛනගත දේපල තුළ පිහිටි තම වෛවාහික නිවසට ඇතුළුවීමට සහ එහි රැඳීසිටීමට අයිතිවාසිකම් ඇති බවට ප්‍රකාශයට පත් කරමි. එය නිසි බලය ඇති අධිකරණයක් මගින් වෙනත් ආකාරයක නියමයක් කරන තුරු බල පැවැත්විය යුතු වේ."

On the strength of this judicial pronouncement, the Respondent requested the key from the Petitioner to enter her personal room. The Petitioner continuously rejected to relinquish the key. The Petitioner lodged a complaint at the Kirulapone Police Station for harassment against the Respondent. Consequently, this application was filed.

The Respondent in her Objections as well as her written submissions firmly maintained that the Petitioner has not satisfactorily discharged the standard of proof in a case of contempt of court; the standard of proof being “beyond reasonable doubt”. It was

her stance that her conduct as depicted in the charge sheet has not constituted any act of contempt.

It is then incumbent upon this Court to rule on the merits of this serious complaint of contempt.

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

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

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

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

In the present dispute, the Petitioner alleges that the Respondent wilfully, deliberately, and intentionally violated the scope of the specific judgement delivered by the Learned District Judge of Colombo on the 31st of July 2018.

It should be noted that according to the said judgement, the learned District Judge made an affirmative finding and declared that the Respondent’s right to her marital home accrued from their lawful marriage. The Respondent was permitted to occupy the premises more fully described in the Schedule.

Although, there appears to be an omission in the judgment to describe the areas which the Respondent was entitled to occupy, such as the marital bedroom, the evidence placed before us demonstrates that the Respondent has taken the law into her own hands and not adopted the legal procedure; the Respondent had harassed the feeble complainant.

On a perusal of the entirety of the evidence in this case we are of the view that the Petitioner has failed to establish the act of the Respondent thus constitutes contempt. The mere acts of breaking the locks, changing the locks, and harassing the Petitioner do not constitute contempt of court; an offence which is calculated to bring the authority of the court into disrepute. The Petitioner is required to establish beyond reasonable doubt that the acts referred to in the said charge sheet bring the authority of the court into disrespect or that the Respondent allegedly acted in violation of the said judgment delivered on the 31st of July 2018.

It is true that when a judgement is pronounced by the court it shall be executed only through a court. The Respondent in this case was impatient and tried to take the law into her own hands without following the due legal procedure to gain possession of the premises. However, these acts do not constitute contempt. Such reprehensible acts of disregarding the lawful procedure to claim the fruits of a judgment one has won in her favour must not be condoned. It may amount to other criminal offences for which such persons may be penalised under criminal law, but it is not contempt.

We hold that Petitioner has failed to establish that the conduct referred to in the charge sheet constitutes contempt. Therefore, we dismiss the application with costs.

JUDGE OF THE COURT OF APPEAL

D. N. SAMARAKOON, J.

I AGREE

JUDGE OF THE COURT OF APPEAL