

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

In the matter of an Application for  
Revision under Article 138 of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka.

Court of Appeal  
Case No. Rev/1/23

Ismalebbe Naleema,  
No. 109, Puthunagar Road, Irakkamam.

**Applicant**

**Vs**

Abdul Majeed Mohamad Fairoos, No.2/2,  
Arunalu Uyana, Obeysekarapura,  
Rajagiriya.

Board of Quazis  
Case No.09/19/A/Kal

**Respondent**

*And between*

Abdul Majeed Mohamad Fairoos, No.2/2,  
Arunalu Uyana,  
Obeysekarapura, Rajagiriya.

Quazi Court of Irakkamam  
Case No.1993/CM/2018/IR

**Respondent-Petitioner**

**Vs**

Ismalebbe Naleema,  
No 109, Puthunagar Road, Irakkamam.

**Applicant-Respondent**

*And now between*

Abdul Majeed Mohamad Fairoos, No.2/2,  
ArunaluUyana, Obeysekarapura,  
Rajagiriya.

**Respondent-Petitioner-Petitioner**

**Vs**

Ismalebbe Naleema,  
No 109, Puthunagar Road, Irakkamam.

**Applicant-Respondent-Respondent**

Before: M. T. MOHAMMED LAFFAR, J.  
S. U. B. KARALLIYADDE, J.

Counsel: M. Yoosuff Nasar with Rajasekar Logithan, instructed by Eksith  
Madawela for the Petitioner

Supported on: 07.08.2023

Decided on: 28.08.2023

**MOHAMMED LAFFAR, J.**

This is an Application filed by the Respondent-Appellant-Petitioner, namely Abdul Majeed Mohamed Fairuos (hereinafter referred to as the Petitioner), seeking to revise and set aside the Judgment of the Board of Quazis dated 19-11-2022 in case No. 09/19/A/Kal and the Order of the learned Quazi for Irakkamam dated 24-01-2019 in case No.1933/CM/2018/IR. The Applicant-Respondent-Respondent, namely Ismalebbe Naleema (hereinafter referred to as the Respondent) is the divorcee of the Petitioner.

We heard the learned Counsel for the Petitioner in support of this Application. The learned Quazi Ordered the Petitioner to pay a sum of Rs. 25,000/= per month as child maintenance for the eldest daughter of the parties, namely Mohamed Fairuos Fathima Agna with effect from 01-04-2017. Being aggrieved by the Order, the Petitioner preferred an appeal to the Board of Quazi. Having scrutinized the said Order of the learned Quazi, documents tendered and the submissions of the Counsel of both parties, on 19-11-2022, the Board of Quazi dismissed the appeal subject to the variation that the said child maintenance to be paid with effect from 14-12-2018. Being aggrieved by the said Judgment, the Petitioner has invoked the revisionary jurisdiction of this Court.

It is settled law that apex Courts exercise the powers of revision only in exceptional circumstances. Revisionary jurisdiction is an extraordinary jurisdiction of this Court and it is exercised only at the discretion of the Court.

In **Thilagaratnam Vs. E.A.P. Edirisingha (1982-1SLR-P56-CA)**, it was observed that

*“Though the Appellate Courts' powers to act in revision were wide and would be exercised whether an appeal has been taken against the order of the original court or not, such powers would be exercised only in exceptional circumstances. There were no exceptional circumstances in this case to justify the exercise of the Court's powers of revision.”*

In **Cadaman Pulle Vs. Ceylon Paper Sacks Ltd., (2001-3SLR-P112)**, it was held that

*“No exceptional circumstances are disclosed why his Application for revisionary relief should be entertained after the lapse of nearly two years. The existence of exceptional circumstances is a pre-condition for the exercise of the powers of revision.”*

Amaratunga, J., in the case of **Dharmaratne Vs. Palmparadise cabanas Ltd., (2003-3SLR-P24-CA)**, observed that,

*“Existence of exceptional circumstances is the process by which the court selects the cases in respect of which the extraordinary method of rectification should be adopted, if such a selection process is not there revisionary jurisdiction of this court will become a gateway of 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 a right of appeal.”*

The Supreme Court, in the case of **Rasheed Ali Vs. Mohamed Ali (1981-1SLR-P262-SC)**, held that

*“The powers of revision vested in the Court of Appeal are very wide and the Court can in a fit case exercise that power whether or not an appeal lies. Where the law does not give a right of appeal and makes the order final, the Court of Appeal may nevertheless exercise its powers of revision, but it should do so only in exceptional circumstances. Ordinarily, the Court will not interfere by way of review, particularly when the law has expressly given an aggrieved party an alternate remedy such as the right to file a separate action except when non-interference will cause a denial of justice or irreparable harm..... The fact that a Judge's order is merely wrong is not a sufficient ground for exercising the powers of revision.”*

In the light of the foregoing determinations, it is settled law that the existence of exceptional circumstances is a pre-condition for the exercise of the powers of revision. The practice of the Court to insist upon the existence of exceptional circumstances for the exercise of revisionary powers has taken deep root in our law and crystallised into a rule which should not be lightly disturbed. The Petitioner in the instant Application has not established exceptional circumstances warranting the exercise of revisionary powers of this Court, and therefore, the Application is liable to be dismissed on this ground alone.

Be that as it may, in terms of section 62 (1) of the Muslim Marriage and Divorce Act No. 13, of 1951 (as amended), any party aggrieved by any Order of the Board of Quazis on any appeal may, with the leave of the Court of Appeal first had and obtained, appeal to that Court from such Order. Thus, it is manifestly clear that the legislature has provided the right to appeal against any Orders of the Board of Quazis to the Court of Appeal.

The right to appeal is a statutory right and must be expressly created and granted by a statute. Merits or demerits cannot be considered at the commencement of the appeal and all matters can be considered only at the argument. The right to appeal is a right provided by the legislature.

Revision is an extraordinary remedy granted by Court under special circumstances. Revision is a discretionary remedy. It is not available as of right. The Petitioner in a Revision Application only seeks the indulgence of Court to remedy a miscarriage of justice. He does not assert it as a right.

If the Petitioner had not availed himself of the right to appeal which was available to him, and invoked the revisionary jurisdiction of this Court, there is a duty cast upon the Petitioner to satisfy this Court as to why he did not invoke the appellate jurisdiction. Failing which, the Petitioner cannot proceed with the Application for revision. An Application for revision is available where the failure to exercise the right to appeal is explained to the satisfaction of the Court.

In **Naroch Vs. Shrikanthan**<sup>1</sup> it was observed that

*“The judgment had been delivered in the presence of the Attorney-at-Law for the parties, the petitioner had not taken any steps to have the said judgment canvassed by way of an appeal. The petitioner had not indicated to court that any special circumstances exist which would invite this court to exercise its powers of revision since the petitioner had not availed himself of the right of appeal which was available to him.”*

In paragraph 09 of the Petition, the Petitioner states that he could not prefer an appeal due to financial difficulties and the undergoing bad health condition of the Petitioner. The financial difficulty is not an acceptable ground for not exercising the right to appeal available to him and to invoke the revisionary jurisdiction of this

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<sup>1</sup> 1997 (1) SLR p286.

Court. Adequate documents have not been tendered to substantiate the purported bad health condition of the Petitioner.

In these circumstances, it is the view of this Court that the Petitioner in this Application failed to put forward any acceptable reasons to not invoke the appellate jurisdiction of this Court under section 62 (1) of the Muslim Marriage and Divorce Act No. 13 of 1951 (as amended).

Moreover, it is trite law that the revisionary jurisdiction of this Court should be invoked within a reasonable time as it is an extraordinary jurisdiction provided by law, exercised only at the discretion of the Court. The instant revision Application has been filed after seven months from the date of the impugned Order of the Board of Quazi and the delay is not explained to the satisfaction of this Court. It is to be noted that the law assists those that are vigilant with their rights, and not those that sleep thereupon (*Vigilantibus dormientibus non jure subveniunt*).

Furthermore, the Supreme Court in **Shanmugavadivu Vs. Kulathilake**<sup>2</sup> observed that “*the requirements of Rules 3 (1) (a) and 3 (1) (b) are imperative. In the circumstances of the case, the Court of Appeal had no discretion to excuse the failure of the plaintiff to comply with the Rules*”.

In the case of **UDA Vs. Ceylon Entertainment Ltd.**,<sup>3</sup> the Supreme Court held that “*the appellant failed to file in the Court of Appeal duly certified copies of material documents as required by Rules 3(b) read with Rule 3(a) of the Supreme Court Rules. It is settled law that Rule 3 of the Supreme Court Rules must be adhered to*”.

In the instant Application, in terms of Rule No. 3 (b) read with 3 (a) of the Supreme Court Rules, the Petitioner has not tendered a copy of the Order of the learned Quazi which is a vital document to this Application, without the same the contention of the Petitioner cannot be substantiated.

Be that as it may, the Board of Quazi has rightly observed the fact that the Petitioner, having signed the case record, had consented before the learned Quazi to pay the amount in dispute as child maintenance. Moreover, the Board of Quazi was of the opinion that the learned Quazi had taken into consideration the income of the Petitioner before making the impugned Order. In those circumstances, it is

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<sup>2</sup> 2003-1SLR-215

<sup>3</sup> 2004-1SLR-95.

the view of this Court that there is no basis to interfere with the Order of the Board of Quazi dated 19-11-2022.

For the foregoing reasons. I refuse to issue notice to the Respondent and dismiss the Application without costs.

*Application dismissed.*

JUDGE OF THE COURT OF APPEAL

**S. U. B. KARALLIYADDE, J.**

I agree.

JUDGE OF THE COURT OF APPEAL