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.

Softlogic Finance PLC,
Previously at:
2. Floor, No. 33, Park Road,
Colombo 2.

Now at:
No. 13, De Fonseka Place,
Colombo 4.

Plaintiff

Court of Appeal Case No:
CA CPA152/2022

PHC of Western Province holden in Colombo
Case No: WP/HCCA/COL/31/2019 (RA)

District Court of Colombo Case No:
561/17/DDR

Vs

1. Malwatta Vidanilage Upul Chaminda
   Malwatta,

2. Shyama Udayangani Malwatta,

   Both at:
   Pillewa Watta, Usawiya Road,
   Ganegoda, Polgahawela.

3. Liyanaralalage Manjula Pathmakumara,
   No. 97, Kurunegala Road,
   Polgahawela.

4. Illupitiya Mudiyanselage Ranjan Nilantha
   Abeysinghe
   Bomunuwa, Debahera,
   Nittambuwa.

Defendants

AND BETWEEN

Shyama Udayangani Malwatta
Pillewa Watta, Usawiya Road,
Ganegoda, Polgahawela.

2nd Defendant-Petitioner

Vs

Softlogic Finance PLC
No. 13, De Fonseka Place,
Colombo 4.

Plaintiff-Respondent

1. Malwatta Vidanilage Upul Chaminda
   Malwatta,
   Pillewa Watta, Usawiya Road,
   Ganegoda, Polgahawela.

2. Liyanaralalage Manjula Pathmakumara
   No. 97, Kurunegala Road,
   Polgahawela.

3. Illupitiya Mudiyanselage Ranjan Nilantha
   Abeysinghe
   Bomunuwa, Debahera,
   Nittambuwa.

1st, 3rd and 4th Defendant-Respondents

AND NOW BETWEEN

Shyama Udayangani Malwatta
Pillewa Watta, Usawiya Road,
Ganegoda, Polgahawela.

2nd Defendant-Petitioner-Petitioner

Vs

Softlogic Finance PLC
No. 13, De Fonseka Place,
Colombo 4.

Plaintiff-Respondent-Respondent

1. Malwatta Vidanilage Upul Chaminda
   Malwatta,
   Pillewa Watta, Usawiya Road,
   Ganegoda, Polgahawela.

2. Liyanaralalage Manjula Pathmakumara
   No. 97, Kurunegala Road,
   Polgahawela.

3. Illupitiya Mudiyanselage Ranjan Nilantha
   Abeysinghe
   Bomunuwa, Debahera,
   Nittambuwa.

1st, 3rd and 4th Defendant-Respondent-Respondents

Before:	**Prasantha De Silva,**
	K.K.A.V. Swarnadhipathi, J.
Counsel:	Dinesh de Silva AAL with Hiranya Damunupola AAL and Vimkuthi Bandara AAL for the 2nd Defendant-Petitioner-Petitioner
	K. Wasantha S. Fernando AAL with H. Abeyratna AAL and Thisara Lokuge AAL for the Plaintiff-Respondent-Respondents
Written Submissions: filed on	Written submissions filed on 30.06.2023 by the 2nd Defendant-Petitioner-Petitioner.
	Written submissions filed on 10.05.2023 by the Plaintiff - Respondent-Respondent
	Both parties agreed to dispose the Preliminary Objection raised by the Plaintiff-Respondent-Respondent by way of Written Submissions.
Delivered on:	31.08.2023

Prasantha De Silva J.

Order

Softlogic Finance PLC, being the Plaintiff, instituted an action bearing No. 561/17/DDR in the District Court of Colombo, against the 1st, 2nd, 3rd and 4th Defendants to recover Rs. 5,835,840.02 as at 11.10.2017 with an interest of 17.78% thereon from 12.10.2017 on a sum of Rs. 4,224,803 under the Debt Recovery Special Provisions Act No. 02 of 1990 (as amended).

On 08.01.2018, the District Court issued Decree Nisi against the Defendant, as prayed for by the Plaintiff. Pursuant to this, the 2nd Defendant made an application on 04.12.2018 to move for unconditional leave to appeal and show cause. The Court granted permission to file written submissions in this regard.

On 21.06.2019 the Learned District Judge refused the said application of the 2nd Defendant, on the basis that the 2nd Defendant had not disclosed a *prima facie* sustainable defence.

Being aggrieved by the said order, the 2nd Defendant-Petitioner had preferred an appeal to the High Court of the Civil Appeal of Western Province (holden in Colombo) by petition of appeal dated 22.09.2019 in case bearing No. WP/HCCA/Col/31/2019 (RA).

After hearing the said matter, the learned High Court Judge of the Civil Appeal dismissed the 2nd Defendant-Petitioner's application by his judgment dated 12.10.2022.

Consequently, the 2nd Defendant-Petitioner-Petitioner [hereinafter referred to as the 'Petitioner'] being aggrieved by the said judgment, had invoked the revisionary jurisdiction of the Court of Appeal seeking to set aside the order dated 12.10.2022 made by the learned Provincial High Court Judge and the order dated 21.06.2019 of the learned District Judge.

When this matter was taken up for hearing, the Plaintiff-Respondent-Respondent (hereinafter referred to as the 'Respondent') had raised a preliminary objection with regard to the maintainability of the said revision application.

Since the parties agreed to dispose of the said preliminary objection by way of written submissions, the Court allowed the parties to file written submissions. Therefore, this order is based on the written submissions tendered by the Petitioner and the Respondent in respect of the preliminary objection raised by the Respondent.

The preliminary objection raised by the Respondent was; whether the Court of Appeal is vested with revisionary jurisdiction in respect of the judgments and orders of the Provincial High Court exercising Civil Appellate Jurisdiction under Section 5A of the High Court of Provinces (Special Provinces) Act No. 19 of 1990 as amended by amending Act No. 54 of 2006.

In view of Section 5C of the said Act, 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.

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 emanating from the District Courts for which an appeal lies 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 have been analysed in detail below.

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]

Apparently, Section 9 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 stipulates that;

"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 mero motu 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." (emphasis added)

It appears that plain reading of the above section indicates that, only the Appellate Jurisdiction has been vested with the Supreme Court with regard to a final order, judgment, decree, or sentence of a High Court established by Article 154P of the Constitution, and not the revisionary jurisdiction.

On behalf of the Petitioner, it was submitted that the Appellate and Revisionary jurisdiction are two separate concepts, and therefore the Legislature specifically granting only the Appellate Jurisdiction to the Supreme Court, which does not oust and/or undermine the Revisionary Jurisdiction of Court of Appeal with regard to a final order, judgment, decree or sentence of a High Court established by Article 154P of the Constitution.

This position was substantiated by citing the recent Judgment of the Supreme Court in ***Wijesiri Gunawardane and two others Vs. Chandrasena Muthukumarana and Four others, SC Appeal No. 111/2015 with SC Appeal No. 113/2015 and SC Appeal No. 114/2015, [SC Minutes 27.05.2020]*** where the Supreme Court held 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."

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

In the said case Supreme Court held that;

> *"Thus, it is clear that the existence of the 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 the right of appeal does not result in an ousting the Revisionary Jurisdiction."*

The Supreme Court further held that;

> *"Particularly in relation to the revisionary jurisdiction, which exists to remedy a miscarriage of justice, greater care must be exercised when employing the maxim.*

Aluwihare P.C. J observed that 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 is significant to note that Aluwihare P.C J has based the above reasoning on interpreting article 138 of the Constitution and Section 9 and Section 11 of Act No.19 of 1990.

In this instance, Court draws the attention to the recent Judgment of the Supreme Court held in ***Indika Roshan Francis Vs. Bulathsinghalage Lal Cooray [SC/Revision/02/2019 Decided on 25.03.2022].***

The facts of the case were that the Plaintiff-Appellant-Petitioner had instituted action seeking for a Declaration of title and ejectment and damages for the premises. Thereafter District Court of Gampaha delivered the Judgment dismissing the Plaint. Being aggrieved by the said Judgment, the Petitioner preferred a Final Appeal against the said judgment to the Provincial Civil Appellate High

Court in the Western Province holden in Gampaha. Consequently, by the Judgment dated 09.01.2019, the Appeal of the Petitioner was dismissed, and the judgment of the District Court was affirmed by the Civil Appellate High Court. Being aggrieved by the said judgment the Petitioner filed a revision application to the Supreme Court and sought to revise the said judgment of the Civil Appellate High Court of Gampaha.

Therefore, the question before the Supreme Court was that, whether the revisionary powers are vested in the Supreme Court.

In the said case, the Supreme Court went on to hold that;

> *"The revisionary powers are explicitly vested in the Court of Appeal by the present Constitution, not to the Supreme Court. Therefore, in light of the statutory provisions discussed above, it is clear to this court that, the views expressed on the Supreme Court's revisionary jurisdiction in cases decided in the era before the enactment of the present Constitution in 1978, cannot be applied to the present Application.*
>
> *It is a question with great importance before this Court that, whether the Supreme Court as the apex Court of the Sri Lankan Judiciary could have the authority to revise the judgments of a lower court, even though no law has expressly vested such powers in the Supreme Court."*

The Supreme Court dismissing the Application in the above case held that "In light of the well-established legal context discussed above, it is apparent that the Supreme Court has not been vested Revisionary Jurisdiction under the existing law."

Therefore, it was the contention of the Petitioner that a person being aggrieved by a decision made by a Provincial High Court exercising its appellate powers can invoke revisionary jurisdiction of the Court of Appeal referred to in Article 138 of the Constitution.

As such, the Petitioner submitted that the aforementioned section indicates that only the appellate jurisdiction has been vested with the Supreme Court with regards to a final order judgment decree or sentence of a Provincial High Court established by article 154P of the Constitution and not the revisionary jurisdiction.

It is noteworthy 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 text of Article 138(2) clearly states 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.

The Respondent contended that in the circumstances of the instant case, the Court of Appeal is not vested with revisionary jurisdiction to exercise revisionary powers to revise or set aside the Order/Judgment made by the High Court of Civil Appeal.

It is relevant to note that the impugned revision application is made against the Judgment pronounced by the Provincial High Court exercising Civil Appellate Jurisdiction under Section 5A of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended by Amendment Act No. 54 of 2006.

It has to be observed that Act No. 19 of 1990 provides for the Provincial High Court to exercise Jurisdiction over orders made by the Magistrate's Court, Labour Tribunal, Agrarian Service Tribunal, and orders made under the Primary Court Procedure Act.

Pursuant to Section 5C of the said Act No. 54 of 2006, 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.

It is significant to note that no jurisdiction was granted over civil matters that the District Court has taken cognizance of. 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 Provincial 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.

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 worth noting that there are several judgments pronounced by the Court of Appeal which has not been brought to the notice of the Supreme Court when determining the said case.

In the case of **G*.K.D. Stephan Gunaratne v Maddumage Thushara Indika Sampath* CA (PHC) APN 54/2013** [CAM 23.09.2013] *A.W.A Salam J.,* held that,'

> 'As has been held in that case scheme of appeal against the order of the Commercial High Court being the same as in the case of an order pronounced by the High Court exercising civil appellate jurisdiction, to allow a revision application to be maintained against the judgment of the High Court exercising civil appellate jurisdiction would amount to usurping the exclusive appellate jurisdiction conferred on the Supreme Court.'

As such, it is in line with the statuary schemes which set out the jurisdiction of the Provincial High Court to not allow an appeal/revision from the Provincial High Court to the Court of Appeal in civil matters.

Similarly in the case of ***Rizleigh Bertram Grand vs Portia Kekulwala CA/RI/06/2016*** decided on 24.06.2019 his lordship *Samayawardena J.* affirmed the above judgment and held further that if a party is allowed to come before the 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 on the purpose of introducing Amendment Act No. 54 of 2006, which has not been considered in the judgment of *Aluwihare PC. J.* in ***Wijesiri Gunawardane & Others v. Chandrasena Muthukumarana & Others (supra),*** 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.

This Court dealt with a similar preliminary objection in the recent case of ***Sudu Abeygedara Indika Premadasa and 4 Others vs People's Bank, (CPA) 124/2001 [C.A.M 05.06.2023],*** where the Court held that in the case of ***Wijesiri Gunawardene & 4 Others Vs. Chandrasena Muthukumarana & Others [Supra],***

"The Supreme Court has not considered the relevant provisions of a particular statute or has not responded to the previous case law applicable to such a matter."

This Court further held that in view of the analysis of the relevant statutory provisions, it clearly manifests that it would be a paradox to permit the Court of Appeal to exercise revisionary jurisdiction against the same jurisdiction that the Court of Appeal has been entrusted, as the Provincial High Court exercises the same Jurisdiction as the Court of Appeal. Since the Court of Appeal cannot lie in revision of its own judgment, the Court of Appeal should not lie in revision of the Provincial High Court's Judgments in exercising its Civil Appellate Jurisdiction provided by Act No. 54 of 2006, which is an exercise of a similar Jurisdiction to that of Court of Appeal.

The relevant statutory provisions considered to uphold the preliminary objection raised in the said case ***Sudu Abeygedara Indika Premadasa and 4 Others Vs People's Bank*** **[Supra]** have been analysed in the said judgment, which is reiterated as follows;

'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.'

I have set out the relevant amending provisions below which have not been considered 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 pursuant to Article 154P read with provisions of Act No. 19 of 1990 as amended by Act No. 54 of 2006.

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 that 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 (supra)*** 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; or 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. The 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 draftsmen to only use the word '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 have 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. Furthermore, I have elucidated 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).

Moreover, 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 of Civil Appeal and a leave to appeal to the Supreme Court, secondly a revision application filed in the Court of Appeal, and thirdly an appeal from such a revision application from the Court of Appeal to the Supreme Court.

Furthermore, to allow the Court of Appeal to exercise revisionary jurisdiction in this manner would allow the court to intentionally go beyond the statutory scope of Act No. 19 of 1990 which has clearly stated that the appeal from Provincial High Courts should lie directly to the Supreme Court after leave being obtained first.

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] (a 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 not 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

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

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, the Court of Appeal having revisionary jurisdiction over an instance where the Provincial High Court exercises its revisionary jurisdiction as is requested for in the instant case. In effect, the 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 the instant case for example, this court is invited to lie in revision of a revision application filed in the Provincial High Court.

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.

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.*

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 and 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.

In view of the aforesaid analysis of the relevant statutory provisions, it clearly manifests that it would be a paradox to permit the Court of Appeal to exercise revisionary jurisdiction against a court exercising similar jurisdiction to that of the Court of Appeal civil appellate matters - the Provincial High Court. 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 Western Province exercising appellate jurisdiction dated 21.10.2022. As such Order of the learned Judge of the District Court of Colombo in the case bearing No. 561/17/DDR dated 21.06.2019 which has been affirmed in the judgment of the learned Provincial High Court Judge in Case No. WP/HCCA/COL/31/2019 (RA) remains in effect.

Hence, the application is dismissed with cost.

JUDGE OF THE COURT OF APPEAL

K.K.A.V. Swarnadhipathi, J.

I agree.

JUDGE OF THE COURT OF APPEAL