

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

In the matter of an Application for Revision and Restitutio in Integrum in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka read together with section 753 of the Civil Procedure Code.

Hewa Maddumage Mili, Ungiammawatta,
Parawahera.

C.A. RII/11/2022

C. A. Case No. 125/95 F

8th defendant Appellant **PETITIONER**

D. C. Matara Case No. 13865/P

PETITIONER

1. Hewa Maddumage Girigoris,
Palupsaranawatte, Parawahera.

And others

PLAINTIFF RESPONDENTS

And

DEFENDANT RESPONDENTS

Before: Hon. Justice D. N. Samarakoon

Hon. Justice Niel Iddawala

Counsel: Hemantha Situge for 08th defendant appellant petitioner

Written Submissions on: 30.05.2023 by the petitioner

Date: 27.06.2023

D. N. Samarakoon J.,

The 08th defendant appellant petitioner filed the present application on 18th March 2022 invoking the revisionary and or restitutio in integrum jurisdiction of this court.

On 13th December 2022, this Court in deciding not to issue notice to the respondents, has dismissed the application of the 08th defendant in limine.

It was on the following two grounds, the said dismissal was effected,

- (i) The petitioner having previously preferred an appeal against the judgment of the district court which having been dismissed by this court. The judgment of A. W. A. Salam J., in Stephen Guneratne vs. Thushara Indika Sampath C.A./P. H. C./A. P. N./54/2013 dated 23rd September 2013 was followed, it says,

“The Court of Appeal cannot act in revision in respect of a judgment it pronounces in a civil appeal”.

- (ii) Delay for 20 years.

The 08th defendant appellant petitioner **petitioner**, then preferred another application in the same case, on the basis that the order of dismissal dated 13th December 2022 is per incuriam.

Amongst reasons adduced by the petitioner is **Marian Beebee vs. Seyed Mohamed and others 69 C. L. W. 34 at 36 (also 68 NLR 36 at 38)**. This is a decision of 05 Judges of the Supreme Court of Ceylon. T. S. Fernando J., Sri Skandarajah J. and G. P. A. de Silva J., agreed with the Chief Justice Melanie

Claude Sansoni. Abeyesundere J., dissented. As it has been quoted time and again and will be quoted often, the Court said,

“The power of revision is an extraordinary power which is quite independent of and distinct from the appellate jurisdiction of this Court. Its object is the due administration of justice and the correction of errors, **sometimes committed by this court itself**, in order to avoid miscarriage of justice. **It is exercised in some cases by a Judge of his own motion,...**”

What was reportedly said by Salam J., is contrary to the above principle. Even if the decisions of the Ceylon Supreme Court are ranked with the present Court of Appeal, Marian Beebee decision is a 05 Judge Bench decision. Justice Salam’s decision is not so. Even the dissenting judgment of Abeyesundere J., was not based on the power of revision itself, but on what his lordship thought as a bar in section 68 of Partition Act for the exercise of it. But practice and prudence has shown, whereas, the majority decision of Sansoni C. J., was hailed the prohibition claimed by Abeyesundere J., was discredited. Cf. Somawathie vs. Madawala 1983 (2) SLR 15 at 30.

Hence, the basis on which this Court has decided to dismiss the petitioner’s application, that it has no jurisdiction to look into the grievance of the petitioner is per incuriam.

The reason of delay has been considered only as an additional or ancillary reason. This Court is of the view that the effect of delay has to be considered with other factors involved and not as a reason by itself.

In the circumstances, this Court on the basis of per incuriam (which means, not by Court) of its decision dated 13th December 2022, revokes the dismissal of the petitioner’s application and issues notices to the respondents.

Judge of the Court of Appeal

Hon. Neil Iddawala, J.

I agree.

Judge of the High Court of Civil Appeal