

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

Case No.CA/PHC/119/2004

S.M.A.A.Priyantha Jayakody

PHC/Matara 196/02(Rev)

1<sup>st</sup> Party Respondent Respondent  
Appellant

M.C Deiyandara 16870

vs  
Officer in Charge, Police Station  
Mawarala.

Complainant-Respondent-Respondent

Kularathna Herathge Sirisena

2<sup>nd</sup> Party Respondent Petitioner-  
Respondent

BEFORE: A.W.A.Salam J (P/CA)  
Sunil Rajapaksa J.,

COUNSEL Athula Perera with Chathurani de Silva for the Appellant.  
W.D. Weeraratne with Priyanka Jayakody for the Respondent

ARGUED ON: 12.06.2013

DECIDED ON: 07.05.2014

**Rajapaksa J.,**

**This appeal has been filed by the 1<sup>st</sup> Party Respondent Respondent Respondent Appellant challenging the Order dated 27.04.2004 of the learned High Court Judge of Matara.**

When this case was taken up for argument the 1<sup>st</sup> Party Respondent Respondent Appellant 's main contention was laches. Now I shall deal with this argument. I note that the instant Revision Application to the High Court was filed on 31.10.2002. The learned Magistrate of Deiyandara entered his judgment on 22.03.2002. Therefore I am of the view, that 7 months delay in filing revision application to the High Court of Matara was undue and unreasonable delay. This delay was fatal to the 2<sup>nd</sup> Party Respondent's Revision Application. The 2<sup>nd</sup> Party Respondent Petitioner Respondent had not properly explained his undue and unreasonable delay. The reasons for the delay are stated in paragraph 13 of the petition of the 2<sup>nd</sup> Party Respondent.

In this regard I would like to cite the following authorities :

Camillus Ignatious vs OIC Uhana Police Station (Rev) CA 907/89, M.C. Ampara 2587. It was held *"that a mere delay of 4 months in filing a Revision Application was fatal to the prosecution of the Revision Application.*

Opatha Mudiyanseelage Nimal Perera vs A.G - CA(Rev) 532/97 -Kandy HC 1239/92, where His Lordship Justice F.N.D. Jayasuriya stated that *"These matters must be considered in limine before the court decides to hear Petitioner on the merit of his application before he could pass the gateway to relief his aforesaid contumacious conduct and his unreasonable and undue delay in filing application must be considered and determination made upon these matters before he is heard on the merit of the application."*

In this case note there was no evidence before High Court to establish the fact that the 2<sup>nd</sup> Party Respondent Petitioner Respondent was suffering from any illness. The 2<sup>nd</sup> Party Petitioner Respondent filed the Revision Application to

the High Court of Matara after seven months delay. After analyzing the submissions made by both parties I am of the view, that the learned High Court Judge has not properly considered the undue and unreasonable delay. Therefore the 2<sup>nd</sup> Party Respondent Petitioner Respondent was guilty of laches. I hold that the learned High Court Judge's judgment was bad in law.

There is no order in the High Court judgment with regard to the possession of the disputed land. The learned High Court Judge has not made a proper order regarding the possession. He has not made an order regarding who should be in possession of the disputed land. Therefore, I hold that the learned High Court Judge's judgment dated 27.04.2004 is contrary to law and facts.

After analyzing the judgment of the learned High Court Judge of Matara, the court holds that the judgment of the learned High Court Judge of Matara was not a well considered order as both relevant facts and law had not been taken into consideration when he was arriving at the determination. Therefore, I set aside the learned High Court Judge's order dated 27.04.2004 and the determination of the learned Magistrate of Deiyandara is restored.

Appeal is allowed without costs.

**JUDGE OF THE COURT OF APPEAL**

Salam J.,

I agree.

**JUDGE OF THE COURT OF APEAL**