

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

In the matter of an Application for Revision
made under and in terms of Article 138(1) of
the Constitution of the Democratic Socialist
Republic of Sri Lanka.

Civaro Lanka (Pvt.) Limited
“Thurburn Wing”
No.400, Deans Road,
Colombo 10.

Plaintiff

Vs.

**CA/Revision/APN – 04/2015
Case No. HC/Civil/105/13/MR**

Auslanka Paper Company (Pvt.) Limited
No.507/16,
Glenwood,
School Lane,
Himbutana Road,
Thalahena, Malabe.

Defendant

And Now Between

Civaro Lanka (Pvt.) Limited,
“Thurburn Wing”
No. 400, Deans Road,
Colombo 10.

Plaintiff-Petitioner

Vs.

Auslanka Paper Company (Pvt.) Limited,
No.507/16,
Glenwood,
School Lane,
Himbutana Road,
Thalahena, Malabe.

Defendant-Respondent

**BEFORE : W.M.M. Malinie Gunaratne, J.
P.R. Walgama, J.**

**COUNSEL : Ronald Perera P.C. with Chandimal Mendis and
Viraj Vithanage for the Plaintiff - Petitioner.**

Argued on : 13.2.2015
Decided on : 30.06.2015

Malinie Gunaratne, J.

The Plaintiff - Petitioner has instituted an action bearing No. HC/Civil/105/13/MR in the Commercial High Court of Colombo, seeking the reliefs set out in the plaint. On 05.11.2014 the learned High Court Judge delivered his Judgment dismissing the Plaint.

The present Petitioner has filed an appeal against the judgment in the Supreme Court (as per paragraph 16 of the Petition). Having done that the Petitioner has filed this revision application in this Court seeking to set aside the judgment of the learned High Court Judge dated 05.11.2015.

The High Court has exercised Civil Jurisdiction under the High Court of the Province (Special Provision) Act No. 10 of 1996. In terms of Section 5 of the Act No. 10 of 1996 an appeal from an order or judgment of

the Commercial High Court shall be made to the Supreme Court. Therefore, the Court of appeal has no appellate jurisdiction in respect of orders or judgments of the Commercial High Court.

I have carefully considered the submissions of the learned President's Counsel. In the course of the submissions, the learned President's Counsel for the Petitioner contended that, since the final appeal will take a long time to be listed, the Petitioner filed this application invoking the revisionary jurisdiction of this Court. He further contended that the Supreme Court is not vested with the revisionary jurisdiction and the exclusive revisionary jurisdiction is vested with the Court of Appeal as per Article 138 of the Constitution.

The learned President's Counsel has completely disregarded the change made by the legislature by enacting Act No. 10 of 1996 as far as High Court orders made in the exercise of powers vested in the High Court, under the Act. No.10 of 1996. By the enactment of Act No10 of 1996, it is clear that in any civil matter dealt with in the High Court, the appeal lies only to the Supreme Court.

The right of appeal from judgments / orders of the High Court is dealt with under Section 5 of the said Act. The said Section 5 reads thus:

“(1) Any person who is dissatisfied with any judgment pronounced by a High Court established by Article 154 P of the Constitution, in the exercise of its jurisdiction under Section 2, in any action proceeding or matter to which such person is a party may prefer an appeal to the Supreme Court against such judgment, for any error in fact or in law.

(2) Any person who is dissatisfied with any order made by a High Court established by Article 154 of the Constitution, in the exercise of its jurisdiction under Section 2, in the course of any action proceeding or matter to which such person is, or seeks to be a party, may prefer an appeal to the Supreme Court against such order, for the correction of any error in fact or in law with the leave of the Supreme Court first had and obtained”.

In *Australanka Exporters Pvt. Ltd. Vs. Indian Bank* 2001 (2) SLR 156, it was held that the appellate jurisdiction in respect of judgments and orders of the High Court of the Provinces made in the exercise of its civil jurisdiction was vested exclusively in the Supreme Court.

In *Senanayake and Others vs. Kohmen and Others* 2002 (3) SLR 381 Justice Amaratunga had made the following observation:

“It is not proper for the Court of Appeal to examine the legality of the judgment of the Commercial High Court even for the limited purpose of safeguarding itself that the petitioner is entitled to the relief prayed for. If the Court of Appeal ventures into such an exercise it is an indirect usurpation of the exclusive jurisdiction conferred on the Supreme Court by the legislature”.

In the case of *Merchant Bank of Sri Lanka Ltd. Vs. J.P. Wijewardana and others* 2010 (B.L.R.) 233, it was held that the right of appeal from judgments / orders of the High Court is vested exclusively in the Supreme Court and this Court cannot exercise even revisionary powers.

Being aggrieved by the said order, appellants made an application for special leave to appeal in the Supreme Court. In that case, dismissing the

appeal it was held that the judgment of the Court of Appeal is correct in law as it has held that the exclusive right of appeal from an order or judgment of the High Court exercising civil jurisdiction is vested with the Supreme Court. In that case Suresh Chandra J. observed thus: (other two judges agreeing) “.....if revisionary jurisdiction to the Court of Appeal is given then it would give the party applying for revision in a situation as in the present case a favourable position by granting an additional opportunity of review as against a party who comes within a purview of the civil jurisdiction of the High Court regarding other matters as they will be entitled only to the right to appeal to the Supreme Court”.

“..... This would give the party in such circumstances two opportunities of review of the preliminary judgment when the clear intention of the Legislature is that there should be only an appeal to the Supreme Court from any judgment or order of the High Court in the exercise of its Civil Jurisdiction in terms of Sections 5(1) and 5(2)”.

This Court is bound by the authorities of the Supreme Court referred to above. Moreover, there is a clear statutory provision in Act No.10 of 1996.

Therefore, taking into consideration all the facts, relevant authorities and submissions made in this case, this Court refuses to issue notice on the Respondents.

JUDGE OF THE COURT OF APPEAL

P.R. Walgama, J.

I agree

JUDGE OF THE COURT OF APPEAL

Petition dismissed.