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

C.A. Case No.531/1997 (F)

D.C. Colombo Case No. 22676/MR

Central Finance Company PLC,

(Formerly known as Central Finance Company Limited)

No.84, Kings Street,

Kandy.

PLAINTIFF

-Vs-

1. **Mohamed Riyal Mohamed Rifal**
   No.109, Riyalson & Company,
   Main Street,
   Kalutara South.
2. **Mohmed Riyal Mohamed Mubasher,**
   No.109, Riyalson & Company,
   Main Street,
   Kalutara South.
3. **Mohamed Riyal Mohamed Suhail**
   No.178, Hill Street,
   Kalutara South.
4. **Mohmed Hadi Mohamed Farook**
   Kodabada Watte,
   Avissawella.

DEFENDANTS

AND NOW BETWEEN

Central Finance Company PLC,

(Formally known as Central Finance Company Limited)

No.84, Kings Street,

Kandy.

PLAINTIFF-APPELLANT

-Vs-

1. **Mohamed Riyal Mohamed Rifal**
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   No.178, Hill Street,
   Kalutara South.
4. **Mohamed Hadi Mohamed Farook**
   Kodabada Watte, Avissawella.

DEFENDANT-RESPONDENTS

BEFORE	:	A.H.M.D. Nawaz, J.
COUNSEL	:	Kamaran Aziz with Eshan Ariyaratne for the Plaintiff-Appellant Respondent absent and unrepresented
Decided on	:	28.08.2018

A.H.M.D. Nawaz, J.

The Plaintiff-Appellant (hereinafter sometimes referred to as "the Plaintiff") instituted action against the Defendant-Respondents (hereinafter sometimes referred to as "the Defendants"), by a Plaint, dated 26.06.1992, praying for *inter-alia* the following substantive relief, to wit-

a. judgment and Decree in sum Rs.505, 685/- against the Defendants jointly and/or severally;

b. an Order for the recovery of the vehicle concerned.

The Defendants thereafter tendered their joint Answer, dated 28.01.1994, and prayed *inter alia* for the dismissal of the Plaintiff's action.

It has to be observed at the outset that the Defendants had neither pleaded specifically a denial of the jurisdiction of Court (as required in terms of Section 76 of the Civil Procedure Code), nor was an issue raised on the question of jurisdiction. Neither was the termination of the lease agreement denied by the Defendants.

The only salient contention made by the Defendants in their said answer was that the Agreement concerned was not executed within the territorial jurisdiction of the District Court of Colombo.

The learned trial Judge thereafter delivered judgment on 31.01.1997, dismissing the action of the Plaintiff, on the ground that Court had no jurisdiction since the Agreement concerned had been entered into beyond the territorial jurisdiction of District Court of *Kandy* (*i.e.* executed in Colombo).

In terms of the Section 76 of the Civil Procedure Code, and a slew of authorities, it is clear that if a Defendant seeks to traverse jurisdiction, it should be pleaded in the Answer by way of a specific denial, as otherwise the Defendant is deemed to have accepted jurisdiction.

According to the terms of the answer, the Defendants have not traversed jurisdiction as required in terms of the law, and have merely pleaded that the Lease Agreement

concerned was executed beyond the jurisdiction of the court. Thus it was submitted by the learned Counsel for the Plaintiff-Appellant that the learned District Judge dismissing the Plaintiff's action based on want of jurisdiction is misconceived in law.

In any event, in terms of Section 9 of the Civil Procedure Code, jurisdiction can be founded on the residence of the Defendant, where the contract was executed and/or where the cause of action arose.

It was pointed out that the Plaintiff had specifically prayed for the return of the vehicle concerned in terms of Prayer (b) to the Plaint.

Clause 21 of the Lease Agreement reads thus:-

> *"Upon the expiration or early termination of this lease hereby created for any reason whatsoever the lessee shall deliver and surrender up property in the condition in which it was received by the lessee, fair wear and tear excepted, to lessee at the address of the lessor stated in the lease agreement"*

The address of the Lessor (the Plaintiff) stated in the Lease Agreement is No.85, Raja Veediya, Kandy.

Therefore the learned Counsel argued that the cause of action (the return of the vehicle concerned) arose in Kandy, being within the territorial jurisdiction of the District Court of Kandy.

Hence, the Counsel for the Plaintiff submitted that the learned trial Judge had grievously erred in dismissing the Plaintiff's action on the basis of want of jurisdiction.

On the basis of such error of law, can this court now exercise jurisdiction to accept and hear this appeal notwithstanding the fact that the notice of appeal was belated?

Section 753 of the Civil Procedure Code:-

> *"The Court of Appeal may, of its own motion or on any application made, call for and examine the record of any case, whether already tried or pending trial, in any court, tribunal or other institution for the purpose of satisfying itself as to the legality or propriety of any judgment or*

order passed therein, or as to the regularity of the proceedings of such court, tribunal or other institution, and may upon revision of the case brought before it pass any judgment or make any order thereon, as the interests of justice may require."

Article 138(1) of the Constitution:-

"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 98 [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"

Article 145 of the Constitution:-

"The Court of Appeal may, ex mero motu or on any application made, call for, inspect and examine any record of any Court of First Instance and in the exercise of its revisionary powers may make any order thereon as the interests of justice may require."

The aforesaid provisions were advanced by learned Counsel Mr. Kamran Aziz in order to drive home the wide amplitude of powers that this Court possesses to exercise revisionary jurisdiction to rectify errors of fact and law. The question that was urged by Mr. Kamran Aziz the learned Counsel was that even though there is no proper appeal before this Court owing to the fact that the notice of appeal was out of time, this Court must exercise its revisionary jurisdiction.

There is no gainsaying that revision lies even when the appeal has abated. Even when an appeal fails, this Court can exercise revisionary jurisdiction provided the overarching consideration of a manifest errors is demonstrated in the proceedings of the court *a quo*. A look-back on the case law repays attention.

It is axiomatic that the revisionary jurisdiction of this Court is available to rectify manifest error or perversity. This principle was adverted to by this Court in ***Chandraguptha v. Gunadasa Suwandaratne*** C.A.L.A 508/2005 (CA minutes of 12.09.2017). In ***Sinnathangam v. Meeramohaideen*** 60 N.L.R 394-T.S.Fernando, J. (with Weerasooriya, J. agreeing) opined that the Court possesses the power to set right, in revision, an erroneous decision in an appropriate case even though an appeal has abated on the ground of non-compliance with technical requirements. Jayawickrama, J. (with De Silva, J. agreeing) followed ***Sinnathangam v. Meeramohaideen*** *(supra)*in ***Soysa v. Silva and Others*** (2000) 2 Sri L.R 235 and considered the case of a revision application that had been filed in the Court of Appeal 10 years after the pronouncement of the judgment in the District Court. In fact the appeal filed against the said judgment had failed in the Court of Appeal on a technicality namely the appellant had signed the notice of appeal on his own when there was a registered Attorney on record. The appeal was rejected as it was preferred contrary to Section 754 of the Civil Procedure Code. Not to be outdone, the appellant in the case preferred a revisionary application. The argument was raised that the petitioner could not move by way of revision after the appeal was rejected by the Court of Appeal. The revisionary application was also resisted on the ground of long delay in that it was after a lapse of 10 years from the pronouncement of the judgment that the petitioner moved by way of revision. It was in those circumstances that this Court observed that the power given to a superior court by way of revision is wide enough to give it the right to revise any order made by an original court. Its object is the due administration of justice and the correction of errors sometimes committed by the Court itself in order to avoid miscarriage of justice.

Revisionary jurisdiction of this Court under Article 138 of the Constitution is untrammeled by delay in its invocation provided there is irreparable damage, miscarriage of justice or perversity in the judgment of the court *a quo*.

The underlying theory behind revisionary jurisdiction is that there must be a manifest error-*see* ***Saheeda Umma and Another v. Haniffa*** (1999) 1 Sri L.R 150 wherein J.A.N. de

Silva, J. (as His Lordship then was) held that the Court of Appeal should act in revision, when there is a grave irregularity or a miscarriage of justice, even in a case where revisionary powers have not been invoked by the Petitioner. In my view this case merits intervention by revision and restitution-the two extraordinary remedies bestowed on this Court by virtue of Article 138 of the Constitution. It is trite that in applications for revision, there must be circumstances that shock the conscience of court- ***Wijesinghe v. Tharmaratnam*** IV Sri L.R 47.

In the case of ***L.B. Finance Com v. M.K. Wallisinghe and Others*** (CA 191/2007 (F) CA Minutes dated 27.10.2011) it was held:-

> *"In all the above circumstances I have taken the view that the Appellant has no right of appeal. Nevertheless this is a fit and proper case to exercise revisionary powers of this court. Due administration of justice requires this court to interfere by way of revisionary powers."*

Though I concur with the submissions of the learned Counsel that the Court will not shy away from exercising its revisionary jurisdiction-a proposition which is rooted in common sense and natural justice, I would bear in mind that there must be a perverse or manifest error in the judgment as a threshold. There must be present in the judgment or the case circumstances that must shock the conscience of Court. I do not observe such a manifest error in the judgment dated 31.01.1997.

Upon a careful consideration of the evidence I find that on the day on which the notice of termination was sent, there had been no default of payment by the Defendants. It would appear that there was no cause of action to institute this action since the notice of termination was not founded on breach. Even at the time when the notice was dispatched, there is evidence that payment was being made on installments.

In the circumstances I would hold that even in the exercise of revisionary jurisdiction, the judgment of the District Court of Kandy cannot be faulted and I affirm the judgment dated 31.01.1997 and decline to set aside the judgment.

JUDGE OF THE COURT OF APPEAL