

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

In the matter of an application for a ruling of contempt of court under and in terms of the contempt of court, Tribunal or Institution Act No. 8 of 2004 read together with Article 105 (3) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA Case NO:

CA/COC/05/025

1. Dulshan Senasinghe
No. 37/F, Balanagala Road
Katugasthota.

2. Dinuka lashanthi Henrcus
No. 37/F, Balanagala Road
Katugasthota.

Petitioners

V.

1. Pathadunbara Praeshiya Sabha

Pitiyegedara

Wattegama

2. Horanage Inoka Manudarshani
Kulathunga
Secretary

Pathadumbara Pradeshiy Sabha
Pitiyagedara
Wattegama.

Respondents

Before : **B. Sasi Mahendran, J.**
 Amal Ranaraja, J

Counsel: Petitioners are represented by learned Counsel

Supported On: 24.03.2025

Order On: 30.04.2025

ORDER

B. Sasi Mahendran, J.

This is an application made in terms of Section 3(1) (a) and /or 3(2)(b) and Section 14(a) of the Contempt of Court, Tribunal or Institution Act, No. 8 of 2024 read together with Article 105 (3) of the Constitution.

The Petitioners instituted this action by petition dated 18.03.2025 seeking *inter alia* to issue a Rule on the Respondents under the form marked ‘A’ and to charge the Respondents for willful breach of the undertaking given to this Court on 10.02.2025 in the case bearing No. CA/WRIT/729/2024.

The Petitioners state that the Petitioners instituted an action before this Court in case bearing No. CA/WRIT/729/2024 on or around 12.11.2024 challenging *inter alia*, the 1st Respondent-Accused’s attempt to demolish a construction (Gate) of the Petitioners. Further, the Petitioners state that they canvassed in the said case

that the 1st Respondent-Accused's actions in terms of the Urban Development Authority Law No. 41 of 1978 as amended were unfair, ultra vires, and arbitrary.

Further, the Petitioners aver that they further sought to stay an action for demolition instituted by the Respondents in the Magistrates Court of Teldeniya under case bearing No. 87747/24. As stated by the Petitioners, the case was supported on 18.12.2024 and was re-fixed the matter was to be resumed for support on 10.02.2025 and parties were permitted to file Limited Statements of Objection and Limited Counter Affidavits. The Petitioners state that the Respondents in CA/WRIT/729/2024 filed Limited Statements of Objection.

On 10.02.2025, when the matter was resumed, the Respondents stated that the Counter Affidavit of the Petitioners had only been received 'only two days back', agitating an insufficiency of time for the perusal of the said documents. Further, the Respondents provided an undertaking which is as follows:

"With greatest respect my lord, since the case filed in the Magistrate Court of Teldeniya case bearing No.87747/2024 is coming up on the 19th of February for the Written Submissions and since this matter is postponed for a subsequent date, I give an undertaking that on the next date of hearing in the Magistrate Court, the matter postpones to a subsequent date."

The Petitioners state that contrary to the said undertaking dated 10.02.2025, when the related matter was taken up before the Magistrates Court of Teldeniya on 19.02.2025 for written submissions, the Respondents have deliberately failed and/or refused to seek a postponement of the matter to a subsequent date and in fact they filed their Written Submissions on the said day in the Magistrates Court of Teldeniya.

The Petitioners further state that when the Counsel for the Petitioners read out loud the said undertaking in open court before the Magistrates Court of Teldeniya on 19.02.2025, the Counsel for the Respondents refused to acknowledge the said undertaking and proceeded to file their written submissions.

The main contention of the Petitioners is that the willful breach of the said undertaking by the Respondents causes disrespect to this Court and grave prejudice to the judicial process and amounts to contempt.

In this context, it is pertinent to consider whether the Respondents had the requisite mens rea as contended by the Petitioners that the Respondents willfully breached the said undertaking.

Our Courts have focused that the element of *mens rea* is required to establish the offence of contempt of court. In other words, whether the act is done willfully.

The question that needs to be answered thus is what does the word 'willful' mean.

Black Law Dictionary, Eighth Edition at page 1916

"willful,"

adj. Voluntary and intentional, but not necessarily malicious. - Sometimes spelled wilful. Cf. WAN-TON. - willfulness,

"The word 'wilful' or 'wilfully' when used in the definition of a crime, it has been said time and again, means only intentionally or purposely as distinguished from accidentally or negligently and does not require any actual impropriety; while on the other hand it has been stated with equal repetition and insistence that the requirement added by such a word is not satisfied unless there is a bad purpose or evil intent." Rollin M. Perkins & Ronald N. Bovce, Criminal Law 875-76 (3d ed. 1982).

"Almost all of the cases under [Bankruptcy Code § 523(a) (6)] deal with the definition of the two words 'willful*' and 'malicious.' Initially one might think that willful and malicious mean the same thing. If they did, Congress should have used one word and not both. Most courts feel compelled to find some different meaning for each of them." David G. Epstein et al., Bankruptcy § 7-30, at 531 (1993)."

The concept of willfulness is elaborated by Her Ladyship Justice Shiranee Tilkawardena in Croos and Another v. Dabrera, (Supra);

"It is also necessary to consider the mens rea pertaining to this charge. Under Rule 31 of the Old English Rules of the Supreme Court, an act of disobedience would become an act of contempt only if it was "Wilful". "Wilful" was taken to mean that while, where the terms of an injunction were broken it was not necessary to show that the person was intentionally contumacious or that he intended to interfere with the administration of justice, yet where the failure or refusal to obey the order of court was casual or accidental and unintentional, it will "not be met by the full rigours of the law".

His Lordship Justice Jameel in Dayawathie and Peiris v. Dr. S.D. M. Fernando and Others, 1988 2 SLR 314, has considered how the concept of willfulness is interpreted in other jurisdictions.

"Per Lord Russel of Killowen C.J. in R. vs. Senior.

" 'Wilfully' means that the act is done intentionally and deliberately and not by accident. or inadvertence, but so that the mind of the person who does the act goes with it."

In the instant application, the main allegation made by the Petitioners is that the Respondents willfully breached the undertaking made to this Court. This Court is of the opinion that there is no dispute that the Respondents have made an undertaking to the effect that they will not file written submissions. Nevertheless, this Court notes that there is no stay order issued by this Court against proceedings in the Magistrates Court of Teldeniya.

We are mindful that the proceedings are controlled by the Courts. Unless the superior courts direct otherwise, the litigants have no say or control with regard to the proceedings of the Court. We are also mindful that the Learned Magistrate has directed the parties to file written submissions on 19.02.2025 (This Court is not aware whether this is the last date given by the Court to file written

submissions). However, the litigants have no discretion in such a direction, i.e. to file written submissions or not unless a superior court directs otherwise. Whether the Respondent has given an undertaking or not, the discretion is always with the Courts to control the proceedings.

In such a circumstance, the question is whether the direction of the Courts supersedes the undertaking made by one of the parties to the Court.

We are of the view that when a party makes an undertaking, the Courts have the discretion to direct such a party to act contrary to such undertaking. Therefore, despite the Respondents' undertaking of not filing written submissions, filing in the Magistrate Court of Teldeniya in my opinion does not amount to contempt of Court. The reason is that this Court is not aware whether that was the last date given by the Court to file written submissions.

Thus, we are mindful that the Petitioners have failed to prove that by filing the written submissions the Respondents have willfully breached the undertaking made to Court. I reiterate that there is no order issued by the Courts to stay the proceeding in the Magistrates Court of Theldeniya. If the Petitioners were interested or diligent, they could have asked the Court to issue a stay to the proceedings in the Magistrates Court case.

For the aforesaid reasons, this Court is not inclined to grant the reliefs prayed by the Petitioners.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.

I AGREE

JUDGE OF THE COURT OF APPEAL