

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

In the matter of an application under and in terms of Section 46 of the Judicature Act No 2 of 1978 (as amended) for transfer of DC Case 4711M Panadura.

**Court of Appeal Case No.
CA/TRF/0007/2025**

Ronald Michael Stanley,
Permanently Residing at
4 Natalie Court Cranbourne Victoria 3977
Australia

Temporarily Residing at
49 Lionel Edirisinghe Mw
Colombo 5

Petitioner

Vs.

1. **Hapuhandige Senaka Kumara Fernando,**
93B Thuduwe Waththa,
Galthude,
Panadura.
2. **Don Ajith Rohana Ilepperuma,**
94/3A Waidya Mawatha,
Galthude,
Panadura.
3. **Sarath Srilal Dissanayake,**
Inspector of Police
Moratuwa Police Station
Moratuwa

4. **Kumaradasa Hettiarachchy,**
28 Urban Housing Complex
Munagama Horana

5. **Honourable Attorney General,**
Attorney General's Department
Colombo 12

Respondents

Before : **M. T. MOHAMMED LAFFAR, J (ACT.P/CA).**
K. M. S. DISSANAYAKE, J.

Counsel : Petitioner is appearing in person.
Wishwa Wijesuriya SC for the State.

Supported on : 11.03.2025

Written Submissions
by the Petitioner
tendered on : 23.04.2025

Written Submissions
by the Respondents
tendered on : Not tendered.

Decided on : 09.05.2025

K. M. S. DISSANAYAKE, J.

This is an application made by the Petitioner appearing in person to this Court under and in terms of section 46 of the Judicature Act (as amended) (hereinafter called and referred to as 'the Act') for the transfer of a civil case pending in the District Court of Panadura bearing No. 4711/M (hereinafter

called and referred to as the ‘civil case’), wherein, the Petitioner is the Plaintiff, to any other appropriate Court that this Court shall deem fit.

When this matter came on before us on 11.03.2025 for support for notice of the instant application for transfer, the Petitioner submitted to Court that matter would of consent, be disposed of by way of written submissions. It was further submitted to Court by the Petitioner that he would however, rely on the petition already, submitted to Court in support of the same and therefore not willing to tender written submissions in support thereof. However, it is to be noted that the Petitioner had notwithstanding, furnished to this Court a set of belated written submissions. On the other hand, learned SC appearing for the Respondents moved to file synopsis in this regard but, not filed in Court. Hence, we are proceeding to hear and determine the application of the Petitioner for notice of the instant application for transfer on the merits on the strength of the material available on the record.

The Petitioner in his petition and affidavit, had averred several facts and circumstances which according to him warrant a transfer of the civil case pending before the District Court of Panadura wherein he is the Plaintiff.

According to the facts and circumstances averred in the petition and affidavit, Mr. Senaka Kumara who wielded connections to the political hierarchy in the area and the local police, Ms. Mangalika-wife of Mr. Senaka Kumara and their associates had caused acts of intimidation and harassment on the Petitioner who holds a dual citizenship of Sri Lanka and Australia and who in the year 2000, bought an island named, Kokduwa located in the Bolgoda Lake, Panadura with intention of building the first island golf course in Asia in collaboration with, and incorporating substantial foreign investment and partnership, Ms. Cleo Muller who was the Petitioner’s business partner and who had purchased Tuduwe Waththa from one Mr. Perera as being access road to the said island named Kokduwa in the year 2009, and the Petitioner’s staff

as a direct result of refusal by the Petitioner and Ms. Muller to succumb to extortion of Rs. 2,000,000/- demanded by Mr. Senaka Kumara for a peaceful passage to the proposed project land; that since then, there had been constant conflicts between the Petitioner, Ms. Muller on the one hand and Mr. Senaka Kumara and his wife Ms. Mangalika and their associates on the other, as a result of which a significant number of complaints and counter complaints had been lodged to Panadura and Hirana Police stations, by both the Petitioner and Ms. Muller on the one hand and Mr. Senaka Kumara and his wife Ms. Mangalika on the other, as a result of which a number of cases had been filed before Magistrate Court of Panadura, by Police against the Petitioner and Mr. Senaka Kumara as well which are still, pending in Court; that consequent to which 16 illegal criminal cases had been filed against him by Police on fictitious complaints lodged by them even without an inquiry being held thereto or without a statement being recorded thereon; that in the premise, the Petitioner had instituted the civil case naming the said Senaka Kumara, Sarath Srilal Dissanayake-Inspector of Police Moratuwa and several other persons as the defendants thereto for malicious prosecution claiming damages in respect of which the instant application for transfer from District Court of Panadura to any other appropriate Court had now, been made to this Court by him in the instant application for transfer.

It was further, averred by the Petitioner in the averments in the petition that considering the unlawful malicious actions of Mr. Fernando, his political connections in Panadura, the death threats against him and his employees, the narcissistic, psychopathic, predatory behavior of the officers concerned of the Panadura/Hirana Police, the intense pain and suffering that he had been put through wasting 15 years of his life in view of his inability to attend to his mother's funeral and also his inability to get back to Australia due to impound of his passport by Court, he truly, believes that there is a risk to his life.

Reason for the transfer of the civil case as disclosed by the Petitioner in the averments in the paragraphs 25, 26 and 27 of his petition, appears to be of his alleged inability to retain a lawyer from Panadura area to handle the civil case in view of the fact that the present proxy lawyer rarely visits to Panadura District Court and the fact that his senior Counsel is unable to get a lawyer from Panadura area to accept the Proxy to handle his case as a result of the complaint for the falsification of documents being lodged by him to the Supreme Court against Amila Ishara Nawalage, Ms. Chamika Lakmali Rodrigo and Mr. Tharaka Liyanaarachchi all of whom are Panadura based lawyers representing the said Senaka Kumara.

It is in this backdrop of the instant application, I would now, propose to examine the provisions of law governing an application of this kind.

It is Section 46(1) of the Act which lays down the grounds of transfer of a case from one Court to another and it enacts thus;

“46. (1) Whenever it appears to the Court of Appeal

- (a) that a fair and impartial trial cannot be had in any particular court or place; or
- (b) that some questions of law of unusual difficulties are likely to arise; or
- (c) that a view of the place in or near which any offence is alleged to have been committed may be required for the satisfactory inquiry into or trial of the same ; or
- (d) that it is so expedient on any other ground,

the court may order upon such terms as to the payment of costs or otherwise as the said Court thinks fit, for the transfer of any action,

prosecution, proceeding or matter pending before any court to any other court, and accordingly in every such case, the court to which any such action, prosecution, proceeding or matter is so transferred shall, notwithstanding anything to the contrary in this or any other law, take cognizance of and have the power and jurisdiction to hear, try and determine such action, prosecution, proceeding or matter, as fully and effectually to all intents and purposes as if such Court had an original power and jurisdiction.”

Upon a careful reading of the averments in the petition of the Petitioner in its totality, it becomes manifestly clear that, the Petitioner does not in any manner, state therein under which limb of Section 46(1) of the Act, namely; (a), (b), (c) or (d) he makes the instant application for transfer of the civil case from Panadura District Court to any other appropriate Court.

It is in this context, I would think it necessary and expedient at this juncture to precisely, ascertain in the first instance from the facts and circumstances averred in the petition of the Petitioner, under which limb of Section 46(1) of the Act namely; (a), (b), (c) or (d), the Petitioner seeks transfer of the aforesaid civil case.

Upon a careful reading of the averments in the petition in its entirety, it becomes manifestly, clear that as a basis of his application for transfer under section 46(1) of the Act, it was not in any manner, alleged therein by the Petitioner that (a) a fair and impartial trial cannot be had in the District Court of Panadura; or, that (b) some questions of law of unusual difficulties are likely to arise before the District Court of Panadura.

In view of the matters specifically, averred in paragraphs 25, 26 and 27 of the petition as enumerated above, the instant application for the transfer of the civil case clearly, appears to me to be one falling under limb (d) of section 46(1)

of the Act, **namely; that it is so expedient on any other ground.** [Emphasis is mine]

The pivotal question that would next, arise before us is; **On whom does the burden of proof lay in an application of this kind and the scope and or the nature of it?**[Emphasis is mine]

It was *inter-alia*, held by this Court in **Sivasubramaniam Vs. Sivasubramaniam [1980] 2 SLR 58**, at Page 64, that “A party to an action who seeks a transfer of a pending action from the Court in which it is pending to another Court must adduce ‘sufficient grounds’ to satisfy us that it is expedient to make an order for its transfer. ‘Expedient’ in this context, in my view, means fit or proper. A transfer would not be ordered on light grounds.”

It was *inter-alia*, held by this Court in **Abdul Hasheeb vs. Mendis Perera and Others [1991] 1 SLR 243** at pages 257 and 258 that, “.....the expression ‘expedient’ in the context means, advisable in the interests of the justice indeed, the purpose of conferring the power of transfer as provided for in section 46 of the Judicature Act, is to ensure the due administration of justice.”.

It was *inter-alia*, held by this Court in **Karunaratne Vs. Simon Singho and Others [2011] 2 SLR 22**, at page 25 that “....expedient would mean advisable in the interest of justice”.

In order to succeed in his application for transfer of the civil case, the Petitioner is bound to discharge the burden of proof so rested upon him. Now the pivotal question is whether the Petitioner was successful in discharging the same.

It may now, be examined.

In order to succeed in his application for transfer of the said civil case from District Court of Panadura to any other appropriate Court under Section 46 of the Act, the Petitioner is bound to establish to our satisfaction through cogent, compelling and convincing evidence, his alleged inability to retain a lawyer from Panadura area to handle the civil case in view of the fact that the present proxy lawyer rarely visits to Panadura District Court and the fact that his senior Counsel is unable to get a lawyer from Panadura area to accept the Proxy to handle his case as a result of the complaint for the falsification of documents being lodged by him to the Supreme Court against Amila Ishara Nawalage, Ms. Chamika Lakmali Rodrigo and Mr. Tharaka Liyanaarachchi all of whom are Panadura based lawyers representing the said Senaka Kumara as alleged by the Petitioner in the averments in the paragraphs 25, 26 and 27 of his petition.

In support of the averments embodied in the paragraphs 25, 26 and 27 of his petition, the Petitioner had annexed to his petition a number of documents marked as 'X' and "A1 to A4".

However, upon a careful perusal of the plaint (X) and the other documents (A1 to A4), it clearly appears, that they are not in any manner, supportive of his assertion that he is unable to retain a lawyer from Panadura area to handle the civil case in view of the fact that the present proxy lawyer rarely visits to Panadura District Court and the fact that his senior Counsel is unable to get a lawyer from Panadura area to accept the Proxy to handle his case as a result of the complaint for the falsification of documents being lodged by him to the Supreme Court against Amila Ishara Nawalage, Ms. Chamika Lakmali Rodrigo and Mr. Tharaka Liyanaarachchi all of whom are Panadura based lawyers representing the said Senaka Kumara.

Hence, I would hold that, the Petitioner had not furnished to this Court material sufficient to arrive at a conclusion that he is unable to retain a lawyer

from Panadura area to handle the civil case in view of the fact that the present proxy lawyer rarely visits to Panadura District Court and the fact that his senior Counsel is unable to get a lawyer from Panadura area to accept the Proxy to handle his case as a result of the complaint for the falsification of documents being lodged by him to the Supreme Court against Amila Ishara Nawalage, Ms. Chamika Lakhmali Rodrigo and Mr. Tharaka Liyanaarachchi all of whom are Panadura based lawyers representing the said Senaka Kumara as alleged by him in the paragraphs 25, 26 and 27 of his petition.

I would therefore, hold that, the instant application for transfer of the civil case under section 46(1) of the Act, cannot sustain both in fact and law and therefore, not entitled to succeed both in fact and law, on this ground alone.

Hence, I would hold that, the instant application for transfer of the civil case under section 46(1) of the Act bears no merit and therefore, it ought to be dismissed on this ground alone.

Furthermore, in order to satisfy this Court, the Petitioner had not furnished any material to it showing even a single instance where a lawyer from the Panadura Bar had refused to appear for him for the reasons stated by him in the averments in paragraphs 25, 26 and 27 of his Petition.

Besides, even, if, it is to be assumed for a moment for the sake of the argument that, his assertion is true yet, the Petitioner is not without a remedy for; he can still, be able to retain a lawyer from an outside Bar even, if such an endeavor turns out to be costly for; it is he who had instituted the instant action against the Respondents seeking certain reliefs as observed by this Court in the decision in **Manatunga Vs. Amarasinghe [2004] 3 SLR 07 at page 12.**

In view of the above, It would clearly, appear to me that except for the mere assertion so made by the Petitioner in the petition that, he is unable to retain a lawyer from Panadura area to handle the civil case in view of the fact that the

present proxy lawyer rarely visits to Panadura District Court and the fact that his senior Counsel is unable to get a lawyer from Panadura area to accept the Proxy to handle his case as a result of the complaint for the falsification of documents being lodged by him to the Supreme Court against Amila Ishara Nawalage, Ms. Chamika Lekmali Rodrigo and Mr. Tharaka Liyanaarachchi all of whom are Panadura based lawyers representing the said Senaka Kumara as alleged by him in the paragraphs 25, 26 and 27 of his petition, the Petitioner had not through cogent, convincing and compelling evidence, made out a strong case for transfer of the civil case. Hence, the said assertion of the Petitioner remains a mere assertion unproven and unsubstantiated by cogent, convincing and compelling evidence.

I would therefore, hold that, the instant application for transfer of the civil case under section 46(1) of the Act, cannot sustain both in fact and law and therefore, not entitled to succeed both in fact and law on this ground too.

Hence, I would hold that, the instant application for transfer of the civil case under section 46(1) of the Act bears no merit and therefore, it ought to be dismissed on this ground too.

In view of all the above circumstances, I would hold that the Petitioner had failed to establish to the satisfaction of this Court such facts and circumstances as urged by him in paragraphs 25, 26 and 27 of his petition as the basis for his application under section 46(1) of the Act for transfer of the civil case from the District Court of Panadura to any appropriate Court.

On a careful consideration of all the relevant material placed before us, I would hold that the Petitioner had failed to adduce sufficient material to satisfy us that it would be expedient to make order for the transfer of the civil case from the District Court of Panadura to any other appropriate Court under any of the limbs of section 46(1) of the Act, namely; (a), (b),(c) or (d).

Hence, I would hold that, the Petitioner had failed to adduce sufficient grounds for a transfer of the civil case from the District Court of Panadura to any other appropriate Court even under section 46(1)(d) of the Act.

I would therefore, hold that this is not a fit and proper case for us to make order issuing notices on the Respondents.

I would thus, refuse to issue notices on the Respondents.

Hence, I would, dismiss the instant application *in limine* with costs.

JUDGE OF THE COURT OF APPEAL

MOHAMMED LAFFAR, J (ACT.P/CA).

I agree.

PRESIDENT (ACTING) OF THE COURT OF APPEAL