

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

In the matter of an application for Revision in terms
of Article 138 of the Constitution of the Democratic
Socialist Republic of Sri Lanka

Court of Appeal case no. CA/PHC/APN/53/2017

H.C. Thangalla case no. WA 02/2017

1. Krishantha Senaka Thissa Jayasinghe,
Chairman,
Thangalla Multi Purpose Cooperative
Society Ltd,
No.178, Beliatta Road, Thangalla.
2. Lokuyakdehige Jayantha Gunasiri,
Vice Chairman,
Thangalla Multi Purpose Cooperative
Society Ltd,
No.178, Beliatta Road, Thangalla.

Petitioners

Vs.

1. N.A.K.L. Wijynayake,
Commissioner/Registrar of Cooperative
Societies, Surthern Province,
Cooperative Development Assistant
Commissioner's Office,

New Administrative Complex,
Siribopura, Hambanthota.

2. W.A.M.Pathmasiri,
Assistant Commissioner of Cooperative
Societies, Southern Province,
Cooperative Development Assistant
Commissioner's Office,
New Administrative Complex,
Siribopura, Hambanthota.
3. Thangalla Multi Purpose Cooperative
Society Ltd.,
No. 178, Beliatta Road, Thangalla.
4. S.R.Ellegoda,
Accountant,
Divisional Secretariat Office,
Thangalla.
5. S.P.Senadheera,
Principal,
H/Kambussawala Maha Vidyalaya,
Kambussawala, Hambanthota.
6. Anurasiri Muthumala,
Headquarters Development Officer,
Cooperative Development Assistant
Commissioner's Office,
Medewatta, Matara.
7. P.A.Siriyawathi,
Assistant Director, Planning,
Divisional Secretariat Office, Thangalla.
8. J.P.Ratnayake,

Election Officer/Cooperative Development
Officer,
Cooperative Development Assistant
Commissioner's Office,
New Administrative Complex,
Siribopura, Hambanthota.

9. Hon. Attorney General,
Attorney General's Department,
Colombo 12

Respondents.

AND

**In the matter of an application made under
and in terms Section 18 of the Judicature
Act with regard to Contempt of Court.**

1. Krishantha Senaka Thisa Jayasinghe,
Chairman,
2. Lokuyakdehige Jayantha Gunasiri,
Vice Chairman,

Petitioners

Vs.

1. N.A.K.L. Wijynayake,
Commisioner/Registrar of Cooperative
Societies, Surthern Province,
2. W.A.M.Pathmasiri,
Assistant Commissioner of Cooperative
Societies, Southern Province,

1st And 2nd Respondent Respondents

3. S.P.Senadheera,
4. Anurasiri Muthumala,
Headquarters Development Officer,

5th And 6th Respondent Respondents

5. K. Sarathchandra,
General Manager,
Thangalla Multi Purpose Cooperative
Society Ltd.,
No. 178, Beliatta Road, Thangalla.

6. K.P.Sarathchandra,
Secretary,
Thangalla Multi Purpose Cooperative
Society Ltd.,
No. 178, Beliatta Road, Thangalla.

Respondents

AND NOW BETWEEN

1. S.P.Senadheera
2. Anurasiri Muthumala

5th and 6th Respondent Respondent Petitioners

3. K.Sarathchandra
4. K.P.Sarathchandra

Respondent Petitioners

Vs.

1. Krishanth Senaka Thisa Jayasinghe
2. Lokuyaddehige Jayantha Gunasiri

Petitioner Petitioner Respondents

3. N.A.K.L.Wijayanayake
4. W.A.M.Pathmasiri

**1st and 2nd Respondents Respondents
Respondents**

Before : H.C.J.Madawala J.

: L.T.B. Dehideniya J.

Counsel : Ranil Samarasooriya with Madhawa Wijayasiriwardane for
the Respondent Petitioners.

: Razik Zarook PC with Rohana Deshapriya and Chanaka
Liyanage for the Petitioner Petitioner Respondents.

: Indula Rathnayake SC for the 1st and 2nd Respondent
Respondent Respondents

Supported on : 04.05.2017

Decided on : 08.05.2017

L.T.B. Dehideniya J.

This is an application to revise and set aside an order made by the
learned High Court Judge of Thanglle directing the Registrar of that Court

to frame charges against the Petitioners under section 18 of the Judicature Act for contempt of Court.

The facts are briefly as follows. The Petitioner Respondents filed an application in the High Court of Thangalle seeking for several writs including a writ of mandamus compelling the 1st 2nd and 3rd Respondent to hold the election of the Thangalla Multi Purpose Cooperative Society Ltd. On 22nd February 2017, when this case came up before the learned High Court Judge, the Counsel for the 2nd Respondent informed Court that the election would be held on 5th March. Though he made such a statement, without obtaining permission of Court or at least without bringing to the notice of Court, the election scheduled to be held on 5th March was postponed indefinitely. Thereafter the Petitioner Respondents filed an affidavit requesting Court to take action for contempt of Court. The learned High Court Judge, after a brief inquiry, not being satisfied with the explanation offered, directed the Registrar of the Court to frame charges for contempt of Court against 1st to 6th Respondents. The Respondent Petitioners in this application seeking this Court's intervention to set aside the said order of the learned High Court Judge directing the Registrar to frame charges.

At this stage this Court need not to consider whether the charge of contempt of Court is proved or not, because so far no charge is framed. The Court has to consider only whether there is material to frame a charge of contempt of court.

The idea of filing the writ application was to compel the relevant authorities to hold the election of the Thangalla Multi Purpose Cooperative Society Ltd. The statement made by the Counsel for the 2nd Respondent that the election would be held on the 4th March is directly related to the issue of this action.

The Counsel for the Petitioner in this application argues that the said statement is not an undertaking given to Court or is not an order of Court. Therefore contempt of Court proceedings cannot be instituted for violating or not following the statement made on 22nd February. The learned President's Counsel for the Petitioner Respondents' contention is that the interim application in the main case has not been preceded because of the statement made in Court by the 2nd Respondent that the election would be held on 5th March. Therefore it amount to an undertaking to Court. The learned Counsel for the 1st and 2nd Respondents argument is that the statement made on the 22nd February is a "mere statement" made by the Counsel.

It is a fact that the Counsel for the 2nd Respondent made a statement to Court that the election would be held on the 5th March. As I pointed out, one of the main reliefs prayed in the writ application is to compel the relevant authorities to hold the election. The officer who is responsible of holding election informs court that the election would be held on a certain day. Even though he made such a statement in Court, without informing Court, he decided to postpone the election and did so. If he has not made such a statement to Court, the Petitioner Respondents would have made an application for interim relief. By making a statement that the election would be held, the Petitioner Respondents were prevented from making the application for interim relief. Under these circumstances the statement made by the 2nd Respondent that the election would be held on 5th March had a weight and the parties had acted on it. It is not a "mere statement". No one can make a "mere statement" in Court without responsibility. There is material to frame a charge of contempt of Court. It is for the trial judge to decide on evidence whether the charge is proved or not.

The Counsel for the Petitioner presented another argument that the Petitioners had to act on the direction of the superior officers and therefore they cannot be held liable for contempt of Court. It is also a matter for the trial judge to decide on evidence. The evidence will reveal the culpability of the Petitioners. It is too early for this Court to come to a finding on a fact where the evidence has not yet been led.

Under these circumstances, I see no reason to issue notice.

Notice refused. The application dismissed

Judge of the Court of Appeal

H.C.J.Madawala J.

I agree.

Judge of the Court of Appeal