

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 seeking to revise and set aside the order of the High Court of Civil Appeal Colombo dated 23-01-2024 delivered in case no WP/HCCA/LA 190/2023*

THAMBIAH PALANIVELU PARAMESWARAM  
No. 56, Rajasinghe Road,  
Colombo 06.

**CA/REV/01/24**  
WP/HCCA/COL/190/2023/LA  
DC Case No. DSP/375/2023

**PLAINTIFF**

Vs

MURUGAIYA SELVANAYAGAM  
No. 167, Sea Street,  
Colombo 11.

**DEFENDANT**

**AND BETWEEN**

THAMBIAH PALANIVELU PARAMESWARAM  
No. 56, Rajasinghe Road,  
Colombo 06.

**PLAINTIFF-PETITIONER**

Vs

MURUGAIYA SELVANAYAGAM  
No. 167, Sea Street,

Colombo 11.

**DEFENDANT-RESPONDENT**

**AND NOW BETWEEN**

THAMBIAH PALANIVELU PARAMESWARAM  
No. 56, Rajasinghe Road,  
Colombo 06.

**PLAINTIFF-PETITIONER- PETITIONER**

Vs.

MURUGAIYA SELVANAYAGAM  
No. 167, Sea Street,  
Colombo 11.

**DEFENDANT-RESPONDENT- RESPONDENT**

Before : Hon. Justice M.T. Mohamed Laffar.  
Hon. Justice P. Kumararatnam.

Argued on : 18-09-2024.

Written Submissions on : 24.10.2024 (by Petitioners)  
24.10.2024 (by Respondents)

Decided on : 22.01.2025

**MOHAMMED LAFFAR, J.**

The Plaintiff-Petitioner-Petitioner (hereinafter referred to as the "Petitioner") seeks to revise and set aside the impugned order of the High Court of Civil Appeal-Colombo dated 23.01.2024, which refused the issuance of an interim order to prevent the Defendant-Respondent-Respondent (hereinafter referred to as the "Respondent") from interfering with the peaceful possession and management of the premises, "Eswara Lodge."

The Petitioner's claim is grounded on several significant facts. It is submitted that the Petitioner and his predecessors have been the owners of the property located at 169, Sea Street, Colombo, utilized as a guesthouse under the name "Eswara Lodge." In or around 2008, the Petitioner permitted the Respondent to manage "Eswara Lodge" under an oral agreement. The terms of this agreement included a monthly payment of Rs. 85,000/- and an initial deposit of Rs. 2.5 million. Disputes later arose when the Respondent failed to adhere to the agreed terms, prompting the Petitioner to institute proceedings in the District Court case DSP/375/2023. The relief sought included declarations of termination of the agreement, injunctions restraining the Respondent, and damages. The District Court initially issued an enjoining order, but upon the Respondent's objections, the interim injunction application was dismissed on 20-10-2023. Subsequently, the Petitioner appealed to the High Court of Civil Appeal, which refused to grant the interim relief on 23-01-2024. Aggrieved by this decision, the Petitioner has filed the present revision application, asserting errors in law and fact in the High Court's judgment.

This court on 07.02.2024 granted the interim relief prayed for in prayer (c) by the Petitioner, seeking to preserve the status quo pending the final determination of the substantive matter of this application.

### **The Petitioner's Contention**

The Petitioner asserts that the Respondent initially entered into possession of the premises as a licensee under an oral agreement made in 2008, wherein the Respondent agreed to manage "Eswara Lodge" on the Petitioner's behalf. This arrangement, coupled with a monthly commission of Rs. 85,000/- and a deposit of Rs. 2.5 million, clearly established the subordinate and temporary nature of the Respondent's occupancy. Under such circumstances, the Petitioner contends that the Respondent is legally estopped, as per Section 116 of the Evidence Ordinance, from disputing the Petitioner's title to the property. The Respondent's subsequent assertions of independent ownership or control over the premises are inconsistent with this estoppel and therefore lack merit.

The Petitioner further argues that the High Court failed to properly evaluate the balance of convenience, which heavily favors maintaining the status quo to prevent further harm to the Petitioner. By denying interim relief, the High Court permitted a situation where irreparable damage could occur, including the disruption of business operations and potential destruction of the Petitioner's property rights. Additionally, the Petitioner highlights the Respondent's lack of clean hands, evidenced by contradictory claims regarding the ownership and his role in the property's management. The Respondent's refusal to adhere to the terms of the oral agreement and subsequent actions, including purported

claims of enhanced rights under fabricated circumstances, undermine his credibility and render him ineligible for equitable relief.

Moreover, it is submitted that the dismissal of the Petitioner's application by both the District Court and the High Court contradicts established judicial precedents set by superior courts in Sri Lanka.

### **The Respondents' Contention**

The Respondent contends that the property in question was transferred to Dedigama Gold Loan Centre (Pvt) Ltd. in 2021, claiming that this entity is the rightful owner, and the Respondent has been in lawful occupation as a licensee under this ownership arrangement. The Respondent further alleges that the Petitioner has deliberately withheld critical information regarding the shared ownership of the property, arguing that the Petitioner's failure to disclose this fact constitutes a material suppression intended to mislead the Court. Additionally, the Respondent claims that the management agreement relied upon by the Petitioner is a mere draft, unsigned and therefore unenforceable, rendering the Petitioner's reliance on this document legally baseless.

The Respondent also highlights that the Petitioner's application lacks the exceptional circumstances required to invoke the revisionary jurisdiction of the Court of Appeal, suggesting that the proper legal avenue should have been an appeal to the Supreme Court as per established legal procedures. The Respondent maintains that the Petitioner's actions are vexatious and designed solely to obtain interim relief through alternative means, circumventing the established appellate process. This argument is presented by the

Respondent's contention that the Petitioner has sought relief based on questionable documents while ignoring the equitable principles of law, which require full disclosure and clean hands from parties seeking such remedies.

### **Observations of the Court**

The Respondent's assertion of lawful occupation under Dedigama Gold Loan Centre (Pvt) Ltd. is fundamentally inconsistent with his own admission of initially entering the premises under the Petitioner's license. This duality undermines his credibility and invites the application of Section 116 of the Evidence Ordinance, which unequivocally estops a party from denying the title of the individual under whom they were licensed to occupy.

The refusal of interim relief by the lower courts has critically disrupted the status quo, creating a situation where the Respondent's potential re-entry and unauthorized interference could irreparably harm the Petitioner's peaceful possession and ongoing business operations at "Eswara Lodge". This potential harm is further magnified by the economic and reputational losses the Petitioner is likely to endure if the Respondent is permitted to act contrary to the agreement under which he initially entered the property.

The Petitioner has effectively demonstrated a strong prima facie case through comprehensive documentary evidence, including valuation reports and detailed police complaints. These documents not only substantiate the Petitioner's claims but also reveal the Respondent's actions as inconsistent and lacking in good faith. The Respondent's refusal to formalize the management agreement, despite ample opportunity, indicates a deliberate intent to exploit the informal arrangement for his benefit, further emphasizing his lack of equitable standing.

Equity and fairness weigh heavily in favour of the Petitioner. The Respondent's inconsistent positions, marked by conflicting claims regarding his legal status and obligations under the agreement, highlight bad faith conduct.

Given the overarching legal principles and the compelling evidence presented, it is evident that the Petitioner's entitlement to interim relief is both legally and equitably justified. Ensuring that the Respondent is restrained from further interference will not only protect the Petitioner's possessory and business rights but also uphold the integrity of judicial processes designed to prevent misuse and exploitation.

## **Conclusion**

Having carefully considered the submissions, evidence, and legal principles, this Court finds that the Petitioner has successfully demonstrated that the impugned order of the High Court of Civil Appeal dated 23-01-2024 is erroneous and requires revision. The Respondent's inconsistent claims and conduct are not only contrary to legal principles but also undermine the equity and fairness essential in proceedings.

The Respondent's conduct, including his attempts to challenge the Petitioner's title despite entering the premises as a licensee, is legally untenable at this point where the trial has not even commenced in the District Court. His actions have disrupted the peaceful possession of the property and exposed the Petitioner to significant risks. These circumstances underscore the necessity of interim measures to protect the Petitioner's rights and preserve the status quo.

Judicial precedents, such as *Pounds v. Ganegama*(40 NLR 73)and other authoritative cases, affirm that interim relief is critical to maintain stability and prevent further prejudice in disputes involving possession. The Petitioners have satisfied the sequential tests that warrant the grant of the interim releif prayed in the District Court. The principles of equity demand that the Respondent, having acted in bad faith, be restrained from causing further harm.

Accordingly, this Court grants the relief sought under prayer (b) of the Petition, revising and setting aside the order of the High Court of Civil Appeal dated 23-01-2024 marked 'X 1' and therefore, the interim relief prayed for in prayer (e) to the Petition filed in the said High Court by thePetitioner is granted.

*Application allowed. No costs.*

JUDGE OF THE COURT OF APPEAL

Hon. Justice P. Kumararatnam. J

I agree.

JUDGE OF THE COURT OF APPEAL.