

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

In the matter of an application for Revision under Article 138 (1) of the Constitution of the Democratic Socialist Republic of Sri Lanka of an order made by the High Court of the Western Province holden in Colombo acting in Revision in terms of Article 154 P of the Constitution of the Democratic Socialist Republic of Sri Lanka read together with the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990 on an order made by the Magistrate's Court of Colombo.

Agstar PLC,
No.09, Bawa Place,
Colombo 08,

Court of Appeal Case No:
CA/PHC/APN/04/2019

Through its authorized
representative Ranasinghe
Arachchilage Don Rasika
Wasantha.

HC Colombo Case No:
HC/RA/161/2017

Complainant

MC Colombo Case No:
39346/06/15

Vs.

1. Palawatta Sugar Distilleries
(Pvt) Ltd.
No.27, Melbourne Avenue,
Colombo 04.
2. Amarasuriya Mahendra
Jayanthipal Chandima,
No. 70,
Fife Road,
Colombo 05

3. Don Ariyasila De Silva
Wickramanayake
No.19/6,
Wickramasinghepura,
Battaramulla.
4. Thilakasena Yakdehige,
No.13,
Bangalawatta Place,
Mabola, Wattala.
5. Charles Stanley Weeraratne,
No.09,
Ratmal Mawatha,
Sirimal Garden,
Ratmalana.
6. Don Hershell Jayaprithi
Gunawardhana,
No. 422/8,
Robert Gunewardhena
Mawatha,
Battaramulla.
7. Don Akmal Eranjith De Silva
Wickremanayake,
No.19/6,
Wickremasinghepura,
Battaramulla.

Accused

AND BETWEEN

Agstar PLC,
No.09, Bawa Place,
Colombo 08,

Through its authorized
representative Ranasinghe
Arachchilage Don Rasika
Wasantha.

Complainant – Petitioner

Vs.

1. Palawatta Sugar Distilleries
(Pvt) Ltd.
No.27, Melbourne Avenue,
Colombo 04.
2. Amarasuriya Mahendra
Jayanthipal Chandima,
No. 70,
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Sirimal Garden,
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No. 422/8,
Robert Gunewardhena
Mawatha,
Battaramulla.
7. Don Akmal Eranjith De Silva
Wickremanayake,
No.19/6,
Wickremasinghepura,
Battaramulla.

Accused – Respondents

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

Respondent

AND NOW BETWEEN

Agstar PLC,
No.09, Bawa Place,
Colombo 08,

Through its authorized
representative Ranasinghe
Arachchilage Don Rasika
Wasantha.

**Complainant – Petitioner –
Petitioner**

1. Palawatta Sugar Distilleries
(Pvt) Ltd.
No.27, Melbourne Avenue,
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Wickremanayake,
No.19/6,
Wickremasinghepura,
Battaramulla.

**Accused – Respondents –
Respondents**

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

Respondent - Respondent

BEFORE : K. K. Wickremasinghe, J.
K. Priyantha Fernando, J.

COUNSEL : Anuja Premaratne, PC with Imasha Senadeera AAL
instructed by Paul Ratnayake Associates for the
Complainant - Petitioner.

Suren de Silva AAL for the 2nd Accused –
Respondent – Respondent instructed by
Dissanayake Amarathunga Associates.

Kanchana Ratwatte AAL instructed by Thushara
Samanpali for 3rd to 7th Accused – Respondent –
Respondent
Nayomi Wickremasinghe SSC for the Hon.
Attorney General

ARGUED ON : 10.12.2019

WRITTEN SUBMISSIONS : The Complainant –Petitioner on 20.06.2019
The 2nd Accused – Respondent - Respondent on
20.06.2019
The 3rd to 7th Accused – Respondents -
Respondents on 19.06.2019

DECIDED ON : 28.08.2020

K.K.WICKREMASINGHE, J.

This is an application for Revision against the Judgment of High Court of Colombo affirming the Order made by the Learned Magistrate of Colombo on the case bearing the number 3934/06/15 dated 11.08.2017. The instant order is concerned with, whether the Complainant – Petitioner – Petitioner (hereinafter referred to as the “Petitioner”) is entitled to proceed with the Revision Application under exceptional circumstances.

FACTS OF THE CASE

The Petitioner is a Company duly registered and incorporated under the Companies Act, No.07 of 2007. The Petitioner Company involves in the business of importation and distribution of fertilizer and other chemicals. During the course of the business, The 1st Accused – Respondent - Respondent Company (hereinafter referred to as the “1st

Respondent”) purchased a stock of fertilizer imported by the Petitioner and payments were made by way of cheques. As the practice of the said Company was purchasing fertilizer on credit basis and three cheques were drawn by the 1st Respondent in light of the aforesaid transaction was dishonored when they were presented for payment. The Learned Magistrate in his order dated 11/08/2017 dismissed the action. Being aggrieved by the said order of the Learned Magistrate, the Petitioner filed a revision application to invoke the revisionary jurisdiction of the High Court of Colombo. The Learned High Court Judge by his order dated 07/12/2018 dismissed the action on the basis that there was noncompliance with the Appellate Court Rules. Being aggrieved by the said order of the Learned High Court Judge of Colombo, the Petitioner filed the instant Revision application in this Court seeking to revise and set aside the said orders of the Learned High Court Judge of Colombo and the Learned Magistrate of Colombo.

GROUND OF THE REVISION APPLICATION

The following grounds were submitted and urged as the exceptional circumstances to invoke the revisionary jurisdiction of this Court by the Learned President’s Counsel for the Petitioner;-

- a. The Learned High Court Judge has failed to consider that there has not been any miscarriage of justice to either party due to the mistake in annexing the order of the Learned Magistrate.
- b. The Learned High Court Judge has failed to consider that Rule 3 of the Supreme Court Rules is aimed at securing a full and complete disclosure of facts of the case and that any error can be remedied in so far as it does not prejudice the rights of the parties.

- c. The Learned High Court Judge has failed to consider that the correct order has been tendered to the Court subsequently and that there was no fatal error or prejudice caused to the rights of the parties.
- d. The Learned High Court Judge has failed to consider that the strict and absolute compliance of the rules is not essential.
- e. The Learned High Court Judge has failed to consider that the laid down principle in interpreting the Rules of the Court that the Supreme Court Rules too should be interpreted in a comparable manner.

The Learned Counsel for the Respondent raised a preliminary objection to this Revision Application on the basis that the Petitioner has not complied with Rule 3(1) of the Court of Appeal (Appellate Procedure) Rules of 1990, by failing to annex duly certified copies of the relevant order and some of the documents to his petition which are material to this action. He relies on the decisions in; *H.C. Wickremasinghe and Others Vs H. Don Cyril Dissanayake and Others* CA 248/2007 decided on 20.01.2014, *Sanmugavadivu Vs Kulathilake* (2003) Sri LR 215 and *Urban Development Authority Vs Ceylon Entertainment Limited and Others* (2004) 1 Sri LR 95.

It was alleged that the impugned order of the Learned Magistrate of Colombo dated 11.08.2017 bearing the case number 39346/06/15 has not been produced with the Petition, even if so pleaded in the Petition.

As the starting point to consider the argument of the learned Counsel on the Preliminary Objection, I set out below Rule 3(1)(a) of the Court of Appeal (Appellate Procedure) Rules 1990 (1990 Rules) as follows:

"If Every application made to the Court of Appeal for the exercise of powers vested in the Court of Appeal by Articles 140 or 141 of the Constitution shall be by way of

Petition, together with an affidavit in support of the averments therein, and shall be accompanied by the originals of documents material to such application (or duly certified copies thereof) in the form of exhibits. Where a Petitioner is unable to tender any such document, he shall state the reason for such inability and seek the leave of Court to furnish such document later. Where a Petitioner fails to comply with the provisions of this rule the Court may, ex mero motu or at the instance of any party, dismiss such application”.

The response of the learned counsel for the petitioner to the preliminary objection raised in this instant case was based on two cases at the stage of the arguments. Those were ***Singappuli Arachchilage Rumesh Sameera Dassanayake alias Gaminige Kolla Vs The Honourable Attorney General*** SC SPL.LA.125/2014, SC SPL.LA: 126/2014 and CA Writ 248/7.

At this juncture it is important to elaborate the grounds on which the Supreme Court overruled the preliminary objection of noncompliance with Rule 3 of the Supreme Court Rules of 1990 in the case of ***Singappuli Arachchilage Rumesh Sameera Dassanayake alias Gaminige Kolla Vs The Honourable Attorney General (Supra)***. In the aforementioned case the learned Additional Solicitor General raised a preliminary objection based on noncompliance with Rule 3 of the Supreme Court Rules of 1990 on the ground that Rule 3 requires the petition to contain a plain and concise statement of all such facts and matters as are necessary to enable the Supreme Court to determine whether special leave to appeal should be granted. However in the above mentioned case the petitioners had, along with the petitions, filed a copy of the entire original case record of the High Court inclusive of the copies of the documentary evidence produced at the trial and as such the Supreme Court has been provided with sufficient material and is not deprived to ascertain the facts and matters

that would be necessary to determine the issues. Therefore the Supreme Court overruled the preliminary objection by the state in favour of the Petitioner.

In the case of *H.C. Wickremasinghe and Others Vs H. Don Cyril Dissanayake and Others (Supra)*, the Respondents raised a preliminary objection regarding the maintainability of the application on the basis that the Petitioners have failed to comply with the mandatory provisions of Rule 3(1) (a) & (b) of the Court of Appeal (Appellate Procedure) Rules 1990 (Failure of the Petitioner to file material documents along with the application). Also one of the documents which were made available to the court is a photocopy and the seal affixed therein is hardly legible with the handwritten words 'true copy'. The Court was of the view that the failure of the Petitioner to make available the entire set of proceedings gives rise to certain doubts as regards the position taken up by the Petitioner and it is certainly not the function of court to inquire as to whether the entirety of the proceedings is made available and upheld the preliminary objection as follows;

“The position of the Respondents should not be dismissed by merely pointing the finger to be highly technical. It is not technical in the manner submitted by the Petitioner. Noncompliance of the Appellate Procedure Rules would be fatal and I uphold the preliminary objections of the Respondents and dismiss this application”.

In the case of *Sanmugavadivu Vs Kulathilake (Supra)*, the preliminary objection was upheld by the Supreme Court on the basis that;

“In the instant case, the question in issue is with regard to Rules 3(1) (a) and 3(1) (b) of the Court of Appeal (Appellate Procedure) Rules 1990. Rules 3(1) (a) and 3(1) (b) unlike Rule 46 make provision for an applicant to purge his default and cure the defect. As pointed out clearly in Kiriwanthe's case, in terms of Rule 46, there was no

provision for purging an applicant's default and the Court was of the view that it should 'first determine whether the default has been satisfactorily explained or cured subsequently without unreasonable delay.' The new Rules permit an applicant to file documents later, if he has stated his inability in filing the relevant documents along with his application, and had taken steps to seek the leave of the Court to furnish such documents. In such circumstances, the only kind of discretion that could be exercised by Court is to see whether and how much time could be permitted for the filing of papers in due course. The appellant had made no such statements in her petition and the Court of Appeal had rightly decided that in the absence of the relevant documents, the Court is "unable to exercise its revisionary powers in respect of the order sought to be revised" by the appellant".

In the case of ***Urban Development Authority Vs Ceylon Entertainment Limited and Others (Supra)***, the Supreme Court upheld the Preliminary on the following rationale;

"It has been urged that the order of the District Court which the petitioner sought to have revised by the Court of Appeal resulted in a miscarriage of justice. In order to decide that question, namely whether the answers to the interrogatories were filed within the time stipulated by the District Court, it is necessary to consider the journal entries in the original record maintained by the District Court. However I find that the petitioner has failed to file in the Court of Appeal duly certified copies (as required by the Rules) of such journal entries and the order of the District Court which are material to the revision application. In any event, in order to decide whether the Court of Appeal had considered the question whether the documents (certified copies) which the petitioner had failed to file in the Court of Appeal were material to the application....."

Therefore, in conclusion what distinguishes *Singappuli Arachchilage Rumesh Sameera Dassanayake alias Gaminige Kolla Vs The Honourable Attorney General (Supra)* from the other cited cases is that in the aforesaid case the entire case record of the High Court has been submitted. As such the Court has been provided with sufficient material to entertain the application even if the procedural rules are violated. If not the failure to produce material documents is fatal.

Accordingly, after analysis of the relevant legal provisions and in light of the discussed long line of decided authorities by the Court of Appeal and the Supreme Court, the inevitable conclusion that this Court shall arrive is that rules of procedure must not always be regarded as mere technicalities which parties can ignore but non-compliance with rules is fatal to the application. Parties who invoke the jurisdiction of this Court cannot ignore the Rules and it could be permitted under special circumstances as in the above cited case.

Further, in the instant case, the Petitioner prayed from the Learned High Court Judge of Colombo to revise the Order of the Learned Magistrate of Colombo bearing case number 39346/06/15 dated 11.08.2017. The Petitioner referred to the said order as *X 21* annexed along with the Petition made to the High Court. On the contrary, the document marked as *X 21* is the Order of the Learned Magistrate of Colombo bearing number 39305/06 dated 11.08.2017. I am of the opinion that the Petitioner has not acted with due diligence. In light of Rule 3 (1) (a) of the Court of Appeal (Appellate Procedure) Rules an application should accompany the originals or the certified copies of documents material to such application. The response of the Petitioner to the preliminary objection raised at the High Court was that there were two cases filed by the same complainant under two different cases before the Magistrate's Court numbered 39305 and 39346 and they were verbatim except the case number.

At this juncture my attention is drawn to the Page 524 of the Court of Appeal Brief, I wish to reproduce the submission made by the Petitioner to the Learned High Court Judge of Colombo.

“ඉහත අංක දරණ ප්‍රතිශෝධන ඉල්ලුම්පත්‍රය වර්ෂ 2017ක් වූ ඔක්තෝබර් මස 10 වන දින මෙම ගරු අධිකරණය වෙත ඉදිරිපත් කර ඇති අතර එය ඉදිරිපත් කිරීමේදී X – X21 දක්වා ලකුණු කරන ලද ලේඛන ඉදිරිපත් කරන ලදී.

එම ප්‍රතිශෝධන ඉල්ලුම්පත්‍රය අදාළ පෙත්සම් සහ දිවුරුම් ප්‍රකාශයේ X21 ලෙස ලකුණු කර අවසාන වශයෙන් ඉදිරිපත් කර ඇත්තේ කොළඹ මහේස්ත්‍රාත් අධිකරණ අංක 39346/06/15 දරන නඩුවේ 2017.08.11 දිනැති නියෝගය වේ.

එම නඩුවට අදාළ සම්බන්ධිත නඩුවක් වන කොළඹ මහේස්ත්‍රාත් අධිකරණ අංක 39305/06/15 දරන නඩුව හා එම ප්‍රතිශෝධන ඉල්ලුම්පත්‍රය හා අදාළ වන කොළඹ මහේස්ත්‍රාත් අධිකරණ අංක 39346/06/15 දරන නඩුව යන නඩු දෙකම ගරු මහේස්ත්‍රාත් අධිකරණය ඉදිරියේ එකම දිනයකදී එකම අවස්ථාවකදී එක්ව කැඳවන ලද අතර.....

මෙම ප්‍රතිශෝධන ඉල්ලුම්පත්‍රයට ගොනු කිරීමේදී සිදුවූ යම් ප්‍රමාද දෝෂයකින් කොළඹ මහේස්ත්‍රාත් අධිකරණ 39305/06/15 නඩුවේ මූලික විරෝධතාවයට අදාළ නියෝගයෙහි සහතික පිටපත මෙම නඩුවට ගොනු කර ඇති අතර.....” (At Page 524 of the Brief)

Therefore, I am of the view that it is fatal that if a petitioner who is seeking to revise a particular order of a Magistrate Court has failed to provide the correct order which is material to the action.

Also, I draw my attention to the submission made by the Petitioner on 12th February 2019 to this court by way of a motion correcting the document marked as **PIG**. Accordingly, the document referred as P1G of Page 525 of the brief is the impugned order of the Learned Magistrate Judge that the Petitioner is sought to revise. Nevertheless, it is observed that even the said annexure is neither the original order nor a certified copy which is a direct violation of Rule 3(1) (a) of the Court of Appeal (Appellate Procedure) Rules 1990.

Furthermore, I observe that neither the entire case record is submitted to the Court nor an application was made to produce such case record. Therefore, I am of the opinion that if a Court of Law to interpret Appellate Procedure Rules in a less stringent manner and to compensate a defect in light of justice, the parties has to provide sufficient material which will not deprive the ascertainment the facts. In the case of *Singappuli Arachchilage Rumesh Sameera Dassanayake alias Gaminige Kolla Vs The Honourable Attorney General (Supra)*, a copy of the entire case record of the High Court inclusive of the copies of the documentary evidence produced at the trial were produced and the Supreme Court has been provided with sufficient material. Hence the facts of the instant case are different to the facts of the case mentioned above. Therefore, the said case has no bearing and applicability to the instant case.

In conclusion, this Court is of the view that the Petitioners submission as to the strict and absolute compliance of the rules is not essential and that principle in interpreting the Rules of the Supreme Court Rules should be comparable do not constitute exceptional circumstances in the instance case.

In view of the above findings it is not necessary to look into the other grounds submitted by the Petitioner.

Accordingly, the Revision Application is dismissed *in limine*. There will be no costs.

JUDGE OF THE COURT OF APPEAL

K. Priyantha Fernando, J.

I agree,

JUDGE OF THE COURT OF APPEAL