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

In the matter of an Application for Restitutio in integrum under Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

1. Don Premarathna Ranawaka,
   No. 440/B, Hibutana Patumaga,
   Angoda.

PLAINTIFF

CA No. CA/RII/0041/2023
DC Colombo Case No: DRE/37/2008

v.

1. Weerakoon Mudiyanselage Upali Ranjith Bandara**,**
   No. 440/B, Hibutana Patumaga,
   Angoda.

DEFENDANT

AND BETWEEN

1. Weerakoon Mudiyanselage Upali Ranjith Bandara,
   No. 440/B, Hibutana Patumaga,
   Angoda.

   DEFENDANT – PETITIONER

   v.

1. Don Premarathna Ranawaka,
   No. 440/B, Hibutana Patumaga,
   Angoda.

   PLAINTIFF – RESPONDENT

AND NOW BETWEEN

1. Weerakoon Mudiyanselage Upali Ranjith Bandara,
   No. 440/B, Hibutana Patumaga,
   Angoda.

   DEFENDANT – PETITIONER – PETITIONER

   v.

1. Don Premarathna Ranawaka,
   No. 440/B, Hibutana Patumaga,

Angoda.

PLAINTIFF – RESPONDENT - RESPONDENT

BEFORE	:	M. Sampath K. B. Wijeratne J. & M. Ahsan. R. Marikar J.
COUNSEL	:	Sandamal Rajapaksha with Lakmal Sooriyagoda for the Defendant – Petitioner - Petitioner.
		Chathura Galhena with Kavindhya Wickramasinghe for the Plaintiff - Respondent - Respondent.
ARGUED ON	:	08.05.2024
WRITTEN SUBMISSIONS	:	30.05.2024 (Defendant – Petitioner – Petitioner) 22.05.2024 (Plaintiff-Respondent-Respondent)
DECIDED ON	:	28.06.2024

M. Sampath K. B. Wijeratne J.

Introduction

The Plaintiff - Respondent - Respondent (hereinafter referred to as the 'Respondent') instituted case No. DRE/37/2008 in the District Court of Colombo

inter – alia claiming for the possession of the land and premises described in the schedule to the plaint and for damages.

The Defendant - Petitioner - Petitioner (hereinafter referred to as the 'Petitioner') sought, *inter – alia* to have the Defendant declared the owner of the property and to dismiss the plaint.

After the trial, the learned Additional District Judge of Colombo dismissed the plaint in his judgment dated 17th January 2014 and declared that the Defendant is entitled to remain on the property.

Being aggrieved by the said judgment, the Respondent appealed to the Civil Appellate High Court of Colombo (High Court exercising jurisdiction in terms of the High Court of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006, commonly known as the Civil Appellate High Court but not named as such in any statute), where the case was allocated No. WP/HCCA/COL/244/2014 (F). After arguments, the learned High Court Judge, in his judgment dated 13th November 2018, allowed the appeal, and set aside the judgment of the learned Additional District Judge. Accordingly, the judgment was entered in favour of the Plaintiff as prayed for in the plaint.

The Defendant did not seek leave to appeal from the Supreme Court against the said judgment in terms of Section 5C of the High Court of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006. Consequently, the record was remitted back to the District Court of Colombo, and the Respondent made an application for the execution of the judgment to evict the Petitioner from the *corpus*. The Petitioner moved to refuse the Respondent's application, and the Respondent filed objections to the Petitioner's application.

The Petitioner's objections to the execution of the judgment of the Civil Appellate High Court were based on the argument that the answers to the issues by the Civil Appellate High Court had made the judgment ambiguous and, therefore,

inexecutable. Subsequently, both parties filed their written submissions on the issue, and the learned District Judge delivered her order on 8th June 2023, allowing the Respondent's application for the execution of the judgment of the Civil Appellate High Court.

The Respondent instituted proceedings in this Court, *inter alia*, seeking to set aside and/or vary/revise the order of the learned District Judge dated 8th June 2023 and to set aside the judgment of the Civil Appellate High Court of Colombo dated 13th November 2018.

Analysis

As I have already stated above the learned District Judge in his judgement held in favour of the Petitioner and dismissed the Respondent's action. In the judgement, the learned District Judge answered all sixteen issues. In essence the learned District Judge held that the lease agreement 'A1' is not a valid deed of lease. He answered issues No. 1,2,3,7 and 8 on the said footing.

He answered issue No. 13 in favour of the Petitioner, granting the reliefs prayed for in the Petitioner's answer.

Issue No. 9 was also answered in favour of the Petitioner holding that the Petitioner is in possession not as the Respondent's licensee but under an independent title. The learned District Judge observed that the Petitioner's mother executed a deed of transfer in favour of one Kumuduni Chamali Perera as security for a loan obtained by her, and that the transferee did not intend to transfer the beneficial interests to the transferor. Consequently, the learned District Judge held that all the Petitioner acquires from the deed executed by Kumuduni Chamali Perera in his favour are the rights that Kumuduni Chamali Perera had, and nothing more. The obvious conclusion of the learned District Judge is that Kumuduni Chamali Perera was holding the property on a constructive trust for the Petitioner's mother. Consequently, the Petitioner was declared the owner of the property.

In the appeal, the learned High Court Judge overturned the judgment of the learned District Judge and concluded that there is no evidence to establish that Kumuduni Chamali Perera holds the land subject to a constructive trust. Consequently, the learned High Court Judge held that it was an outright transfer by Kumuduni Chamali Perera in favour of the Respondent, and that the Respondent had allowed the Petitioner to remain in the property for three years under a lease agreement.

The learned High Court Judge allowed the appeal and set aside the judgment of the learned District Judge. Accordingly, the judgment was entered in favour of the Plaintiff as prayed for in the plaint. However, in the judgment, the learned High Court Judge did not overturn the answers given by the learned District Judge to issues No. 2 to 6 and 10 to 16; these were allowed to stand. The learned High Court Judge set aside the answers to issues 1, 7, 8, and 9 only, and these were answered in the following manner:

The first issue, which the learned District Judge answered as 'not a valid lease agreement,' was answered by the High Court Judge as 'Yes,' suggesting that there is a valid lease agreement between the Petitioner and the Respondent.

The second issue, concerning whether the lease period ended on 30th September, 2007, which the learned District Judge answered as 'not a valid lease agreement', remained unchanged. In contrast, the learned High Court Judge set aside the answer to issue No. 7 and answered it as 'No', which aligns with the learned District Judge's determination that there was 'not a valid lease agreement'. Issue No. 8, which the learned District Judge answered as 'not a valid lease agreement', was answered by the High Court Judge as 'No'. The answer to issues No. 7 and 8 contradicts the answer given by the learned High Court Judge to issue No. 1.

The other issue that was reconsidered and freshly answered by the learned High Court Judge, overturning the decision of the learned District Judge, pertains to issue No. 9. This issue concerns whether the Petitioner is in possession of the property

with or without the leave and license of the Respondent. The learned High Court Judge answered this issue negatively, in contrast to the affirmative answer given by the learned District Judge.

The learned High Court Judge, while holding that the Petitioner's possession is not based on an independent title by answering issue No. 9 in the negative, allowed to stand the answer given by the learned District Judge to issue No. 4. According to this answer, the possession of the Petitioner, even after the expiry of the lease, is not deemed unlawful or unauthorized.

The answer to issue No. 11 by the learned District Judge, which the learned High Court Judge allowed to remain unchanged, suggests that the Petitioner is not bound to honour the notice to quit sent by the Respondent's Attorney-at-Law.

The answer to issue No. 12 by the learned District Judge is based on the premise that the Respondent has failed to disclose a cause of action against the Petitioner. Consequently, although the learned High Court Judge ultimately held in favour of the Respondent, the answers to the aforementioned issues are inconsistent with this final conclusion.

More importantly, the answers to issues No. 6 and 13 by the learned District Judge, which the learned High Court Judge allowed to remain unchanged, state that the Petitioner is entitled to the reliefs claimed in the answer and that the Respondent is not entitled to the reliefs claimed in the plaint. Accordingly, these two answers contradict the final conclusion of the learned High Court Judge and therefore, cannot be upheld as they stand.

Nevertheless, neither party sought leave to appeal from the Supreme Court against the judgment of the learned High Court Judge. Consequently, the Respondent applied to the District Court to enforce the judgment of the learned High Court Judge, which was objected to by the Petitioner. The Petitioner raised the aforementioned defects in the judgment of the learned High Court Judge before the

District Judge. The learned District Judge correctly determined that the District Court, being the lower court, lacks the authority to reconsider the judgment of the superior court, and therefore declined to make an order in that regard. Consequently, by her order dated 8th June 2023, the learned District Judge rejected the objections raised by the Petitioner and granted the Respondent's application to execute the writ of possession.

In the instant application the Petitioner seeks to set aside and/or vary/revise the order of the learned District Judge dated 8th June 2023 and also to set aside the judgement of the learned Civil Appellate High Court Judge dated 13th November 2018.

Based on its merits, I do not perceive any valid reason to interfere with the decision of the learned District Judge dated 8th June 2023. However, it must be acknowledged that this order stems from the disputed judgment of the learned High Court Judge.

Nevertheless, considering the analysis above, it is evident that there are significant errors in the judgment of the learned High Court Judge, rendering it ineffective. Allowing this judgment to stand would result in a serious miscarriage of justice, which justifies setting it aside.

The Petitioner has brought this application before this Court seeking *restitutio in integrum* under Article 138 of the Constitution. Article 138(1) confers upon this Court the exclusive jurisdiction to grant relief through *restitutio in integrum*.

Under Roman law, *restitutio in integrum* was a remedy aimed at removing legal disadvantages that had occurred, providing protection against injustice arising from the practical impossibility of foreseeing all circumstances in advance. Restitution aims to restore a party to their original legal position, which they were deprived of by operation of law.

A party seeking restitution must act promptly[1]. If a party has acquiesced or approved of defective proceedings through their conduct, Courts typically refrain from setting aside those proceedings. The Court, in exercising its jurisdiction of *restitutio in integrum*, does not relieve parties of the consequences of their own errors, negligence, or laches[2]. Furthermore, in my view, *restitutio in integrum* is a special jurisdiction exercised by this Court in distinct contexts and should not be a substitute for an appeal or a revision application.

As previously stated in this judgment, neither the Petitioner nor the Respondent pursued their right of appeal to the Supreme Court with leave obtained. Therefore, I am of the view that there has been negligence on the part of the Petitioner.

Furthermore, this application was made to this Court on the 12th October 2023, seeking, *inter alia*, to set aside the judgment of the High Court Judge dated 13th November 2018.

According to the judgment of this Court in the case of *Saheeda Umma and another v. Haniffa and others*[3], an application for *restitutio in integrum* is considered an action under section 11 of Prescription Ordinance No. 22 of 1871, as amended, and is subject to a three-year limitation period. Accordingly, the Petitioner's application to set aside the judgment of the learned High Court Judge through *restitutio in integrum* is time-barred.

Nevertheless, as previously mentioned in this judgment, the impugned decision of the learned High Court Judge cannot be upheld under any circumstances.

As I have already stated, the Petitioner's application to this Court was submitted after a substantial delay. This delay affects the exercise of the Court's revisionary jurisdiction. Nevertheless, it had been held in the case of *Caroline Nona and others*

[1] *Babun Appu v. Simon Appu,* 11 NLR 44.
[2] *Don Lewis v. Dissanayake*, 70 NLR 8.
[3] [1999] 1 Sri L.R. 150.

v. Pedrick Singho and others[4] that *'the question whether delay is fatal to an application in revision depends on the facts and circumstances of the case. If the impugned order or that part of the judgement is manifestly erroneous and is likely to cause grave injustice, the Court should not reject the application on the ground of delay alone.'*

Further, it was held that *'whenever the order challenged disclose a miscarriage of justice which shocks the conscience of Court and it had deprived a right of a party, justice of the case requires the use of the discretion of Court to excuse the delay in coming to court*[5]*.'*

As it was stated by Sansoni C.J. in *Mariam Beebee v. Seyed Mohamed*[6] the object of the power of revision is nothing else but the due administration of justice.

In the case of *Somawathi v. Madawala and others*[7] (S.C.) His Lordship Justice Soza observed that, *''The Court will not hesitate to use its revisionary powers to give relief where a miscarriage of justice has occurred. (...) a miscarriage of justice results as here, then this Court will not sit idly by. Indeed, the facts of this case cry aloud for the intervention of this Court to prevent what otherwise would be a miscarriage of justice.''*

In my view, the statement made by Justice Soza in the case is equally relevant to the current situation.

In the aforementioned case of *Saheeda Umma and another v. Haniffa and others*[8], this Court exercised its extraordinary powers of revision despite the application for *restitutio in integrum* being time-barred.

[4] [2005] 3 Sri L.R. 176 at p.182 and 183.
[5] Ibid p.184.
[6] 68 N.L.R. 36 at p. 38.
[7] (1983) 2 Sri LR 15 at p.31.
[8] *Supra* note 04.

Article 138(1) of the Constitution, as it stands currently, reads as follows:

'**138(1):** *The Court of Appeal shall have and exercise subject to the provisions of the Constitution or of any law, an appellate jurisdiction for the correction of all errors in fact or in law which shall be committed by the High Court, in the exercise of its appellate or original jurisdiction or by any Court of First Instance, tribunal or other institution and* ***sole and exclusive*** *cognizance, by way of appeal,* ***revision*** *and restitutio in integrum, of all causes, suits, actions, prosecutions, matters and things of which such* ***High Court****,* ***Court of First Instance****, tribunal or other institution may have taken cognizance: (emphasis added)*

Provided that no judgement, decree, or order of any Court shall be revised or varied on account of any error, defect or irregularity, which has not prejudiced the substantial rights of the parties or occasioned a failure of justice.'

In the case of *Gunawardane and others v. Muthukumarana and others*[9] (S.C.) Aluwihare J., interpreted Articles 138 and 154 P (3) of the Constitution in conjunction with the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990. His Lordship held that despite the removal of the Court of Appeal's appellate jurisdiction over decisions of the Provincial High Court and the granting of a right of appeal to the Supreme Court under section 9 of the Act, did not eliminate or undermine the Court of Appeal's revisionary jurisdiction over such decisions.

The High Court of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006 similarly provides in section 5C (1) that appeals from the District Court to the High Court confer a right of appeal to the Supreme Court. Therefore, the aforementioned judgment of the Supreme Court should apply equally to the Civil Appellate High Courts as well. Consequently, under Article 138(1) of the

[9] (2020) 3 Sri.L.R.306.

Constitution, the Court of Appeal retains revisionary jurisdiction over decisions of both the District Court and the Civil Appellate High Court.

Conclusion

In light of the analysis provided above in this judgment, it is my considered view that a strong case for the interferences of this Court have been made out by the Petitioner and there are sufficient exceptional circumstances warranting the exercise of Court's revisionary powers. Allowing the judgment of the learned High Court Judge dated 13th November 2018 to stand would result in a serious miscarriage of justice. Therefore, I set aside the judgment of the learned High Court Judge dated 13th November 2018 and direct the present judges of the Civil Appellate High Court of Colombo to reconsider the judgment of the learned District Judge dated 17th January 2014 and deliver a fresh judgment expeditiously, addressing all the issues.

Consequently, I also set aside the order made by the learned District Judge on 8th June 2023, which was based on the judgment of the learned High Court Judge dated 13th November 2018.

Parties shall bear their own costs.

JUDGE OF THE COURT OF APPEAL

M. Ahsan. R. Marikar J.

I Agree.

JUDGE OF THE COURT OF APPEAL