

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

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

Ranasinghe Arachchige Sanath
Udayakumara Ranasinghe,
No. 540/2, Daham Mawatha, Pitipana
South, Homagama.

PETITIONER

CA (PHC) APN 139/2023
High Court Colombo Case No: HCRA 16/22
MC Nugegoda Case No: 29318

-Vs-

1. Kankanige Siripala,
No. 280/7, Depanama, Pannipitiya
2. Chandrasekara Herath Mudiyanseelage Sunil
Chandrasekara,
No. 278/4/A, Depanama, Pannipitiya
3. Kankani Dilani Nisansala,
No. 278/4/B, Depanama, Pannipitiya

RESPONDENTS

AND

1. Kankanige Siripala,
No. 280/7, Depanama, Pannipitiya
2. Chandrasekara Herath Mudiyanseelage Sunil
Chandrasekara,
No. 278/4/A, Depanama, Pannipitiya
3. Kankani Dilani Nisansala,
No. 278/4/B, Depanama, Pannipitiya

RESPONDENTS-PETITIONERS

-Vs-

Ranasinghe Arachchige Sanath
Udayakumara Ranasinghe,
No. 540/2, Daham Mawatha, Pitipana
South, Homagama.

PETITIONER-RESPONDENT

AND NOW BETWEEN

Ranasinghe Arachchige Sanath
Udayakumara Ranasinghe,
No. 540/2, Daham Mawatha, Pitipana
South, Homagama.

PETITIONER-RESPONDENT-PETITIONER

-Vs-

1. Kankanige Siripala,
No. 280/7, Depanama, Pannipitiya
2. Chandrasekara Herath Mudiyanseelage Sunil
Chandrasekara,
No. 278/4/A, Depanama, Pannipitiya
3. Kankani Dilani Nisansala,
No. 278/4/B, Depanama, Pannipitiya

**RESPONDENTS-PETITIONERS-
RESPONDENTS**

Before: Damith Thotawatte, J.
Sarath Dissanayake, J.

Counsels Keerthi Thilakarathne instructed by Chanuka Ekanayake for the Petitioner-Respondent-Petitioner.

Kapila Liyanagamage instructed by Danuka Lakmal for the 1st to 3rd Respondents-Petitioners-Respondents.

Argued	09-05-2025
Written submissions tendered on:	04-07-2025 By the Petitioner-Respondent-Petitioner 11-07-2025 By the Respondent-Petitioner-Respondent
Judgment Delivered:	30-07-2025

Thotawatte J.

The Petitioner - Respondent - Petitioner (hereinafter sometimes referred to as the Petitioner) filed information by way of an affidavit in the Magistrate's Court of Nugegoda, under the terms of Section 66(1) (b) of the Primary Courts' Procedure Act No. 44 of 1979 regarding an obstruction of the roadway by the 1st, 2nd and 3rd Respondents – Petitioners – Respondents (hereinafter sometimes referred to as the Respondents).

The Petitioner had been married to the 3rd Respondent, and during the subsistence of that marriage, the Petitioner had by Deed of Gift No. 1535 dated 28th February 2014, gifted to his daughter a land belonging to him subject to his life interest. The access to this land is from the same roadway that gives access to the residences of the 1st, 2nd, and 3rd Respondents (bearing assessment No's 280/7, 278/4/A, 278/4/B).

According to the Petitioner, premises No. 278/4/B, which had been the matrimonial home of the Petitioner and the 3rd Respondent during the existence of the marital relationship and had also been gifted to his daughter subject to the Petitioner's life interest, by Deed of Gift No. 1579 dated 22nd June 2002.

On or about 30th November 2016, the 3rd Respondent had obtained an interim protection order against the Petitioner under the Prevention of Domestic Violence Act No. 34 of 2005, which temporarily prevented the Petitioner from entering his matrimonial home. This order had been continuously extended up to 2nd September 2020, on which date the learned Magistrate refused to further extend the said protection order.

The Petitioner avers that upon attempting to re-enter his Matrimonial Home following the expiry of the protection order, he discovered that the Respondents, acting in concert, had obstructed the only means of access to the said premises by erecting a gate across the roadway, which had been padlocked, and by constructing a temporary garage upon the said roadway, thereby unlawfully obstructing his access.

Learned Magistrate, having inquired into the complaint contained in the said information, by her order dated 27-01-2021 (in the High Court, both parties have agreed that the correct date as 27th January 2022), had held that the Petitioner is entitled to the impugned right of way.

Being aggrieved by the said order of the learned Magistrate, the Respondents had filed a revision application in the Provincial High Court of Western Province holden in Colombo, urging the Provincial High Court to revise the order of the learned Magistrate. The Provincial High Court, holding in favour of the Respondents, had set aside the order dated 27-01-2021 (in the High Court, both parties have agreed that the correct date as 27th January 2022) of the learned Magistrate by its judgment dated 05-09-2023.

The Petitioner, being dissatisfied with the Judgement of the Hon. Judge of the Provincial High Court, had filed this instant application in this Court seeking, *inter alia*, the following reliefs;

- c) To act in revision and set aside the Judgment of the High Court dated 5th September 2023.
- d) To act in revision and allow and affirm the Judgment of the Magistrate Court dated 27.01.2022 in the case bearing No. 29318,
- e) Grant reliefs prayed for by the Petitioner by virtue of his petition dated 4 January 2021 initially filed before the Magistrate Court of Nugegoda.

The Petitioner, in his petition, has admitted that he has filed an appeal in respect of the same matter, and it was yet to be listed before this Court. When this matter was taken up for hearing, the Court was informed that the number CA (PHC) 180/23 has been allocated to the connected appeal.

The Respondents have taken a preliminary objection to this application, stating that as the Petitioner has exercised his right of appeal against the Judgment of the High Court of Colombo by filing CA (PHC) No. 180/2023, the Petitioner cannot maintain this revision application.

This issue has been extensively considered by His Lordship Chitrasiri, J in ***Kulatilaka vs. Attorney General***¹. Whilst acknowledging that the filing of an appeal would not be a strict barrier to file a revision application, it is stated that in such a situation, the person who files a revision application should be in a position to state adequate reasons or the circumstances that should necessitate looking at the merits in a revision application.

In ***Kulatilake vs. Attorney General***, His Lordship Chitrasiri, J has stated;

*“Consequently, as mentioned herein before, the petitioner exercising his statutory right, filed an appeal against the said judgment. The petitioner relying upon the same grounds filed this application also invoking the revisionary jurisdiction of this Court.
Since there are two applications filed by the petitioner in this same forum,*

¹ [2010] 1 SRIL.R. 212

it is necessary to examine the maintainability of a revision application under those circumstances. It is trite Law that the revisionary jurisdiction of this Court would be exercised if and only if exceptional circumstances are in existence to file such an application. Moreover, it must be noted that the Courts would exercise the revisionary jurisdiction, it being an extraordinary power vested in Court, especially to prevent miscarriage of justice being done to a person and/or for the due administration of justice”.

It is clear from a consistent line of judicial authorities, such as *Rustom vs. Hapangama & Co.*², *Hotel Galaxy (Pvt.) Ltd. vs. Mercantile Hotels Ltd*³, *Rasheed Ali vs. Mohamed Ali and others*⁴, *A.A. Mohamed Thaaaj vs. H.M.U.B. Herath and others*⁵, *Indika Roshan Francis vs. Bulathsinghalage Lal Cooray and Rajapaksha Pathirannahelage Priyadarshan*⁶, that the existence of exceptional or extraordinary circumstances is a threshold requirement.

Before considering this matter on the merits, it has to be examined whether the Petitioner has urged exceptional or extraordinary circumstances sufficient to invoke the revisionary jurisdiction of this court.

Citing the case *Urban Development Authority Vs. Ceylon Entertainments Ltd*⁷, which held “That presence of exceptional circumstances by itself would not be sufficient if there is no express pleading to the effect in the petition whenever an application is made invoking, the revisionary jurisdiction of the Court of Appeal” with approval, His Lordship Prasantha De Silva, J., in *Aysha Hameed and others Vs. Mohamed Mohideen Shaul Hameed and others*⁸ has stated that mere existence of exceptional circumstances itself would not allow Court to invoke revisionary jurisdiction and to exercise revisionary powers, exceptional circumstances should be precisely and expressly averred in petition.

The Petitioner in his petition has cited as exceptional or circumstances the following;

- a) The matter is of public importance
- b) The petitioner has no alternative remedy

²[1978-79] 2 SLR 225

³[1987] 1 Sri LR 5

⁴[1981] 2 SLR 29

⁵CA PHC APN 53/2013 decided on 16.05.2016

⁶SC REVISION/02/2019 decided on 25.03.2022

⁷CA 1319/2001 decided on 05.04.2002

⁸CPA 13/2021 decided on 02.03.2023

- c) The petitioner was unable to file the revision application on time due to ill health
- d) The petitioner promptly filed this application as soon as he was physically fit enough to travel to Colombo and give instructions to his lawyers

None of the above-stated grounds can be considered as exceptional grounds. Further, to state that the petitioner has no alternative remedy when he has already filed an appeal regarding the same matter is manifestly erroneous.

Although not specifically mentioned as an exceptional ground, the possible delay in hearing the appeal also appears to be a factor that has motivated the petitioner to file this revision application. However, the petitioner has failed to convince the court that there is an urgency with regard to this matter. Even if there was an acceptable urgency, the Petitioner could have filed an application to accelerate the appeal instead of filing a revision.

The circumstances cited by the appellant do not rise to the level of exceptional circumstances and, as such, do not constitute sufficient grounds for the exercise of the revisionary powers of this Court, and as such, I proceed to dismiss this application without cost.

Dismissing this application will not prevent the Petitioner from pursuing the CA (PHC) 180/23 Appeal.

Judge of the Court of Appeal

Sarath Dissanayake, J.

I agree

Judge of the Court of Appeal