

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

LANKA.

In the matter of an appeal under and in terms of Article 154P (6) of the Constitution of the Democratic Socialist Republic of Sri Lanka against the Judgement of the Provincial High Court of Kandy dated 18.11.2015 in case bearing No.45/14/Rev.

Court of Appeal Case No:
CA (PHC) 162/2015

High Court Kandy Case No:
45/14/Rev

Magistrate's Court Kandy Case
No. 43359

Migallage Gamlath Ralalage Wijesinghe,
No.24/44 Aruppola, Watta Road,
Watapaluwa, Kandy.

Plaintiff

Vs.

1. A.M. Jayasundara,
2. Kusuma Jayasundara

Both of the above at No.27/28 A,
Aruppola Watta Road,
Watapaluwa, Kandy.

Respondents

AND

Migallage Gamlath Ralalage Wijesinghe,
No.24/44 Aruppola, Watta Road,
Watapaluwa, Kandy.

Plaintiff-Petitioner

Vs.

1. A.M. Jayasundara,
2. Kusuma Jayasundara

Both of the above at No.27/28 A,
Aruppola Watta Road,
Watapaluwa, Kandy.

Respondent-Respondents

AND NOW BETWEEN

Migallage Gamlath Ralalage Wijesinghe,
No.24/44 Aruppola, Watta Road,

Watapaluwa, Kandy.

Petitioner-Appellant

Vs.

1. A.M. Jayasundara,
2. Kusuma Jayasundara

Both of the above at No.27/28 A,
Aruppola Watta Road,
Watapaluwa, Kandy.

Respondent-Respondents

Before: Prasantha De Silva, J.
K.K.A.V. Swarnadhipathi, J.

Counsel: Kalana De Silva for the Petitioner-Appellant.
Respondent-Respondents are absent and unrepresented.

Counsel for the Appellant agrees to dispose this matter by way of written submissions already filed.

Written submissions : 29.03.2022 for the Petitioner-Appellant
tendered on

Order delivered on : 07.02.2023

Prasantha De Silva, J.

Judgment

This is an appeal emanating from an Order of the learned High Court Judge of the Central Province holden in Kandy. The Respondent-Respondent in this matter had been absent and unrepresented after being issued notices on several occasions. However, they had sent letters dated 28.04.2021 and 02.02.2020, informing their inability to attend Courts since they are under medication resulting from old age and ill-health.

Hence, the Court fixed this matter for argument and the Appellant agreed to dispose the matter by way of written submissions already filed. Hence, this Judgment would be based on the material adduced by parties in their pleadings.

It appears that the Petitioner-Appellant had instituted action against the Respondent-Respondents in the Magistrate's Court of Kandy in case bearing No.43359, in terms of Section 73 of the Primary Courts' Procedure Act No.44 of 1979 on the basis that the Respondent-Respondents had breached the final order dated 21.05.1993 made in Primary Court case bearing No.31453 filed under Section 66 of the Primary Courts' Procedure Act No.44 of 1979.

The said Magistrate's Court case bearing No.43359 had commenced on 19.03.2013 and after the conclusion of examination in chief of the Petitioner-Appellant, case was re-fixed for cross examination of the Petitioner-Appellant for 14.05.2013. Since the Petitioner-Appellant was absent and unrepresented on this day, the said case had been dismissed for want of appearance.

Consequently, the Petitioner-Appellant had made an application by tendering an affidavit with a medical certificate to purge the default in appearing in Court. However, the Court without accepting the medical certificate had dismissed the application of the Petitioner-Appellant.

Being aggrieved by the said Order of dismissal by the learned Magistrate, the Petitioner-Appellant had invoked the revisionary jurisdiction of the Provincial High Court of the Central Province holden at Kandy. However, the learned High Court Judge delivered the Order on 18.11.2015 dismissing the revision application of the Petitioner-Appellant with cost fixed at Rs.10,000/-. Being dissatisfied by the said Order, the Petitioner-Appellant had preferred this appeal.

It was emphasized in the case ***Bandulasena and others vs. Galla Kankanamge Chaminda Kushantha and others [CA PHC No.147/2009, CA minutes of 27.09.2017]***;

“It would be relevant to bear in mind that the appeal before this Court is an appeal against a judgment pronounced by the Provincial High Court in exercising its revisionary jurisdiction. Thus, the task before this Court is not to consider an appeal against the Primary Court order but to consider an

appeal in which an order pronounced by the Provincial High Court in the exercise of its revisionary jurisdiction is sought to be impugned.

It is relevant to observe that this Court in the case of *Nandawathie and another Vs. Mahindasena* also had taken the above view. It is noteworthy that this Court in that case had stated that the right given to an aggrieved party to appeal to the Court of Appeal in a case of this nature should not be taken as an appeal in the true sense but in fact an application to examine the correctness, legality or the propriety of the order made by the High Court Judge in the exercise of its revisionary powers.”

It was held in the case of *Nandawathi and another Vs. Mahindasena [(2009) 2 SLR 218]*;

“When an Order of a Primary Court Judge is challenged by way of revision in the High Court, the High Court can examine only the legality of that Order and not the correction of that Order”.

It was emphasized by *Ranjith Silva J.* that;

“I am of the opinion that this particular right of appeal in the circumstances should not be taken as an appeal in the true sense, but in fact as an application to examine the correctness, legality or the propriety of the Order made by the High Court Judge in the exercise of revisionary powers. The Court of Appeal should not under the guise of an appeal attempt to re-hear or re-evaluate the evidence led in the main case”.

In view of the aforecited Judgment, we are not supposed to consider this as an appeal preferred against the Order of the Magistrate’s Court. We are of the view that the task before this Court is to ascertain whether this appeal emanates from an Order pronounced by the Provincial High Court in the exercise of its revisionary jurisdiction. Thus, the Court of Appeal is empowered to evaluate the correctness of the exercise of revisionary jurisdiction by the Provincial High Court. Similarly, the Provincial High Courts too should be mindful when exercising revisionary jurisdiction in respect of applications made against the Orders of the Magistrate’s Court and should consider these as revision applications and not as appeals.

According to the findings of the learned High Court Judge, the Order in the Magistrate's Court case No. 43359 was delivered on 23.05.2013 and the revision application was made on 05.08.2014. The delay was for a period more than one year and the Petitioner-Appellant had not given any explanation for the delay.

Moreover, the Petitioner-Appellant had not shown exceptional circumstances that shock the conscience of Court to exercise revisionary jurisdiction of the Provincial High Court of the Central Province. Therefore, it is apparent that the learned High Court Judge has very correctly held against the Petitioner-Appellant and dismissed the application of the Petitioner-Appellant.

Thus, we see no reason to interfere with the Order of the learned High Court Judge dated 18.11.2015 and the Order of the learned Magistrate dated 23.05.2013.

The appeal is dismissed with tax cost.

JUDGE OF THE COURT OF APPEAL

K.K.A.V. Swarnadhipathi, J.
I agree.

JUDGE OF THE COURT OF APPEAL