

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

An application for Revision in terms of Article 138(1) of the Constitution of the Republic of Sri Lanka against the order dated 7th August 2019 of the Provincial High Court of the North Western Province Holden at Chilaw in case No. HC/03/2019.

CA /PHC/APN 111/2019

H.C. Chilaw Case

No.HCA/03/2019

M.C. Marawila Case No.24416/D

Dr. Anton Naduwilage

No.2 Church Road

Marawila

Accused-Respondent-Petitioner

Vs.

Hon. Attorney General

Attorney General's Department

Colombo 12.

Complainant-Appellant-Respondent

BEFORE

:

HON. JUSTICE K.K. WICKREMASINGHE

HON. JUSTICE K. PRIYANTHA PERNANDO

COUNSEL

:

Senany Dayaratne with Nishadi Wickramasinghe
for the Accused-Respondent-Petitioner.

Shanaka Wijesinghe, DSG for the A.G.

SUPPORTED AND

DECIDED ON

:

13.01.2020

HON. JUSTICE K.K. WICKREMASINGHE

We have heard the submissions of both Counsel in support of their respective cases. The Petitioner in this case has made a preliminary objection in the High Court in terms of the Supreme Court Rule 34. It was on the basis that the Respondent in the High Court case has not filed their written submissions although several dates were given by the learned High Court Judge.

The Respondent has failed to show due diligence in taking necessary steps (filing of written submissions). Learned Counsel for the Petitioner submits that on the previous day the learned High Court Judge has already made an order stating that the application will be dismissed if steps are not taken to file written submissions.

However, on the following day the State Counsel was absent due to her sickness. Considering that, the learned High Court Judge dismissed the objection of the Petitioner.

In terms of Rule 34 the Court is vested with discretion to decide on the matter. The words mentioned is "the Court may". Therefore, the learned High Court Judge has acted within her discretion provided in the rule. What the learned High Court Judge mentioned on the previous day does not amount to an order of dismissal and it was only an anticipatory action. Hence there is no prima facie case established by the Petitioner to issue notice to Respondents.

Website Copy

JUDGE OF THE COURT OF APPEAL

HON. JUSTICE K. PRIYANTHA FERNANDO

I agree.

Website Copy

JUDGE OF THE COURT OF APPEAL

TW