

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

In the matter of an Application under and in terms of Article 154(P) 6 of the Constitution of the Democratic Socialist Republic of Sri Lanka to be read with Article 11 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990

H.M.P.G. Ranasinghe Bandara,  
No. 108, Retiyagama,  
Meda-Mahanuwara.

**Petitioner-Appellant**

Court of Appeal Case No:  
**CA/PHC/55/2016**  
HC Kandy Case No:  
**27/2014 (WRIT)**

**-Vs-**

1. W.M.P.K. Weerasekara,  
Commissioner of Co-operative Development  
and Registrar (Central Province),  
Department of Co-operative Development of  
Central Province,  
Ehelepola Kumarihamy Mawatha,  
Bogambara,  
Kandy.

**A.M.K.C.K. Atapattu,**  
**Commissioner of Co-operative Development**  
**and Registrar (Central Province),**

**Department of Co-operative Development of  
Central Province,  
Ehelepola Kumarihamy Mawatha,  
Bogambara,  
Kandy.**

**1A Substituted-Respondent**

2. Teldeniya Multi-Purpose Co-operative Society  
Limited,  
Teldeniya.
3. Gayan Bandara Wijesundara,  
Arbitrator,  
Sudarshana Mawatha,  
Mawathagama.

**Respondent-Respondent**

**Before : A.L. Shiran Gooneratne J.**

**&**

**Dr. Ruwan Fernando J.**

**Counsel :** A.M.E.B. Atapattu for the Petitioner-Appellant.

Madubashini Sri Meththa, SC for the 1A Substituted-  
Respondent-Respondent.

**Written Submissions:** By the Petitioner on 06/03/2020.

By the 1A Substituted-Respondent on 14/07/2020.

**Argued on:** 21/09/2020

**Judgment on :** 16/11/2020

## **A.L. Shiran Gooneratne J.**

This is an Appeal seeking to set aside an order made by the Provincial High Court of Kandy, arising from an application for writ in the nature of *Certiorari* to quash the decision made by the 1<sup>st</sup> Respondent (Commissioner of Co-operative Development), rejecting the appeal filed in terms of Section 72(2) of the Co-operative Statutes of the Central Provincial Council No. 10 of 1990, as amended by Statute No. 04 of 1993, as reflected in document marked "P6", and a writ in the nature of *Mandamus* to hear and determine the appeal filed by the Appellant, as reflected in document marked "P5". The learned High Court Judge by order dated 05/05/2016, refused to grant any relief and dismissed the said application.

The 3<sup>rd</sup> Respondent, (Arbitrator) inquired into a dispute between the Appellant and the 2<sup>nd</sup> Respondent, Teldeniya Multi-Purpose Co-operative Society to recover a shortfall in goods amounting to Rs. 883,118.10/-. The Arbitrator held that the Appellant was liable to pay a sum of Rs. 755,906.95/-, to the 2<sup>nd</sup> Respondent. Being aggrieved by the said award, the Appellant preferred an appeal to the 1<sup>st</sup> Respondent in terms of Rule 49(xii)(a) and (b), of the operative statute, which reads as follows;

*"(a) Every appeal to the Registrar from an award of an arbitrator or a panel of arbitrators shall be made within 30 days from the date of the award by a written statement setting out the grounds of appeal. Every such appeal shall be forwarded to the Registrar with an appeal deposit of Rs. 50 or 10% of the sum awarded where the appeal is made by the party against whom the award has been made*

*and by Rs. 50 or 10% of the sum claimed in the dispute where the appeal is made by the party claiming any sum of money, whichever sum is the higher sum in either case.*

*(b) An appeal not made in conformity with the above shall be rejected by the Registrar."*

The 1<sup>st</sup> Respondent refused to accept the said Appeal made in terms of Rule 49(xii)(b) of the Co-operative Societies Rules - 1973, published in the Extraordinary Government Gazette No. 93/5, dated 10/01/1974, made under Section 61 of the Co-operative Societies Law No. 5 of 1972, on the basis that the Appellant had failed to deposit the required amount as stipulated by the said Rule.

In the written submissions tendered to Court, the Appellant questions the *vires* of Rule 49(xii)(a) and (b), on the mandatory requirement to deposit Rs. 50/- or 10% of the Arbitrator's award, whichever is higher, by a person preferring an appeal against the said order.

However, when this matter was taken up for argument, the Appellants position was that he had informed the 2<sup>nd</sup> Respondent to deduct the required amount as stipulated by the said rule from the Appellant's account held by the 1<sup>st</sup> Respondent and accordingly, confined his argument to a relief of an equitable nature as to whether the 1<sup>st</sup> Respondent should have conformed to the request by the Appellant to set off the amount required, from the said deposit, as reflected in the impugned document marked "P5", in order to satisfy the mandatory requirement contemplated by the said rule.

Document marked P5, (Vide page 199 of the brief) states thus;

“වගලත්තරකාර අභියාචක සේවයේ සිටියදී මෙම ආරාදුල බේරුම් කිරීම සඳහා රු. 100,000/= ක මුදලක් පැමිණිලිකාර සමිතියේ තැන්පත් කර ඇත. එකී තැන්පත් කුචිතාන්සිය මේ සමඟ අමුණා ඇත. සැලකිල්ලට ගෙන මෙම අභියාචනය භාරගෙන මනාලෙස විභාග කර බේරුම්කරුගේ තීන්දුව හෙවත් ප්‍රදානය සංශෝධනය කර වගලත්තරකාර අභියාචකට සාදාරණ වූත් යුක්තිසහගත වූත් සහනයක් ලබාදෙන මෙන් ගෞරවයෙන් ඉල්ලා සිටිමි.”

The 1<sup>st</sup> Respondent's position is that the Appellant's substantive relief, a writ in the nature of *mandamus* to demand the performance of a duty, is clearly not contemplated or in conformity with the statutory provisions of the Act.

The principles governing the issue of a writ of *mandamus* were widely discussed in *Credit Information Bureau of Sri Lanka vs. Messrs Jafferjee and Jafferjee (Pvt) Ltd (2005) 1 SLR 89 at 93*, where the Supreme Court observed that, “*there is rich and profuse case law on Mandamus on the conditions to be satisfied by the applicant*” and cited, *inter alia*, “the applicant must have a legal right to the performance of a legal duty by the parties against whom the mandamus is sought. (R v. Bamstaple Justices (1937) 54 TLR 36). The foundation of mandamus is the existence of a legal right (Napier Ex parte 1852 18 QB, 692 at 695).

In *Arulananthan vs. Hon. D.M. Jayaratne and 5 others, (2008) BLR 264*, Sri Skandarajah, J. having considered the principles set out in the above judgment, cited with approval, *P.K. Benarji vs. H.J. Simonds AIR (1974) Cal. 347*, where it

was held that *“the court will not grant a mandamus to enforce a right not of a legal but of a purely equitable nature, however extreme the inconvenience to which the applicant might be put”*. (emphasis is mine)

The conformity of Rule 49 (xii)(a) and (b), by the Appellant is a statutory requirement to the performance of a legal duty by the party against the *mandamus* is sought. Accordingly, the Appellant is required to deposit the amount as stipulated by the said Rule to initiate the appeal process.

It is well settled law that, due conformity of Rule 49(xii)(a), is a mandatory requirement in preferring an appeal of this nature. (*M.K.R. Nimal Jayasuriya vs. Seemasahitha Mitipola Sakasuruwam Saha Naya Ganudenu Pilibanda Sampakara Samithiya and two others, C.A. 889/2000 decided on 12/02/2004*). The Appellant has not conformed to the said requirement, which warrants an unhesitant rejection of this Appeal.

Accordingly, the order of the Provincial High Court is affirmed and the Petition is dismissed with costs fixed at Rs. 20,000/-

**JUDGE OF THE COURT OF APPEAL**

**Dr. Ruwan Fernando, J.**

**I agree.**

**JUDGE OF THE COURT OF APPEAL**