

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

In the matter of an application for
Restitutio in Integrum / Revision under
Article 138 of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.

Future Consumer Limited (previously
known as Future Consumer Enterprises
Limited),

Knowledge House, Shyam Nagar, Off
JVLR, Jogeshwari (East) Mumbai – 400
060, Maharashtra, India.

Petitioner

CA Case No: RII/06/2022

CHC Case No: CHC 02/2022 CO

Vs.

1. Aussee Oats Milling (Private) Limited,
28 BOI EPZ, Mirigama- 11200,
Sri Lanka.
2. SVA India Limited,
162 C, Mittal Tower Nariman Point,
Mumbai 400 021, India.
3. Abhinav Gupta,
UCA Lanka (Private) Limited, No. 13-B,
BOI EPZ, Horana, 12400, Sri Lanka and
also of 28 BOI EPZ, Mirigama- 11200,
Sri Lanka.
4. Raghav Gupta,
UCA Lanka (Private) Limited, No. 13-B,
BOI EPZ, Horana, 12400, Sri Lanka and
also of 28 BOI EPZ, Mirigama- 11200,
Sri Lanka.

5. Vinod Gupta,
UCA Lanka (Private) Limited, No. 13-B,
BOI EPZ, Horana, 12400, Sri Lanka and
also of 28 BOI EPZ, Mirigama- 11200,
Sri Lanka.
6. L.K.C. Prasanna Jayasuriya,
No. 270/8, Godaparagahawatta,
Kimbulapitiya and also of 28 BOI EPZ,
Mirigama- 11200, Sri Lanka.

Respondents

AND NOW BETWEEN

Aussee Oats Milling (Private) Limited,
28 BOI EPZ, Mirigama- 11200,
Sri Lanka.

1st Respondent- Petitioner

Vs.

Future Consumer Limited (previously
known as Future Consumer Enterprises
Limited),

Knowledge House, Shyam Nagar, Off
JVLR, Jogeshwari (East) Mumbai – 400
060, Maharashtra, India.

Petitioner- Respondent

2. SVA India Limited,
162 C, Mittal Tower Nariman Point,
Mumbai 400 021, India.
3. Abhinav Gupta,
UCA Lanka (Private) Limited, No. 13-B,
BOI EPZ, Horana, 12400, Sri Lanka and
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Sri Lanka.

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Sri Lanka.
6. L.K.C. Prasanna Jayasuriya,
No. 270/8, Godaparagahawatta,
Kimbulapitiya and also of 28 BOI EPZ,
Mirigama- 11200, Sri Lanka.

Respondent-Respondents

Before: **R. Gurusinghe J.**
&
M.C.B.S. Morais J.

Counsel: Upul Jayasuriya, PC for the Petitioner.
Avindra Rodrigo PC with Kasuni Jayaweera for the 2nd
Respondent instructed by F.J. & G de Saram.
Chanaka De Silva, PC with Pradinath Sivanesan for the
Petitioner-Respondent instructed by K.U. Gunasekara.

Written Submissions: By the 1st Respondent- Petitioner – on 18.03.2022, 08.07.2025
By the Petitioner - Respondent - on 04.07.2025
By the 2nd Respondent- Respondent - on 28.03.2022, 04.07.2025

Argued on: 19.05.2025

Decided On: **06.08.2025**

JUDGMENT

M.C.B.S. Morais J.

This is an application for *restitution in integrum*/revision under Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

The Aussee Oats Milling (Private) Limited (hereinafter sometimes will be referred to as the 1st Respondent- Petitioner) is a joint venture company of which the shareholders are the Future Consumer Ltd (hereinafter sometimes will be referred to as the Petitioner-Respondent) who owns 50% plus 1 shares and the SVA Indias Ltd (hereinafter sometimes will be referred to as the 1st Respondent- Respondent) who owns 50% minus 1 shares. Accordingly, the 1st Respondent -Petitioner is challenging the decision of the learned Judge of the Commercial High Court of Colombo dated 26th of January 2022 in the case bearing No. CHC/02/2022/CO and the Petitioner has prayed for the following.

- I. *“Issue notice on the Respondent in the first instance:*
- II. *Set aside and/or vary and/or dissolve the order of the Learned Judge of the Colombo High Court dated 26th January 2022 in case bearing No. CHC/02/2022/CO, marked X4,*
- III. *Direct the Learned High Court Judge to dismiss the application bearing No. CHC 02/2022 CO marked as X2,*
- IV. *Grant and issue an interim order staying further proceedings in case bearing No. CHC/02/2022/ CO, until final determination of this application,*
- V. *Grant and issue an interim order staying the operation of Order of Learned High Court Judge on 26th January 2022 in case bearing No CHC/ 02/ 2022/ CO until the final determination of this application:*
- VI. *Grant and issue an interim order staying the operation of Interim Orders issued by Learned High Court Judge on 26th January 2022 in terms of paragraphs (1), and/or (j), and/or (k), and/or (l), and/or (m), and/or (n), and/or (o), and/or (p), of the prayer to the Petition of the Petitioner-Respondent in case bearing No CHC/02/2022/ CO until the final determination of this application;*
- VII. *for costs and;*
- VIII. *such and other further reliefs as Your Lordships Court shall seem meet.”*

FACTUAL BACKGROUND

The initial application was filed by the Respondent-Petitioner in the Commercial High Court of Colombo, action bearing No. CHC/78/2021/CO under and in terms of section 233 read together with section 520 of the Companies Act No.07 of 2007. The application was based on an alleged insolvency concerning an affiliate of the Petitioner-Respondent company, attributed to an attachment order issued by the High Court of New Delhi dated 18th March 2021. The Respondent-Petitioner further contended that the Petitioner-Respondent acted in contravention of the Articles of Association of the Petitioner's Company and thus sought certain interim and final reliefs against the Respondents.

The Commercial High Court, having heard the 1st Respondent-Petitioner *ex parte*, granted certain interim reliefs. Subsequently, after hearing the Petitioner-Respondent, the Court made an order on 19th February 2024 rejecting the 1st Respondent-Petitioner's application. Being aggrieved by the said order, the 1st Respondent-Petitioner has made an application in *restitutio in integrum* case bearing No.CA/RII/23/2024 claiming that the order dated 19th of February 2024 is wrongful and erroneous in law. However, the said *restitutio* application was withdrawn by the Respondent-Petitioner on 2nd of May 2025 following the withdrawal of the Commercial High Court Case No. CHC/78/2021/CO.

In the meantime, a further action was instituted by the Petitioner-Respondent in the Commercial High Court of Colombo under Section 224-228 of the Companies Act No. 7 of 2007, case bearing No. CHC/02/2022/CO, pleading that the conduct of the 2nd to 6th Respondent-Respondents amounts to acts of oppression and mismanagement. The said application was supported *ex-parte* on 26th of January 2022 before the Commercial High Court of Colombo. Upon considering the submissions made by the Petitioner-Respondent, the learned High Court Judge granted interim orders as prayed for in prayers (i) to (p) of the petition of the Petitioner-Respondent. Having come to know of this, the 1st Respondent-Petitioner filed a petition and affidavit under Section 521 of the Companies Act No. 7 of 2007, denying the averments contained in the Petition of the Petitioner-Respondent. The 1st Respondent-Petitioner objected to the said Petition, and prayed for the orders of the Commercial High Court dated 26th January 2022 to be set aside, and moved the Court to support the matter by the Counsel of the Petitioner on 10th, 11th, or 14th February 2022.

The Court, having considered the said application, fixed the matter for support on 14th February 2022. However, when the matter was taken up on that day, the Counsel for the Petitioner was held back in supporting a case in the Supreme Court and the junior Counsel for the 1st Respondent-Petitioner appeared and requested to take up the matter later. As there were no other cases for the bench to proceed with, the Court ordered the matter to be supported on 24th February 2022. Nonetheless, on 14th February itself, the Counsel for the Petitioner filed a motion to support the matter on 15th February 2022, which was denied by the learned High Court Judge.

The 1st Respondent-Petitioner contends that the aforesaid case bearing No. CHC 02/2022 CO was instituted by the Petitioner-Respondent despite the existence of a pending matter before the Commercial High Court of Colombo bearing No. CHC 78/2021 CO concerning the same subject matter, under which the learned High Court Judge had granted certain interim relief against the Petitioner-Respondent.

The 1st Respondent-Petitioner further contends that the Petitioner-Respondent's intention in instituting proceedings against the 1st to 6th Respondents in Case No. CHC/02/2022/CO has been to disrupt the smooth functioning of the 1st Respondent-Petitioner's company and its employees. The Petitioner further states that, despite the urgency of the matter, the learned High Court Judge has scheduled the case for hearing only on 24th February 2022. Therefore, the Petitioner has invoked the restitutionary/revisionary jurisdiction of this Court.

Aggrieved by the said denial to take up the matter on the 5th of February 2022, the 1st Respondent-Petitioner has filed this case seeking the 1st mentioned reliefs. Having supported the matter before this Court, the Court of Appeal has granted interim reliefs by issuing restraining orders staying the operation of the order made under paragraphs (n), (o), and (p) dated 26th January 2022 in addition to staying the proceedings in the Commercial High Court of Colombo in Case No. CHC/02/2022/CO. Subsequently, having heard the Petitioner-Respondent, the Court extended the restraining orders (n), (o), and (p) of the Commercial High Court in Case No. CHC/02/2022/CO. However, the stay order was not extended.

ISSUES

The 1st Respondent-Petitioner's main contention is that they have not been given an opportunity to be heard. When considering in light of the circumstances, the learned Commercial High Court Judge has granted the request of the counsel for the 1st Respondent-Petitioner and allowed to support the case on 14th of February 2022. However, when the matter was taken up on the particular day the Counsel was not present to support it and moved the court for it to be kept down, which could not be granted as there were no other matters for the court to go on, hence fixed the matter for 24th of February 2022. Meanwhile, on the same date, the counsel has requested the matter to be taken up on 15th of February 2022 which was rejected as a date has been given.

While endorsing the right of any party to be given an opportunity to be heard, it is noteworthy that the court having granted a date which the 1st Respondent-Petitioner requested, and the 1st Respondent-Petitioner failed to utilize such, it is quite questionable whether they should be given another opportunity as a right. In light of these circumstances, I am of the view that there cannot be any such right to be given a second chance. Therefore, the 1st Respondent-Petitioner's contention that they were not provided with an opportunity to be heard cannot be sustained.

The remedy of Restitutio-in-Integrum is an extraordinary remedy and will be granted only under exceptional circumstances. This has been clearly established in the case of ***Sri Lanka Insurance Corporation Ltd V. Shanmugam and Others [1995] 1 Sri LR 55;***

“Superior courts of this country have held that relief by way of Restitutio in Integrum in respect of judgments of original courts may be sought where (a) the judgments have been obtained by fraud, (Abeysekerasupra), by the production of false evidence. (Buyzer v. Eckert) (12) or nondisclosure of material facts, (Perera v. Ekanaike) (13), (or where judgment has been obtained by force or fraud, (Gunaratne v. Dingiri Banda (14), Jayasuriya v Kotelawela) (15), (b) Where fresh evidence has cropped up since judgment which was unknown earlier to the parties relying on it, (Sinnethamby-supra), and fresh evidence which no reasonable diligence could have helped to disclose earlier, (Mapalathan-supra). (c) Where judgments have been pronounced by mistake and decrees entered thereon, (Sinnethamby-supra), provided of course that it is an error which connotes a reasonable or excusable error, (Perera v. Don Simon) (16).”

Therefore, it is evident that the reliefs under an application for *restitutio in integrum* can only be provided under the circumstances set out above. However, the 1st Respondent-Petitioner has failed to prove any such exceptional circumstances in the present instance

Further, the Commercial High Court from where this application stems from is a court established under High Court of the Provinces (Special Provisions) Act No. 10 of 1996. Section 5(2) of the said Act emphasizes, that a party may appeal to the Supreme Court with leave to appeal being provided on any order of the High Court against an error of Law or Fact.

Section 5(2) of the High Court of the Provinces (Special Provisions) Act No. 10 of 1996, reads as follows,

“(2) Any person who is dissatisfied with any order made by a High Court established by Article 154P of the Constitution, in the exercise of its jurisdiction under section 2 in the course of any action, proceeding or matter to which such person is, or seeks to be, a party, may prefer an appeal to the supreme Court against such Order for the correction of any error in fact or in law, with the leave of the Supreme Court first had and obtained.”

Therefore, there seems to be a clear remedy available to the 1st Respondent-Petitioner which has not been exhausted. This alternative remedy debars the 1st Respondent-Petitioner from resorting to the reliefs sought under the *restitutio in integrum*/revision application.

Further, in the case of ***Sri Lanka Insurance Corporation Ltd. V. Shanmugam and Another (1994) 1 SLR 55***, Ranaraja J. held as follows:

“Restitutio in integrum being an extraordinary remedy, it is not to be given for the mere asking or where there is some other remedy available, Mapalathan v. Elayavan (7). It is a remedy which is granted under exceptional circumstances and the power of court should be most cautiously and sparingly exercised”

As established in the aforementioned case, the remedy of *restitutio in integrum* is not ordinarily granted when there exists an alternative remedy that the parties can pursue. This principle ensures that parties first exhaust any available statutory or procedural remedies before seeking such an extraordinary form of relief. In the present instance, there is a clear,

viable alternative remedy available to the 1st Respondent-Petitioner, which has not yet been exhausted. Despite this, the 1st Respondent-Petitioner has prematurely sought relief under the doctrine of restitutio in integrum, thereby bypassing the appropriate legal relief available.

CONCLUSION

When considering the facts of the case, the 1st Respondent-Petitioner's application primarily challenges the validity of the order issued by the Commercial High Court on 26th January 2022. It is clear that the appropriate and established legal remedy for such a challenge lies in exercising the remedy provided under Section 5(2) of the High Court of the Provinces (Special Provisions) Act No. 10 of 1996, which permits an appeal to the Supreme Court with leave, for the correction of any error in fact or law made by the Commercial High Court.

However, it is important to emphasize that this alternative remedy was readily available and, yet it was not pursued by the 1st Respondent-Petitioner before seeking extraordinary relief by way of *restitutio in integrum*/revisionary jurisdiction in this Court. The failure to exercise this existing alternative remedy undermines current application, as the remedy of restitutio in integrum is an extraordinary measure invoked under exceptional circumstances.

Moreover, having carefully considered all the facts and materials presented before this Court, it is my view that the 1st Respondent-Petitioner has failed to demonstrate any exceptional or extraordinary circumstances justifying the invocation of this Court's jurisdiction under Article 138 of the Constitution.

Therefore, this application is dismissed and the interim reliefs provided by this court are dissolved with a cost of Rs. 500,000 payable by the 1st Respondent –Petitioner to the Petitioner-Respondent.

Judge of the Court of Appeal

R. Gurusinghe J.

I agree

Judge of the Court of Appeal

