

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

In the matter of a Revision in terms of Article 138 of the Constitution read with Article 154(P)(3)(b) of the Constitution of the Democratic Socialist Republic of Sri Lanka and Section 11 of the High Court of Provinces (Special Provisions) Act No. 19 of 1990.

Ganeshan Yogachithra,

No.13, Puhulyaya,

Mahiyanganaya.

Court of Appeal

APPLICANT-PETITIONER

Revision Application No:

CA/CPA/114/23

Vs.

High Court

Revision Application No:

HCRA 33/2021

Baragama Kapu Gedara Sumith,

No.13, Puhulyaya,

Mahiyanganaya.

Magistrate's Court

RESPONDENT

Case No:

34197

AND BETWEEN

Ganeshan Yogachithra,

No.13, Puhulyaya,

Mahiyanganaya.

APPLICANT-PETITIONER- PETITIONER

Vs.

Baragama Kapu Gedara Sumith,

No.13, Puhulyaya,

Mahiyanganaya.

RESPONDENT-RESPONDENT

AND NOW BETWEEN

Ganeshan Yogachithra,

No.13, Puhulyaya,

Mahiyanganaya.

APPLICANT-PETITIONER-PETITIONER-

PETITIONER

Vs.

Baragama Kapu Gedara Sumith,

No.13, Puhulyaya,

Mahiyanganaya.

RESPONDENT-RESPONDENT-

RESPONDENT

Before : Sampath B. Abayakoon, J.

: P. Kumararatnam, J.

Counsel : Malintha Jayasinghe instructed by Nirodh De Silva
for the Applicant-Petitioner-Petitioner-Petitioner

Argued on : 13-09-2024

Decided on : 06-12-2024

Sampath B Abayakoon, J.

This is an application by the applicant-petitioner-petitioner (hereinafter referred to as the petitioner) seeking to invoke the revisionary jurisdiction granted to this Court in terms of Article 138 of the Constitution.

When this matter was supported before this Court, having considered the facts and the circumstances, this Court decided to issue notice on the respondent-respondent. However, despite the notice being issued and it being not returned, the respondent-respondent-respondent (hereinafter referred to as the respondent) failed to appear before this Court and make any submission in regard to the application filed by the petitioner.

At the hearing, this Court heard to the submissions of the learned Counsel for the petitioner in this regard.

This is a matter where the petitioner has initiated proceedings before the Magistrate's Court of Mahiyanganaya, under case number 34197 seeking relief in terms of the Prevention of Domestic Violence Act No. 34 of 2005 against the respondent who is her legally married husband.

In her petition before the Magistrate's Court, the petitioner has indicated her matrimonial home as the house situated at No.13, Puhulyaya, Mahiyanganaya. Her complaint had been to the effect that due to the continuous domestic violence towards her by the respondent, she was forced to leave the house together with her son and was forced to seek shelter in her mother's home.

After having examined her under oath, the learned Magistrate of Mahiyanganaya has initially issued an interim protection order against the respondent prohibiting him from entering the matrimonial home.

After a due inquiry held in that regard, the learned Magistrate of Mahiyanganaya of his order dated 31-03-2021 has decided to issue a protection order as the Act provides, in order to prevent the domestic violence on the petitioner by the respondent. In his order, the learned Magistrate has directed that the respondent is prohibited from entering the house of the mother of the petitioner on the basis that the petitioner is living in that house, and has decided against ordering the respondent to leave the matrimonial home.

Being aggrieved by the said order, the petitioner has filed an application of revision before the Provincial High Court of Uva Province holden in Badulla, without invoking the statutory guaranteed remedy of filing an appeal before the said High Court in terms of section 17 of the Prevention Domestic Violence Act.

The learned High Court Judge of Badulla after having considered the application has concluded that he does not find sufficient exceptional grounds to interfere with the order of the learned Magistrate of Badulla, and has concluded that the learned Magistrate has pronounced a proper order in order to prevent the incidents of domestic violence complained by the petitioner to the Magistrate's Court. Accordingly, the revision application has been dismissed.

It is on the basis of being aggrieved of the said judgment of the learned High Court Judge of the Provincial High Court of Uva Province holden in Badulla, the petitioner had preferred this application in revision to this Court.

Although this Court considered the application filed by the petitioner on its merit, this Court finds that in terms of section 10(2) of the Prevention of Domestic Violence Act, any protection order issued shall remain in force for a period of not exceeding 12 months only.

The relevant section 10(2) reads as follows;

10(2). A Protection Order shall remain in force for a period not exceeding 12 months as specified therein.

Hence, it is the considered view of this Court that pronouncing a judgment on this matter would be only be of an academic interest since the protection order made by the learned Magistrate of Mahiyanganaya on 31-03-2021 will no longer have any validity before the law.

Since this Court does not find a basis to pronounce a judgment on any questions of law based on the facts relevant to this case, this Court finds no reasons to interfere with the Judgment pronounced by the learned High Court Judge of Badulla and also the order made by the learned Magistrate of Mahiyanganaya.

Accordingly, the revision application is dismissed for the reasons considered above on the basis that pronouncing a judgment in this regard would be a futile exercise.

The Registrar of the Court is directed to communicate this order to the Provincial High Court of the Uva Province holden in Badulla, and to the Magistrate's Court of Mahiyanganaya for information.

Judge of the Court of Appeal

P Kumararatnam, J.

I agree.

Judge of the Court of Appeal