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

In the matter of an application for revision under Article 138 of the Constitution.

Court of Appeal Case No: CA/CPA/0098/2022

High Court Case No: ALT/09/2019

Labour Tribunal Court Case Nos:
MH/33/152/2013
MH/33/1153/2013

1. **J. Chathuranga Dharmakeerthi**,
   No. 21, Koboduwa Road,
   Kuda Waskaduwa,
   Waskaduwa.

2. **S.S. Bastian**, alias Bastian Sundararajan No. 58/19,
   Lords Place,
   Kandana.

Applicants

Vs.

Lucky Homes (Private) Limited,
No. 145/1, High Level Road,
Pannipitiya.

Respondent

AND

Lucky Homes (Private) Limited,
No. 145/1, High Level Road,
Pannipitiya.

Respondent-Appellant

Vs.

1. **J. Chathuranga Dharmakeerthi**,
   No. 21, Koboduwa Road,
   Kuda Waskaduwa,
   Waskaduwa.

2. **S.S. Bastian**, alias Bastian
Sundararajan No. 58/19,
Lords Place,
Kandana.

Applicant-Respondents

AND NOW

1. **J. Chathuranga Dharmakeerthi**,
No. 21, Koboduwa Road,
Kuda Waskaduwa,
Waskaduwa.

2. **S.S. Bastian**, alias Bastian
Sundararajan No. 58/19,
Lords Place,
Kandana.

Applicant-Respondent-Petitioners

Vs.

Lucky Homes (Private) Limited,
No. 145/1, High Level Road,
Pannipitiya.

Respondent-Appellant-Respondent

Before : **D. THOTAWATTA, J.**
K. M. S. DISSANAYAKE, J.

Counsel : Sandamal Rajapakse with Kalpanee Dissanayake for the Applicant-Respondent-Petitioners.
Isuru Lakpura for the Respondent-Appellant-Respondent.

Argued on : 08.09.2025

Written Submissions of the Applicant-Respondent -Petitioners tendered on	:	26.11.2025
Written Submissions of the Respondent-Appellant -Respondent tendered on	:	21.10.2025 and 07.11.2025
Decided on	:	23.01.2026

K. M. S. DISSANAYAKE, J.

Instant application in revision has been preferred to this Court by the Applicant-Respondent-Petitioners (hereinafter called and referred to as 'the Petitioners") seeking to revise and set aside an interlocutory order dated 12.07.2022, made by the learned High Court Judge of the Western Province holden at Homagama in an action bearing No. ALT 09/2019 in the exercise of the appellate jurisdiction vested in it by Article 154P(3)(b) of the Constitution of the Democratic Socialist Republic of Sri Lanka (hereinafter called and referred to as 'the Constitution") to be read with Article 138 of the Constitution, a certified copy of which was annexed to the petition furnished to this Court by Petitioners marked as **X10** (hereinafter called and referred to as 'the HC order") whereby, he had made order allowing an application made to it by the Respondent-Appellant-Respondent (hereinafter called and referred to as 'the Respondent") to receive and admit new evidence additional to, or supplementary of, the evidence already taken in the labour tribunal in the form of documents marked as A1 to A6. The Respondent had at the outset, raised an objection as to the jurisdiction of this Court over the instant matter mainly, relying on the decision in **W.T.S. Nilantha Fernando Vs. P.M.S. Nilanthi Perera-SC-APPEAL 65/2025-DECIDED ON 10.10.2025**, and it is to the following effect;

> "Does the Court of Appeal have a revisionary jurisdiction in terms of Article 138 of the Constitution in respect of a decision of the Provincial High Court

made in the exercise of the appellate jurisdiction in terms of section 31D of the Industrial Dispute Act No. 43 of 1950 as amended?."

On the other hand, the Petitioners had mainly, relying on the decision in **Gunawardane and Others Vs. Muthukumarana and Others-2020 [3] SLR 306** sought to resist it.

It may now, be examined.

At the outset, it is to be observed that the order impugned (**X10**) is an interlocutory order made by the learned High Court Judge of the Western Province holden at Homagama in an action bearing No. ALT 09/2019 in the exercise of the appellate jurisdiction vested in it by Article 154P(3)(b) of the Constitution to be read with Article 138 of the Constitution.

Now the pertinent question that would arise for our consideration is whether an interlocutory order made by a High Court established by Article 154P of the Constitution in the exercise of the appellate jurisdiction vested in it by section 3 of the Act in respect of an order of the Labour Tribunal is amendable to an extra-ordinary revisionary jurisdiction of this Court when proviso to section 9(a) of the Act expressly, confers upon a party aggrieved by such an order a right of appeal to the Supreme Court with special leave to appeal first had and obtained.

Article 138(1) of the Constitution enacts that,

> "The Court of Appeal shall have and exercise subject to the provisions of the Constitution or of any law, an appellate jurisdiction for the correction of all errors in fact or in law which shall be [committed by the High Court, in the exercise of its appellate or original jurisdiction or by any Court of First Instance], tribunal or other institution and sole and exclusive cognizance, by way of appeal, revision and restitutio in integrum, of all causes, suits, actions, prosecutions, matters and things [of which such High Court, Court of First Instance], tribunal or other institution may have taken cognizance…"

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It was *inter-alia,* held by the Supreme Court in **Weragama v. Eksath Lanka Wathu Kamkam Samithiya and others-1994[1] SLR 329**, that "....however, the jurisdiction of the Court of Appeal under Article 138 is not an entrenched jurisdiction, because Article 138 provides that it is subject to the provisions "of any law"; hence it was always constitutionally permissible for that jurisdiction to be reduced or transferred by ordinary law (of course, to a body entitled to exercise judicial power). That is the reason why I held in Swastika Textile Industries Ltd. v. Dayaratne, that section 3 of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990, conferred concurrent, appellate and revisionary jurisdiction on the High Courts in respect of Labour Tribunals, and that thereafter section 31D3 of the Industrial Disputes Act, as amended by Act No. 32 of 1990, made that jurisdiction exclusive, thereby taking away the jurisdiction of the Court of Appeal in that respect.

It was *inter-alia*, held by the Supreme Court in **SC/Appeal/65/2025-Decided on 10.10.2025** at page 32 that, "In this context, it would be legally impermissible and institutionally unsound for the Court of Appeal, in *pari materia*, to sit in appeal over judgments and orders pronounced by a Provincial High Court in the exercise of its appellate or revisionary jurisdiction. A party cannot pursue successive appeals before two courts of coordinate jurisdiction in respect of the same matter. This strikes at the very root of the issue. Such a practice is inimical to legislative intent, imposes unnecessary burdens on the judicial system, and undermines the principle of finality in litigation. These considerations make clear that concurrent jurisdiction was intended to provide an alternative forum for appellate review, not to create an additional tier in the appellate hierarchy.".

Hence, it becomes manifest that the jurisdiction of the Court of Appeal under Article 138 is not entrenched and therefore, not absolute and as such it is inherently, conditional and it can thus, be altered by ordinary law as held by Supreme Court in **Weragama v. Eksath Lanka Wathu Kamkam Samithiya and**

others (Supra) and in **Swasthika Textiles Industries Ltd Vs Dayaratne-1993 [2] SLR 348**

The Thirteenth Amendment to the Constitution enacted Article 154P(1) to the Constitution and it reads thus;

> "There shall be a High Court for each Province with effect from the date on which this Chapter comes into force. Each such High Court shall be designated as the High Court of the relevant Province."

Hence, Article 154P(1) of the Constitution so enacted by the Thirteenth Amendment, made provisions for the establishment of the High Courts in the provinces.

Article 154P(3)(b) of the Constitution enacted by the Thirteenth Amendment to the Constitution, reads thus;

> "Every such High Court shall –
>
> (b) **notwithstanding anything in Article 138 and subject to any law**, exercise, appellate and revisionary jurisdiction in respect of convictions, sentences and orders entered or imposed by Magistrates Courts and Primary Courts within the Province;" [Emphasis is mine]

Hence, Article 154P(3)(b) conferred upon the High Court so established under Article 154P(1) the appellate and revisionary jurisdiction in respect of convictions, sentences and orders entered or imposed by Magistrates Courts and Primary Courts within the Province **notwithstanding anything in Article 138 and subject to any law**. [Emphasis is mine]

Article 154P(6) of the Constitution enacted by Thirteenth Amendment to the Constitution confers upon any person aggrieved by a final order, judgment or sentence of any such High Court so established under Article 154P(1) of the Constitution made in the exercise of its jurisdiction under paragraphs (3)(b) or (3)(c) or (4) a right of appeal to the Court of Appeal in accordance with Article

138 of the Constitution subject to the provisions of the Constitution and any law and it reads thus;

> "(6) **subject to the provisions of the Constitution and any law**, any person aggrieved by a final order, judgment or sentence of any such Court, in the exercise of its jurisdiction under paragraphs (3)(b) or (3)(c) or (4) may appeal there from to the Court of Appeal **in accordance with Article 138**." [Emphasis is mine]

However, no provision was made with regard to the procedure to be followed in such High Courts. With a view to providing for the lacuna in the law with regard to the procedure to be followed in the High Court of the Provinces, so established under Article 154P(1) of the Constitution which enacted by the Thirteenth Amendment to the Constitution, the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990 (hereinafter called and referred to as 'the Act") was enacted making provision "regarding the procedure to be followed in, and the right to appeal to, and from, the High Court established under Article 154P of the Constitution".

The Act also made provision for the appeals to be brought in before the Court of Appeal as well as the Supreme Court from the High Court. While section 9 of the Act provides for the appeals to Supreme Court from High Court, section 11 thereof provides for appeals to Court of Appeal from the High Court established under Article 154P of the Constitution.

Section 9 of the Act reads thus;

> "9. **Subject to the provisions of this Act or any other law**, any person aggrieved by
>
> (a) **a final order**, **judgment**, **decree** or **sentence** of a High Court established by Article 154P of the Constitution in the exercise of the appellate jurisdiction vested in it by paragraph (3) (b) of Article 154P of the Constitution **or section 3 of this Act** or any other law, in any matter or

proceeding whether civil or criminal which involves a substantial question of law, **may appeal therefrom to the Supreme Court if the High Court grants leave to appeal to the Supreme Court ex mero motu** or **at the instance of any aggrieved party to such matter or proceedings** :

Provided that the Supreme Court may, **in its discretion**, **grant special leave to appeal to the Supreme Court from "any final"** or "**interlocutory order"**, judgment, decree or sentence made by such High Court, in the exercise of the appellate jurisdiction vested in it by paragraph (3) (b) of Article 154P of the Constitution or **section 3 of this Act**, or any other law **where such High Court has refused to grant leave to appeal to the Supreme Court**, or **where in the opinion of the Supreme Court, the case or matter is fit for review by the Supreme Court:**

Provided further that the Supreme Court shall grant leave to appeal in every matter or proceeding in which it is satisfied that the question to be decided is of public or general importance; and

(b) a final order, judgment or sentence of a High Court established by Article 154P of the Constitution in the exercise of its jurisdiction conferred on it by paragraph (3) (a), or (4) of Article 154P of the Constitution may appeal therefrom to the Court of Appeal."[Emphasis is mine]

Section 3 of the Act enacts thus;

"A High Court established by Article 154P of the Constitution for a Province shall, **subject to any law**, exercise appellate and revisionary jurisdiction **in respect of orders made by Labour Tribunals within that Province** and orders made under section 5 or section 9 of the Agrarian Services Act, No. 58 of 1979, in respect of any land situated within that Province". [Emphasis is mine]

Section 31DD(1) of the Industrial Dispute's Act 43 of 1950 (as amended) enacts thus;

> "Any workman, trade union or employer who is aggrieved "**by any final order"** of a High Court established under Article 154P of the Constitution, **in the exercise of the appellate jurisdiction vested in it by law** or in the exercise of its revisionary jurisdiction vested in it by law, **in relation to an order of a labour tribunal**, may appeal therefrom to the Supreme Court **with the leave of the High Court** or **the Supreme Court** first had and obtained."

Upon a careful analysis of section 9(a) of the Act, it becomes manifestly, clear that, subject to the provisions of the Act or any other law, any person aggrieved by **a final order**, **judgment**, **decree** or **sentence** of a High Court established by Article 154P of the Constitution in the exercise of the appellate jurisdiction vested in it by paragraph (3)(b) of Article 154P of the Constitution **or section 3 of the Act** or any other law, in any matter or proceeding whether civil or criminal which involves a substantial question of law, **may appeal therefrom to the Supreme Court if the High Court grants leave to appeal to the Supreme Court *ex mero motu*** or **at the instance of any aggrieved party to such matter or proceedings**. Hence, it inevitably, follows therefrom that section 9(a) of the Act does not in any manner, confer upon the Court of Appeal jurisdiction to grant leave to appeal *ex mero motu* or at the instance of any aggrieved party to such matter or proceedings **from an interlocutory order** made by a High Court established by Article 154P of the Constitution in the exercise of the appellate jurisdiction vested in it by paragraph (3) (b) of Article 154P of the Constitution **or section 3 of the Act** or any other law, in any matter or proceeding whether civil or criminal which involves a substantial question of law. [Emphasis is mine]

Similar provision can be found in section 31DD(1) of the Industrial Disputes Act as amended which provides that "Any workman, trade union or employer who is aggrieved "**by any final order"** of a High Court established under Article 154P of the Constitution, **in the exercise of the appellate jurisdiction vested in it by law** or in the exercise of its revisionary jurisdiction vested in it by law, **in relation to an order of a labour tribunal**, may appeal therefrom to the Supreme

Court **with the leave of the High Court** or **the Supreme Court** first had and obtained.".[Emphasis is mine]

Upon a careful analysis of section 9(a) of the Act and section 31DD(1) of the Industrial Disputes Act as amended, it becomes abundantly, clear that neither section, namely; section 9(a) of the Act or section 31DD(1) of the Industrial Disputes Act as amended, provides for a right of appeal to the Supreme Court **with the leave of the High Court** or **the Supreme Court** first had and obtained from an **"interlocutory order"** of a High Court established under Article 154P of the Constitution, **in the exercise of the appellate jurisdiction vested in it by section 3 of the Act**, **in relation to an order of a labour tribunal**. [Emphasis is mine]

Conversely, the 1st proviso to section 9(a) of the Act expressly, confers upon the Supreme Court the jurisdiction to grant **in its discretion**, special leave to appeal **to the Supreme Court from "any interlocutory order"** made by such High Court, in the exercise of the appellate jurisdiction vested in it by **section 3 of this Act**, **where such High Court has refused to grant leave to appeal to the Supreme Court**, or **where in the opinion of the Supreme Court, the case or matter is fit for review by the Supreme Court**. [Emphasis is mine]

Hence, it becomes manifestly, clear without an iota of doubt upon careful analysis of 1st proviso to section 9(a) of the Act that it expressly, confers upon the Supreme Court the jurisdiction to grant in its discretion, special leave to appeal to it from **"any interlocutory order"** made by such High Court, in the exercise of the appellate jurisdiction vested in it by **section 3 of this Act** in relation to an order of the labour tribunal in those instances, namely; a) **where such High Court has refused to grant leave to appeal to the Supreme Court**, or b) **where in the opinion of the Supreme Court, the case or matter is fit for review by the Supreme Court**. [Emphasis is mine]

In the circumstances, it becomes manifestly, clear that 1st proviso to section 9(a) of the Act expressly, provides for a right of appeal to the Supreme Court from an

interlocutory order made by such High Court, in the exercise of the appellate jurisdiction vested in it by **section 3 of this Act** in relation to an order of the labour tribunal with special leave to appeal first had and obtained from the Supreme Court under any of those circumstances as enumerated therein. [Emphasis is mine]

Hence, it becomes manifestly, clear upon a careful analysis of the provisions enumerated above taken cumulatively, that the legislature had expressly, and unambiguously, provided for a right of appeal **"only"** to the Supreme Court **both** from **a final order** as well as from **an interlocutory order** made by such High Court in the exercise of the appellate jurisdiction vested in it by **section 3 of this Act** in relation to an order of the labour tribunal with special leave to appeal first had and obtained from the Supreme Court under any of those circumstances as enumerated therein. [Emphasis is mine]

Now, the pertinent question is; What was the specific objective that the legislature intended to achieve by expressly, unequivocally and unambiguously, providing for a right of appeal "**only**" to the apex Court of this country-the Supreme Court, to an aggrieved party by enacting a proviso to section 9(a) of the Act **"from an interlocutory order"** made by a High Court established by Article 154P of the Constitution in the exercise of the appellate jurisdiction vested in it by section 3 of the Act in relation to an order of the labour tribunal with special leave to appeal first had and obtained therefrom under any of those circumstances set out in proviso to section 9(a) of the Act in the same way as from a final order as provided for by section 9(a) of the Act as well as by section 31DD(1) of the Industrial Disputes Act as amended?. In my view, the specific objective intended to be achieved by the legislature thereby, was to arrest delays in the administration of justice, which would in turn, result in the early and expeditious disposal of the disputes arising out of labour matters for; resolution of disputes as such expeditiously, is an essential element for the smooth and fast economic growth of this Country. [Emphasis is mine]

The next question that would then arise for our consideration in view of the jurisdictional objection so raised to us by the respondent would be; "In the light of the law set out above, does the Court of Appeal have a revisionary jurisdiction in terms of Article 138 of the Constitution in respect of a decision of the Provincial High Court made in the exercise of the appellate jurisdiction in terms of section 31D of the Industrial Dispute Act No. 43 of 1950 as amended?."

It was observed by the Supreme Court in **Gunawardane And Others Vs. Muthukumarana and Others (Supra)** at page 314 that, "*At the outset, it must be borne in mind that the revisionary jurisdiction of the Court of Appeal is a Constitutional mandate. Its genesis lies in Article 138 of the Constitution. There is no question that the Constitution is the supreme law of the land (vide In Re Reference under Article 125(1) of the Constitution. In those circumstances, any ouster or restriction of a Court's jurisdiction which is founded on the Constitution, in so far as it is permitted under the Constitution, must be made in express language. In Re the Nineteenth Amendment to the Constitution, a bench of 7 judges unequivocally opined that "This manifests a cardinal rule that applies to the interpretation of a Constitution, that there can be no implied amendment of any provision of the Constitution" (at page 110). Therefore, it is only right and befitting that this Court insists that every provision which restricts or modifies a Court's Constitutional mandate is express and set out in no uncertain terms*.".

It is in this context, I would think it expedient at this juncture to direct my judicial mind to the observations explicitly, made by the Supreme Court in a later case in **W.T.S. Nilantha Fernando Vs. P.M.S. Nilanthi Perera (Supra)**, dealing with the observations so made by the Supreme Court in ***Gunawardane v. Muthukumarana* (Supra)**, and they may be reproduced *verbatim* the same as follows to the extent that would be necessary for the proper resolution of the jurisdictional objection so raised by the Respondent before us as enumerated above;

"*The Court of Appeal relied heavily on the judgment of this court in Gunawardane v. Muthukumarana [2020] 3 Sri LR 306 in overruling the preliminary objection raised by the defendant on jurisdiction. In that case, at page 310, this court held as follows: Section 9 of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990, as amended, does not oust the revisionary jurisdiction of the Court of Appeal in respect of decisions made by a Provincial High Court exercising its appellate powers. Therefore, the revisionary jurisdiction of the Court of Appeal referred to in Article 138 of the Constitution of the Republic of Sri Lanka can be invoked in order to canvass a decision made by a Provincial High Court exercising its appellate powers.*

With all due respect, I am unable to agree with that conclusion. That judgment is predominantly premised on the conceptual separation of revision from appeal, in the manner adopted by Sansoni C.J. in the oft quoted decision in Mariam Beebee v. Seyed Mohomed (1965) 68 NLR 36, where it was observed at page 38:

The power of revision is an extraordinary power which is quite independent of and distinct from the appellate jurisdiction of this Court. Its object is the due administration of justice and the correction of errors, sometimes committed by this Court itself, in order to avoid miscarriages of justice. It is exercised in some cases by a Judge of his own motion, when an aggrieved person who may not be a party to the action brings to his notice the fact that, unless the power is exercised, injustice will result. The Partition Act has not, I conceive, made any change in this respect, and the power can still be exercised in respect of any order or decree of a lower Court.

When Mariam Beebee v. Seyed Mohomed was decided in 1965, Sri Lanka was governed by the Soulbury Constitution. Neither the Soulbury Constitution nor the First Republican Constitution of 1972 contained any provision equivalent to Article 138 of the present Constitution of 1978, which

expressly enacts the appellate, revisionary, and restitutio in integrum jurisdiction of the Court of Appeal, to be exercised "subject to the provisions of the Constitution or of any law."

Indeed, the Supreme Court in Gunawardane, at page 314, acknowledged: "At the outset, it must be borne in mind that the revisionary jurisdiction of the Court of Appeal is a Constitutional mandate. Its genesis lies in Article 138 of the Constitution." However, both the Supreme Court in Gunawardane and the Court of Appeal in the instant case failed to properly appreciate that Article 138 is not an entrenched provision but an enabling one. Article 138(1) itself makes plain that the appellate jurisdiction of the Court of Appeal "by way of appeal, revision and restitutio in integrum" is "subject to the provisions of the Constitution or of any law". Nevertheless, both courts proceeded on the footing that, in the absence of an express exclusion, the Court of Appeal continues to retain revisionary jurisdiction over judgments of the Provincial High Court.

At page 316 of Gunawardane, it was further stated: "As I observed earlier, the revisionary jurisdiction of the Court of Appeal is a Constitutional mandate which, undoubtedly, is subject to the provisions of statutory law. Nevertheless, owing to its genesis in the Constitution, any restriction or modification which the Legislature seeks to introduce must be introduced by way of express wording." In my view, this reasoning is untenable. Whilst conferring revisionary jurisdiction on the Court of Appeal, the Constitution itself expressly stipulates that such jurisdiction is "subject to the provisions of the Constitution or of any law." When the Constitution at the outset makes clear that the revisionary jurisdiction is conditional and not absolute, there is no need for express words of exclusion. Parliament, by ordinary legislation, is empowered to regulate, modify, or reallocate such jurisdiction. To hold otherwise would elevate Article 138(1) to a status of entrenchment which the Constitution has not conferred.

This is consistent with the principle affirmed in Swasthika Textile Industries Ltd v. Dayaratne, where the Supreme Court held that appellate and revisionary jurisdiction under Article 138(1) is not entrenched and can be altered by ordinary law. In that case, the Supreme Court held that section 31DD, introduced into the Industrial Disputes Act by Act No. 32 of 1990, which provides that: "Any workman, trade union or employer who is aggrieved by any final order of a High Court established under Article 154P of the Constitution, in the exercise of the appellate jurisdiction vested in it by law or in the exercise of its revisionary jurisdiction vested in it by law, in relation to an order of a Labour Tribunal, may appeal therefrom to the Supreme Court with the leave of the High Court or the Supreme Court first had and obtained", removed the appellate and revisionary jurisdiction of the Court of Appeal in respect of final orders of the High Court made in relation to orders of Labour Tribunals, and vested such jurisdiction exclusively in the Supreme Court. In that instance also, there was no express removal of the revisionary jurisdiction of the Court of Appeal. This position was subsequently accepted as correct by a Bench of five Judges of this court in Abeywardene v. Ajith De Silva [1998] 1 Sri LR 134 at 140.

As I have emphasised repeatedly, Provincial High Courts were vested with special jurisdiction under Acts Nos. 19 of 1990, 10 of 1996, and 54 of 2006 with the specific objective of arresting delays in the administration of justice. Sansoni C.J. in Mariam Beebee v. Seyed Mohomed did not recognise the revisionary power as an absolute and unqualified principle of law; rather, His Lordship acknowledged that its exercise is subject to legislative intent. This is apparent from his explicit observation in the above excerpt that "The Partition Act has not, I conceive, made any change in this respect, and the power [of revision] can still be exercised in respect of any order or decree of a lower Court", thus recognising that the legislature could, through statute, alter or limit the scope of revisionary powers.

Unlike the Partition Act considered in Mariam Beebee, Acts Nos. 19 of 1990, 10 of 1996, and 54 of 2006 expressly restructure appellate jurisdiction and, by their terms, exclude any intermediate recourse to the Court of Appeal from judgments and orders of Provincial High Courts exercising their appellate jurisdiction. The legislative design, read together with the enabling nature of Article 138, leaves no scope for the Court of Appeal to invoke its appellate, revisionary or restitutio in integrum jurisdiction in such instances, without disregarding the clear statutory command and frustrating the very object of the Provincial High Court scheme."

I would therefore, hold following the decision of a bench of five judges of the Supreme Court in **Abeywardene v. Ajith De Silva 1998 [1] SLR 134 at Page 140** and the decision of the Supreme Court in **Swasthika Textile Industries Ltd v. Dayaratne (Supra)** and the recent decision of the Supreme Court in **W.T.S. Nilantha Fernando Vs. P.M.S. Nilanthi Perera (Supra)**, that while conferring revisionary jurisdiction on the Court of Appeal, the Constitution itself expressly enunciates that such jurisdiction is "subject to the provisions of the Constitution or of any law" and therefore, its exercise is subject to legislative intent; and that when the Constitution at the outset makes clear that the revisionary jurisdiction is conditional and not absolute, there is no need for express words of exclusion; and that Parliament, by ordinary legislation, is thus, empowered to regulate, modify, or re-allocate such jurisdiction; and that to hold otherwise would elevate Article 138(1) to a status of entrenchment which the Constitution has not conferred; and that in the result, appellate and revisionary jurisdiction under Article 138(1) which is not entrenched, can be altered by ordinary law; and that **more particularly**, section 31DD which introduced into the Industrial Disputes Act by Act No. 32 of 1990, which provides that: "Any workman, trade union or employer who is aggrieved by any final order of a High Court established under Article 154P of the Constitution, in the exercise of the appellate jurisdiction vested in it by law or in the exercise of its revisionary jurisdiction vested in it by law, in relation to an order of a Labour Tribunal, may

appeal therefrom to the Supreme Court with the leave of the High Court or the Supreme Court first had and obtained", and 1st Proviso to section 9(a) of the Act had clearly, **removed the revisionary jurisdiction of the Court of Appeal in respect of both the final orders as well as interlocutory orders of the High Court established under Article 154P of the Constitution**, in the exercise of the appellate jurisdiction vested in it by section 3 of the Act or in the exercise of its revisionary jurisdiction vested in it by law, made in relation to orders of Labour Tribunals, and **vested such jurisdiction "exclusively" in the Supreme Court** for; in that instance too, there was no express removal of the revisionary jurisdiction of the Court of Appeal. [Emphasis is mine]

It is to be observed that the pivotal question that arose before this Court for our consideration is; "Does the Court of Appeal have a revisionary jurisdiction in terms of Article 138 of the Constitution in respect of a decision of the Provincial High Court made in the exercise of the appellate jurisdiction in terms of section 31D of the Industrial Dispute Act No. 43 of 1950 as amended?" and therefore, legal effect of both the proviso to section 9(a) of the Act as well as section 31DD(1) of the Industrial Dispute's Act had directly, come before us for our consideration, whereas, the pivotal question that arose before the Supreme Court in the decision in ***Gunawardane v. Muthukumarana*** **(Supra)** for its consideration was whether "Having failed to exercise the right to file an appeal in terms of section 9 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended, could a person invoke the revisionary jurisdiction of the Court of Appeal referred to in Article 138 of the Constitution of the Republic of Sri Lanka in order to canvass a decision made by a Provincial High Court exercising its appellate powers?", and hence, the legal effect of the proviso to section 9(a) of the Act or the section 31DD(1) of the Industrial Dispute's Act had never been the subject matter of the said case that had come before the Supreme Court for its consideration, and therefore, Supreme Court had no occasion to examine the legal effect of section 9(a) of the Act or the section 31DD(1) of the Industrial Dispute's Act and hence, the facts of this case are different from the facts of the

said Supreme Court decision and therefore, the decision of the Supreme Court in ***Gunawardane v. Muthukumarana*** **(Supra)** can clearly, be distinguishable from the facts of the instant application in revision before us and therefore, I would most respectfully, and humbly, state that the decision of the Supreme Court in ***Gunawardane v. Muthukumarana*** **(Supra)** has no bearing on the instant application in revision before us.

In view of the foregoing, I would hold that the Court of Appeal does not have revisionary jurisdiction vested in it in terms of Article 138 of the Constitution in respect of an interlocutory order of the Provincial High Court established by Article 154P of the Constitution and made in the exercise of the appellate jurisdiction in terms of section 31D of the Industrial Dispute Act No. 43 of 1950 as amended in relation to an order of a Labour Tribunal by reason of the fact that 1st Proviso to section 9(a) of the Act had clearly, removed the revisionary jurisdiction of the Court of Appeal in respect of the interlocutory order of the High Court established under Article 154P of the Constitution made in the exercise of the appellate jurisdiction vested in it by section 3 of the Act or in the exercise of its revisionary jurisdiction vested in it by law and made in relation to orders of Labour Tribunals, and vested such jurisdiction "exclusively" in the Supreme Court.

In the circumstances, the preliminary objection so raised by the Respondent is entitled to succeed in law and as such it is upheld.

In the result, I would dismiss the instant application in revision *in limine* with costs.

JUDGE OF THE COURT OF APPEAL

D. THOTAWATTA, J.

I agree.

JUDGE OF THE COURT OF APPEAL