

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

In the matter of an application for *Restitutio-In-Integrum* and Revision under and in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka

Court of Appeal

Case No: RII/0072/2024

Shenuka Anne Shireen Perera
No. 134/12, Dutugamunu Street,
Kohuwala, Nugegoda

District Court of Nugegoda

Case No: D/5974/2023

Plaintiff

Jason Lishon Batcho
No. 134/12 Dutugamunu Street,
Kohuwala, Nugegoda.

Defendant

AND NOW

Jason Lishon Batcho
No. 134/12 Dutugamunu Street,
Kohuwala, Nugegoda.

Defendant-Petitioner

Vs.

Shenuka Anne Shireen Perera
No. 134/12 Dutugamunu Street,
Kohuwala, Nugegoda.

Plaintiff-Respondent

Before :

R. Gurusinghe J
&
Dr. S. Premachandra, J

Counsel : Varuna Nanayakkara
for the Petitioner

Tharaka Nanayakkara with Dileepa Fernando
Instructed by Neethika Partners
for the Plaintiff-Respondent

Argued on : 22-10-2025

Decided on : 20-11-2025

JUDGMENT

R. Gurusinghe J

The wife of the petitioner, the plaintiff in Case No. D/5974/2023 in the District Court of Nugegoda, obtained two interim injunction orders namely, an interim injunction preventing the petitioner (the defendant in that case) from taking away the child of the marriage from the custody of the plaintiff-respondent without an order from a competent court, and an interim injunction preventing the defendant from entering the matrimonial home.

Being dissatisfied with the above two injunctions, the petitioner filed a leave to appeal application in the Civil Appellate High Court of Mount Lavinia, in terms of the provisions of section 5 of the High Court of the Provinces (Special Provisions) Act No. 1990 as amended by Amendment Act No. 54 of 2006.

The petitioner, without supporting the above application, which is still pending before the Civil Appellate High Court of Mount Lavinia, filed this *Restitutio-in-Integrum* application. *Restitutio-in-Integrum* is an extraordinary remedy granted to a petitioner in exceptional circumstances where the petitioner has no other remedy available in law.

In the case of Periera vs. Wijewickrama, 15NLR 411, Periera J. held, “*the remedy of restitution was not granted unless no other remedy was available to the applicant or unless Restitution was the more effective remedy* (Voet 4, 1, 13, 14).

In the case of Menchinahamy vs. Muniweera, 52NLR 409, Dias S.P.J. held “*the remedy by way of Restitutio in Integrum is an extraordinary remedy and is given under exceptional circumstances.... Restitutio in Integrum is not available if the petitioner has another remedy open to her.*”

In Sri Lanka Insurance Corporation vs Shanmugam and another [1995] 1 Sri LR 55, Ranaraja J. held “*Restitution is granted only if no other remedy is available to the party aggrieved.*”

The orders canvassed in this application are not final orders. Those orders are valid until the case is over. If the circumstances are changed, the same court can vary those orders. A party dissatisfied with any order made by the District Court may prefer an appeal to the Civil Appellate High Court. The petitioner has already exercised that right of appeal.

Restitutio-in-Integrum is an equitable remedy that may be invoked at the discretion of court. If some other adequate remedy is available, as pointed out by the abovementioned case laws, *Restitutio-in-Integrum* will not lie. The petitioner has the right to proceed with the leave to appeal application that he has already filed in the Civil Appellate High Court of Mount Lavinia. I have not considered the merits of this application, leaving them to be considered by the Learned Judges of the High Court of Mount Lavinia.

For the reasons stated above, the application of the petitioner is dismissed.

Judge of the Court of Appeal.

Dr. S. Premachandra J.

I agree.

Judge of the Court of Appeal.