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

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

Court of Appeal Case No:
CA/PHC/0117/2018

Kandy High Court No:
WRT 42/2015

R.M.B.G. Heenbanda,
No. 27/1, Galkanda,
Rambukewela.

Petitioner

Vs.

1. **N. S. Senadheera**,
   Commissioner of Co-operative Development & Registrar (Central Province),
   Department of Co-operative Development-Central Province,
   Ehalepola Kumarihamy Mawatha,
   Bogambara, Kandy.

2. **Pujapitiya Multipurpose Co-operative Society Ltd**,
   Pujapitiya.

3. **Gayan Bandara Wijesundere**,
   Arbitrator,
   Sudharshana Mawatha,
   Mawathagama.

Respondents

AND NOW BETWEEN

R.M.B.G. Heenbanda,
No. 27/1, Galkanda,
Rambukewela.

Petitioner-Appellant

Vs.

1. **N. S. Senadheera**,
   Commissioner of Co-operative Development & Registrar (Central Province),
   Department of Co-operative Development-Central Province,
   Ehalepola Kumarihamy Mawatha,
   Bogambara, Kandy.

1. **Amila Navarathna**,
   Commissioner of Co-operative Development & Registrar (Central Province),
   Department of Co-operative Development-Central Province,
   Ehalepola Kumarihamy Mawatha,
   Bogambara, Kandy.

Substituted 1st-Respondent-Respondent

2. **Pujapitiya Multipurpose Co-operative Socicty Ltd**,
   Pujapitiya.

3. **Gayan Bandara Wijesundere**,
   Arbitrator,
   Sudharshana Mawatha,
   Mawathagama

Respondents-Respondents

Before	:	**D. THOTAWATTA, J.** **K. M. S. DISSANAYAKE, J.**
Counsel	:	Upul Ranjan Hewage with Ms. Kaushali Samaratunga for the Petitioner-Appellant. Prabashini Jayasekara, S.C. for the 1st and 3rd Respondents- Respondents. A. M. E. B. Athapattu with Dinendra Senaratne for the 2nd Respondent-Respondent.
Argued on	:	09.07.2025
Written Submissions of the Petitioner -Appellant tendered on	:	11.01.2023
Written Submissions of the 1st and 3rd Respondents -Respondents tendered on	:	29.04.2022.
Written Submissions of the 2nd Respondent -Respondent tendered on	:	26.03.2024.
Decided on	:	07.11.2025

K. M. S. DISSANAYAKE, J.

The instant appeal arises from an order of the learned High Court Judge of the Central Province holden in Kandy dated 12.07.2018 (hereinafter called and referred to as "the order") wherein the learned High Court Judge had dismissed an application made thereto by the Petitioner-Appellant (hereinafter called and referred to as "the Appellant") praying for orders in the nature of a writ of *certiorari* quashing the decision made by the 1st Respondent-Respondent (hereinafter called and referred to as "the 1st Respondent") and contained in

ඉඅ**7** dismissing the appeal preferred to him by the Appellant (ඉඅ**5**) against the arbitral award made by the 3rd Respondent-Respondent (hereinafter called and referred to as "the 3rd Respondent") (ඉඅ**2**), appointed by the 1st Respondent to arbitrate the dispute that had arisen between the 2nd Respondent-Respondent (hereinafter called and referred to as "the 2nd Respondent") and the Appellant, for the failure on the part of the Appellant to deposit as security 10% of the sum specified in the arbitral award (ඉඅ**2**) in contravention of Rule 49(xii)(a) of the Co-operative Societies Regulations 1973 read in conjunction with section 72(2) of the Central Province Co-operative Societies Statute of No. 10 of 1990 as amended and a writ of *mandamus* directing and compelling the 1st Respondent to hear and conclude the said appeal preferred to him by the Appellant (ඉඅ**5**).

The facts and circumstances pertaining to the instant appeal as recited in the petition of appeal by the Appellant, may be briefly, set out as follows;

The Appellant had at all times material to the instant application, been employed as a manager of a retail outlet of the 2nd Respondent; and that, the 2nd Respondent had demanded a sum of Rs. 666779.54/- from the Appellant for shortage of goods that had been in his possession in that capacity as a manager of that retail outlet of the 2nd Respondent which demand had been rejected by the Appellant; and that the 2nd Respondent had then, referred the dispute to the 1st Respondent who had then referred it to the 3rd Respondent for arbitration; and that consequent to an inquiry held by him, the 3rd Respondent had made his arbitral award (ඉඅ**2**), by which the Appellant was held liable to pay the 2nd Respondent a sum of Rs. 666779.54/-; and that being aggrieved by the said arbitral award, the Appellant had then preferred an appeal to the 1st Respondent against the arbitral award and deposited only Rs.50/- and the Appellant had thereby, failed to deposit 10% of the value of the Arbitral Award (ඉඅ**2**) as required by Rule 49(xii)(a) of the Co-operative Societies Regulations 1973 read in conjunction with section 72(2) of the Central Province

Co-operative Societies Statute of No. 10 of 1990 as amended; and that the 1st Respondent had by letter dated 06.05.2015 (**පෙ7**), informed the Appellant that his appeal was rejected for; he had failed to deposit the required amount; and that the Appellant had then made an application to the High Court of the Central Province holden in Kandy praying for orders in the nature of a writ of *certiorari* to quash the said decision of the 1st Respondent contained in (**පෙ7**) and a writ of *Mandamus*; and that the learned High Court Judge had dismissed the application by holding that the Appellant had failed to deposit the minimum required amount resulting in the rejection of the appeal for; Court had in Sebastian Fernando Vs. Katana Multi-purpose Co-Operative Society LTD and Wijesekara Subsinghe Siripala vs. Elpitiya Multi-purpose Co-Operative Society LTD cited to Court by the Appellant in support of his application, not pronounced a mandatory order and hence, it appears that the real intention of the Appellant was to delay the payment of said sums of monies. It was in this premise, the High Court had dismissed the instant application. Hence, this Appeal on the grounds of appeal urged by the Appellant in paragraph 7(අ),(ආ),(ඇ) and (ඈ) among any other grounds of appeal that may be urged by Counsel at the hearing of it and they may be reproduced *verbatim* the same as follows;

> "(අ) අභියාචකගේ ඉල්ලීම හා සම්බන්ධිත නඩු නීතිය නිසි පරිදි සැළකිල්ලට නොගැනීම;
>
> (ආ) විශේෂයෙන්ම සෙබස්තියන් ප්‍රනාන්දු එ කටාන විවිධ සේවා සමුපකාර සමිතිය නඩු තීන්දුව මඟින් අභියාවන තැන්පත සම්බන්ධයෙන් කර ඇති විශ්ලේෂණයන් හා ඉන් පසුව තීරණය වූ විජේසේකර සුභසිංහ සිරිපාල එදිරිව ඇල්පිටිය විවිධ සේවා සමූපකාර සමිතිය C.A.(P.H.C) APPEAL අංක 8/94 නඩු තීන්දුව කෙරෙහි ප්‍රමාණවත් සැළකිල්ලක් නොදක්වා තිබීම;
>
> (ඇ) අභියාවකගේ ඉල්ලීම හා සම්බන්ධිත අනෙකුත් ලේඛණ එනම් දිවයිනේ අනකුත් පළාත්වලට සෙබස්තියන් ප්‍රනාන්දු නඩු තීන්දුවේ ස්ථාවරය අනුව කටයුතු කිරීමට නීතිපති දෙපාර්ථමේන්තුව මගින් ලබා දී ඇති උපදෙස් සැළකිල්ලට නොගැනීම;

(ඇ) ආර්ථික දුෂ්කරතා ඇති සද්භාවමය අභියාචකයෙකුට බෙරුම්කරණයකින් අනතුරුව සමුපකාර සමිති රෙජිස්ට්‍රාර්වරයා වෙත අභියාචනයක් මඟින් නීතියේ සහණ ලබා ගැනීමට ඇති අවස්ථාව අහිමි වීම සළකා නොබැලීම.''

When translated into English, it reads thus;

"(a) Failure to properly consider the case law relevant to the appellant's request;

(b) Failure to give sufficient consideration to the analysis made in the Sebastian Fernando vs. Katana Multi-purpose Co-operative Society in relation to the appeal deposit, and the subsequent decision in Wijesekera Subhasinghe Siripala v. Elpitiya Multi-purpose Co-operative Society C.A.(P.H.C) APPEAL No. 8/94;

(c) Failure to consider other documents relevant to the appellant's request, namely; the instructions given by the Attorney General's Department to other provinces in the island to act in accordance with the position of the Sebastian Fernando case;

(d) Failure to consider the deprivation of a *bona fide* appellant with economic hardship of the opportunity to seek relief in law through an appeal to the Registrar of Co-operative Societies after an arbitral award."

It is in this backdrop, I would now, propose to consider the instant appeal based on the grounds of appeal so urged by the Appellant.

I would think it appropriate at this juncture to reproduce *verbatim* the same, the paragraph 10 of the petition which sets out the grounds for his application for writs of *certiorari* and *mandamus* sought therein;

"10. පෙත්සම්කරු මෙහිදී කියා සිටින්නේ තුන්වන වග උත්තරකාර බෙරුම්කරුගේ තීන්දුවට එරෙහිව කරුනු කියා සිටීමට ඇති අවස්ථාව අහිමි වීම නිසා පහත සඳහන් හේතු මත යුක්තියේ අපගමනයක් සිදු වී ඇති බවය.

(අ) සෙබස්තියන් ප්‍රනාන්දු එ. කටාන විවිධ සේවා සමූපකාර සමිතිය (X1) යන නඩු තීන්දුවේ දී 1973 සමුපකාර සමිති රීති මාලාවේ 49 (xii) අරීතිය 1972 සමූපකාර පනතේ රීති සෑදීමට ඇති බලය ඉක්මවා සෑදූ රීතියක් බව ප්‍රකාශයට පත් කර තිබීම;

(ආ) තවද සෙබස්තියන් ප්‍රනාන්දු නඩු තීන්දුව ප්‍රකාශයට පත් කර තිබියදීම ඉන් පසුව තීරණය වූ විජේසේකර සුභසිංහ සිරිපාල එදිරිව ඇල්පිටිය විවිධ සේවා සමූපකාර සමිතිය C.A.(P.E.C) APPEAL අංක 8/94 නඩු තීන්දුව මඟින් ද ඉහත කී ස්ථාවරය පිළිගෙන තිබීම;

(ඇ) දිවයිනේ අනකුත් පළාත් වලට සෙබස්තියන් ප්‍රනාන්දු නඩු තීන්දුවේ ස්ථාවරය අනුව කටයුතු කිරීමට නීතිපති දෙපාර්ථමේන්තුව මඟින් උපදෙස් ලබා දී තිබීම. (X2);

ඈ) සද්භාවමය අභියාචකයෙකුට බෙරුම්කරණයකින් අනතුරුව මෙවැනි අභියාචනයක් මඟින් නීතියේ සහණ ලබා ගැනීමට ඇති අවස්ථාව අහිමි වීම."

When translated into English, it reads thus;

"10. The petitioner states that the deprivation of the opportunity to present matters in defence against the decision of the 3rd Respondent-arbitrator, has resulted in a miscarriage of justice for the following reasons:

(a) In the case of Sebastian Fernando v. Katana Various Services Cooperative Society (X1), it was declared that Section 49 (xii) of the Cooperative Societies Rules, 1973 was a rule made in excess of the power to make rules under the Cooperatives Act, 1972.

(b) Further, even after the Sebastian Fernando judgment was pronounced, the said position was also accepted in the subsequent case of Wijesekera Subhasinghe Siripala v. Elpitiya Various Services Cooperative Society C.A.(P.E.C) APPEAL No. 8/94

(d) The Attorney General's Department has instructed other provinces in the island to act in accordance with the position of the Sebastian Fernando judgment. (X2)

d) A bona fide appellant can obtain relief of law through such an appeal after a hearing. Loss of opportunity."

Upon a careful analysis of paragraph 10(අ) of the petition in particular that was furnished by the Appellant to the High Court of the Central Province holden in Kandy for a kind of relief as enumerated above, it clearly, appears that before the High Court, the Appellant had not in any manner, sought to challenge the *vires* of Rule 49(xii)(a) of the Co-operative Societies Regulations 1973 read in conjunction with section 72(2) of the Central Province Co-operative Societies Statute of No. 10 of 1990 as amended, instead he had proceeded on an assumption that the Supreme Court in Sebastian Fernando vs. Katana Multi-purpose Co-operative Society-1990 [1] SLR 342, had already, declared and determined Rule 49(xii)(a) of the Co-operative Societies Regulations 1973 to be *ultra vires.*

It is to be noted that, the learned High Court Judge of the Central Province holden in Kandy appeared to have proceeded to dismiss the instant application on the premise that the Supreme Court in Sebastian Fernando vs. Katana Multi-purpose Co-operative Society (Supra) had not declared any order as to the *vires* of Rule 49(xii)(a) of the Co-operative Societies Regulations 1973 as being a binding judicial precedent. It is this order, that the Appellant now, seeks to canvas before us in the instant Appeal.

However, it is significant and interesting to observe that the Appellant had in the instant appeal before us, abandoned his original position so adverted to, before the High Court that the Supreme Court in Sebastian Fernando vs. Katana Multi-purpose Co-operative Society(Supra), had already, declared and determined Rule 49(xii)(a) of the Co-operative Societies Regulations 1973 to be *ultra vires*, instead, he had endeavoured to convince this Court both in the oral and written submissions made at the hearing of the instant appeal before us that the learned High Court judge of the Central Province holden in Kandy in arriving at the said findings which resulted in the dismissal of the application

of the Appellant, or this Court in arriving at the findings in CA(PHC) 12/2014-Decided on 05.10.2018, had not in any manner, taken into consideration the pertinent observations made by their Lordships Mark Fernando, J and Kulatunga, J in Sebastian Fernando vs. Katana Multi-purpose Co-operative Society (Supra) as to the *vires* of Rule 49(xii)(a) of the Co-operative Societies Regulations 1973 read in conjunction with section 72(2) of the Central Province Co-operative Societies Statute of No. 10 of 1990 as amended.

While, vehemently, controverting and refuting the original position so adverted to by the Appellant before the High Court, it was on the other hand, contended at the hearing of this appeal before us by the 1st and 3rd Respondents that the Supreme Court in Sebastian Fernando vs. Katana Multi-purpose Co-operative Society (Supra) had not declared Rule 49(xii)(a) of the Co-operative Societies Regulations 1973 to be *ultra vires*, but the Supreme Court in Weerakkody Pathirennehelage Somarathne Vs. D.D. Premachandra, Comissioner of Co-operative Societies and Others-SC APPEAL 58/80-Decided on 28.07.1981 had held it to be *intra-vires* and therefore, the petition of the Appellant is misconceived in law and as such, it should be dismissed *in-limine* with punitive or exemplary costs. It is to be observed that the 2nd Respondent too, had associated with the position so adverted to by the 1st and 3rd Respondents at the hearing of this appeal.

In the light of the above, the pivotal question that would arise for consideration in the instant appeal, is the legal effect of the observations made by their Lordships Mark Fernando, J and Kulatunga, J in Sebastian Fernando vs. Katana Multi-purpose Co-operative Society (Supra) as to the *vires* of Rule 49(xii)(a) of the Co-operative Societies Regulations 1973 read in conjunction with section 72(2) of the Central Province Co-operative Societies Statute of No. 10 of 1990 as amended, namely; it can in law, be considered as *ratio decidendi* or *obiter dicta*.

It may now, be examined.

It is true that the Supreme Court in Sebastian Fernando vs. Katana Multi-purpose Co-operative Society (Supra) had made an extensive and exhaustive analysis on the *vires* of Rule 49(xii)(a) of the Co-operative Societies Regulations 1973. However, it is significant to observe that the Supreme Court had not in any manner, declare it to be *ultra vires*, instead the Supreme Court had at page 349, proceeded to state as follows;

> "Thus a serious question arises as to the *vires* of Rule 49 (Xll) (a) that the requirement of an appeal deposit is not authorised by sections 58 (3), 61 (1) or 61(2) (y). However, as that question was not placed before the Court of Appeal for consideration, and as the Respondents were not heard in that Court (nor in this Court, though duly noticed) it is only proper that it should be determined by that Court, after such amendment of the petition as that Court may permit in its discretion, and after hearing the Respondents."

It was further observed by Court in Sebastian Fernando vs. Katana Multi-purpose Co-operative Society (Supra) at page 360 that,

> "For the above reasons, I am of the view that a serious question arises as to the *vires* of Rule 49 (XII) (a). This question was not raised in the appellant's application to the Court of Appeal but only in this Court; leave was allowed on that ground and the question was argued without the respondents being heard. As such, it is only proper that a determination on that ground should be made by the Court of Appeal after such amendment of the petition as that Court may permit in its discretion."

Hence, it clearly, appears that the Supreme Court in Sebastian Fernando vs. Katana Multi-purpose Co-operative Society (Supra) left the *vires* of Rule 49(xii)(a) to be considered by the Court of Appeal. However, it was revealed that when the matter was sent back to the Court of Appeal, the State had given an

undertaking to Court that the Registrar of Co-operative Development notwithstanding the insufficiency of fees will entertain the petition of appeal dated 21.03.1983. In view of this undertaking the petitioner withdrew his application and hence the Court of Appeal did not make a finding on the *vires* of Rule 49(xii)(a) as directed by the Supreme Court as observed by this Court in CA(PHC)12/2014-Decided on 05.10.2018.

It becomes thus, manifest that the Supreme Court in Sebastian Fernando vs. Katana Multi-purpose Co-operative Society (Supra) had not in any manner, gone into the question of the *vires* of Rule 49(xii)(a) of the Co-operative Societies Regulations 1973 nor had it declared it to be *ultra vires,* instead, the Supreme Court had having observed that a serious question arises as to the *vires* of Rule 49(xii)(a) of the Co-operative Societies Regulations 1973, that the requirement of an appeal deposit is not authorized by sections 58(3), 61(1) or 61(2)(y) and left it to be considered the Court of Appeal but not considered by it for the reasons enumerated above.

Hence, it clearly, appears that the observations so made by the Supreme Court in Sebastian Fernando vs. Katana Multi-purpose Co-operative Society (Supra) is clearly, not a *ratio decidendi* but, an *obita dicta.*

In the circumstances, the principle ground so urged by the Appellant in paragraph 10(ඒ) of his petition filed before the High Court of Central Province holden in Kandy in support of his application for writs of *certiorari* and *mandamus* against the 1st Respondent cannot in any manner, sustain in law and as such his application for writs of *certiorari* and *mandamus* ought to have been rejected *in-limine* by the learned High Court Judge of Central Province holden in Kandy on this ground alone, as rightly done by him in the order now sought to be impugned in the instant appeal before us by the Appellant.

On the other hand, it was *inter-alia*, held by the Supreme Court in Weerakkody Pathirennehelage Somarathne Vs. D.D. Premachandra, Comissioner of Co-

operative Societies and Others(Supra) at page 4 that, "I am therefore of the view that Rule 49(xii)(a) is the rule that has been framed under Section 61(2)(y) by the Minister and does not circumscribe the right of appeal granted under section 58(3) of the Law as the rule making powers of the Minister entitles the Minister in terms of the law to prescribe forms, fees to be paid and procedure to be observed."

It was further held by the Supreme Court in Weerakkody Pathirennehelage Somarathne Vs. D.D. Premachandra, Comissioner of Co-operative Societies and Others(Supra) at page 5 that, "and therefore, I am of the view that, Rule 49(xii)(a) is not *ultra vires*, the rule making powers conferred on the Minister."

However, it appears that, the Supreme Court in Sebastian Fernando vs. Katana Multi-purpose Co-operative Society (Supra) had proceeded to consider the ruling in Weerakkody Pathirennehelage Somarathne Vs. D.D. Premachandra, Comissioner of Co-operative Societies and Others(Supra) as to the *vires* of Rule 49(xii)(a) of the Co-operative Societies Regulations 1973 as *obiter dicta.*

It is in this context, it would be pertinent at this juncture to examine the distinction between the *ratio decidendi* and the *obiter dicta* of a decision.

Rupert Cross in Precedents in English Law (3rd Edition, 1977) delineates the two legal terms as follows;

> "The ratio decidendi of a case is any rule of law expressly or impliedly treated by the judge as a necessary step in reaching his conclusion, having regard to the line of reasoning adopted by him, or a necessary part of his direction to the jury" (page 76)
>
> "Obiter dictum is a proposition of law which does not form part of the ratio decidendi" (page 79)

Rupert Cross in Precedents in the English Law (Oxford University Press, 1961 at p. 75) states that,

> "in order to discover what the *ratio decidendi* of a particular case, one must have regard to the facts of that case, the issues raised by the pleadings and arguments and subsequent cases that have considered the case under review."

It was explicitly, held by Court in Walker Sons and Co. (UK) Ltd. v. Gunatilake and others-1978-79-80 [1] SLR 231 at 232 that, the *ratio decidendi* of a Superior Court is binding for all inferior Courts:

> "The *ratio decidendi* of cases decided by the Court becomes a rule for the future binding all courts which the courts of last resort are not whether it be under the same system or under a different system."

It is significant to observe that, in Weerakkody Pathirennehelage Somarathne Vs. D.D. Premachandra, Comissioner of Co-operative Societies and Others(Supra), although the petition of appeal was not sent to the Registrar of Co-operative Development, **the appeal deposit was also not paid** and it is in this context that the Court in Weerakkody Pathirennehelage Somarathne Vs. D.D. Premachandra, Comissioner of Co-operative Societies and Others(Supra) unlike in Sebastian Fernando vs. Katana Multi-purpose Co-operative Society (Supra) **had the benefit of a full argument on the *vires* of Rule 49(xii)(a) of the Co-operative Societies Regulations 1973 and held that it to be *intra vires***.[Emphasis is mine]

According to Rupert Cross in Precedents in English Law (3rd Edition, 1977), a distinction can be drawn between different kinds of *dicta*.

This would be:

(a) *dicta* which are irrelevant to the case in which they occur-***obiter dicta***; and

(b) *dicta* **which relate to some collateral issue in the case** although not forming part of the *ratio decidendi*-***judicial dicta***. [Emphasis is mine]

This distinction appears to suggest that ***judicial dicta*** **have a higher level of authority than mere *obiter dicta***. [Emphasis is mine]

In the light of the above, it is my view that the *dicta* in Weerakkody Pathirennehelage Somarathne Vs. D.D. Premachandra, Comissioner of Co-operative Societies and Others (Supra) would amount to *judicial dicta*.

Applying the *Judicial dicta* pronounced in Weerakkody Pathirennehelage Somarathne Vs. D.D. Premachandra, Comissioner of Co-operative Societies and Others (Supra), I would declare Rule 49(xii)(a) of the Co-operative Societies Regulations 1973, to be *intra vires*.

There is a further point which is directly, linked with the issue at hand before us, and it arises out of the doctrine of approbation and reprobation and it may now, be dealt with.

As manifest from paragraph 10(ඈ) of his petition as enumerated above, the Appellant does not in any manner, seek to challenge before the High Court of the Central Province holden in Kandy, the *vires* of Rule 49(xii)(a) of the Co-operative Societies Regulations 1973 read in conjunction with section 72(2) of the Central Province Co-operative Societies Statute of No. 10 of 1990 as amended, instead he assumes that the Supreme Court in Sebastian Fernando Vs. Katana Multi-purpose Co-Operative Society(Supra) had already, determined and declared Rule 49(xii)(a) of the Co-operative Societies Regulations 1973 to be *ultra vires*, nevertheless, he had proceeded to partially comply with the Rule 49(xii)(a) of the Co-operative Societies Regulations 1973 when he had on his own volition, proceeded to furnish Rs. 50/- as a security deposit along with his appeal to the 1st Respondent as required by the Rule 49(xii)(a) of the Co-operative Societies Regulations 1973. Hence, it manifestly, appears that the

Appellant had by doing so on his own volition, affirmed the Rule 49(xii)(a) of the Co-operative Societies Regulations 1973 and when the 1st Respondent rejected his appeal, he had then, proceeded to disaffirm the same rule that he had once affirmed as aforesaid thereby contending that the Supreme Court in Sebastian Fernando v. Katana Various Services Cooperative Society (Supra) had declared it to be *ultra vires*.

It is in this context, I would think it appropriate at this juncture to examine the principle enunciated by the Supreme Court in Ranasinghe Vs. Premadharma and Others 1985 [1] SLR 63 at page 70, wherein it was held that, "The rationale of the above principle appears to be that a defendant cannot approbate and reprobate. In cases where the doctrine of approbation and reprobation applies, the person concerned has a choice of two rights, either of which he is at liberty to adopt, but not both. Where the doctrine does apply, if the person to whom the choice belongs irrevocably and with full knowledge accepts the one, he cannot afterwards assert the other; he cannot affirm and disaffirm."

In view of the doctrine of approbation and reprobation enunciated by the Supreme Court in Ranasinghe Vs. Premadharma and Others(Supra), if the Appellant in the instant appeal seeks to rely on the Rule 49(xii)(a) of the Co-operative Societies Regulations 1973 read in conjunction with section 72(2) of the Central Province Co-operative Societies Statute of No. 10 of 1990 as amended to contend that he had complied with Rule 49(xii)(a) of the Co-operative Societies Regulations 1973 when he had furnished Rs. 50/- as security deposit together with his appeal to the 1st Respondent thereby affirming that, the said rule is *intra-vires,* and when the 1st Respondent proceeds to reject it for non-compliance of the same, he cannot afterwards, disaffirm it namely; Rule 49(xii)(a) of the Co-operative Societies Regulations 1973 read in conjunction with section 72(2) of the Central Province Co-operative Societies Statute of No. 10 of 1990 as amended which requires Rs.

50/- or 10% of the value of the Arbitral award whichever is higher to be deposited along with his appeal as security deposit, by contending that it is *ultra vires,* for; he cannot in law, affirm and disaffirm the same inasmuch as if the Appellant to whom the choice belongs irrevocably, and with full knowledge accepts the one, he cannot afterwards assert the other.

In the circumstances, I would hold that the Appellant is now, debarred from asserting that the Rule 49(xii)(a) of the Co-operative Societies Regulations 1973 is *ultra vires*, for; he had once, affirmed it to be *intra-vires* by partly, complying with the same by depositing Rs. 50/- as security deposit as required by the said rule.

I would therefore hold that, the contention so advanced by the Appellant, cannot sustain in law and as such it ought to have been rejected *in-limine* on this ground too, as rightly contended by the 1st and 3rd Respondents.

With regard to the ground urged in paragraph 10(ඒ) of his petition furnished by the Appellant to the High Court of the Central Province holden in Kandy, as well as the ground urged in paragraph 10(ඒ) of his petition of appeal furnished to this Court by the Appellant, I would hold that in the light of the law set out above, it too, cannot sustain in law in view of the *judicial dicta* pronounced by the Supreme Court in Weerakkody Pathirennehelage Somarathne Vs. D.D. Premachandra, Comissioner of Co-operative Societies and Others(Supra) that the Rule 49(xii)(a) of the Co-operative Societies Regulations 1973 is *intra-vires* and as such it too should be rejected *in-limine*.

In view of the reasons enumerated above, I would hold that the appeal is not entitled to succeed both in fact and law.

In the result, I would proceed to dismiss the appeal with costs.

JUDGE OF THE COURT OF APPEAL

D. THOTAWATTA, J.

I agree.

JUDGE OF THE COURT OF APPEAL