

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

In the matter of an appeal under Article 138 and Article 154 (P)6 of the Constitution of the Republic read with Rule 11 of the Court of Appeal(Procedure for Appeals From High Court Established By Article 154 of the Constitution) Rules, 1988.

**Court of Appeal Case No:
CA/PHC/0099/2019**

**High Court (Polonnaruwa)
Writ Application No:
06/2015**

**Marasinghe Mudiyanselage Chandrani
Kanthilatha,
No. 87,
Samudragama,
Bendiwewa,
Jayanthipura.**

Petitioner

Vs.

1. **M. G. Nadeeka Dilrukshi,**
Registrar of Co-operative Societies and
Commissioner of Co-operative
Development,
Department of Co-operative Development,
North Western Province,
No. 352,
Maithreepala Senanayake Mawatha,
Anuradhapura.
2. **K.G. Chaminda Dharmathilaka,**
Assistant Commissioner of Co-operative
Development,
Office of the Assistant Commissioner of Co-
operative Development,
Polonnaruwa,
Kaduruwela.

3. **U.G. Ekanayake,**
Arbitrator,
Ihakuluwewa,
Diyabeduma.

4. **Polonnaruwa Multi Purpose Co-operative Society Ltd,**
Polonnaruwa.

Respondents

AND NOW BETWEEN

**Marasinghe Mudiyanselage Chandrani
Kanthilatha,**
No. 87,
Samudragama,
Bendiwewa,
Jayanthipura.

Petitioner-Appellant

Vs.

1. **M.G. Nadeeka Dilrukshi,**
Registrar of Co-operative Societies and
Commissioner of Co - operative
Development,
Department of Co-operative Development,
North Western Province,
No.352,
Maithreepala Senanayake Mawatha,
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2. **K.G. Chaminda Dharmathilaka,**
Assistant Commissioner of Co-operative
Development,
Office Of the Assistant Commissioner of Co-
operative Development,

Polonnaruwa,
Kaduruwela.

3. **U.G Ekanayake,**

Arbitrator,
Ihakuluwewa,
Diyabeduma.

4. **Polonnaruwa Multi Purpose**

Co-operative Society Ltd,

Polonnaruwa.

Respondent-Respondents

Before

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

Counsel

: Saradi Kamalathunga instructed by
Nadeeka B. Senanayake for the Petitioner
-Appellant.

Rajika Aluwihare, S.C. instructed by
R. Firdouz, S.S.A. for the 1stand 2nd
Respondent-Respondents.

3rd Respondent is absent and
unrepresented.

Prabash Walisundara for the 4th
Respondent-Respondent.

Argued on

: 01.07.2025

Written Submissions
of the
Petitioner-Appellant
tendered on

: 05.03.2024

Written Submissions
of the 1st and 2nd
Respondent-Respondents
tendered on : 15.01.2025

Written Submissions
of the 3rd and 4th
Respondent-Respondents
tendered on : Not tendered.

Decided on : 20.11.2025

K. M. S. DISSANAYAKE, J.

The instant appeal arises from an order of the learned High Court Judge of the North Central Province holden in Polonnaruwa dated 29.03.2019 (hereinafter called and referred to as “the order”) whereby the learned High Court Judge had dismissed an application made thereto by the Petitioner who is now, the Petitioner-Appellant to the instant appeal (hereinafter called and referred to as “the Appellant”) praying for orders in the nature of a writ of *certiorari* quashing a decision made by the 1st Respondent thereto, who is now, the 1st Respondent-Respondent to the instant appeal (hereinafter called and referred to as “the 1st Respondent”) dismissing an appeal preferred to the 1st Respondent by the Appellant against an arbitral award made by the 3rd Respondent thereto who is now, the 3rd Respondent-Respondent to the instant appeal (hereinafter called and referred to as “the 3rd Respondent”), appointed by the 1st Respondent to arbitrate a dispute that had arisen between the 4th Respondent thereto who is now, the 4th Respondent-Respondent to the instant appeal (hereinafter called and referred to as “the 4th Respondent”) and the Appellant due to her refusal to pay a sum of Rs. 1794812.29/- to the 4th Respondent on account of cash shortage during her services with the 4th Respondent as a manager of a retail store of the 4th Respondent, in view of her failure to deposit as security a sum equivalent to 10% of the arbitral award specified therein as required by Section 58(3) of the North Central Province Co-

operative Societies Statute of No. 05 of 2009 as amended and Rule 49(xii)(a) of the Co-operative Societies Regulations 1973 and a writ of *mandamus* directing and compelling the 1st Respondent to hear and conclude the said appeal preferred to him by the Appellant.

The facts and circumstances material to the instant appeal as can be gathered from the record, 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 store of the 4th Respondent; and that, the 4th Respondent had demanded a sum of Rs. 1794812.29/- from the Appellant for shortage of goods during her period of service as a manager of a retail store of the 4th Respondent which demand had been rejected by the Appellant; and that the 2nd Respondent thereto, who is now, the 2nd Respondent-Respondent to the instant appeal (hereinafter called and referred to as “the 2nd Respondent”) had on the advice of the 1st Respondent, referred the dispute to the 3rd Respondent for arbitration; and that consequent to an inquiry held by him, the 3rd Respondent had made his arbitral award by which the Appellant was held liable to pay the 4th Respondent a sum of Rs. 1492634.62/-; 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/- as security deposit together therewith; and that the 1st Respondent had by her letters dated 14.10.2014 and 09.07.2015 informed the Appellant that her appeal was rejected for; she had failed to deposit a sum equivalent to 10% of the arbitral award specified therein as required by Section 58(3) of the North Central Province Co-operative Societies Statute of No. 05 of 2009 as amended and Rule 49(xii)(a) of the Co-operative Societies Regulations 1973; and that the Appellant had then, made an application to the High Court of the North Central Province holden in Polonnaruwa praying for orders in the nature of a writ of *certiorari* to quash the said decision of the 1st Respondent and a writ of *Mandamus* compelling the 1st Respondent to accept and hear the appeal;

and that the learned High Court Judge had while observing that the decisions in Sebastian Fernando, Wijesekara Subasinghe and the other decisions, relied upon by the Appellant in support of her position, were decisions that had been decided before the enactment of the North Central Province Co-operative Societies Statute of No. 05 of 2009 as amended, dismissed the application by holding that the decision of the 1st Respondent rejecting the appeal of the Appellant could not be considered as one made in contravention of Section 58(3) of the North Central Province Co-operative Societies Statute of No. 05 of 2009 as amended for; the Officers of a Provincial Council have no power to act in contravention of a law that may be enacted by such a Provincial Council and therefore, the 1st Respondent had not acted *ultra vires* of the powers vested in her by Section 58(3) of the North Central Province Co-operative Societies Statute of No. 05 of 2009 as amended in rejecting the appeal for non compliance by the Appellant, of the requirement relating to deposit of security of a sum equivalent to 10% of the Arbitral Award as provided for by Section 58(3) of the North Central Province Co-operative Societies Statute of No. 05 of 2009 as amended and in the circumstances, there was no necessity to issue orders in the nature of writs of *certiorari* and *mandamus* against the 1st Respondent. It is this order of the Learned High Court Judge that the Appellant now, seeks in the instant appeal to impugn on the grounds of appeal set out in paragraph 5(a),(b) and (c) of the petition of appeal among any other grounds of appeal which may be urged by Counsel at the hearing of this Appeal and they may be reproduced as follows;

- a) The High Court had made the said Order on the basis that Statute No.05 of 2009 of the North Western Provincial Council in Section 58(3) requires an Appeal deposit of a sum of 10% of the Arbitrator's Award. However the said requirement of depositing 10% of the award is obnoxious to the right of appeal is therefore unlawful and the learned High Court judge had failed to comprehend this legal issue;

- b) The learned High Court Judge has misdirected himself in relation to the law applicable and specially has failed to apply the principle of law and the vision contained in the case of SEBASTIAN FERNANDO V.KATANA MULTI-PURPOSE CO-OPERATIVE SOCIETY LTD,AND OTHERS reported in 1990 (1) SLR 342;
- c) The learned High Court judge has failed to decide that the 1st Respondent had acted in breach of his legal duty to hear and entertain the appellant's appeal.

When this matter came up before us for hearing, Counsel for the Appellant had informed Court that this matter could be disposed of by way of written submissions, and the respective Counsel for the 1st, 2nd and 4th Respondents had given their assent thereto. Furthermore, the Counsel for the 4th Respondent had informed Court that he would rely on the written submissions filed on behalf of the 1st and 2nd Respondents and therefore, not filing the same. Hence, this Court will proceed to the judgment on the strength of the written submissions as urged.

Upon a careful scrutiny of the written submissions of the Appellant furnished to this Court in its totality, it becomes abundantly clear that although, the Appellant had in her petition of appeal, mainly, relied on three of grounds of appeal as enumerated above in support of her appeal, however, she had at the hearing of this appeal, opted to argue in her written submissions, only the ground as urged in paragraph 5(b) of the petition of appeal which clearly, shows that the Appellant had clearly, and explicitly, abandoned the rest of the grounds of appeal so urged by her in paragraph 5(a) and (c) of her petition of appeal.

It is significant to observe that the Appellant had in the High Court of the North Central Province holden in Polonnaruwa too, raised the similar question of *vires* of the act of the 1st Respondent which culminated in the rejection of the

appeal of the Appellant for non-compliance of the provisions of the Section 58(3) thereof with regard to the deposit of security as stipulated therein as raised by her before this Court in paragraph 5(b) of the petition of appeal as enumerated above and the learned High Court Judge of the North Central Province holden in Polonnaruwa had having so examined the question of *vires* of the act of the 1st Respondent which culminated in the rejection of the appeal of the Appellant for non-compliance of the provisions of the Section 58(3) thereof with regard to the deposit of security as stipulated therein, held that the North Central Province Co-operative Societies Statute of No. 05 of 2009 had been enacted by the North Central Provincial Council by virtue of the powers vested in it by the Constitution; and that the 1st Respondent had rejected the appeal acting under the powers vested in her by Section 58(3) of the North Central Province Co-operative Societies Statute of No. 05 of 2009 as amended and therefore, it was not a decision made in excess of the powers vested in the 1st Respondent by Section 58(3) of the North Central Province Co-operative Societies Statute of No. 05 of 2009 as amended and as such, the decision of the 1st Respondent could not be considered as a decision made in excess of the powers so vested in her by Section 58(3) of the North Central Province Co-operative Societies Statute of No. 05 of 2009 as amended and the reasons adduced therefor by Court being that the North Central Province Co-operative Societies Statute No. 05 of 2009 had been enacted by the Provincial Council of the North Central Province by virtue of the powers vested in it by the Constitution and Rule 49(xii)(a) of the Co-operative Societies Regulations 1973 that had been made by the Minister in-charge of the Co-operative Societies subject under the provisions of the Co-operative Societies Law No. 5 of 1972, had in section 58(3) of the North Central Province Co-operative Societies Statute No. 05 of 2009, been enacted by the Provincial Council of the North Central Province as a law and it had thus, become a law in the North Central Provincial Council and the Commissioner of Co-operative Societies and all the officers thereto, are bound by it and appeal of the Appellant had thus, been

dismissed by the 1st Respondent in terms of the law enacted by Section 58(3) thereof and therefore, the 1st Respondent has acted *intra-vires* of the powers vested in her by Section 58(3) thereof in rejecting the appeal of the Appellant for non-compliance of the provisions of the Section 58(3) thereof with regard to the deposit of security as stipulated therein.

Hence, the learned High Court Judge of the North Central Province holden in Polonnaruwa had in the impugned order, proceeded to examine the *vires* of the act of the 1st Respondent that culminated in the rejection of the appeal of the Appellant for non-compliance of the provisions of the Section 58(3) of the North Central Province Co-operative Societies Statute of No. 05 of 2009 as amended with regard to the deposit of security as stipulated therein, and rejected the application of the Appellant made to it for orders in the nature of a writ of *certiorari* quashing the decision of the 1st Respondent rejecting the appeal of the Appellant for non-compliance of the provisions of the Section 58(3) thereof with regard to the deposit of security as stipulated therein, and a writ of *mandamus* directing the 1st Respondent to accept, hear and determine the appeal of the Appellant on the premise that the Section 58(3) of the North Central Province Co-operative Societies Statute of No. 05 of 2009 as amended was *intra-vires* of the powers vested in the 1st Respondent by Section 58(3) thereof.

However, it is significant to observe that the Appellant in the instant appeal, had not in any manner, sought to impugn the findings of the learned High Court Judge with regard to the question of the *vires* of the act of the 1st Respondent that culminated in the rejection of the appeal of the Appellant for non-compliance of the provisions of the Section 58(3) of the North Central Province Co-operative Societies Statute of No. 05 of 2009 as amended with regard to the deposit of security as stipulated therein, which led him to have dismissed the appeal and hence, those findings of the learned High Court

Judge of the North Central Province holden in Polonnaruwa still, remain in force, uncontroverted and unchallenged.

Besides, the said findings of the learned High Court Judge of the North Central Province holden in Polonnaruwa are well supported and fortified by the provisions of Article 154G(1) of the Constitution of the Democratic Socialist Republic of Sri Lanka which enacts that “Every Provincial Council may, subject to the provisions of the Constitution, make statutes applicable to the Province for which it is established, with respect to any matter set out in List 1 of the Ninth Schedule (hereinafter referred to as ‘the Provincial Council List’)” and item number 17 of the List 1 of the Ninth Schedule being the subject of Co-operatives and hence, the North Central Province Co-operative Societies Statute of No. 05 of 2009 and its Section 58(3) had been enacted by the North Central Provincial Council by virtue of the powers vested in it by Article 154G(1) of the Constitution to be read with item number 17 of the List 1 of the Ninth Schedule to the Constitution.

Hence, I would hold that the said findings of the learned High Court Judge of the North Central Province holden in Polonnaruwa with regard to the question of *vires* of the act of the 1st Respondent that culminated in the rejection of the appeal of the Appellant for non-compliance of the provisions of the Section 58(3) of the North Central Province Co-operative Societies Statute of No. 05 of 2009 as amended with regard to the deposit of security as stipulated therein, can wholly, sustain in law, as enacted by Article 154G(1) of the Constitution to be read with item number 17 of the List 1 of the Ninth Schedule to the Constitution.

I would therefore, hold that the requirement of deposit of a sum equivalent to 10% of the arbitral award as stipulated by Section 58(3) of the North Central Province Co-operative Societies Statute of No. 05 of 2009 as amended, is not in any manner, obnoxious to the right of appeal and is therefore, lawful and hence, the learned High Court judge of the North Central Province holden in

Polonnaruwa had correctly, comprehended this legal issue in the true sense for which purpose it was enacted by the North Central Provincial Council and therefore, the ground of appeal urged in paragraph 5(a) of the appeal of the Appellant though not argued by the Appellant at the hearing of this appeal before us, cannot in any manner, sustain in law, and as such it should be rejected *in-limine*.

In the result, I would proceed to affirm the said findings of the learned High Court judge of the North Central Province holden in Polonnaruwa.

I would next, propose to deal with the only ground of appeal argued by the Appellant before us at the hearing of this appeal in the written submissions, namely; ground of appeal urged in paragraph 5(b) of the petition of the appeal of the Appellant.

b) The learned High Court Judge has misdirected himself in relation to the law applicable and specially has failed to apply the principle of law and the vision contained in the case of Sebastian Fernando Vs.Katana Multi-Purpose Co-Operative Society Ltd, And Others reported in 1990 (1) SLR 342;

The averments contained in paragraphs 5 and 9 of the written submissions of the Appellant in particular would in my view, be most relevant and appropriate in this regard and they may be re-produced *verbatim* the same as follows;

Paragraph 5;

“The appellant thereafter filed an application bearing No: Writ/ 06/ 2015 in the provincial High Court of Polonnaruwa seeking a Writ of Certiorari to quash the said decision of the 1st Respondent and a Writ of Mandamus directing the 1st Respondent to entertain the said appeal. (vide page 224 of the Appeal Brief). The basis of the said application was

that Rule 49 (xii) (a) of the Co-operative Society Rules 1973, made by the Minister was ultra vires the Rule making power of the Minister.”

Paragraph 9;

“It is very clear that although Rule 49 (xii)(a) was not quashed for reasons specified in the final paragraph of the judgment, the Supreme Court in fact held that Rule 49 (xii)(a) was ultra vires.”

The averments in paragraphs 5 and 9 of the written submissions of the Appellant taken cumulatively, clearly, shows that the Appellant thereby sought to contend that although, Rule 49(xii)(a) of the Co-operative Societies Regulations 1973 was not quashed for reasons specified in the final paragraph of the judgment in Sebastian Fernando Vs. Katana Multi-Purpose Co-Operative Society Ltd, And Others (Supra), the Supreme Court had infact, held that Rule 49(xii)(a) of the Co-operative Societies Regulations 1973 was *ultra vires*.

Hence, the Appellant had not in any manner, sought either before the High Court of the North Central Province holden in Polonnaruwa or before this Court, to canvas the question of *vires* of Rule 49(xii)(a) of the Co-operative Societies Regulations 1973 read in conjunction with section 58(3) of the North Central Province Co-operative Societies Statute No. 05 of 2009 as amended, instead she had proceeded on an assumption 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*.

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, declared 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 (XII) (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 the Supreme 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 later revealed upon an inquiry 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 the decision in CA(PHC)12/2014-Decided on 05.10.2018.

Thus, it becomes, 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, I would hold that neither the principle ground so urged by the Appellant in paragraphs 15(^{¶7}) and 16 of her petition in particular, filed before the High Court of North Central Province holden in Polonnaruwa in support of her application for writs of *certiorari* and *mandamus* against the 1st Respondent nor the principal ground of appeal so urged by her in paragraph 5(b) of her petition of appeal filed before this Court in support of the appeal can in any manner, sustain in law. Hence, the Appellant's application for writs of *certiorari* and *mandamus* ought to have been rejected *in-limine* by the learned High Court of North Central Province holden in Polonnaruwa 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, Commissioner of Co-operative Societies and Others(Supra) at page 4 to the following effect;

“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, Commissioner of Co-operative Societies and Others(Supra) at page 5 as follows;

“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, Commissioner 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, Commissioner 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, Commissioner 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, Commissioner of Co-operative Societies and Others(Supra) would amount to *judicial dicta*.

Applying the *Judicialdicta* pronounced in Weerakkody Pathirennehelage Somarathne Vs. D.D. Premachandra, Commissioner 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 15(^q) of her petition filed before the High Court of North Central Province holden in Polonnaruwa, the Appellant does not in any manner, seek to challenge before the High Court of North Central Province holden in Polonnaruwa, the *vires* of Rule 49(xii)(a) of the Co-operative Societies Regulations 1973 read in conjunction with section 58(3) of the North Central Province Co-operative Societies Statute of No. 5 of 2009 as amended, instead she 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, she had proceeded to partially comply with the Rule 49(xii)(a) of the Co-operative Societies Regulations 1973 read in conjunction with section 58(3) of the North Central Province Co-operative Societies Statute of No. 5 of 2009 as amended when she had on her own volition, proceeded to furnish Rs.

50/- as a security deposit along with her appeal to the 1st Respondent as required by the Rule 49(xii)(a) of the Co-operative Societies Regulations 1973 read in conjunction with section 58(3) of the North Central Province Co-operative Societies Statute of No. 5 of 2009 as amended. Hence, it manifestly, appears that the Appellant had by doing so on her own volition, affirmed the Rule 49(xii)(a) of the Co-operative Societies Regulations 1973 read in conjunction with section 58(3) of the North Central Province Co-operative Societies Statute of No. 5 of 2009 as amended and when the 1st Respondent rejected his appeal, she had then, proceeded to disaffirm the same rule that she 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 the light 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 58(3) of the North Central Province Co-operative Societies Statute of No. 5 of 2009 as amended, to contend that she had complied with Rule 49(xii)(a) of the Co-operative Societies Regulations 1973 read in conjunction with section 58(3) of

the North Central Province Co-operative Societies Statute of No. 5 of 2009 as amended when she had furnished Rs. 50/- as security deposit together with her 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, she cannot afterwards, disaffirm it namely; Rule 49(xii)(a) of the Co-operative Societies Regulations 1973 read in conjunction with section 58(3) of the North Central Province Co-operative Societies Statute of No. 5 of 2009 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; she 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, she 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 read in conjunction with section 58(3) of the North Central Province Co-operative Societies Statute of No. 5 of 2009 as amended is *ultra vires*, for; she 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.

With regard to the contention advanced by the Appellant in paragraph 20 of her petition furnished by her to the High Court of North Central Province holden in Polonnaruwa, based on a letter dated 28.03.2011 and issued by the Former Additional Solicitor General which was annexed thereto marked as **X3**, 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 Pathirennelage Somarathne Vs. D.D. Premachandra,

Commissioner 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