

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

In the matter of an application for Leave to Appeal to the Supreme Court of the Democratic Socialist Republic of Sri Lanka under and in terms of Section 5(C) of the High Court of the Provinces (Special Provisions) Amendment Act No. 54 of 2006.

Central Finance Company Limited,  
No. 84, Raja Veediya,  
Kandy.

**Plaintiff**

**SC Appeal No: 136/2010**

**SC (HC) CA LA Application No: 74/2009**

**Appeal No: WP/HCCA/COL/138/2007 (F)**

**DC Colombo Case No: 19999/L**

**Vs.**

1. Indrani Swarnalatha Marie Peiris,  
No. 19, Gregory's Road,  
Colombo 07.
2. Jaithra Chandrasing Peiris,  
No. 19, Gregory's Road,  
Colombo 07.
3. Darup Hastin Peiris,  
No. 19, Gregory's Road,  
Colombo 07.

4. Yahala Clothing Limited,  
Yahala House,  
P.O. Box No. 1122, Stales House,  
Staples Street,  
Colombo 02.

**Defendants**

**AND**

Central Finance Company Limited,  
No. 84, Raja Veediya,  
Kandy.

**Plaintiff-Appellant**

**Vs.**

1. Indrani Swarnalatha Marie Peiris,  
No. 19, Gregory's Road,  
Colombo 07.
2. Jaithra Chandrasing Peiris,  
No. 19, Gregory's Road,  
Colombo 07.
3. Darup Hastin Peiris,  
No. 19, Gregory's Road,  
Colombo 07.
4. Yahala Clothing Limited,  
Yahala House,  
P.O. Box No. 1122, Stales House,  
Staples Street,  
Colombo 02.

**Defendants-Respondents**

**AND**

1. Indrani Swarnalatha Marie Peiris,  
No. 19, Gregory's Road,  
Colombo 07.
2. Jaithra Chandrasing Peiris,  
No. 19, Gregory's Road,  
Colombo 07.
3. Darup Hastin Peiris,  
No. 19, Gregory's Road,  
Colombo 07.
4. Yahala Clothing Limited,  
Yahala House,  
P.O. Box No. 1122, Stales House,  
Staples Street,  
Colombo 02.

**Defendants-Respondents-  
Petitioners**

**Vs.**

Central Finance Company Limited,  
No. 84, Raja Veediya,  
Kandy.

**Plaintiff-Appellant-Respondent**

**AND NOW**

1. Indrani Swarnalatha Marie Peiris,  
No. 19, Gregory's Road,  
Colombo 07.

**Deceased**

- 1A. Darup Hastin Peiris,  
No. 19, Gregory's Road,  
Colombo 07.
2. Jaithra Chandrasing Peiris,  
No. 19, Gregory's Road,  
Colombo 07.
3. Darup Hastin Peiris,  
No. 19, Gregory's Road,  
Colombo 07.
4. Yahala Clothing Limited,  
Yahala House,  
P.O. Box No. 1122, Stales House,  
Staples Street,  
Colombo 02.

**Defendants-Respondents-  
Petitioners- Petitioners**

**Vs.**

Central Finance Company Limited,  
No. 84, Raja Veediya,  
Kandy.

**Plaintiff-Appellant-  
Respondent-Respondent**

**Before: Justice A.L. Shiran Gooneratne**

**Justice Arjuna Obeyesekere**

**Justice K. Priyantha Fernando**

**Counsel:** Suren De Silva with Jehan Samarasinghe instructed by Sinnadurai Sundaralingam and Balendra for the **01<sup>st</sup> to 04<sup>th</sup> Defendant-Respondent-Petitioner-Petitioners.**

Avindra Rodrigo, PC with M.R. Samarasinghe instructed by F.J. & G. De Saram for the **Plaintiff-Appellant-Respondent-Respondent.**

**Argued on:** 07/08/2025

**Decided on:** 26/09/2025

**A.L. Shiran Gooneratne J.**

- [1] By Plaint dated 20/02/2002, the Plaintiff-Appellant-Respondent (hereinafter sometimes referred to as the “Plaintiff-Respondent”) instituted Action No. 19530/L in the District Court of Colombo (hereinafter referred to as the “first action”) against the Defendants-Respondents-Appellants (hereinafter sometimes referred to as the “Defendants-Appellants”), seeking, *inter alia*, a declaration of title to the land in dispute, the ejectment of the Defendants-Appellants from the said land, and the recovery of damages.
- [2] The first action, bearing No. 19530/L, was dismissed by the District Court on 23/05/2003 for non-compliance with an imperative provision of the Civil

Procedure Code. Thereafter, the Plaintiff-Respondent filed an Appeal, bearing No. 412/2003(F), in the Court of Appeal, seeking to have the said dismissal set aside.

- [3] While Appeal No. 412/2003(F) was pending before the Court of Appeal, the Plaintiff-Respondent instituted another action, bearing No. 19999/L (hereinafter referred to as the “second action”), in the District Court of Colombo against the same Defendants, based on the same cause of action relating to the same land, notwithstanding the pendency of the Appeal in Action No. 412/2003(F) before the Court of Appeal.
- [4] In their Answer, the Defendants raised a preliminary objection to the maintainability of the second action, contending, *inter alia*, that the pendency of the Appeal in the first action rendered the second action misconceived in law. The Defendant-Appellants accordingly sought a ruling on the maintainability of the Action No. 19999/L. Upon consideration of Issue No. 19, raised on the preliminary objection, the learned District Judge upheld the objection and dismissed the second action before the conclusion of the Defendant’s case.
- [5] In the Order dated 26/03/2007, the learned District Judge observed that the Plaintiff-Respondent, by motion dated 19/10/2006, had brought to the attention of Court that an application had been filed in the Court of Appeal seeking leave to withdraw Appeal No. 412/2003(F), being the Appeal in Action No. 19530/L. However, the Court observed that the Plaintiff-Respondent had failed to establish that the said application for withdrawal had been allowed by the Court of Appeal or that the Appeal had been withdrawn.
- [6] Accordingly, the District Court on 26/03/2007 held that the Plaintiff-Respondent was not entitled to institute and maintain the second action, as the Appeal against the dismissal of the first action remained pending before the Court of Appeal as of the relevant date.

- [7] Being aggrieved by the said Order dated 26/03/2007, the Plaintiff-Respondent by Petition of Appeal bearing No. WP HCCA/COL/138/2007(F) dated 18/05/2007 appealed to the Civil Appeal High Court holden in Colombo (“the Appellate Court”).
- [8] Before the Appellate Court, the Plaintiff-Respondent contended that the dismissal order amounted to a final judgment within the meaning of Section 147 of the Civil Procedure Code, since it determined a pure question of law, namely *res judicata*, which, once upheld, brought the proceedings to an end. It was argued that because the Order disposed of the entire action, it was final in nature and could therefore be appealed as of right.
- [9] The Plaintiff-Respondent sought to distinguish ***Ranjit vs. Kusumawathie***<sup>1</sup> from ***Siriwardena vs. Air Ceylon Ltd***<sup>2</sup>, on the basis that in the former, the Order arose from an application made in the course of proceedings, whereas in the present case, the dismissal was based on a preliminary issue framed at the outset. Reliance was placed on ***Siriwardena vs. Air Ceylon Ltd***<sup>3</sup>, where an Order was held to be final if it disposed of the entire matter in litigation and left nothing further for adjudication.
- [10] The Defendant-Appellants, however, argued that the Order was interlocutory and therefore required Leave to Appeal. They relied on ***Ranjit vs. Kusumawathie***<sup>4</sup> and the English decision of ***Salaman vs. Warner***<sup>5</sup>, which apply the “application approach,” whereby an Order is interlocutory if, depending on how the application is decided, the case could either proceed to trial or be brought to an end. It was submitted that had the preliminary objection been decided in favour of the Plaintiff, the action would have

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<sup>1</sup> [1998] 1 SLR 73

<sup>2</sup> [1984] 2 SLR 293

<sup>3</sup> *ibid*

<sup>4</sup> n (1)

<sup>5</sup> [1891] 1 QB 734

continued, thereby demonstrating that the Order was interlocutory. They further contended that the application approach, affirmed by a five-judge bench of the Supreme Court in 2010, is now the prevailing law, superseding the Order approach adopted in *Siriwardena vs. Air Ceylon Ltd*<sup>6</sup>.

- [11] Based on the afore stated position, the Defendants-Appellants raised a preliminary objection, stating that the Order dated 26/03/2007 is not a final Judgement but an Order made in the course of the action and therefore, the application before the Appellate Court should have been that of seeking Leave to Appeal in terms of Section 754(2) instead of a direct Appeal in terms of Section 754(1) of the Civil Procedure Code.
- [12] The question for determination is whether the Order made by the learned District Judge of Colombo on 26 March 2007, dismissing the Plaintiff's second action on the ground of *res judicata*, constitutes a "final order" appealable as of right under Sections 147 and 207 of the Civil Procedure Code, or whether it is an "interlocutory order" requiring Leave to Appeal.
- [13] The Appellate Court directed both parties to file written submissions on this question. The Appellate Court, by Order dated 09/03/2009, overruled the said preliminary objection raised by the Defendants-Appellants and fixed the matter for argument.
- [14] By Petition dated 17/04/2009, the Defendants-Appellants have invoked the jurisdiction of this Court to set aside the Order dated 09/03/2009 of the Appellate Court.
- [15] By Order dated 15/10/2010, Court granted Leave to Appeal on the following questions of law;

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<sup>6</sup> n (2)



In any event was the High Court of Civil Appeal Colombo in error in ignoring the fact that *Ranjith vs. Kusumawathi* being a later decision which considered the contrary decision given in the earlier case of *Siriwardana vs. Air Ceylon Limited*, which has been consistently followed by the Court of Appeal in a number of subsequent decisions, ought to have been followed by the High Court of Civil Appeal Colombo in the circumstances of this case?

[16] The Court also permitted the Plaintiff-Respondent to raise the following question of law.

Whether the Divisional Bench decision of S.C. Appeal Nos. 101A/2009 and 101B/2009 (S.C. HCCALA No. 174/2008 – S.C. Minutes of 10/06/2010 would have an application in the context of an action that has been dismissed upon a plea based on *res judicata*.

**Respective positions taken by Counsel at the time of filing written submissions in this Court**

[17] Learned Counsel for the Plaintiff-Respondent submitted that, by the Order of the District Court upholding the plea of *res judicata* raised by the Defendants-Appellants, the rights of the parties were finally determined, thereby resulting in the dismissal of the action. Therefore, the Impugned Order of the learned District Judge constitutes a final Judgment within the meaning of Section 754(1), read with Section 754(5), of the Civil Procedure Code, against which the Plaintiff-Appellant could have preferred only a direct appeal.

[18] The Defendants-Appellants, on the other hand, argued that had the District Court ruled in favor of the Plaintiff-Respondent on the said objection, the trial would not have been finally disposed of and the matter would have proceeded to trial. Accordingly, they contended that the Impugned Order does not amount to a final order having the effect of a Judgment within the meaning of Sections

754(1) and 754(5) of the Civil Procedure Code, but is merely an interlocutory order.

[19] Therefore, the question that arises for determination is whether the Order given by the District Court is an interlocutory order where the Plaintiff-Respondent should have filed a Leave to Appeal application under Section 754(2) instead of filing an appeal under Section 754(1) of the Civil Procedure Code.

[20] Sections 754(1), 754(2) and 754(5) of the Civil Procedure Code, reads thus;

*(1) Any person who shall be dissatisfied with any judgment pronounced, by any original court in any civil action, proceeding or matter to which he is a party may prefer an appeal to the Court of Appeal against such judgment for any error in fact or in law.*

*(2) Any person who shall be dissatisfied with any order made by any original court in the course of any civil action, proceeding, or matter to which he is or seeks to be a party, may prefer an appeal to the Court of Appeal against such order for the correction of any error in fact or in law, with the leave of the Court of Appeal first had and obtained.*

*(3) ...*

*(4) ...*

*(5) Notwithstanding anything to the contrary in this Ordinance, for the purposes of this Chapter -*

*"judgment" means any judgment or order having the effect of a final judgment made by any civil court; and*

*"order" means the final expression of any decision in any civil action, proceeding or matter which is not a judgment.*

- [21] At the time of submitting written arguments, both parties cited ***Siriwardana vs. Air Ceylon Limited***<sup>7</sup> and ***Ranjith vs. Kusumawathi***<sup>8</sup>, in support of their respective cases, which extensively discussed a series of Judgments to determine the nature of the application to be filed before the Court.
- [22] The distinction between a final and an interlocutory order has received considerable judicial attention in Sri Lanka. In ***Siriwardena vs. Air Ceylon Limited***<sup>9</sup>, following ***Bozson vs. Altrincham Urban District Council***<sup>10</sup>, this Court held that an Order is final if it leaves nothing further to be adjudicated between the parties. In ***Ranjith vs. Kusumawathi***<sup>11</sup>, the Court adopted the “application approach” enunciated in ***Salaman vs. Warner***<sup>12</sup>, which directs attention to the nature of the application rather than solely to the effect of the Order. According to this approach, if the determination of the application in one way permits the case to proceed, while its determination in the other way brings the proceedings to an end, the Order is interlocutory. This principle was expressly affirmed by a five-judge bench in 2010.
- [23] In ***Siriwardana vs. Air Ceylon Limited***<sup>13</sup> Sharwananda J. (as he then was), having discussed several other decisions, applied a four-point test to determine whether an Order had the effect of a final Judgment, and to qualify to be a Judgment under Section 754(5) of the Civil Procedure Code, held;

*“it must be an order finally disposing of the rights of the parties.*

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<sup>7</sup> n (2)

<sup>8</sup> n (1)

<sup>9</sup> n (2)

<sup>10</sup> [1903] 1 KB 547

<sup>11</sup> n (1)

<sup>12</sup> n (5)

<sup>13</sup> n (2)

*The order cannot be treated to be a final order if the suit or action is still left alive suit or action for the purpose of determining the rights and liabilities of the parties in the ordinary way*

*The finality of the order must be determined in relation to the suit*

*The mere fact that a cardinal point in the suit has been decided or even a vital and important issue determined in the case, is not enough to make an order, a final one.”*

[24] In **Ranjith vs. Kusumawathie**<sup>14</sup> Deeratne J., having examined a line of Judgments from the English Courts, observed that;

*“...there have been two virtually alternating tests adopted by different judges from time to time in the UK to determine what final orders and interlocutory orders were. The order approach was adopted in Shubbrook v. Tufnell (1882) 9 QBD 621, where Jessel, MR, and Lindely, LJ. held that an order is final if it finally determines the matter in litigation. Thus, the issue of final and interlocutory depended on the order made. The application approach was adopted in Salaman v. Warnar and others (1891) 1 QB 734, in which the Court of Appeal, consisting of Lord Esher, MR, Fry and Lopes, LJJ. held that the final order is one made on such application or proceeding that, for whichever side the order was given, it will, if it stands, finally determine the matter in litigation. Thus, the issue of final or interlocutory depended on the nature of the application or proceedings giving rise to the order and not the order itself.”*

[25] Since there was a conflict between the decisions in **Siriwardana vs. Air Ceylon Limited**<sup>15</sup> and **Ranjith vs. Kusumawathi**<sup>16</sup>, in **Rajendra Chettiar vs.**

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<sup>14</sup> n (1)

<sup>15</sup> n (2)

<sup>16</sup> n (1)

**Narayanan Chettiar**<sup>17</sup>, His Lordship the Chief Justice nominated a bench of five Judges to reconsider the Judgments in these two cases. In **Rajendra Chettiar vs. Narayanan Chettiar**<sup>18</sup>, the Court considered Appeal Nos. 101A/2009 and 101B/2009 (SC HCCA LA 174/2008), in which the learned Additional District Judge had rejected the Plaints and dismissed the action *in limine*, in terms of Section 46(2) of the Civil Procedure Code. In determining the matter, the Court cited with approval the decision in **Ranjith vs. Kusumawathi**<sup>19</sup>, wherein Dr. Shirani A. Bandaranayake, J. (as she then was) observed:

*“The order appealed from is an order made against the appellant at the first hurdle. Can one say that the order made on the application of the 4<sup>th</sup> defendant is one such that whichever way the order was given, it would have finally determined the litigation? Far from that, even if the order was given in favor of the appellant, he has to face the second hurdle, namely the trial to vindicate his claim.*

Her Ladyship further observed:

*“Considering the decision given by Deeralatne J., in Ranjith vs. Kusumawathi (supra) it is abundantly clear that the order dated 14.05.2008 is not a final order having the effect of a judgment within the meaning of sub-sections 754(1) and 754(5) of the Civil Procedure Code, but is only an interlocutory order”.*

[26] In 2015, the Supreme Court, having considered SC Appeal No. 41/2015 and SC/CHC Appeal No. 37/2008, which came up for determination before a bench

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<sup>17</sup> [2011] 2 SLR 70

<sup>18</sup> *ibid*

<sup>19</sup> n (1)

of seven Judges of this Court, granted Special Leave to Appeal on the following questions of law:

*Was the judgment in Rajendra Chettiar v. Narayanan Chettiar, relied on by the Court of Appeal, wrongly decided?*

*Whether the decision enunciated in Rajendra Chettiar v. Narayanan Chettiar, deciding that the application approach test should be preferred over the order approach test in deciding whether an order is a final or interlocutory order in civil proceedings be revisited in this appeal.*

[27] SC Appeal No. 41/2015 was filed following a dismissal for non-compliance with an imperative provision of the Civil Procedure Code, and SC/CHC Appeal No. 37/2008 arose from a dismissal on the ground of prescription. In both cases, the lower courts upheld preliminary objections raised by the respective parties and dismissed the actions. As the questions of law raised in both cases were identical, they were taken up together, and the Supreme Court delivered a single Judgment. In its Judgment dated 04/08/2017, the Supreme Court extensively discussed the decisions in **Siriwardana vs. Air Ceylon Limited**<sup>20</sup>, **Ranjith vs. Kusumawathi**<sup>21</sup> and **Rajendra Chettiar vs. Narayanan Chettiar**<sup>22</sup>. Priyasad Dep, PC, CJ, observed:

*“In two cases before us orders are made in respect of points of law raised by the parties. If the preliminary objections were rejected cases would have proceeded to trial. In both cases at the time of dismissal, the rights of the parties were not determined.*

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<sup>20</sup> n (2)

<sup>21</sup> n (1)

<sup>22</sup> n (17)

*In Order to decide whether an Order is a final Judgment or not, it is my view that the proper approach is the approach adopted by Lord Esher in Salman vs. Warnar which was cited with approval by Lord Denning in Salter Rex vs. Gosh. It stated:*

*if their decision whichever way it is given, will if it stands finally dispose of the matter in dispute, I think that for the purpose of these rules it is final. On the other hand, if their decision, if given in one way, finally dispose of the matter in dispute, but if given the other, will allow the action to go on, then I think it is not final, but interlocutory”*

[28] In both instances, upon consideration of the relevant judicial precedent, this Court held that the Orders made by the respective Courts were interlocutory in nature. Accordingly, the proper course available to the aggrieved parties was to invoke the jurisdiction of this Court by way of a Leave to Appeal application under Section 754(2) of the Civil Procedure Code, and not by way of an Appeal under Section 754(1). Both Appeals were therefore dismissed.

[29] In the present case, at the commencement of the trial, the Defendants raised a preliminary objection before the District Court, challenging the maintainability of the action. The objection was founded on the institution of Case No. 19530/L, previously filed against the same Defendants, based on the same cause of action and in respect of the same land. The Defendants accordingly contended that the present action constituted a duplication of proceedings. The Plaintiffs did not object to the preliminary objection being raised at the commencement of the Defendants' case. Having considered the material placed before it, the District Court, by Order dated 26/03/2007, upheld the objection and dismissed the second action on the ground that it was not maintainable.

[30] In ***Salaman vs. Warner***<sup>23</sup>, Fry L.J. stated thus;

*“I think that the true definition is this. I conceive that an order is ‘final’ only where it is made upon an application or other proceeding which must, whether such application or other proceeding fail or succeed, determine the action. Conversely, I think that an order is ‘interlocutory’ where it cannot be affirmed that in either event the action will be determined.”*

[31] As referred to earlier in this Judgment, the first action, bearing No. 19530/L, was dismissed by the District Court on 23/05/2003 for non-compliance with an imperative provision of the Civil Procedure Code. The Plaintiff-Respondent raised a question of law based on the plea of res judicata through estoppel, referencing the Divisional Bench decision Appeal Nos. 101A/2009 and 101B/2009 [SC HCCA LA 174/2008] (***Rajendra Chettiar vs. Narayanan Chettiar***<sup>24</sup>). In that case, the learned Additional District Judge dismissed the action *in limine* under Section 46(2) of the Civil Procedure Code. Importantly, in both cases, the merits were not examined at that time.

[32] In ***Stassen Exports Ltd. vs. Lipton Ltd. and another***<sup>25</sup>, the Supreme Court held;

*“considering the views expressed on the doctrine of res judicata, it is apparent that where a final judicial decision has been pronounced by a court which had jurisdiction over the issue before it, any party to such litigation as against the other party would be estopped in any subsequent litigation from disputing such decision on the merits whether it be used as the foundation of an action or as a bar to any claim.----”*

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<sup>23</sup> n (5)

<sup>24</sup> n (5)

<sup>25</sup> [2009] 2 SLR 172



In *Carl Zeiss Stiftung vs. Rayner & Keeler Ltd. (No. 2)*<sup>26</sup>, Lord Guest stated, “*any party to such litigation as against any other party is estopped in any subsequent litigation from disputing or questioning such decision on the merits.*”

- [33] It is crucial to recognize that when the District Court dismissed the second action, it did not consider or resolve the rights and liabilities of the parties on the merits, nor did it issue a final Judgment. By Order dated 26/03/2007, the District Court *inter alia*, upheld the plea of *res judicata* by way of estoppel and accordingly dismissed the action. At the time the District Court made its Order, an Appeal against the Order in the first action was pending before the Court of Appeal. The Court held that although the Plaintiff admitted to filing the Appeal and undertook to withdraw it, the Plaintiff had failed to establish that the application to withdraw the Appeal bearing No. C.A. 412/03 had been allowed, or that the Appeal had in fact been withdrawn.
- [34] Applying the application approach to the present case, it is evident that the dismissal of the Plaintiff’s second action arose from a preliminary objection taken at the commencement of proceedings. While the decision to uphold the objection brought the action to an end, had the objection been overruled, the matter would have proceeded to trial, leaving the parties’ substantive rights yet to be decided. The decisive consideration is whether the Order necessarily concludes the litigation irrespective of the outcome of the application. On this test, the Order dated 26/03/2007 must be regarded as interlocutory.
- [35] Considering all the above circumstances, it cannot be said that the decision of the District Court, in dismissing the second action, was final and conclusive between the parties on the merits so as to operate as a complete bar to further proceedings. Accordingly, I hold that the Order dated 26/03/2007 is not a Final

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<sup>26</sup> 1967 (1) AC. 853

Order having the effect of a Judgment within the meaning of Sections 754(1) and 754(5) of the Civil Procedure Code, but is interlocutory in nature.

[36] Therefore, I answer the questions of law Nos. 1 in the affirmative, No. 2 in the negative, set aside the Order dated 09/03/2009 of the Civil Appeal High Court of Colombo, and dismiss the Appeal bearing No. WP/HCCA/COL/138/2007(F) filed in that Court.

[37] Appeal allowed. No order as to costs.

**Judge of the Supreme Court**

**Arjuna Obeyesekere, J.**

I agree

**Judge of the Supreme Court**

**K. Priyantha Fernando, J.**

I agree

**Judge of the Supreme Court**