

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

In the matter of an Application for Leave to Appeal in terms of Section 31DD of Industrial Disputes Act, against the Judgment dated 30/07/2020 delivered by the Provincial High Court of Western Province (Holden in Negombo) in Case No. HCRA 189/20.

SC Appeal 04/2024 [SC/HC/LA 71/20]

Provincial High Court of Negombo

Case No: H.C.R.A. 189/20

Additional Labour Tribunal of Negombo

Case No: 21/අඪ. /1159/2013

Warnakulasuriya Manori Dilmini

Fernando

No. 9/1, Luxman Mawatha,

Sea Street,

Negombo.

Applicant-Petitioner-Petitioner

Vs.

B2 Engineering (Pvt) Ltd.

Lot 88B, Ring Road,

Phase II,

Free Trade Zone,
Katunayake.

Respondent-Respondent-Respondent

**BEFORE : YASANTHA KODAGODA, PC, J.,
KUMUDINI WICKREMASINGHE, J. &
A.L. SHIRAN GOONERATNE, J.**

Sudarshani Coorey instructed by Diana Stephanie Rodrigo for
the Appellant.

Respondent absent and unrepresented.

Argued and decided on: 16th January 2026

JUDGMENT

YASANTHA KODAGODA, PC, J.,

- 1) This matter was taken up for hearing founded upon a previous decision taken by this Court that the Appeal could be taken up for hearing even in the absence of the Respondent. That was due to the reason that on several previous occasions (including on 6th December 2023) notwithstanding Notice of this matter having been dispatched to the Respondent (both before as well as after the Grant of Leave to Appeal) the Respondent had not been present in Court nor been represented. Therefore, upon being satisfied that the Respondent had adequate notice of this matter, the Court proceeded to take up this matter for hearing. Learned Counsel for the Appellant submits that she has instructions to submit to Court that the Respondent company is a functioning business entity even as at today.

- 2) The Applicant-Petitioner-Appellant had served as an employee of the Respondent-Respondent-Respondent company and, as at the time her employment had been terminated, has held the position of General Manager. She had at the same time been married to the Managing Director of the Respondent company, a German national named Uwe Becker. She had remained in employment even after her marriage to the afore-stated person. Due to an alleged matrimonial dispute between the Appellant and Uwe Becker, the latter had left the matrimonial abode on 5th October 2011. The cause of the dispute had allegedly been an extra-marital affair Uwe Becker had with a third party. On 11th November 2011, Uwe Becker instituted action in the District Court seeking a divorce from the Appellant. However, the Appellant remained in employment at the Respondent company. On 1st March 2013, Uwe Becker in his capacity as the Managing Director of the Respondent company filed a newspaper Notice stating that the Appellant had no further connections with the Respondent company. The Appellant alleges that thereafter the Respondent company terminated her employment.
- 3) On 20th April 2013, filing an Application in the Labour Tribunal the Appellant claimed that her employment was wrongly terminated by the Respondent company. She sought reinstatement, back-wages and compensation. In the Answer filed by the Respondent company, it took up the position that the employment of the Applicant was not terminated, and that she had resigned from the company on the 1st of March 2013. Subsequently, this matter had been taken up for inquiry by the learned President of the Labour Tribunal. The Appellant gave evidence and concluded the case for the Appellant. The Respondent company called Uwe Becker to testify on its behalf. While he was

under cross-examination, on 20th October 2015, the Respondent company made an application for laying-by of the proceedings in the Labour Tribunal. That application was made under section 31B(3) of the Industrial Disputes Act, on the footing that Uwe Becker had filed a divorce action against the Appellant, it was pending, and therefore the proceedings in the Labour Tribunal should be laid-by till the conclusion of the said divorce case.

- 4) Allowing the application on behalf of the Respondent company, on 1st June 2016, the learned President of the Labour Tribunal made order laying-by the proceedings.
- 5) For some time, the Appellant had remained dormant in expectation that the afore-stated divorce action would come to an end and then the proceedings in the Labour Tribunal would resume. Since it did not happen within a reasonable period of time, the Appellant had made an application to the Labour Tribunal seeking the lifting of the order of suspension of proceedings and moving that the Labour Tribunal proceedings resume.
- 6) On the 10th of December 2019, the Learned President of the Labour Tribunal made order refusing the application to reactivate the proceedings. Against that order the Appellant presented a Revision Application to the High Court and the High Court by its judgment dated 30th July 2020, had dismissed that Application. This Appeal arises out of the afore-stated judgment of the High Court.
- 7) Section 31B(3) of the Industrial Disputes Act (introduced by the Industrial Disputes (Amendment) Act, No. 62 of 1957), reads as follows:

Where an application under sub-section (1) relates –

(a) to any matter which, in the opinion of the Tribunal, is similar to or identical with a matter constituting or included in an industrial dispute to which the employer to whom that application relates is a party and into which an inquiry under this Act is held,

or

(b) to any matter the facts affecting which are, in the opinion of the Tribunal, facts affecting any proceedings under any other law,

*the Tribunal shall make order **suspending its proceedings** upon that application until the conclusion of the said inquiry or the said proceedings under any other law, and upon such conclusion the Tribunal shall resume the proceedings upon that application and shall, in making order upon that application, have regard to the award or decision in the said inquiry or the said proceedings under any other law.*

[Emphasis added by me.]

- 8) The first observation I wish to make with regard to the application of section 31B(3)(b) is that, following an application being made seeking suspension of proceedings on the footing that there are proceedings pending ‘under any other law’, the learned President of the Labour Tribunal is required to consider the nature of such ‘proceedings under any other law’ in the backdrop of the proceedings instituted before him, and form an opinion regarding the following matters:

- Whether the **facts** affecting the matter presented through the filing of the Application presented to the Labour Tribunal under section 31B(1) (which is sought to be suspended) **are** the **facts** affecting any other matter pending under any other proceeding under any other law.

9) In formulating the above criterion to be considered by the learned President of the Labour Tribunal, I proceeded on the footing that what Parliament meant by the use of the term 'affecting', on an overall consideration of the scheme and the purported purpose sought to be achieved by the inclusion of section 31B(3) of the Industrial Disputes Act, was, where the matter to be adjudicated upon by the Labour Tribunal relates to a set of facts which constitutes the matter to be decided by a dispute resolution proceedings taking place under any other law. The intention of the Parliament appears to me to have been, in such a situation, abate proceedings before the Labour Tribunal and await the outcome in the proceedings under such other law. Furthermore, following the completion of such other proceedings, the Parliament intended the Labour Tribunal to have regard to (and not necessarily be bound by) the decision of such other proceedings under such other law. The need to do so, understandably arises out of the fact that a Labour Tribunal has been placed at the lowest strata of the dispute resolution adjudicatory system of Sri Lanka (and is a Tribunal as opposed to a Court of law), and therefore it would be desirable for the Labour Tribunal to refrain from adjudicating into the matter, until the Court of law concludes its proceedings and adjudicates the matter. Furthermore, as the latter part of section 31B(3) stipulates, once such other proceedings are concluded, the Labour Tribunal is required to resume proceedings, and 'have regard to' such other proceedings (which really means the outcome of such other proceedings) and take such outcome into consideration.

10) I have considered the material available in this matter, and we have formed the view that the afore-stated divorce proceedings between the Appellant and

the Managing Director of the Respondent company Uwe Becker is extraneous in so far as the dispute between the Appellant and the Respondent company is concerned. That is because the set of facts in issue in the divorce proceedings would not be identical to the facts in issue in the dispute presented to the Labour Tribunal. While in the Divorce proceedings the facts in issue would be whether a matrimonial fault has been committed by a party and if so, which party committed such fault, the facts in issue before the Labour Tribunal would be whether the applicant's employment had been terminated by the employer and if so whether such termination was lawful and fair. Nevertheless, I do appreciate that in both proceedings there may be certain common facts which are relevant. In my view, the existence of some common facts *per se* would not justify the invocation of section 31B(3)(b) and suspension of proceedings. Further, it is important to note that the question of termination of employment can be decided without taking into consideration the manner in which the matrimonial dispute between the parties is required to be judicially decided.

- 11) Furthermore, this Court notes that the object and purposes of the Industrial Disputes Act will be frustrated by prolonged suspension of the proceedings before the Labour Tribunal. It appears to Court that the Respondent company has made the afore-stated application under Section 31B(3)(b) of the Industrial Disputes Act for a collateral and abusive purpose of delaying the resolution of the Industrial Dispute between the parties. In those circumstances, we find ourselves unable to agree with the contention of the High Court contained in the impugned judgment of that Court. In arriving at that finding, this Court has taken into consideration the fact that given the circumstances relating to this matter, the industrial dispute between the

Appellant and the Respondent company can be decided by the learned President of the Labour Tribunal based on the evidence that the parties may present pertaining to the industrial dispute between the parties, independent of the judicial finding in the divorce proceedings refer to above.

12) Therefore, I set aside the impugned judgment of the High Court dated 13th of July 2020. The learned President of the Labour Tribunal is directed to forthwith issue Notice to the parties and resume the inquiry. Given the delay which has already occurred and serious prejudice caused to the Appellant who has been out of employment for several years, the learned President of the Labour Tribunal is directed to conclude the inquiry within six months following the receipt of this Judgment.

13) Accordingly, the Appeal allowed.

JUDGE OF THE SUPREME COURT

KUMUDINI WICKREMASINGHE, J.

I agree.

JUDGE OF THE SUPREME COURT

A.L. SHIRAN GOONERATNE, J.

I agree.

JUDGE OF THE SUPREME COURT