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

An application in terms of Recovery of Possession of leased premises Act No. 01 of 2023.

China Great Wall Hospital Private Limited
No.32, Park Road, Colombo 05.
And
No.21, Upatissa Road,
Bambalapitiya,
Colombo 04.
Plaintiff

S.C. Appeal No.59/2024
S.C.(SPL) L.A. No. 35/2024
C.A. RII No. 40/2023
D.C. Colombo No. DRE(S)41/23

Vs.

Raguwan Sandanam,
No.12, Dehiwala Road,
Maharagama.
And
No.18/1 and 18/2,
Sellamuttu Avenue,
Colombo 03.
Defendant

AND BETWEEN

In the matter of an Application for revision and/or Restitutio in integrum in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Raguwan Sandanam,
No.12, Dehiwala Road,
Maharagama.
And
No.18/1 and 18/2,
Sellamttu Avenue,
Colombo 03.
Defendant-Petitioner

Vs.

China Great Wall Hospital Private Limited
No.32, Park Road, Colombo 05.
And
No.21, Upatissa Road,
Bambalapitiya,
Colombo 04.
Plaintiff-Respondent

AND NOW BETWEEN

In the matter of an appeal from the judgment of the Court of Appeal of the Democratic Socialist Republic of Sri Lanka under and in terms of Article 128(2) of the Constitution.

China Great Wall Hospital Private Limited,
No.32, Park Road, Colombo 05.
And
No.21, Upatissa Road,
Bambalapitiya,
Colombo 04.
Plaintiff-Respondent-Appellant

Vs.

Raguwan Sandanam,
No.12, Dehiwala Road,
Maharagama.
And
No.18/1 and 18/2,
Sellamuttu Avenue,
Colombo 03.
Defendant-Petitioner-Respondent

BEFORE : **P. PADMAN SURASENA, CJ.**
A.L. SHIRAN GOONERATNE, J.
ACHALA WENGAPPULI, J.

COUNSEL : Boopathy Kahathuduwa with Sachintha Perera, Keheliya Koralage and Navindu Kalansooriya instructed by Wasantha Kahathuduwa for the Plaintiff-Respondent-Appellant .

Mahinda Nanayakkara with Sunanda Randeniya for the Defendant-Petitioner-Respondent

ARGUED ON : 27th June, 2024

DECIDED ON : 12th September, 2025

ACHALA WENGAPPULI, J.

This is an appeal by which the Plaintiff-Respondent-Appellant (a company duly incorporated in Sri Lanka and hereinafter referred to as "the Plaintiff Company") sought Special Leave to Appeal from this Court, against a judgment pronounced by the Court of Appeal on 19.12.2023.The Court of Appeal, by pronouncement of the said judgement, revised or acted in *restitutio in integrum,* in respect of an order made by the District Court on 14.09.2023 under Section 11(2) of the Recovery of Possession of Premises Given on Lease Act No. 1 of 2023, (hereinafter referred to as "the Act"). The original Court, by its order made the decree *nisi* which had already been issued against the Defendant-Petitioner-Respondent (hereinafter referred to as "the Defendant") *absolute,* after refusing his application to grant him further time to. show cause against the said decree nisi.

After the said application was supported by the Plaintiff Company on 17.05.2024 and, upon hearing the Defendant in opposing the same, this Court decided to grant Special Leave to Appeal on the following question of law:

> Have the learned Judges of the Court of Appeal given an incorrect interpretation to Section 11(2) of the Recovery of Possession of Premises Given on Lease Act No. 1 of 2023?

In view of the request made by the Plaintiff Company to have this matter taken up for hearing urgently, the appeal was taken up for hearing on 27.06.2024. Parties were afforded an opportunity to supplement their oral submissions that were presented before this Court, if they so wish, by

way of written submissions. The parties have availed themselves of this opportunity and tendered comprehensive written submissions.

It would be pertinent to make a brief reference to the relevant factual matters before proceeding to consider the submissions of the learned Counsel for the Plaintiff Company for its acceptability in the determination of the said question of law.

The parties have entered into an Agreement of Lease No. 23, attested by *T.S. Gunasekera,* Notary Public on 23.07.2019, in relation to a premises bearing assessment Nos. 18/1 and 18/2 of *Sellamuttu* Avenue, *Kollupitiya* for a period of five years, commencing from 01.10.2019 and ending on 30.09.2024. The parties also agreed with a pre-determined quantum of monthly rental, with a proportionate increment for each year of occupation of the premises. The Defendant who came into possession of the premises on 22.07.2019, thereafter fallen into arrears after the month of February 2020, in breach of the conditions that are stipulated in the said agreement.

On 08.08.2023, the Plaintiff Company instituted action against the Defendant before the District Court of *Colombo* invoking its jurisdiction under the said Act, seeking *inter alia* a judgment and decree to evict the Defendant and his agents from the premises described in the schedule to its Plaint, a judgment and decree to recover a sum of Rs. 11,795,506.00, as arrears of lease rentals. The Plaintiff Company also sought the issuance of an order *nisi* against the Defendant in the first instance, in terms of the said Act.

That being the general background to the primary dispute that erupted between the parties, I now set out the relevant factors that had

taken place in a more detailed manner since the said alleged breach and would make an attempt to arrange them in a chronological sequence, as they assume a greater importance in the task of determining the solitary question of law presented before this Court.

After instituting an action in terms of the said Act, the Plaintiff Company supported its application before the District Court of *Colombo* on 11.08.2023, seeking issuance of a decree *nisi*. The Court, by its order made on the same day, issued the decree *nisi* against the Defendant. It further ordered that the said decree *nisi* be served on the Defendant through the Fiscal of that Court on a day specified in that decree, in addition it being served under registered cover. The District Judge signed the decree *nisi* on 23.08.2023 and ordered that the decree be served on the two given addresses of the Defendant, as disclosed by the Plaintiff Company in its Plaint.

On 02.09.2023, the Defendant was arrested by *Borella* Police along with several others, in relation to an allegation of committing certain offences against a third party. He was produced before the Magistrate's Court of *Colombo* in Case No. B 98183/02/23 on the same day and was remanded. In the meantime, the decree *nisi* issued against the Defendant was affixed on the building situated at the *Kollupitiya* address by the Fiscal of the District Court of *Colombo* on 07.09.2023. The decree *nisi* that was served to the other address through the Fiscal of the District Court of *Nugegoda*, was accepted by a representative of the Defendant on 08.09.2023.

The Defendant signed a Proxy on 13.09.2023 in the presence of his Attorney-at- Law and thereby authorised the latter to represent him in the instant action, instituted by the Plaintiff Company. On 14.09.2023, being the date specified in the decree *nisi* as the date on which the Defendant could make an application seeking leave of Court to appear before it and to show cause, the said Attorney appeared in Court tendered the proxy and, after informing Court that his client is in remand custody, moved Court for "two weeks" time to tender a petition supported by an affidavit. The reason indicated to the Court by the said Attorney was, that it was not possible to obtain "*proper instructions*" ("නිසි උපදෙස්") from his client, the Defendant.

The Plaintiff Company strongly objected to that application, and citing statutory provisions contained in Section 11(2) of the said Act, it moved Court for an order for making the decree *nisi,* absolute. After considering the submissions of Counsel, the District Court made order on 14.09.2023, refusing the Defendant's application. The Court stated that in terms of Section 11(2) of the Act, no provision was made by the Legislature to grant any "*further time*" to file petition and affidavit. Accordingly, the decree *nisi* was made absolute.

Being aggrieved by the said order, the Defendant (who by then was enlarged on bail by the Magistrate's Court on 20.09.2023), had taken a rather an unusual step. He decided to invoke the jurisdiction of the Court of Appeal, conferred under Article 138 of the Constitution, by filing an application for revision and/or *restitutio in integrum* against the said order of the District Court on 01.10.2023. The primary relief prayed for by the Defendant in that application was the intervention of the appellate Court

by setting aside the said order. He also sought the dismissal of the Plaint of the Plaintiff Company.

In that application for revision and/or *restitutio in integrum,* the Defendant had highlighted several "*exceptional grounds*" on which he has prayed for the discretionary remedy. These "*exceptional grounds*" are listed below in the order they were presented by the Defendant:

a. the trial Court failed to ascertain as to whether the Plaintiff Company has no *locus standi* to institute an action against the Defendant,
b. the trial Court failed to ascertain as to whether the amount of money claimed by the Plaintiff Company is justly due,
c. the Decree *nisi* and the Order of Refusal were issued arbitrarily and against the law by the trial Court,
d. Order of Refusal made by the trial Court violates Rules of Natural Justice,
e. the trial Court failed to consider the reasons adduced by the Defendant seeking permission to file his "objections" at a later date,
f. the institution of the action by the Plaintiff Company is *per se* erroneous since the relief sought in terms of prayer to the Plaint is violative of the provisions contained in Section 6 of the said Act.

The Plaintiff Company, in his Statement of Objections, stated *inter alia* that since an alternative remedy available for the Defendant to seek redress from the impugned order, he cannot invoke jurisdiction conferred

under Article 138, being it is an extraordinary jurisdiction. In addition, the Plaintiff Company challenged the factual assertion of the Defendant by stating that filing of the proxy through an Attorney-at-Law is *ex facie* proof that he (the Defendant) was in a position to give instructions to his Attorney and therefore moved the appellate Court to dismiss the said application for revision/ *restitutio in integrum*.

The contentions that were advanced by the Defendant in support of his application before the Court of Appeal are as follows:

a. in the absence of a board resolution of the Plaintiff Company the institution of an action is bad in law,
b. in the absence of a resolution empowering *E Lin,* a director of the Plaintiff Company, to execute the said Lease Agreement, it had not been properly executed,
c. the affidavit by one of the directors of the Plaintiff Company along with the Plaint cannot be taken into consideration according to law,
d. the Plaintiff Company failed to prove that the premises given on lease "*is lawfully due to the Plaintiff Company*" in terms of Section 4(1)(a) of the said Act,
e. the Plaintiff Company failed to disclose a proper cause of action and comply with Section 46(2)(d) of the Civil Procedure Code as required in terms of Section 4(1) of the said Act,
f. the Plaintiff Company failed to properly plead its cause and thus failed to comply with Section 40(d) of the Civil Procedure Code and as such there was total want of jurisdiction,

g. the Order of Refusal is arbitrary and against the law as it violates the Rules of Natural Justice.

Upon consideration of the material placed by the parties, the Court of Appeal has formed the view that it should exercise its powers of revision /*restitutio in integrum* in favour of the Defendant and proceeded to set aside the order of the District Court. The appellate Court considered the undisputed fact that the Defendant was in remand custody from 06.09.2023 to 20.09.2023. It also considered the application made by his Attorney to the District Court to grant "*further time*" of two weeks to file petition and affidavit seeking to obtain leave of Court to appear and show cause, in terms of the provisions contained in Section 12 of the Act. Thereupon, after referring to the statutory provisions of Section 11(2) of the said Act, the appellate Court, decided that it "… *was the main reason which led to the learned Additional District Judge to refuse to grant time. Whereas she was not at fault on the face of the Section, under the powers of revision and restitutio in integrum this Court can consider whether the Legislature intended the abrogation of the Rules of Natural Justice, in that the Rule "Audi Alteram Partem" in enacting the above provision*".

In view of the fact that the Act did not specifically abrogate the principles of natural justice, that Court proceeded to hold that "… *a legislation would not be interpreted to shut out a party from legal proceedings pending against him when he has a valid and reasonable reason to move for further time*."

During the hearing of the instant appeal, learned Counsel for the Plaintiff Company contended that the process of reasoning, adopted by the

Court of Appeal and the interpretation given to Section 11(2) of the Act on rule of *audi alteram partem* is completely incorrect and wrong in law for following reasons:

(1). the Court of Appeal incorrectly applied the principles of natural justice *audi alteram partem,* which is not a rule of interpretation and also failed to note that the statutory provisions that contain in Section 11 and 16 were in fact drafted in recognition of that principle,

(2). the Court of Appeal erred in resorting to any other rule of interpretation before proceeding to interpret the provisions of Section 11(2) on literal rule, being the primary rule of interpretation, without any reason as to why the plain literal meaning of that Section cannot be applied,

(3) the Court of Appeal incorrectly referred to principles outlined in the preamble to the Constitution to establish the intention of the Legislature and it failed to peruse the *Hansard* for the purpose of ascertaining the intention of the Legislature, in order to interpret the legislation,

(4) the Court of Appeal erred when it held that "… *a proxy could be sent to the remand prison for the signature …*" and also by adding "… *it is not only a difficult thing but an almost impossible thing to obtain meaningful instructions while the Defendant was in remand custody*" whereas the proxy of the Defendant itself confirms that it was signed in the presence of an Attorney-at-Law.

What lies at the very core of the contention is the statutory provisions contained in Section 11(2), which reads as follows:

> "*The Court shall not grant the defendant any further time to make an application to enable the defendant to seek leave to appear and show cause against such decree nisi.*"

It is this particular Section that the Court of Appeal has found to be in violation of the rule *Audi Alteram Partem,* and therefore held that "*… under the powers of revision and restitutio in integrum this Court can consider whether the Legislature intended the abrogation of the Rules of Natural Justice, in that the Rule "Audi Alteram Partem" in enacting the above provision*". Thus, the Court of Appeal has undertaken an investigation whether the Legislature, in enacting Section 11(2) of the Act, has "*… intended the abrogation of the Rules of Natural Justice, in that the Rule Audi Alteram Partem …*".

After inserting a number of quotations from judicial precedents in its impugned judgment which defined its revisionary jurisdiction, the Court of Appeal has thereupon arrived at its final conclusion, that " *[O]n the basis of audi alteram partem referred to and explained above, this Court sets aside the order of the learned Additional District Judge dated 14.09.2023 and set aside the decree absolute, exercising the powers of revision and restitutio in integrum and allows the defendant petitioner to file papers in terms of Section 12(2) of the Act within 06 weeks from the date of this judgment , subject to the depositing in the District Court of a sum of Rs.11,975,506.00 either in cash or upon a bank guarantee or an acceptable security.*"

It appears that, in the assessment of the Court of Appeal, the only exceptional ground that merited its intervention with the impugned order of the original Court is the ground urged by the Defendant that the Order of Refusal made by the lower Court is arbitrary and against the law, as it violates the Rules of Natural Justice. In doing so, the Court of Appeal concluded that Section 11 (2) is explicit in laying down the applicable law in this regard and therefore, the trial Court could not be faulted for making such an order. Hence, the decision of the Court of Appeal to intervene with the legally valid order was made not because an error of law committed by the District Court, but because the Act and the provisions of Section 11(2) do not specifically abrogate the principles of natural justice, and therefore "*… a legislation would not be interpreted to shut out a party from legal proceedings pending against him when he has a valid and reasonable reason to move for further time*."

The Court of Appeal reached the said conclusion purely on the premise that the statutory provisions contained in the Act did not abrogate the applicability of the Rules of Natural Justice and therefore it had the power under Article 138 to remedy an injustice that resulted in due to strict adherence by the District Court to the statutory provisions contained in Section 12(1), which it taken to be contrary to the rule, *audi alteram partem*.

With due respect to the appellate Court, it is my considered view that it proceeded to act on that premise upon after undertaking evaluation of the statutory provisions contained in the Act, particularly of Section 12(1) and reaching a totally erroneous conclusion.

Let me set out the many reasons for my view in a more detailed manner.

It is critical to bear in mind an important principle of interpretation of Statutes in this regard, because it spells out the boundaries within which a Court could undertake such an exercise. At page 1 of his work, on **Interpretation of Statutes,** *Maxwell* quoted the judgment of Lord *Greene* MR in ***Re A Debtor*** [1948] 2 All E.R. 533 (at p. 536) that "*[I]f there is one rule of construction for statutes and other documents, it is that you must not simply imply anything in them which is inconsistent with the words expressly used.*" This rule is described as the literal rule and accepted as the primary rule of interpretation of Statutes.

The text of Section 11(2) of the Act reads, "*[T]he Court shall not grant the defendant any further time to make an application to enable the defendant to seek leave to appear and show cause against such decree nisi*", and as such it effectively prevented a Court from granting any 'further' time to a defendant, who was already served with a decree *nisi* and directed to obtain leave of Court to appear and show cause on a special date. What is important to note in the imposition of this restriction, the Section 12(1) only prohibits a defendant seeking "*…any <u>further</u> time to make an application…*" (emphasis added).

It is clear from the word "*further*" contained in Section 12(1), that it is an indication that the Legislature was alive to the fact that such a defendant had already been granted time to do so by the District Court. That Court did so by specifying the date which it thought as reasonable, after allowing reasonable time period by enabling him to make an

application to seek leave of Court to appear and show cause against that decree *nisi,* in terms of Section 12(1).

Therefore, the statutory prohibition imposed by Section 11(2) is an important step in the procedure prescribed by the Act, applicable to a defendant, when he seeks leave of that Court to appear and show cause against the decree *nisi*. The Act specifies the procedure that should be followed in the issuance of a decree *nisi* as well as to ensure its prompt service on a defendant. Particularly, a defendant who was served with a decree *nisi* issued under this Act, cannot present himself in Court at his convenience. He is expected to follow the specific procedure set out in the Act, by which he could appear before Court and, that too after obtaining leave of Court, in order to show cause against the decree *nisi*. In order to illustrate the point, I shall make a refence to the other Sections that set out the procedural steps the District Court is expected to follow, in relation to an action instituted before it under Section 3 of the Act.

After the plaint is filed and if it appears to the District Court that the requirements of Section 5(1)(a) and (b) have been satisfied, it shall enter a decree *nisi.* The decree *nisi* then should be served on the defendant within a period not less than three days, in terms of the statutory provisions contained in Part II of the Act. Section 11(1) imposes a duty on the issuing Court to specify the date, in the decree *nisi* itself, on which the defendant should appear before it and to make an application seeking leave of Court to appear and to show cause, if he so wishes. Section 11(1) further requires the District Court to specify the said date, after having due regard to the distance from the defendant's residence to Court. Section 8(1) imposes a duty on a plaintiff to serve the decree *nisi* and thereby "… *giving a*

defendant a reasonable opportunity to make an application to seek leave to appear and show cause". Thus, the Parliament, by enacting these specific statutory provisions, had thereby ensured the availability of a reasonable opportunity for a defendant, that enable him to appear before the Court and effectively put up a challenge to the decree *nisi* that was served on him. It is relevant to note here that the Defendant never made any claim before the District Court either to the effect that he had not been served with a decree *nisi* at all or had served but at a very late stage, depriving him of any reasonable opportunity to show cause against the same.

Section 12(1) sets out the specific procedure by which such a defendant should show cause against the decree *nisi* issued against him. That Section, whilst recognising the defendant's entitlement to show cause against the already issued decree *nisi* against him, also imposes a pre-condition him by stating that "*… he first obtains leave to appear and show cause from the Court which issued the decree nisi.*"

The Court of Appeal, in coming to a finding that Section 11(2) prevented the Defendant from challenging the decree *nisi,* by refusing to grant further time, has failed to consider the Act as a whole and the statutory scheme that has been put in by Parliament. It has confined its attention solely to that Section. *Maxwell* states (ibid, at p. 28) "*… it is an elementary rule that construction is to be made of all the parts together, and not of one part only by itself.*" This principle was once more repeated by the learned author (at p. 62) when he states "*… the meaning of a section may be determined, not so much by reference to other individual provisions of the statute, as by the scheme of the Act regarded in general.*"

It is very evident from the approach of the Court of Appeal adopted in dealing with the Defendant's application under Article 138, it was moved by the perception created in its mind of an '*injustice*' caused to him. This was the main factual point urged before this Court by the learned Counsel who represented the Defendant in this Court, when he submitted that his client was unable to give "*meaningful instructions*" to his Attorney due to his continued incarceration. He successfully convinced the Court of Appeal of the validity of his submission on this point. Undoubtedly, it is this very factor that influenced the Court of Appeal in granting relief as prayed for by the Defendant. Whether the finding of fact reached by that Court to the effect that the Defendant was unable to give such "*meaningful instructions*" to his Attorney was correctly reached upon by the Court of Appeal on the material placed before that Court is another factor that requires consideration and shall be re-visited further down in this judgment.

It is to remedy this '*injustice'* as perceived by the Court of Appeal, that it had undertaken a long journey and traversed through the entire scope of its jurisdiction conferred under Article 138, in order to arrive at a finding that the Defendant was denied of an opportunity to present his position which, in its view, was obnoxious to the rules of natural justice. Therefore, the Court of Appeal proceeded to exercise its discretion by setting aside the impugned order of the District Court made in terms of the provisions contained in Section 11(2) of the Act, by adopting an interpretation to that Section by stating that "*… a legislation would not be interpreted to shut out a party from legal proceedings pending against him when he has a valid and reasonable reason to move for further time*."

In view of this specific finding made by the Court of Appeal which made it to provide an interpretation to Section 11(2) seeking to avert an injustice that results in applying literal interpretation to that Section, it is necessary to refer to the relevant rules of interpretation of Statutes that are applicable in such a situation.

It is noted that among several issues on which this Court was required to make determinations in the judgment of ***Stassen Exports Ltd., v Brooke Bond (Ceylon) Ltd., and another*** (1990) 2 Sri L.R. 63, there is one that stands out from the rest, which has a direct relevance to the issue under consideration in the instant appeal. In that, Court noted that "… *it was for this Court to provide an interpretation, whether the word 'rules' in Article 182 (3) of the Code of Intellectual Property should, as the respondent suggests, be given its wider, 'ordinary' meaning, or whether, as the appellant says, it should be given a narrower, 'technical' meaning*". *Amerasinghe* J, before arriving at a determination of this particular issue has considered a significant number of judicial precedents and quoted them extensively. Of these multitude of quotations referred them, the principle of interpretation of Statutes, in relation to instances where the meaning of a statutory provision is clear and free from any ambiguity was highlighted.

Pollock, J *in* ***Miller v. Salomans*** (1852) 7 Ex. 475, (at p. 560) said: "... *I think, where the meaning of a statute is plain and clear, we have nothing to do with its policy or impolicy, its justice or injustice, its being framed according to our views of right or the contrary. If the meaning of the language used by the legislature be plain and clear, we have nothing to do but to obey it - to administer it as we find it; and I think, to take a different course is to abandon the office of Judge, and to assume the province of legislation."* A similar view was

expressed by *Finnemore* J, in ***Holmes v. Bradfield Rural District Council*** *(1949) 2 KBD 1,* (at p. 7), by stating that: "*[O]f course the mere fact that the results of applying a statute may be unjust or even absurd does not entitle a Court to refuse to put it into operation.*"

In comparatively a recent pronouncement, Lord *Diplock* declared that (vide judgment of ***Duport Steels Ltd and Others v. Sirs and Others*** [1980] 1 All ER 529, at p. 541) "… *if judges under the guise of interpretation, provide their own preferred amendments to statutes which experience of their operation has shown to have had consequences that members of the Court before whom the matter comes consider to be injurious to the public interest*."

Amerasinghe J, in encapsulating the essence of these multiple pronouncements, held that (at p. 74) " … *although in our Republic sovereignty is, in terms of Article 3 of the Constitution, in the People, effect must be given to the meaning intended by Parliament which, in terms of Article 4 (a) of the Constitution exercises the power of the People, even though the Court (which in terms of Article 4 (c) of the Constitution is an instrument through which the judicial power of the People is exercised by Parliament) may believe that such a meaning was opposed to the consciousness of the people*".

This principle is also found in *Maxwell* (at p. 536) as " *[I]f language is clear and explicit, the Court must give effect to it, for in that case the words of the statute speak the intention of the Legislature. And in so doing it must bear in mind that its function is jus decree, not jus dare: <u>the words of a statute must not be overruled by the judges, but reform of the law must be left in the hands of Parliament</u>.*" (emphasis added)

I am in respectful agreement with the pronouncement made by *Amerasinghe* J, which was referred to above. Therefore, it is clear that when the Court of Appeal determined that "*… a legislation would not be interpreted to shut out a party from legal proceedings pending against him when he has a valid and reasonable reason to move for further time*" it has fallen into a serious error, when it adopted an approach that had all the attributes of a post enactment review of legislation, presented in the guise of providing a remedy to an 'injustice' caused by a statutory provision.

What remains now is to deal with the factual consideration, which I kept aside earlier on in this judgment, namely that the acceptance by the Court of Appeal that the Defendant "*… has a valid and reasonable reason to move for further time*".

When the Defendant appeared before the District Court on 14.09.2023, through his Attorney, who had been appointed by way of a valid proxy, and possessed the authority to represent him in Court, the former was well aware of the fact that he had already been ordered to appear before that Court on that specific day "*… and make an application seeking leave from Court to appear and show cause, if any, why this decree nisi should not be made absolute*". This is because, Section 11(1) states that the "*… date to be specified in the decree nisi as the date on which the defendant is to make an application seeking leave to appear and show cause*". These factors, taken in conjunction with the prohibition imposed by Section 11(2) of the Act with the words "*… Court shall not grant the defendant any further time to make an application to enable the defendant to seek leave to appear and show cause against such decree nisi*", results in a position that the Defendant, who failed to utilise the opportunity provided by the Act to seek leave of the Court to

appear and show cause against the decree *nisi,* by operation of law is not entitled at all to be granted any further time for that purpose.

The oral application of the Defendant seeking further time was made to Court not on the premise that it was not possible to obtain any instructions from him at all due to his incarceration, but because it was not possible to obtain "*proper instructions*". Although the Defendant was detained in Fiscal custody, he was not held incommunicado or was under a prohibition for an Attorney-at-Law to interview him after obtaining due approval. The mere inconvenience for the Attorney to obtain "*proper instructions*" from a client who was incarcerated, surely could not be considered as a valid basis to put the process of litigation constituted under the Act on hold. This contention is fundamentally flawed as what guarantee the Defendant had that he would be enlarged on bail within the next two weeks for his Attorney to obtain "proper instructions".

Should the Defendant be entitled to succeed on this point, then the action has to abated, awaiting the release of the Defendant. If after trial, he was convicted and ordered to serve a term of imprisonment, then the Court is compelled to await for his release after the completion of his term as well.

The finality of the date specified in the decree to make an application seeking leave of Court to appear is clearly evident, if one were to examine the statutory provisions contained in Section 15(a) of the Act. Section 15(a) states where a defendant, "… *fails to make an application for leave to appear and show cause <u>on the date specified in the decree nisi under subsection (1) of Section 11,</u> the Court shall make the decree nisi absolute*"

(emphasis added). The literal meaning of this subsection is clear that, on or before the date specified in the decree, only a Defendant could make an application seeking to appear before the Court.

The question whether the Defendant utilised the reasonable time interval provided by the Court in terms of the Act to make his application should in the circumstances be answered in the negative. The District Court could have granted the Defendant's application for further time, provided the Plaintiff Company consented, in terms of the proviso to Section 15. However, in this instance, understandably the Plaintiff Company strongly resisted granting of any further time to the Defendant to make an application to leave of Court to appear. That objection left the District Court with no discretion but to refuse the application of the Defendant, as specifically stated by Section 11(2) of the Act.

The Court of Appeal, in its impugned judgment made another error when it held that the Defendant should be allowed to "… *file papers in terms of Section 12(2) of the Act within 06 weeks from the date of this judgment, subject to the depositing in the District Court of a sum of Rs. 11,795,506.00 either in cash or upon a bank guarantee or an acceptable security.*"

In terms of Section 12(1), the Defendant is expected to obtain leave of Court to appear before it as the first step and then only could show cause against the decree *nisi,* as the second step. Since the Court of Appeal ordered six weeks' time to the Defendant to make that application *ex mere motu*, it could be understood that the said part of the judgment of that Court was meant to facilitate the request for further time. However, the Court of Appeal also ordered the Defendant to make that application after

"*…depositing in the District Court of a sum of Rs. 11,795,506.00 either in cash or upon a bank guarantee or an acceptable security.*"

Section 12(3) states "*[U]on the filing of the petition and affidavit referred to in subsection (2), if the Court is satisfied that the contents of the petition and affidavit disclose a defence which is prima facie sustainable against the action of the plaintiff for recovery of possession of the premises, the Court may grant the defendant leave to appear and show cause against the decree nisi, subject to security.*" Section 13 (a) to 13(c) in turn provides for the manner in determining the quantum of the security that should be provided. Thus, the question of making a deposit arises only if the application of the Defendant satisfies the requirements as imposed by Section 12(3).

Since the provisions of Section 12(3) imposes a duty on Court to satisfy itself of the "… *contents of the petition and affidavit discloses a defence which is prima facie sustainable against the action of the plaintiff…* ". If it does, then the Court should allow the Defendant to appear and show cause, of course subject to the condition of depositing security in terms of that Section. The District Court made no finding as to the disclosure of a *prima facie* sustainable defence as the proceedings did not proceed to that point. Therefore, when the Court of Appeal ordered the Defendant to deposit security without first making a determination whether he should be granted leave of Court to appear and show cause against the decree *nisi* and without a determination whether he discloses a defence which is *prima facie* sustainable against the action of the plaintiff, it had obviously acted contrary to the provisions of the Act. It need not be emphasised here that

these two determinations must be made by the original Court and not by an appellate Court.

Lastly, I wish to highlight another error made by the Court of Appeal in its determination to interfere with the order of the District Court. It is well settled since the pronouncement of ***Rustom v Hapangama & Co.,*** (1979) 1 Sri L.R. 352, that the insistence on the existence of exceptional circumstances, is a pre-requisite that warrants the exercise of the discretion conferred on the Court of Appeal, in favour of a petitioner who opted to invoke its jurisdiction conferred by Article 138 of the Constitution, when he failed to seek an alternative remedy available to him.

Section 16(1) of the Act states that no appeal shall lie against the decree *nisi,* which has been made absolute due to the failure of a defendant to make an application in terms of Section 15(a). However, the Act itself offers an alternative remedy to a defendant who is aggrieved by an order made under Section 12 of the Act. Section 16 confers power on the District Court to entertain an application by a defendant, against whom a decree *nisi* has been made absolute, if such a defendant satisfies the original Court of either of the grounds that has been specified in Section 16(1)(a) and 16(1)(b), and he is therefore entitled to have that decree absolute set aside subject to imposing security, provided that such an application was made not later than one year from the date on which the decree *nisi* was made absolute. Therefore, the Defendant was required to satisfy the existence of

exceptional circumstances, if the Court of Appeal were to exercise its powers of revision.

Despite the Defendant placed reliance on several ”exceptional circumstances” pleaded in his petition, the appellate Court considered only one. The exceptional circumstance on which the Court of Appeal acted in revising the order of the District Court was the deprivation of an opportunity for the Defendant to show cause against the decree *nisi.* In the process of reasoning adopted by that Court to arrive at the said finding, it had failed to observe that the reason on which the Defendant could not be granted any further time to show cause against the decree *nisi* was due to operation of law. Since the impugned order made by the Court of Appeal, being a legally valid order as held by the appellate Court itself, cannot be considered as an “error in fact or of any law” committed by an original Court which could be corrected in terms of jurisdiction conferred by Article 138 on that Court. In any event, a situation that resulted in due to operation of a statutory provision could not be taken as a one that has “*prejudiced the substantial rights of the parties or occasioned a failure of justice*” of a party in terms of the proviso to Article 138.

Thus, the question of law on which this appeal was heard, namely “*[H]ave the learned Judges of the Court of Appeal given an incorrect interpretation to Section 12(1) of the Recovery of Possession of Lease Premises Act No. 01 of 2023?”* is accordingly answered in the affirmative.

The appeal of the Plaintiff Company is therefore entitled to succeed. The impugned judgment of the Court of Appeal is accordingly set aside. The order of the District Court is restored and affirmed.

The Plaintiff Company is entitled to the costs of this appeal.

JUDGE OF THE SUPREME COURT

P. PADMAN SURASENA, CJ.

I agree.

CHIEF JUSTICE

A. L. SHIRAN GOONERATNE, J.

I agree.

JUDGE OF THE SUPREME COURT