

**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 from the order of the Provincial High Court of Negombo made to it in terms of Article 154P (3) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**SC / SPL / LA / 192 / 24**

**HC (Negombo): HCMCA 07/23**

**MC (Minuwangoda):**

**2126 / Maintenance**

**Rajasekera Waduge Sarika**

**Sugandini Rajasekera,**

Godigamuwa Road,

Dunagaha.

**APPLICANT**

**-Vs-**

**Kannake Arachchige Asantha**

**Sanjaya Rukmal Wimaladasa,**

“Wimal Engineering” Pvt Ltd,

Negombo Road,

Dunagaha.

**RESPONDENT**

**AND THEN BEWEEN**

**Kannake Arachchige Asantha  
Sanjaya Rukmal Wimaladasa,**  
“Wimal Engineering” Pvt Ltd,  
Negombo Road,  
Dunagaha.

**RESPONDENT – APPELLANT**

**-Vs-**

**Rajasekera Waduge Sarika  
Sugandini Rajasekera,**  
Godigamuwa Road,  
Dunagaha.

**APPLICANT – RESPONDENT**

**AND NOW BETWEEN**

**Kannake Arachchige Asantha  
Sanjaya Rukmal Wimaladasa,**  
“Wimal Engineering” Pvt Ltd,  
Negombo Road,  
Dunagaha.

**RESPONDENT – APPELLANT –  
PETITIONER**

-Vs-

**Rajasekera Waduge Sarika**

**Sugandini Rajasekera,**

Godigamuwa Road,

Dunagaha.

**APPLICANT – RESPONDENT –  
RESPONDENT**

**BEFORE:**            **A.H.M.D. NAWAZ, J**  
  
                             **A.L. SHIRAN GOONERATNE, J &**  
  
                             **K. PRIYANTHA FERNANDO, J**

**COUNSEL:**        Pradeep Fernando instructed by Poornima Gnanasekera for the  
Respondent -Appellant –Petitioner.

W. Dayaratne, PC with R. Jayawardene and Malshika Jayalath  
for the Applicant-Respondent –Respondent.

**ARGUED &**

**DECIDED ON:**    **02/08/2024**

**A. H. M. D. NAWAZ., J**

1. The Petitioner before this Court seeks leave to appeal from the judgment of the learned High Court Judge of Negombo dated 31.05.2024 in which the

Petitioner was ordered to pay an enhanced sum of money as maintenance to his wife and children.

2. A preliminary objection has been raised by Mr. W. Dayaratne, PC that Section 14(2) of the Maintenance Act No. 37 of 1999 which provides for a leave to appeal application to be made to the High Court has not been complied with by the Petitioner. The objection in a nutshell is that a direct leave to appeal will not lie to the Supreme Court, when a leave to appeal to the Supreme Court must have been made to the High Court.
3. The judgement sought to be impugned before this Court was delivered by the High Court in the exercise of its appellate jurisdiction from an order made by the Magistrate in maintenance proceedings. In such a situation Section 14(2) of the Maintenance Act No.37 of 1999 becomes relevant.
4. Section 14(2) of the Act states as follows;

*“Any person dissatisfied with an order made by a High Court in the exercise of its appellate jurisdiction under this Section, may prefer an appeal therefrom to the Supreme Court, on a question of law, **with the leave of High Court, and where such leave is refused, with the Special Leave of the Supreme Court, first had and obtained.**”*
5. This provision makes it patently clear that a pre-condition to the invocation of the jurisdiction of the Supreme Court to challenge a decision made by the High Court in the exercise of its appellate jurisdiction in a maintenance appeal is to seek leave in the first instance from that High Court itself.
6. In terms of Section 14(2) of the Maintenance Act, No. 37 of 1999, where the High Court pronounces an adverse judgment against an appellant in a maintenance appeal, the appellant is required, in the first instance, to seek leave to appeal from the very High Court that rendered the decision.

7. If leave is granted, the grant itself ripens into an appeal to the Supreme Court. Section 14(2) expressly provides that it is only where leave from the High Court has been sought and refused that a party may thereafter invoke the jurisdiction of this Court by way of an application for special leave to appeal.
8. The scheme of the Maintenance Act, No. 37 of 1999 thus imposes a clear condition precedent to the invocation of the appellate jurisdiction of this Court in maintenance appeals emanating from the Magistrate's Court and carried through the High Court.
9. Either the grant of leave by the High Court or, upon refusal, the grant of special leave by this Court, constitutes the sole avenue for engaging the appellate jurisdiction of the Supreme Court in maintenance appeals.
10. As I have already observed, a party to a maintenance appeal in the High Court, arising from proceedings in the Magistrate's Court, cannot prefer a direct application for leave to appeal to this Court when his appeal has been unsuccessful before the High Court. The Respondent–Appellant–Petitioner (hereinafter referred to as “the Petitioner”) has in the present instance sought to do precisely that.
11. It is manifestly clear that the Petitioner has not adhered to the procedure prescribed by the Maintenance Act, No. 37 of 1999. Consequently, the jurisdiction of this Court has not been properly invoked.
12. It is, however, apposite at this stage to advert to the decision in ***Antony Fernando v. Deepthi Lakmali***,<sup>1</sup> wherein a Petitioner, similarly circumstanced in that he too had not sought leave from the High Court, contended before this Court that his right of appeal to the Supreme Court, from

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<sup>1</sup> (2012) 2 Sri L.R. 81

an unsuccessful appeal to the High Court, derived from the governing general statute, namely ***High Court of the Provinces (Special Provisions) Act No.19 of 1990***. That general statute, by Section 9, conferred a right of appeal in the following terms.

*"Subject to the provisions of this Act or any other law, a person aggrieved by-*

*(a) A final order, judgment, decree or sentence of a High Court established by Article 154P of the Constitution in the exercise of the appellate jurisdiction vested in it by paragraph (3) (b) of Article 154P of the Constitution or section 3 of this Act or any other law, in any matter or proceeding whether civil or criminal which involved a substantial question of law, may appeal therefrom to the Supreme Court if the High Court grants leave to appeal to the Supreme Court ex mero motu or at the instance of any aggrieved party to such matter or proceeding:*

*Provided that the Supreme Court may, in its discretion, grant special leave to appeal to the Supreme Court from any final or interlocutory order, judgment, decree or sentence made by such High Court, in the exercise of the appellate jurisdiction vested in it by paragraph (3) (b) of the Article 154P of the Constitution or section 3 of this Act, or any other law where such High Court has refused to grant leave to appeal to the Supreme Court, or where in the opinion of the Supreme Court, the case or matter is fit for review by the Supreme Court:*

*Provided further that the Supreme Court shall grant leave to appeal in every matter or proceeding in which it is satisfied that the question to be decided is of public or general importance;..."*

13. This Court in ***Antony Fernando*** was therefore invited to treat the right of appeal as flowing directly from Section 9 of the said statute, notwithstanding the procedural regime introduced by subsequent legislation. That contention, however, was ultimately found to be misplaced, for the later special enactment had prescribed a distinct procedural route which could not be circumvented by reliance on the general statute.
14. In advancing his argument, the Petitioner in ***Antony Fernando v. Deepthi Lakmali*** (supra) appears to have overlooked that Section 9 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 expressly contemplated that the right of appeal to the Supreme Court could be regulated by subsequent legislation. Significantly, Section 9 of the Act opens with the words “*Subject to the provisions of this Act or any other law,*” thereby recognizing that the general law embodied in the Act itself is always susceptible to amendment or modification of condition precedents by a special enactment. An amendment could change the procedure as regards appeals.
15. Accordingly, no inconsistency arises between the provisions of the **High Court of the Provinces (Special Provisions) Act, No. 19 of 1990** and those of the **Maintenance Act, No. 37 of 1999**. The invocation of the maxim *generalialia specialibus non derogant* in ***Antony Fernando v. Deepthi Lakmali*** (supra) is therefore misplaced, for that maxim becomes relevant only where there exists a genuine conflict between a special law and a general law. In the present context, the Maintenance Act, No. 37 of 1999 does not derogate from the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990, but rather operates as a special enactment carving out a limited exception in respect of appeals to the Supreme Court in maintenance matters.
16. It is also evident that policy considerations underlie this legislative scheme, which necessitated the requirement that leave be first sought from the High Court. This requirement under Section 14(2) is of a piece with a clear

legislative policy to regulate and restrict recourse to the Supreme Court in maintenance matters, by ensuring that appellate intervention is invoked through a designated channel, and only in conformity with the procedure laid down in the Amendment Act.

17. It is true that in *Antony Fernando v. Deepthi Lakmali* (supra) this Court, somewhat infelicitously, invoked the maxim *generalalia specialibus non derogant* despite the absence of any true conflict between the general statute and the special enactment. Nevertheless, the Court arrived at the correct conclusion—namely, that no direct leave to appeal lies to the Supreme Court *dehors* the procedural scheme of the Maintenance Act, No. 37 of 1999. The more appropriate approach, however, would have been to give direct and exclusive effect to the special legislation itself. Where Parliament has prescribed a specific procedure in a special enactment, that procedure must be scrupulously observed notwithstanding the existence of a general enactment prescribing a broader course. The Maintenance Act, No. 37 of 1999, as the later and more particular expression of legislative intent, unequivocally imposes the requirement that leave be sought in the first instance from the High Court.
18. Upon a careful perusal of the record, this Court finds no evidence of an application for leave having been made to the learned High Court Judge.
19. It is no doubt permissible for such an application to be made *ore tenus* (that is, orally in open court). However, if the learned High Court Judge were invited to exercise his power in that regard, he would have been bound to advert to the making of such an application in his order, whether granting or refusing leave.
20. The absence of any such reference in the impugned order to an application of this nature persuades this Court to the conclusion that no such application was, in fact, made to the High Court.



21. In the circumstances, as it is apparent that there is no proper application before this Court, we proceed to refuse this application.

**Judge of the Supreme Court**

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

**Judge of the Supreme Court**

I agree

**K. Priyantha Fernando, J**

**Judge of the Supreme Court**

I agree