

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

In the matter of an Application for Revision against the Judgement dated 09<sup>th</sup> January 2019 by the Provincial Civil Appellate High Court (Holden in Gampaha) in terms of Article 127 of the Constitution.

Supreme Court Case No.

**SC/Revision/02/2019**

Gampaha Civil Appellate High Court

Case No.

WP/HCCA/GAM/64/2013(F)

Negombo DC

Case No.1740/L

Indika Roshan Francis,

No. 252/12A, Pahala Karagahamuna,

Kadawatha.

**Plaintiff**

**Vs.**

1.Bulathsinghalage Lal Cooray,

2.Rajapaksha Pathirannahelage

Priyadarshani

Both of No. 10/6,

Pahala Karagahamuna,

Kadawatha.

**Defendants**

**And between**

Indika Roshan Francis,

No. 252/12A, Pahala Karagahamuna,

Kadawatha.

**Plaintiff- Appellant**

**Vs.**

1. Bulathsinghalage Lal Cooray,

2. Rajapaksha Pathirannahelage

Priyadarshani

Both of No. 10/6,

Pahala Karagahamuna,

Kadawatha.

**Defendant- Respondents**

**And now between**

Indika Roshan Francis,

No. 252/12A, Pahala Karagahamuna,

Kadawatha.

**Plaintiff- Appellant-Petitioner**

**Vs.**

1. Bulathsinghalage Lal Cooray,

2. Rajapaksha Pathirannahelage

Priyadarshani

Both of No. 10/6,

Pahala Karagahamuna,

Kadawatha.

**Defendant- Respondent-Respondents**

Before: L.T.B Dehideniya, J.  
A.L.S Gooneratne, J.  
Arjuna Obeyesekere, J.

Counsels: Dinesh de Alwis with Hiranthika Sewwandi for Plaintiff- Appellant- petitioner  
instructed by Janak Sandakelum  
S.N Vijith Singh for Defendant-Respondent-Respondents

Argued on: 09.02.2022

Decided on: 25.03.2022

**L.T.B Dehideniya, J.**

Plaintiff- Appellant-Petitioner (hereinafter sometime referred to as the Petitioner) instituted an action by plaint dated 05<sup>th</sup> February 2010 against the 1<sup>st</sup> and 2<sup>nd</sup> Defendant- Respondent- Respondents (hereinafter sometime referred to as the Respondents) seeking for a Declaration of title and ejection and damages for the premises described in the schedule to the Plaint. The Petitioner contested that the Respondents were in unlawful possession of the said premises. The District Court of Gampaha delivered the judgement dated 09<sup>th</sup> October 2013 in favour of the Respondents, dismissing the plaint, holding that the Petitioner has failed to prove the case and granted relief prayed for in the Answer. Being aggrieved by the said judgement, the Petitioner preferred a Final Appeal against the said judgement to the Western Provincial Civil Appellate High Court (Holden in Gampaha). By the Judgement dated 09<sup>th</sup> January 2019, the Appeal of the Petitioner was dismissed and reaffirmed the judgement of the District Court by the Civil Appellate High Court.

Being aggrieved by the said judgement, the Petitioner filed the instant revision application in this Court and sought to revise the said judgement of the Civil Appellate High Court. This is a matter where Petitioner has invoked the revisionary jurisdiction of the Supreme Court in terms of Article 127 of the Constitution. When the Application was taken up for argument, the learned counsel for the Respondents raised a preliminary objection regarding the maintainability of this Revision Application, contending that there is no legal provision which enables the Petitioner to file such an Application in the Supreme Court. In other words, it was the submission that Supreme Court has no jurisdiction to exercise revisionary powers under the existing law.

The question before this Court is that, whether the revisionary powers are vested in the Supreme Court. The Petitioner's submissions are based upon the ground that the inherent powers of the Supreme Court can be used to correct errors which were demonstrably and manifestly wrong and where it was necessary in the interests of justice to correct matters in situations such as in the instant Application where there is a serious miscarriage of justice.

According to the Article 138 (1) of the Constitution, power to exercise Revisionary Jurisdiction is vested upon the Court of Appeal.

**Article 138 (1)**

*“The Court of Appeal shall have and exercise subject to the provisions of the Constitution or of any law, an appellate jurisdiction for the correction of all errors in fact or in law which shall be committed by the High Court, in the exercise of its appellate or original jurisdiction or by any Court of First Instance...”*

Under the Administration of Justice Law, No.44 of 1973, the Supreme Court is vested with the Revisionary Jurisdiction. Under **Section 11**, where it was expressly provided that, jurisdiction for the correction of all errors in fact or in law committed by any subordinate court by way of revision is vested in the Supreme Court.

**Section 11**

*“The Supreme Court shall be the only superior court of record and shall have, subject to the provisions of this Law, jurisdiction for the correction of all errors in fact or in law committed by any subordinate court, and sole and exclusive cognizance by way of appeal, revision and restitutio-in-integrum of all actions, proceedings and matters of which such subordinate court may have taken cognizance, and such other jurisdiction as may be vested in the Supreme Court by law. In the exercise of its jurisdiction, the Supreme Court may, in accordance with law, affirm, reverse or vary any judgment or*

*order, or give directions to such subordinate court, or order a new trial or a further hearing. It may, if necessary, receive and admit new evidence additional to, or supplementary of, the evidence already taken in such subordinate court: Provided that no judgment or order pronounced by any subordinate court shall on appeal or revision be reversed or varied on account of any error, defect or irregularity in the proceedings which shall not have prejudiced the substantial rights of either party or occasioned a failure of justice.”[Emphasis added]*

Even so, according to the present constitution in 1978, the revisionary powers vested in the Supreme Court by the Administrative Justice Law was removed to the Court of Appeal by the Article 169(2) of the Constitution.

**Article 169(2)** provides that;

*“the Supreme Court established by the Administration of Justice Law, No.44 of 1973, shall, on the commencement of the Constitution, cease to exist and accordingly the provisions of that Law relating to the establishment of the said Supreme Court, Shall be deemed to have been repealed. Unless otherwise provided in the Constitution, every reference in any existing written law to the Supreme Court shall be deemed to be a reference to the Court of Appeal.”*

Further, According to the Article 169(3) of the Constitution, all the appellate proceedings including proceedings by way of revision, case stated and restitutio in integrum pending in Supreme Court established under the Administration of Justice Law, No.44 of 1973, on the day preceding the commencement of the Constitution, shall stand removed to the Court of Appeal and Court of Appeal shall have jurisdiction to take cognizance of and to hear and determine the same, and the judgements and the orders of the Supreme Court aforesaid delivered or made before the commencement of the Constitution in appellate proceedings shall have the same force and effect as they had been delivered or made by the Court of Appeal.

Looking back at some of the case law that were decided before the enactment of the present Constitution in 1978, the Court has been held that Revisionary Jurisdiction is vested in the Supreme Court of Sri Lanka in appropriate circumstances.

In the case of *Sinnathangam v. Meera Mohideen* (60 NLR 394) *T. S. Fernando J.* stated as follows;

*"The Supreme Court possesses the power to set aside, in revision, an erroneous decision of the District Court in an appropriate case even though an appeal against such decision has been correctly held to have abated on the ground of non-compliance with some of the technical requirements in respect of the notice of security."*

A similar view was expressed in the case of *Attorney General v. Podisingho* (51 NLR 385) and it was held that, the powers of revision of the Supreme Court are wide enough to embrace a case where an Appeal lay but was not taken. In such a case, however, an Application in revision should not be entertained save in exceptional circumstances, such as, where there has been a miscarriage of justice.

The discretionary power of the Supreme Court in exercising the revisionary jurisdiction is discussed in *Rustom Vs Hapangama* (1978/79) 1 Sri L.R 352 *Ismail J* observed that the general rule is that while the power of revision available to the Supreme Court is a discretionary power the courts have consistently refused to exercise this power when an alternative remedy which was available to the applicant was not availed of before the applicant sought to avail of a remedy by way of revision. Nevertheless, in a series of decided cases the courts have indicated that this was not an invariable rule and in certain instances where exceptional circumstances are shown the Court would exercise this discretionary power even when an alternative remedy which is available has not been availed.

According to the Article 127 of the Constitution, the Supreme Court shall be the final Court of Civil and Criminal appellate jurisdiction for and within Sri Lanka for the correction of all errors

in fact or in law which shall be committed by the Court of Appeal or any Court of First Instance, tribunal or other institution. Even though the said Article has expressly provided Appellate Jurisdiction to the Supreme Court, there is no specific provision relating to the Revisionary Jurisdiction of the Supreme Court. The Petitioner refers to this situation as a lacuna in the Constitution. In determining whether the Supreme Court has the power to exercise revisionary jurisdiction under such legal circumstances, statutory law and case law must be carefully analysed.

Nevertheless, when carefully considering the Article 169(2) of the present Constitution, it appears that the Petitioner's contention regarding the unavailability of an express provision as to the revisionary powers of the Supreme Court which amounting to a lacuna in the Constitution has no sustainability before the Article 169(2).

Accordingly, the revisionary powers are explicitly vested in the Court of Appeal by the present Constitution, not in the Supreme Court. Therefore, in light of the statutory provisions discussed above, it is clear to this court that, the views expressed on the Supreme Court's revisionary jurisdiction in cases decided in the era before the enactment of the present Constitution in 1978, cannot be applied to the present Application.

It is a question with great importance before this Court that, whether the Supreme Court as the apex of the Sri Lankan Judiciary could have the authority to revise the judgements of a lower court, even though no law has expressly vested such powers in the Supreme Court.

In the case of *Peoples Merchant PLC v. Udaya Saman Subasinghe* (SC CHC Appeal No. 14/2014, decided on 23-06-2021) Padman Surasena J. analysed the application of the Revisionary Jurisdiction of the Supreme Court. (At p.8-9)

*“Although the learned counsel for the Respondent - Appellant, Mr. Vijitha Sing, submitted that this Court has jurisdiction to consider this appeal in the exercise of its revisionary powers, this Court has not been vested with such power by any law. Mr.*

*Vijith Sing, also did not refer to any provision of law under which this Court could have exercised such revisionary power. In my view there is no merit in this argument and it should suffice to say that 'the Supreme Court is a creature of statute and its powers are statutory' as stated by His Lordship Amerasinghe J in the case of **Jeyaraj Fernandopulle vs. Premachandra De Silva and Others.** [1996] 1 Sri L.R 70” [emphasis added]*

*In the case of **Mahesh Agri Exim (Pvt) Ltd Vs. Gaurav Imports (Pvt) Ltd and Others** (SC Revision No. 02/2013 Decided on 30-07-2019), this Court had to consider the question whether this Court has revisionary jurisdiction against orders made by the Commercial High Court. I had the privilege of agreeing with His Lordship Justice Priyantha Jayawardena who stated in that case, the following.*

*“The Counsel for the Petitioner submitted that a grave prejudice has been caused to his client and therefore, the Supreme Court should intervene in this matter. He further submitted that this is a fit and proper case to exercise revisionary jurisdiction and/or inherent powers of this Court.*

*We are of the opinion that this Court has no jurisdiction to entertain Revision applications arising from the orders made by the Commercial High Court. Further, the inherent powers of this Court cannot be entertained in this application.” [Emphasis added]*

In light of the well-established legal context discussed above, it is apparent that the Supreme Court has not vested Revisionary Jurisdiction under the existing law.

As per the submissions tendered by the Petitioner, it is contended that the inherent powers of the Supreme Court have been used to correct errors which were demonstrably and manifestly wrong and where it was necessary in the interests of justice to correct matters in situations where there is a serious miscarriage of justice. In the eyes of the law a serious miscarriage of

justice occurs when a grossly unfair outcome is made in a criminal or civil proceeding and refers to as a failure of a court or judicial system to achieve a just conclusion. The miscarriage of justice is taken into consideration in the case of *Attorney General v. Podisingho* (51 NLR 385) per Dias S.P.J, even though the revisionary powers should not be exercised in cases when there is an Appeal and was not taken, revisionary powers should be exercised only in exceptional circumstances such as miscarriage of justice, where a strong case for interference of the Supreme Court is made out for.

In *Lakshaman Ravendra Watawala v. Chandana Karunathilake* (SC Appeal 31/2009 and SC Appeals 35/2009-78/2009, decided on 06-07-2018) at p. 9 per Priyantha Jayawardena J.,

*“...However, our Courts entertain Revision Applications if a grave prejudice has been caused to a litigant even if there is an ouster clause...”*

at p. 12

*“Therefore, it is evident that, in appropriate instances, the Court has entertained Revision Applications when there was no right to appeal.” [emphasis added]*

However, it is noteworthy that, the present Application is not a matter where the Petitioner is inviting the Supreme Court to interfere in a Revision Application when there was no right to appeal. This is an instance where there was a right to appeal available for the Petitioner, nevertheless, the Petitioner did not act in due diligence to comply with it. In the context of the present Application there was a right to appeal in terms of Supreme Court Rules and Section 9(a) of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990. According to the reasons set out in the Petition, the Petitioner states that, he was unable to file an Application for Leave to Appeal in this Court within the due period of time for the reason of ill health. A closer look at the submissions reveals that, the Petitioner’s reasoning for non-compliance with the right of appeal is not credible enough to justify a miscarriage of justice. Therefore, it is

clear to this court that the Petitioner has failed to establish compelling evidence as exceptional circumstances to accept a Revision Application.

By considering above circumstances, I am of the view that in an instance where the Petitioner did not act in due diligence to comply with his right of appeal and where Supreme Court has not been vested revisionary power by any law, it is not possible to intervene and consider the Petitioner's Revision Application as this Court has no jurisdiction to entertain such Application. I proceed to dismiss this Revision Application.

**Judge of the Supreme Court**

**A.L.S Gooneratne J.**

**I agree**

**Judge of the Supreme Court**

**Arjuna Obeyesekere J.**

**I agree**

**Judge of the Supreme Court**