IN THE SUPREME COURT OF THE

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA.

In the matter of a Rule in terms of Section 42(2) of the Judicature Act No. 2 of 1978, against Mr. Dickshan Arnold Punchihewa, Attorney-at-Law.

SC RULE 02/2023

Bodiyabadhuge Lanwel Godfrey Perera.
No. 02,
Perera Cottage,
Uswella,
Maggona.

COMPLAINANT

Vs

Dickshan Arnold Punchihewa,
Attorney-at-Law.
No. 05,
Aruna Mawatha,
Nagoda Road,
Kalutara South.

RESPONDENT

Before : **P. PADMAN SURASENA, J.**
ACHALA WENGAPPULI, J. &
ARJUNA OBEYESEKERE, J.

Counsel : Faisz Musthapha, PC with H. Withanachchi for the Respondent.

Rohan Sahabandu, PC with Chathurika Elivitigala and S. Senanayake for the Bar Association of Sri Lanka.

Nirmalan Wigneswaran, DSG with Sajith Bandara, SC for the Attorney General.

Argued &
Decided on : 29-07-2024

P. PADMAN SURASENA, J.

As indicated in the journal entries pertaining to the proceedings before Court on the previous days, Mr. Nirmalan Wigneswaran DSG, had concluded his address on the last occasion. Court also heard the submissions of Mr. Faisz Musthapha PC, who appeared for the Respondent Attorney-at-Law. Accordingly, Court concluded the inquiry.

The complaint made by the virtual Complainant to this Court is that the Respondent Attorney-at-Law who appeared for him in the Provincial High Court of Civil Appeals had consented before Court, to set-aside the Judgment of the District Court of Kalutara in Case No. 5058/L, without having instructions from him to do so.

This is reflected in the following paragraphs contained in the Rule dated 24-02-2023 issued against the Respondent Attorney-at-Law under the hand of the Registrar of this Court.

> *(a) You have appeared for the Complainant as his Attorney in the case bearing number DC Kalutara 5058/L where the Complainant as the*

Plaintiff therein has sought a widening of the existing road he has used over the lands of the 1st and 2nd Defendants of the said case on the basis of right of way of necessity;

(b) During the appeal proceedings in the Civil Appellate High Court of the Western Province Holden in Kalutara (WP/HCCA/KAL/96/2010) relating to the above case, you have appeared for the said Complainant who was the Plaintiff-Respondent in the said appeal and it has been recorded by the Judges of the said Civil Appellate, High Court in their judgment of 18th May 2015, that you have consented to the fact that the impugned judgment of the District Court of Kalutara in the case 5058/L should be set aside, on the basis that the District Court could not have granted a right of way of necessity when there was an existing right of way; and

(c) the Complainant has, however, not given any such instructions for you to consent to set aside the judgment of the District Court of Kalutara at the Civil Appellate High Court on the basis that there is an already existing right of way and whereas in the plaint filed in District Court of Kalutara case 5058/L you have averred, inter alia, that the existing right of way was not adequate to take a vehicle; and

(d) Due to this concession made by you at the Civil Appellate High Court without the consent of the Complainant, grave injustice has been caused to the Complainant;

The Rule has alleged that by reason of the aforesaid acts and conduct, the Respondent Attorney-at-Law has not exercised his skill with due diligence to the best of his ability and

care in the interest of his client and has thus committed a breach of Rule 15 of the Supreme Court (Conduct and Etiquette for Attorneys-at-Law) Rules 1988.

It was on the above basis that this Court has directed the Respondent Attorney-at-Law to show cause as to why he should not be suspended from practice or be removed from the office of Attorney-at-Law of the Supreme Court of the Democratic Socialist Republic of Sri Lanka, in terms of Section 42(2) of the aforesaid Act.

Accordingly, Mr. Faisz Musthapha PC, appearing for the Respondent Attorney-at-Law made submissions to show cause as to why the Respondent Attorney-at-Law should not be punished in this instance.

Having considered the submissions, we observe that despite the fact that there is a lapse on the part of the Respondent Attorney-at-Law in his capacity as the Counsel for the Plaintiff-Respondent before the Provincial High Court of Civil Appeals, there are facts which we must consider in favour of the Respondent Attorney-at-Law. This is particularly because the perusal of the judgment pronounced by the Provincial High Court of Civil Appeals shows that the learned Judges of the Provincial High Court of Civil Appeals had first arrived at the conclusion, that granting of right of way of necessity to the Plaintiff-Respondent, is erroneous and contrary to the existing law as there was a road way already in existence. This conclusion is found in the first paragraph of the judgment.

We observe that it is thereafter, that the learned Judges of the Provincial High Court of Civil Appeals had recorded (in the second paragraph) the following:

> *At this point the learned Counsel for the Plaintiff-Respondent conceded to the fact that the impugned judgment, granting right of way of necessity to the Plaintiff-Respondent cannot stand on the basis that there is an existing right of way.*

We also observe that the Respondent Attorney-at-Law had been the Counsel for the Plaintiff-Respondent right through in the District Court as well. It is the Respondent Attorney-at-Law who had fought this case in the District Court on behalf of the Plaintiff-Respondent until he succeeded in obtaining a judgment in favour of the Plaintiff-Respondent. In the light of that back ground, we cannot simply reject the submission of Mr. Faisz Musthapha PC, that what really had happened could be attributed to the absence of clarity in the submissions made by the Respondent Attorney-at-Law before the Provincial High Court of Civil Appeals which may have not been capable of distinguishing the positions between the nature of the case at hand on one side and the legal principle which has been referred to in the Judgment on the other.

After we heard submissions of all Counsel, we inquired from the Complainant as to his expectations from this case. The Complainant categorically stated before us, that his expectation is to obtain an adequate compensation on account of loss of his case before the Provincial High Court of Civil Appeals.

The Respondent Attorney-at-Law at the commencement of the inquiry itself through his Counsel had indicated to us that he is prepared to make good, any loss, the Complainant would have suffered due to any lapse on his part with regard to any absence of an effective communication (submissions) with Court.

Having regard to the material adduced in this case, the submissions made by all Counsel and the views obtained from the Complainant, we are of the view that ends of justice would be met by the course of action proposed before us. Therefore, as proposed by the Respondent Attorney-at-Law, we direct the Respondent Attorney-at-Law to pay a compensation of Rupees One Million to the Complainant.

The Respondent Attorney-at-Law is directed to deposit this amount of money (Rupees One Million) in the Registry within one week. After the said money is deposited, the Complainant is entitled to withdraw this money from the Registry.

Accordingly, Court directs that the further proceedings of this case should stand terminated.

JUDGE OF THE SUPREME COURT

ACHALA WENGAPPULI, J.

I agree.

JUDGE OF THE SUPREME COURT

ARJUNA OBEYESEKERE, J.

I agree.

JUDGE OF THE SUPREME COURT

Mhd/-