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. Sendahendi Sarath Wijesiri De Silva, Attorney-at-Law.

SC Rule No. 05/2022

Ven. Wellawe Sri Chandananda Thero,

Ullalapola Sri Sugathawanarama Purana Viharaya,
Divulapitiya.

COMPLAINANT

Vs.

Mr. S. Sarath W. de Silva,

No. 78/3, 2nd Bastian Mawatha
Baddagana Road,
Pita-Kotte.

RESPONDENT

BEFORE: **S. THURAIRAJA, PC, J.**
KUMUDINI WICKREMASINGHE, J. &
ACHALA WENGAPPULI, J

COUNSEL: Nagitha Wijesekera for the Respondent

Rohan Sahabandu, PC with Ms. Chathurika Elvitigala for the Bar Association of Sri Lanka.

Nayomi Kahawita, SSC for the Hon. Attorney-General.

INQUIRY ON: 29th January 2024, 26th March 2024, 03rd April 2024

DECIDED ON: 03rd September 2024

THURAIRAJA, PC, J.

1. The Complaint against Mr. Sendahendi Sarath Wijesiri De Silva, the Respondent Attorney-at-Law, was made by a venerable *Bhikku,* ordained in the name Rev. Wellawe Sri Chandananda Thero, by way of affidavits dated 22nd December 2021 and 15th August 2022.

2. Upon receiving the said Complaint from the venerable Thero, the Registrar of the Supreme Court, having followed the preliminary procedure, preferred this Rule against the said Respondent regarding the allegations set out therein.

3. The Rule against the Respondent Attorney-at-Law dated 06th December 2022 is as follows:

> *"**WHEREAS,** a complaint has been made to this Court by Ven. Wellawe Sri Chandananda Thero of Ullalapola Sri Sugathawanarama Purana Viharaya, Divulapitiya (hereinafter sometimes referred to as 'the Complainant') by affidavits*

dated 22.12.2021 and 15.08.2022, that you being the Attorney-at-Law retained to appear, for the Complainant in the District Court of Kurunegala Case No. L/8211 and in the District Court of Minuwangoda Case No. L/196, failed to take steps in the said cases before the said District Courts, which resulted in the said cases bearing Nos. L/8211 and No. L/196 being postponed on several dates.

AND WHEREAS *the said complaint made by said* Ven. Wellawe Sri Chandananda Thero and the investigations made into the said complaint disclose*;*

a) *That you have on several occasions obtained money from the Complainant and altogether a sum of Rs. 4,450,000/- (Four Million Four Hundred and Fifty Thousand Rupees) has been paid to you by the Complainant to represent the Complainant in Court and to attend to all professional matters in connection with Kurunegala District Court Case No. L/8211 and Minuwangoda District Court Case No. L/196.*

b) *That you having obtained the aid sum of money on the pretext of rendering all necessary professional services in connection with the said Kurunegala District Court Case No. L/8211 and Minuwangoda District Court Case No. L/196, have failed to represent the Complainant in the proceedings of the said cases on several dates before the said District Courts.*

c) *That you being the registered Attorney-at-Law for the Complainant have been once noticed by Court to appear on the next date in case No. L/8211 before the District Court of Kurunegala and hence you were aware that the said case was postponed on account of your absence before the Court on the said date.*

d) *That you despite having failed to appear and take steps in the aforesaid cases have continued to hold on to the original documents of the Complainant relevant to the said cases without returning the same to the Complainant.*

WHEREAS *you have been informed through letter dated 26.01.2022 to submit observations by way of an Affidavit to the Supreme Court on the Affidavit of the Complainant dated 22.12.2021, which letter has neither been returned nor responded up to date.*

AND WHEREAS*, in the circumstances your conduct discloses that;*

a) *You being an Attorney-at-Law have acted in a manner detrimental and/or prejudicial to the interest of your client, the said Ven. Wellawe Sri Chandananda Thero, and*

b) *You being an Attorney-at-Law have not exercised skill and due diligence in the best interest of your client, especially in filing pleadings and appearing on behalf of the said Ven. Wellawe Sri Chandananda Thero.*

AND WHEREAS, *the aforesaid complaint made by the said Ven. Wellawe Sri Chandananda Thero discloses that you have by reason of the aforesaid acts of misconduct committed;*

a) *Deceit and/or malpractice falling within the ambit of section 42(2) of the Judicature Act read with Rule 79 of the Supreme Court Rules, 1978 which renders you unfit to remain as an Attorney-at-Law, and*

b) *You have failed to exercise skill and due diligence in failing to file pleadings and appearing in the aforesaid District Court cases in breach of Rule 15 of the Supreme Court (Conduct of and Etiquette for Attorneys-at-Law) Rules 1988.*

c) *By reason of the aforesaid matters you have conducted yourself in a manner which would reasonably be regarded as disgraceful or dishonorable of Attorneys-at-Law of good repute and competency and have thus committed a breach of Rule 60 of the Supreme Court (Conduct of and Etiquette for Attorneys-at-Law)*

Rules 1988 made under Article 136 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

d) *By reason of the aforesaid acts and conduct you have conducted yourself in a manner unworthy of an Attorney-at-Law and have thus committed a breach of Rule 61 of the Supreme Court (Conduct of and Etiquette for Attorneys-at-Law) Rules 1988.*

AND WHEREAS *this Court is of the view that proceedings against you for suspension or removal from the office of Attorney-at-Law should be taken under Section 42(2) of the Judicature Act read with the Supreme Court Rules, 1978 (Part VII) made under Articles 136 of the Constitution of the Democratic Socialist Republic of Sri Lanka.*

THESE ARE THEREFORE *to command you in terms of Section 42(3) of the Judicature Act No. 2 of 1978 to show cause as to why you 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 Judicature Act"*

4. When the Rule was read and explained to the Respondent, he pleaded not guilty and the matter was taken up for inquiry before this Court. This Court heard evidence from the Virtual Complainant, Rev. Wellawe Sri Chandanada Thero, and the evidence of the Manager, Sampath Bank, Colombo 02 as well as the two Registrars of the District Courts of Kurunegala and Minuwangoda were accepted without calling them to the witness stand.

5. The Virtual Complainant Thero submitted that he retained the services of the Respondent Attorney-at-Law in March 2015 regarding the possession of two temples situated within the judicial districts of Kurunegala and Minuwangoda. Whereas the Virtual Complainant had paid Rs. 4,450,000/- in total as professional fees to the Respondent, he had not

provided a satisfactory service. Furthermore, it is alleged that the Respondent deceived the Virtual Complainant by stating that he filed a case at the Minuwangoda District Court when he had not in fact done so.

6. Substantiating the aforementioned allegations, the Virtual Complainant submitted two affidavits to this Court and further testified under oath. The venerable Thero is a retired principal and the chief incumbent of five temples under his control. He had sought to take legal action to evict two *Bhikku* who were appointed to maintain two of the said temples for mismanagement of the same. It is for this purpose the Virtual Complainant had retained the Respondent. The venerable Thero submitted that the Respondent initially quoted Rs. 1,500,000/- as professional fees for both cases[1] and that the Respondent promised to win both cases.

7. This marks the first and most obvious error on the part of the Respondent. While an attorney may speculate and provide advice as to legal realities and potential consequences when such is sought, it is a given that there must never be a promise, undertaking, assurance, guarantee, or the like as to what the outcome of a case may be, for puffery and soothsaying is beneath the noble profession. Considerations and potential outcomes of a judicial decision are so complex and various that no man short of a true clairvoyant may be capable of predicting the outcome of proceedings with complete accuracy. When a lawyer so promises a client a desired outcome with certainty, such conduct is tantamount to improper solicitation of services, a misdeed absolutely prohibited for attorneys-at-law.

8. The Thero further claimed that he proceeded to pay the professional fees so demanded in several instalments. He had deposited money into a Sampath Bank account maintained by the Respondent on 11 occasions, with various other payments being made in cash,

[1] Proceedings dated 26 March 2024 at p. 14

on court dates, consultations and when the Respondent visited the Virtual Complainant. The Thero explained that he had placed such trust in the Respondent that did not think it necessary to obtain any receipts for the payments so made.

9. The Virtual Complainant submitted bank deposit slips amounting to a total of Rs. 938,000/- (Rupees nine hundred thirty-eight thousand), a receipt/letter issued for Rs. 50,000/- (Rupees fifty thousand) and a handwritten note marked **'P5'** providing all accounts. The Virtual Complainant submitted that he maintains this record in a diary to keep accounts of all transactions and other important matters such as almsgivings.

10. Upon perusal of the said records, including the bank deposits, the Court observed that they perfectly match the amounts alleged except for an erroneous entry of Rs. 80,000/- which needs to be corrected as Rs. 8,000/-, which the Virtual Complainant Thero himself pointed out in his testimony. Except for this minor clerical error, all other bank entries perfectly corroborate with the records kept by the Virtual Complainant Thera.

11. The Respondent in his affidavit averred that he did not receive 4,450,000/-. He admitted to accepting the payments deposited to the Sampath Bank account aggregating to Rs. 938,000/- only and nothing more. However, as I previously noted, in the Virtual Complainant's evidence, a letter/receipt issued by the Respondent regarding a payment of Rs. 50,000/- was submitted. Once this document was submitted in evidence, the Respondent conceded to have accepted a payment of Rs. 50,000/-, for the purpose of obtaining the services of a surveyor, in addition to the sum of Rs. 938,000/- previously admitted. Apart from this contradiction *per se,* it is further apparent to his Court that the Respondent had not maintained any accounts regarding his transactions with the client, the Virtual Complainant.

12. Regarding the payments made, the Virtual Complainant had maintained clear records and submitted the same before this Court, whereas the Respondent had failed to maintain any records and relied only on the material available in the notices served on

him. Some parts of the payments the Virtual Complainant claimed to have made are corroborated by bank deposit slips, a letter/receipt issued by the Respondent and sworn evidence of the Virtual Complainant. In this context, the consistency of the evidence submitted by the Virtual Complainant, and the lack thereof on the part of the Respondent, leaves no other option but to accept the version of the Virtual Complainant in this regard, viz. that he had paid Rs. 4,450,000/- to the Respondent.

13. As apparent from the proceedings of the District Court of Kurunegala case No. 8211/L available before us, the learned District Judge has observed that the plaint dated 13th May 2015 filed for a declaratory action did not properly identify the land in boundaries or extent. The learned Judge had ordered to "file proper amended plaint and move"[2] Subsequently, an amended plaint has been filed with boundaries and extent mentioned as 10 acres, but without proper identification or description. Although the Respondent admitted to receiving Rs. 50,000/- for the purpose of obtaining services of a Surveyor, neither the initial plaint nor the amended plaint even mentions of a plan.

14. While each lawyer may have approaches of their own as to how they plead a case, the rudiments remain unchanged and common. Overlooking basics such as identifying the subject matter of a case, as the Respondent has, falls well below the standard of care and competence expected of an attorney and points towards nothing but gross ineptitude and negligence. In the instant case, the Respondent has submitted a plaint in a declaratory action without a description or boundaries of the land.

15. The first obligation which an attorney owes to a client is to act with due diligence and prepare his brief with care and skill. As **Justice A.R.B. Amerasinghe** writes in **Professional Ethics and Responsibilities of Lawyers,** "*[a]n attorney should advise and represent his client and render professional assistance conscientiously with scrupulous care*

[2] vide Journal Entry dated 13th May 2015, District Court of Kurunegala case No. 8211/L

and due diligence in reasonable time and he should not accept any professional matter unless he can attend to it [Cf.SL Rule 10; CCBE Code 3.1.2; ICE Rules 4 and 10; ACT 3.5 (1)]...[3] *...Slipshod work, evidenced, for example by mistakes or omissions in statements or documents prepared on behalf of the client, does not meet the quality of diligent service expected of an attorney. [Cf Canada Ch II Rule (b) Commentary 7 (h).]"*[4]

16. Even the most prudent of lawyers are susceptible to mistakes as with any man; but when one estimates himself a senior and charges accordingly, those who seek his services and his peers alike expect of him a standard that meets such estimation. In the present inquiry, it was submitted that the Respondent Attorney-at-Law initially quoted an amount of Rs. 1.5 million and in fact received from the Virtual Complainant over Rs. 4.5 million as far back as in 2015. When one considers what the Respondent has charged as professional fees in perspective, it is very much on the higher side of the scale.

17. It is imperative that we look at our profession's ethical rules and codes of conduct as reflective of and concerned with the public interest and due administration of justice rather than protectionism and professional self-interests or conformity.[5] In the words of **Ross Cranston**, *"...in matters of professional discipline the touchstones are the standing of the profession in the eyes of the public and public protection from the unscrupulous or incompetent."*[6]

18. Lest it be forgotten, according to the ancient tradition, the lawyers' professional services are honorary, and any reward given to them by a client is deemed gratuitous rather than compensatory. This was so for the Roman order of *juris consults*, the orators of ancient

[3] A.R.B. Amerasinghe, *Professional Ethics and Responsibilities of Lawyers* (2018 Stamford Lake) at p. 290

[4] ibid at p. 291

[5] See the comments of Staughton LJ in *R v. Visitors to the Inns of Court, ex parte Calder* [1994] QB 1

[6] Ross Cranston, *Legal Ethics and Professional Responsibility* (1995 Clarendon Press Oxford) at p. 3

Athens as well as the English cohorts of Barristers and Solicitors.[7] While there is a departure from this tradition nowadays for all practical purposes, the great principle behind the tradition, viz., 'that law is an exalted profession and lawyers are not mercenaries',[8] must not go unheeded.

19. Quoting from **Coleridge's Table Talk, vol. 2.**, the American Judge and Law Professor **George Sharswood** remarks,

> *"I should be sorry to see the honorary character of the fees of barristers and physicians done away with. Though it seems to be a shadowy distinction, yet I believe it to be beneficial in effect. It contributes to preserve the idea of a profession, of a class which belongs to the public, in the employment and remuneration of which no law interferes, but the citizen acts as he likes, in 'foro conscientiae.'"*[9]

20. One of the biggest curses with which a state or community can be visited, he notes, is a "…horde of pettifogging, barratrous, custom-seeking, money-making lawyers".[10] Far be it for me to comment on how attorneys must structure their fees, and I do not believe it necessary to regulate externally the fee arrangements of independent practitioners. Those engaged in a profession so strenuous on the mind must be sufficiently compensated and attorneys are free to charge a sum that is commensurable with their reputation and the quality of services; however, it must not be done at the expense of the nobility and honour of the Bar.

21. When the charges of an attorney are at the higher end of the spectrum, and he so holds himself to a high standard, it is only appropriate for this Court, in adjudicating inquiries

[7] See C.L. Anand, *General Principles of Legal Ethics* (1965 Law Books Co.) at p. 138

[8] ibid at p. 142

[9] Hon. George Sharswood LL.D, *An Essay on Professional Ethics* (5th edn, Philadelphia: T. & J.W. Johnson & Co. 1884) at p. 145

[10] ibid at p. 148

of this nature, to hold respondent attorneys against such standards they have set for themselves, in addition to the general standards of prudence expected of an attorney.

22. Perusing the available material including the case records available from the District Court of Kurunegala, I observe that the plaint filed has serious infirmities and how the Respondent has conducted himself is unbefitting of a legal professional. Having paid a significant amount as professional fees, it is only reasonable for the Venerable Thero to complain of not getting value for money, especially considering the maladroit manner in which his matter had been handled.

23. The Respondent further stated that he travelled to Kurunegala on many occasions from his residence in Pita Kotte for the said case. The case record indicates that the case was instituted in May 2015 and the case was taken up or journalized on twenty-two different occasions. The Respondent had appeared himself only on seven occasions. Another Attorney-at-Law had appeared on seven dates while on one occasion the Virtual Complainant plaintiff was unrepresented.[11]

24. It is the Respondent's position that whenever he could not appear, he made arrangements for another Attorney to appear. However, according to the testimony of the Virtual Complainant before this Court, the Attorneys who appeared in his stead had been manifestly ill-equipped to handle the case and assist the court. Virtual Complainant said in his evidence that those lawyers were unable to answer any questions posed by the bench, and colloquially described their demeanour as "කසාය බීපු ගොළුවා වගේ [*a mute who had a decoction*]"[12] and "කරකවලා අත්හැරියා වගේ [*like a deer/rabbit caught in the headlights*]".[13]

[11] From what is indicated in available records

[12] An approximate translation

[13] An analogous idiom as a direct translation of it makes no sense

25. It is not uncommon in practice for attorneys to have their juniors or other known attorneys appear in their stead where personal or professional difficulties arise. While there is nothing inherently wrong in this, a counsel or registered attorney who undertakes a matter are duty bound to take necessary steps to ensure that interests of their client are well served by such other attorney who appears in their place. They must also ensure that such substitutions are not routinely done, for wasting judicial time in this manner is neither in the interest of justice nor of their client.

26. As **Justice Amerasinghe** says of this, "*[w]here he has been retained to appear in court, obviously, an attorney cannot exercise his skill, and ensure that his professional engagement is fulfilled, if he does not appear at the proceedings at the place and time the matter is listed to come on. He must do so unless, as SL Rule 16 states, the attorney is 'prevented by circumstances beyond his control.'…"*[14]

27. The Virtual Complainant in his complaint stated that the Respondent undertook the handling of two cases—one in Kurunegala and another in Minuwangoda. Although the Respondent initially remained silent towards the show cause notice issued by the Registrar of this Court, he subsequently submitted his observations by way of an affidavit. In these observations, he vehemently denied receiving any instructions regarding any case at the Magistrate's Court of Minuwangoda. At the very outset, it is to be noted that, in 2015, the Minuwangoda Court was a combined Magistrate's-District court.

28. The affidavit of the Respondent said nought of a dispute in Minuwangoda. The Respondent continued to make no reference to a case in Minuwangoda in his line of cross-examination of the Virtual Complainant until the Virtual Complainant submitted a copy of a Letter of Demand under the hand of the Respondent Attorney-at-Law.[15]

[14] A.R.B. Amerasinghe, *Professional Ethics and Responsibilities of Lawyers* (2018 Stamford Lake) at p. 308

[15] Marked 'P 6'

However, once the said Letter of Demand was submitted, the Respondent's line of questioning changed tune attempting to assert that there had been instructions from the Virtual Complainant to not proceed to file action.

29. Though the Respondent initially denied his involvement with a case in Minuwangoda, the Virtual Complainant states that the Respondent gave the aforementioned Letter of Demand following his repeated enquiries regarding the Minuwangoda matter. When the Virtual Complainant could not see any action being taken subsequent to the said Letter of Demand, he had asked the Respondent for the case number, at which point he was given No. 196/L. When the Virtual Complainant called on the District Court to check its progress, he had found the case bearing No. 196/L to be one concerned with land in Andiambalama, with no connection whatsoever to the two temples regarding which the Respondent's services were retained. The record of the said case, which was made available to this Court by the Registrar of the Minuwangoda District Court, confirms the above.

30. When the Court inquired from the Respondent if he was aware that the Minuwangoda Court was a combined court, the Respondent answered to the negative. Giving the Virtual Complainant a false case number, creating an impression that he has taken steps to file an action, without so much as an idea as to the structure of the court is a serious deception of his client.

31. In this context, the Respondent's initial position before this Court with regard to the Minuwangoda case, denying his involvement or receiving instructions in that regard, I must note, is a serious omission and borders on misdirecting the Court.

32. In addition to the misconduct I have adverted to above, it was further revealed during the Inquiry that the Respondent was not maintaining proper records as attorneys ought to. It is an accepted fact that the Respondent obtained Rs. 50,000/- for the purpose of paying the Surveyor, and he has also issued a receipt for this amount. However, it is

recorded that the Surveyor was only paid Rs. 15,000/-. The Respondent stated that he paid the Surveyor "Rs. 30,000/- or something". When the Court further questioned the Respondent in this regard, he admitted that he does not maintain separate accounts relating to his clients. In fact, the Respondent had not even a professional diary let alone proper records such as solicitors' accounts.

33. All moneys obtained from clients for purposes such as paying Surveyors or other professionals retained and stationery etc. are held by attorneys on trust and must not be misappropriated, dishonestly or otherwise, for their own purposes. To avoid such misappropriation, as well as to protect his or her own interests, it is paramount that all attorneys maintain proper accounts concerning their financial dealings with clients. This is not a mere principle or precaution, but rather a professional duty of all attorneys-at-law. Can there be a clearer indication of ineptitude than an attorney who cannot duly maintain simple financial accounts or a professional diary?

34. In ***Re H.A. Mahinda Ratnayake,***[16] Jayantha Jayasuriya, PC, CJ observed,

> *"It is the persons of "good repute and of competent knowledge and ability" who could be admitted as attorneys-at-law as provided under section 40(1) of the Judicature Act. Therefore, if a person of good repute after admission as an attorney-at-law engages in any conduct that changes the quality of his character and makes him no longer a person of good repute, such a person is liable to be subjected to disciplinary action as provided under the Judicature Act and the Rules of the Supreme Court."*[17]

35. Similarly, a person of "good repute and of competent knowledge and ability" so conducts themself that the quality of their character as a person of competent knowledge and

[16] SC Rule 04/2022, SC Minutes of 10th August 2023

[17] ibid at p. 6

ability changes, the interests of justice and of the profession demand that such persons be subject to disciplinary action.

36. The relationship between the attorney and client is one of trust, and the law as well as society places this trust in high regard—So much so that they say one should not hide anything from doctors and lawyers. The trust reposed on the Respondent by the Virtual Complainant was very much evident in his testimony. Even at the inquiry, the Venerable Thero continued to refer to the Respondent as 'අපේ මහත්තයා' (*Apé Mahattaya*, which roughly translates to 'our sir').

37. In the instant case, the Respondent has completely and utterly flouted this trust. The evidence led before us sufficiently establishes the Respondent to have cheated and/or misappropriated the Virtual Complainant's funds in breach of the trust reposed upon him by the Virtual Complainant as his Registered Attorney. Accordingly, I find him guilty of deceit. However, when it comes to findings of misconduct that is criminal in character, the context of such findings must be properly understood with reference to what this Court is concerned with in proceedings of this nature.

38. To this end, I see it pertinent to cite the observations of Amerasinghe J in ***Dhammika Chandratileke v. Susantha Mahes Moonesinghe,***[18]

> *"Conviction for an offence is neither necessary, nor invariably sufficient, to make a person amenable to the disciplinary jurisdiction of this Court. It is not an irrelevant matter, for conviction for an offence is a prima facie, albeit only a prima facie, reason for this Court to act in disciplinary proceedings. The Court has a wide jurisdiction in deciding what is unprofessional conduct that makes a person amenable to disciplinary proceedings.* ***The question in proceedings of this nature, is not whether an attorney-at-law has been, or may be convicted for or found guilty***

[18] [1992] 2 SLR 303

of an offence or not, and if guilty whether he should be punished, but whether, having regard to the misconduct established, he is a fit person to be continued on the roll*, and if so, on what terms.* ***It may well be that the facts establishing unprofessional conduct may also be the foundation of a criminal prosecution, past, present or to come. However, it is unnecessary to decide, and I wish to make it clear that I have not decided, that the facts proved satisfy the criteria set out in section 388 of the Penal Code, for the ascertainment of whether Moonesinghe is guilty of the penal offence of criminal breach of trust is not the object and intention of these proceedings.*** *Having regard to the object and intention of these proceedings, I find that a non-technical, popular, meaning—uti loquitur vulgus—rather than the technical meaning usually given to the phrase by lawyers, is more appropriate and agreeable in deciding what criminal breach of trust means in the Rule…"*[19]

39. His Lordship further observed,

"An attorney whose misconduct is criminal in character, whether it was done in pursuit of his profession or not, (this Court has wider powers than those affirmed by section 4 of the Penal Code), may be struck off the roll, suspended from practice, reprimanded, admonished or advised, even though he had not been brought by the appropriate legal process before a court of competent criminal jurisdiction and convicted; and even though there is nothing to show that a prosecution is pending or contemplated. [See Edgar Edema- (1877) Ramanathan 380, 384; Re Isaac Romey Abeydeera - (1932) 1 CLW 358, 359; In re a Proctor - (1933) 36 NLR 9; In re C.E. de S. Senaratne - (1953) 55 NLR 97, 100; Re Donald Dissanayake - Rule 3 of 1979 S.C. Minutes of 31.10.1980; Re P.P.Wickremasinghe - Rule 2 of 1981, S.C. Mins. of 19.7.82

[19] ibid at p. 318-9 (Emphasis is mine)

; Re Rasanathan Nadesan - Rule 2 of 1987 S.C. Mins. of 20.5.1988; Stephens v Hill - (1842) 10 M & W 28 Vol. 152 ER (1915 Ed.) 368 (supra); Anon (supra) ; Re Hill - (1868) LR 3 QB 543, 545, 548 Re Vallance ; Anon (1894) 24 L.Jo 638 But cf. Short v Pratt - (1822) 1 Bing. 102 Vol. 130 (1912 Ed.) ER 42 and Re Knight - (1823) 1 Bing 142.]"

40. The Rule against the respondent Moonesinghe in the above-cited case charged him specifically with 'criminal breach of trust' as well as deceit. While the Rule against Respondent Attorney-at-Law in the instant case makes no reference, even loosely, to such an offence, I see it necessary to explicitly place on record that the findings of this Court should not be read to prejudice any past, present or future prosecutions. More fittingly to the instant case, His Lordship's observations further make it clear that this Court need not insist upon or await a conviction of an offence in contemplating disciplinary action where the misconducts alleged bear criminal semblance.

41. In ***Dhammika Chandratileke v. Susantha Mahes Moonesinghe (Supra),*** the respondent-attorney, who, *inter alia,* defaulted on the repayment of a sum received upon a promissory note and the agreed interest thereon, was found guilty of deceit and struck off the Roll even in the absence of any criminal prosecution contemplated against him. In fact, in ***Re Thirugnanasothy***[20] a proctor who had been acquitted of criminal misappropriation, on what was described as sound but technical reasons, was nevertheless struck off the Roll.

42. It is amply clear from the material available and testimonies before this Court that the Respondent has acted in a manner unbefitting of an attorney-at-law and the allegations levelled against him are well founded. Though the Respondent claims to be a senior

[20] [1973] 77 NLR 236

practising since 2003, he has manifestly failed to observe the standards expected of a novice let alone an attorney of such seniority.

43. For the foregoing reasons, the Rule against the Respondent is made absolute and the Respondent, Sendahendi Sarath Wijesiri De Silva, shall forthwith be struck off the Roll of Attorneys-at-Law.

44. The Respondent is further ordered to return, within three months from the date of this Ruling, Rs. 3,000,000/- (Rupees three million) to the Virtual Complainant as well as all such documents he may have in his possession related to the matters for which he was retained

45. The Registrar of the Supreme Court is directed to take all necessary steps and to transmit a copy of this ruling to the Registrar General.

Rule Affirmed.

Respondent Struck Off the Roll of Attorneys-at-Law.

Judge of the Supreme Court

KUMUDINI WICKREMASINGHE, J.

I agree.

Judge of the Supreme Court

ACHALA WENGAPPULI, J.

I agree.

Judge of the Supreme Court