

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

*In the matter of an application for revision of order
dated 8th August 2016.*

SC Revision No. 10/2016

High Court Case No. HC (Civil) 177/2002

Sri Lanka Savings Bank Limited,
No. 110, D. S. Senanayake Mawatha,
Colombo 08.

PLAINTIFF

Vs

1. De Croos Associates Limited,
No. 826, Kotte Road,
Athul Kotte,
Kotte.

Currently at
No. 529, Kotte Road,
Athul Kotte,
Kotte.

2. Trehan Emmanuel Kumar De Croos,
Sri Nikethan,

Kurana, Negombo.

DEFENDANTS

AND NOW

Ajith Dissanayake
No. 156/30,
Jayagath Uyana,
Maligagodaella Road,
Mulleriyawa New Town.

**COURT COMMISSIONER, LICENSED AUCTIONEER
AND VALUER- PETITIONER**

Vs

Sri Lanka Savings Bank Limited,
No. 110, D. S. Senanayake Mawatha,
Colombo 08.

PLAINTIFF- RESPONDENT

Before : **P. Padman Surasena J**

Yasantha Kodagoda PC J

Mahinda Samayawardhena J

Counsel : Harith de Mel instructed by Akalanka Dias for the Court Commissioner -
Licensed Auctioneer and Valuer - Petitioner.

Kamal Dissanayake with Sureni Amarathunga and Dulna de Alwis for the
Plaintiff- Respondent.

Argued on : 03-12-2021

Decided on : 22-09-2023

P Padman Surasena J

The Plaintiff - Respondent, Sri Lanka Savings Bank Limited (Hereinafter sometimes referred to as the Plaintiff Bank), instituted action in the High Court by filing the plaint dated 9th August 2002 seeking to enforce a mortgage bond to recover a sum of money owed by the 1st and 2nd Defendants. Following a default in the settlement, the Plaintiff Bank had obtained an order for the sale of the mortgaged property.

The Court Commissioner, Licensed Auctioneer and Valuer - Petitioner (Hereinafter sometimes referred to as the Petitioner), claims that he had been directed by the Registrar of the High Court to submit a Valuation Report relating to the said mortgaged property. However, the Plaintiff Bank has taken up the position that no commission was issued to the Petitioner in regard to the said mortgaged property and no other auctioneer was appointed by Court to value the property and conduct the auction other than Mr. K. P. Nawanandana Silva.

The Petitioner on the 9th February 2016 has made an application to the Commercial High Court to recover a professional fee due to him from the Plaintiff Bank for a Valuation Report dated 5th October 2015 in respect of the mortgaged property which he states has been submitted to Court. It must be noted that the said Valuation Report has been referred to in the court proceedings, as the Valuation Report tendered by motion dated 2nd October 2015. However, it is the position of the Petitioner that the same was tendered on the 5th October 2015 and that it has been erroneously recorded as 2nd October 2015 in the Execution file maintained by the Registrar of the Commercial High Court.

Subsequently, the Commercial High Court upon consideration of the matter, by order dated 8th August 2016 has refused the said application for the recovery of professional fees claimed by the Petitioner. The Commercial High Court, in that order, had affirmed the position of the Plaintiff Bank that no commission was issued to the Petitioner. The order of the learned Judge of the Commercial High Court has been produced marked **P**. Thereafter, the Petitioner by the petition dated 20th December 2016 filed the instant Revision Application seeking *inter alia* to revise and

set aside the order dated 8th August 2016 of the learned Judge of the Commercial High Court marked **P**.

The primary issue this Court has to decide in the instant matter is whether this Court has jurisdiction to hear and determine this Revision Application. In other words, this Court has to first decide whether the Supreme Court has Revisionary Jurisdiction to entertain the instant application.

Accordingly, this Court on 3rd December 2021 heard and concluded the submissions of both learned Counsel for the Petitioner and the Plaintiff Bank regarding the preliminary issue whether this Court has Revisionary Jurisdiction to entertain the instant application of the Petitioner.

At the outset, I must mention here that when this application was taken up before this Court for argument, the learned Counsel who appeared for the Petitioner was unable to point to any specific legal provision which has enabled him, to file and maintain this application.

Although Court has granted time for the learned Counsel who appeared for the Petitioner to file written submissions to substantiate any possible argument in this regard, he has failed to tender any such written submission to Court. Thus, I am unable to ascertain exactly, the legal argument (if any), he was to advance in the expected written submissions.

Be that as it may, I would now proceed to consider whether the Petitioner is entitled to file the instant Revision Application in this Court.

The plenary jurisdiction of this Court is set out in Article 127 of the Constitution of the Democratic Socialist Republic of Sri Lanka; it is as follows.

"127 (1) The Supreme Court shall, subject to the Constitution, be the final Court of civil and criminal appellate jurisdiction for and within the Republic of 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 and the judgments and orders of the Supreme Court shall in all cases be final and conclusive in all such matters.

(2) The Supreme Court shall, in the exercise of its jurisdiction, have sole and exclusive cognizance by way of appeal from any order, judgement, decree, or sentence made by the Court of Appeal, where any appeal lies in law to the Supreme Court and it may affirm, reverse or vary any such order, judgment, decree or sentence of the Court of Appeal and may issue such directions to any Court of First Instance or order a new trial or further hearing in any proceedings as the justice of the case may require, and may also call for and admit fresh or additional evidence if the interests of justice so demands and may in such event, direct that such evidence be recorded by the Court of Appeal or any Court of First Instance."

Article 127 (2) sets out what this Court can do in the exercise of its appellate jurisdiction and therefore the said Article comes into operation only when it considers an appeal lawfully filed before it.

Article 127 (1) has specifically subjected itself to the other provisions of the Constitution. This is clear from the wording "*The Supreme Court shall, subject to the Constitution,..*" , found in that Article.

Thus, Article 127 (1) must be read with Article 128 of the Constitution. This is because Article 128 is another provision in the Constitution which has specified several channels through which any appeal can reach this Court. Article 128 of the Constitution as it was then,¹ is as follows.

"128 (1) An appeal shall lie to the Supreme Court from any final order, judgment, decree or sentence of the Court of Appeal in any matter or proceedings, whether civil or criminal, which involves a substantial question of law, if the Court of Appeal grants leave to appeal to the Supreme Court ex mero motu or at the instance of any aggrieved party to such matter or proceedings;

(2) 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

¹ A new sub paragraph was added as Article 128 (5) by the Twentieth Amendment to the Constitution which was certified on 29th October 2020.

sentence made by the Court of Appeal in any matter or proceedings, whether civil or criminal, where the Court of Appeal 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 that the Supreme Court shall grant leave to appeal in every matter or proceedings in which it is satisfied that the question to be decided is of public or general importance.

(3) Any appeal from an order or judgment of the Court of Appeal, made or given in the exercise of its jurisdiction under Article 139, 140, 141, 142 or 143 to which the President, a Minister, a Deputy Minister or a public officer in his official capacity is a party, shall be heard and determined within two months of the date of filing thereof.

(4) An appeal shall lie directly to the Supreme Court on any matter and in the manner specifically provided for by any other law passed by Parliament.

Article 128 (1), (2), (3) refers only to appeals from orders or judgements of the Court of Appeal. The instant matter is neither an appeal nor against an order or judgement of the Court of Appeal. Thus, Articles 128 (1), (2), (3) have no relevance to the instant application. Article 128 (4) of the Constitution also refers only to appeals. Since the instant matter is not an appeal Article 128 (4) is also not relevant to this application.

In Martin Vs Wijewardena.² Jameel J (with Ranasinghe CJ and Amerasinghe J agreeing) stated that the right of appeal is a statutory right and must be expressly created and granted by statute.

In Mariam Beebee Vs. Seyed Mohamed,³ Sansoni C.J. who delivered the majority decision of the Divisional Bench which heard that case stated that the power of revision is an extraordinary power which is quite independent of and distinct from the appellate jurisdiction of the Court.

² (1989) 2 Sri. L. R. 409.

³ (1965) 68 NLR 36.

The above dicta were cited with approval by Soza J (with Sharvananda J, Wanasundera J, Wimalaratne J and Ratwatte J agreeing) in a Divisional Bench decision of this Court in Somawathie Vs. Madawela and others,⁴ and later by Kulatunga J (with G P S De Silva CJ and Ramanathan J agreeing) in Gunaratne Vs. Thambinayagam and others.⁵

Revisionary Jurisdiction is not an inherent power of Court. Thus, Revisionary Jurisdiction must have been conferred on a Court to enable it to exercise such jurisdiction. It is then only that a party will be able to invoke such jurisdiction.

His Lordship Amerasinghe J in the case of Jeyaraj Fernandopulle Vs. Premachandra De Silva and Others,⁶ stated that "*the Supreme Court is a creature of statute and its powers are statutory.*"

It is Article 138 of the Constitution which has conferred Revisionary Jurisdiction on the Court of Appeal and the Provincial High Courts. As Article 138 has conferred this jurisdiction subject to any law, this jurisdiction must be understood by reading it with High Courts of Provinces (Special Provisions) Act No. 19 of 1990 or Act No. 54 of 2006 depending on whether the relevant matter is civil or criminal. However, I find no such enabling provision in our law to enable the Supreme Court to exercise Revisionary Jurisdiction in respect of the instant application.

In the case of Mahesh Agri Exim (Pvt) Ltd Vs. Gaurav Imports (Pvt) Ltd. and others,⁷ 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.

⁴ (1983) 2 Sri. L. R. 15.

⁵ (1993) 2 Sri. L. R. 355.

⁶ (1996) 1 Sri. L. R. 70.

⁷ SC Revision No. 02/2013, decided on 30-07-2019.

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."

Let me also have the indulgence to refer to the case of Udaya Saman Subhasinghe Vs. People's Merchant PLC.⁸ The Petitioner - Respondent in that case (People's Merchant PLC) raised a preliminary objection to the maintainability of that appeal stating that there is no legal provision which provided a right of appeal for the Respondent-Appellant (Udaya Saman Subhasinghe) i.e., to file such an appeal to this Court without first obtaining the leave of the Supreme Court on a question of law, against the impugned order made by the High Court under section 31 (1) of the Arbitration Act. The learned counsel who appeared for the Respondent - Appellant in that case, conceded that the Respondent - Appellant had not first obtained the leave of the Supreme Court on a question of law in that appeal. However, he thereafter submitted that this Court nevertheless has jurisdiction to entertain this appeal both under Article 127 of the Constitution and in the exercise of revisionary powers of this Court. With the concurrence of Her Ladyship Murdu N. B. Fernando PC J and His Lordship A. H. M. D. Nawaz J, I took the view that this Court does not have revisionary powers to intervene and consider that appeal.

In the above circumstances and for the foregoing reasons, I am of the view that this Court does not have Revisionary Jurisdiction to intervene and consider the instant application. I proceed to dismiss this application.

JUDGE OF THE SUPREME COURT

YASANTHA KODAGODA PC J

I agree,

JUDGE OF THE SUPREME COURT

⁸ SC CHC Appeal No. 14/2014, decided on 23-06-2021.

MAHINDA SAMAYAWARDHENA J

I had the privilege of reading the draft judgment of Justice Surasena, and I regret very much that I find myself unable to agree with it.

The petitioner filed this revision application against the order of the Commercial High Court made against him dated 08.08.2016. He states that as he is not a party to the case, he has no right of appeal to this Court against the said order in terms of section 5 of the High Court of the Provinces (Special Provisions) Act, No. 10 of 1996, and therefore he has no alternative but to come before this Court by way of revision. If that is correct, there should be a place for the petitioner to challenge the order. That order cannot be considered both as the first and the final order.

The Court of Appeal has no appellate, revisionary or restitutio in integrum jurisdiction over the judgments or orders of the Commercial High Court.

It is significant to note that this revision application was supported for notice before this Court on 13.02.2017 and this Court, after hearing both parties, decided to issue formal notice on the respondent bank and allowed both parties to file objections, counter objections, written submissions, and fixed the matter for argument.

The case came before the present bench at the argument stage. If this Court did not have jurisdiction to entertain this revision application, the previous bench could not have issued formal notice and fixed the matter for argument.

The respondent bank does not take up a jurisdictional objection. The respondent bank moves to dismiss the application of the petitioner in limine on different grounds: failure to plead exceptional circumstances, failure to name necessary parties and failure to tender necessary documents.

This Court has entertained revision applications in the past. One such example is the case of People's Bank v. Ocean Queen Marine (Pvt) Ltd reported in [2016] 1 Sri LR 141.

If this Court is to dismiss the application for want of jurisdiction at this stage, in my view, both parties shall be given a full hearing. Subject to taking up a different position after a full hearing, I am unable to decide at this juncture that the Supreme Court does not under any circumstances

have revisionary jurisdiction or at least inherent jurisdiction to remedy an injustice committed by the Commercial High Court, especially when there is no right of appeal.

JUDGE OF THE SUPREME COURT