

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

S.C. Appeal 166/2011  
SC/HC/CALA 289/2011  
WP HCCA/COL 45/2010/LA

In the matter of an Application for Leave to Appeal against Judgment dated 23<sup>rd</sup> June 2011 Pronounced in Case No. WP HCCA/COL/45/2010/LA under and in terms of Section 5(c) (1) of the High Court of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006.

ISPAT Corporation (Pvt) Ltd.,  
No. 111-1/C/2, New Parliament Road,  
Battaramulla.

**PLAINTIFF**

Vs.

Hiat Steel (Pvt) Limited,  
Pelahela,  
Dekatana.

**DEFENDANT**

**AND**

People's Bank,  
No. 75, Sir Chittampalam A. Gardiner  
Mawatha, Colombo 2.

**1<sup>ST</sup> CLAIMANT-PETITIONER**

Ismail Abdul Gaffar,  
No. 20B, Sujatha Mawatha,  
Kalubowila,  
Dehiwela.

**2<sup>ND</sup> CLAIMANT-PETITIONER**

Vs.

ISPAT Corporation (Pvt) Ltd.,  
No. 111-1/C/2, New Parliament Road,  
Battaramulla.

**PLAINTIFF-RESPONDENT**

Hiat Steel (Pvt) Limited,  
Pelahela,  
Dekatana.

**DEFENDANT-RESPONDENT**

**AND BETWEEN**

ISPAT Corporation (Pvt) Ltd.,  
No. 111-1/C/2, New Parliament Road,  
Battaramulla.

**PLAINTIFF-RESPONDENT-PETITIONER**

Vs.

Hiat Steel (Pvt) Limited,  
Pelahela,  
Dekatana.

**DEFENDANT-RESPONDENT-  
RESPONDENT**

People's Bank  
No. 75, Sir Chittampalam A. Gardiner  
Mawatha, Colombo 2.

**1<sup>ST</sup> CLAIMANT-PETITIONER-  
RESPONDENT**

Ismail Abdul Gaffar,  
No. 20B, Sujatha Mawatha,  
Kalubowila,  
Dehiwela.

**2<sup>ND</sup> CLAIMANT-PETITIONER-  
RESPONDENT**

**AND NOW BETWEEN**

People's Bank  
No. 75, Sir Chittampalam A. Gardiner  
Mawatha, Colombo 2.

**1<sup>ST</sup> CLAIMANT-PETITIONER-  
RESPONDENT-PETITIONER**

Vs.

ISPAT Corporation (Pvt) Ltd.,  
No. 111-1/C/2, New Parliament Road,  
Battaramulla.

**PLAINTIFF-RESPONDENT-PETITIONER-  
RESPONDENT**

Hiat Steel (Pvt) Limited,  
Pelahela,  
Dekatana.

**DEFENDANT-RESPONDENT-  
RESPONDENT-RESPONDENT**

Ismail Abdul Gaffar,  
No. 20B, Sujatha Mawatha,  
Kalubowila,  
Dehiwela.

**2<sup>ND</sup> CLAIMANT-PETITIONER-  
RESPONDENT-RESPONDENT**

**BEFORE:** Priyasath Dep P.C., J.  
Upaly Abeyrathne J. &  
Anil Gooneratne J.

**COUNSEL:** Kushan D'Alwis P.C. with Hiran Jayasooriya &  
Rajiv Wijesinghe for the 1<sup>st</sup> Claimant-Petitioner-  
Respondent-Appellant

M.U.M. Ali Sabry P.C. with Shamith Fernando  
Instructed by K.P. Law Association for the  
Plaintiff-Respondent-Petitioner-Respondent

**WRITTEN SUBMISSIONS OF THE  
1<sup>ST</sup> CLAIMANT-PETITIONER-RESPONDENT-**

**PETITIONER FILED ON:** 30.11.2011 & 01.02.2016

**WRITTEN SUBMISSIONS OF THE  
PLAINTIFF-RESPONDENT-PETITIONER-**

**RESPONDENT FILED ON:** 13.12.2011 & 25.07.2011

**ARGUED ON:** 17.12.2015

**DECIDED ON:** 29.04.2016

**GOONERATNE J.**

This matter arises from claims to property seized, which provision has been made in terms of Section 241 of the Civil Procedure Code. Supreme Court granted leave on 19.10.2011 against the Judgment of the Civil Appellate High Court dated 23.6.2011 on questions of law set out in paragraph 11(a), (b) & (c) of the petition filed of record. In brief the questions of law indicate that this court need to decide as to whether the jurisdiction of the court which made order for execution of decree is ousted in case where a claim or as objection is preferred, where the property seized is outside the jurisdiction of court. The said section seems to contemplate different positions where property seized is not within the jurisdiction of court which made order for execution of decree. The relevant section as stated above is Section 241, which reads thus:

In the event of any claim being preferred to, or objection offered against the seizure or sale of, any immovable or movable property which may have been seized in execution of a decree or under any order passed before decree, as not liable to be sold, the Fiscal or Deputy Fiscal shall, as soon as the same is preferred or offered, as the case may be, report the same to the Court which passed such decree or order, and the Court shall thereupon proceed in a summary manner to investigate such claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he were a party to the action:

Provided always that when any such claim or objection is preferred or offered in the case of any property so seized outside the local limits of the jurisdiction of the Court

which passed the decree or order under which such seizure is made, such report shall be made to, and such investigation shall thereupon be held by, the Court of the district or division within the local limits of which such seizure was made, and the proceedings on such report and investigation with the order thereon shall, at the expiry of the appealable time, if no appeal has been within that time taken therefrom, but if an appeal has been taken, immediately upon the receipt by such Court of the judgment or order in appeal, be forwarded by such Court to the Court which passed the decree or order, and shall be and become part of the record in the action;

Provided, further, that in every such case the Court to which such report is made shall be nearer to the place of seizure than, and of co-ordinate jurisdiction with, the Court which passed the decree or order.

I have checked the present Civil Procedure Code Section 241 with the earlier Civil Procedure Code. (contained in Chapter 86 – Legislative Enactment of Ceylon – 1938 revision) Both sections in either code contains identical provisions. The printed wording is the same, except in the way the Section is arranged or printed. The present Code gives more clarity by separately arranging the provisos of the section but in the earlier code the entire section has been put together or clubbed together.

It is desirable to ascertain the meaning of this section before I proceed to consider the facts of the case in hand. I am inclined to accept the explanation and views of Dr. K.D.P. Wickremesinghe in his text, on Civil Procedure in Ceylon, as regards Section 241 of the Civil Procedure Code.

At pg. 257 Dr. Wickremesinghe states as follows:

Where a claim is preferred to, or objection offered against the seizure or sale of, any property seized, as not liable to be sold, the Fiscal must report the same to the court which passed the decree or order of seizure. The court must thereupon investigate the claim or objection summarily. Where the property seized is within the jurisdiction of a court other than that which passed the decree or order, the report has to be made, and investigation must be held, by the court which has jurisdiction over such property. The proceedings with the order thereon must be forwarded by such court to the court which passed the decree or order, and the two courts should have coordinate jurisdiction.

The material made available to this court indicates that Plaintiff-Respondent-Petitioner filed action against the Defendant-Respondent-Respondent seeking relief in a sum of Rs. 1,000,000/- in the manner pleaded in the plaint dated 02.12.2005. The Plaintiff was successful in the above case and decree nisi was entered in favour of the Plaintiff which was thereafter made absolute. Plaintiff moved court to execute a writ in the said case and certain movable properties belonging to the Defendant was seized by the Deputy Registrar/Fiscal of the District Court of Pugoda in the Defendant's premises situated at Pelahela-Dekatana. (within the jurisdiction of the District Court of Pugoda). It is pleaded that against the above seizure the People's Bank (1<sup>st</sup> Claimant-Petitioner-Respondent) and the 2<sup>nd</sup> Claimant-Petitioner-Respondent took up the position that the properties seized are not liable to be sold in execution of the decree and made their respective claims to the District Court

of Colombo. The Plaintiff-Respondent-Petitioner filed objections to the claims made by the aforesaid Claimant-Petitioners-Respondents and pleaded that the claim should have been made to the District Court of Pugoda as the District Court of Colombo has no jurisdiction and moved for dismissal of the above applications. At the inquiry in the District Court of Colombo Plaintiff raised a preliminary objection based on above.

The learned District Judge of Colombo however overruled the said preliminary objections by his order of 27.04.2010, being aggrieved by the said order of 27.04.2010 the Plaintiff-Respondent-Petitioner sought leave to appeal from the said order from the relevant High Court, and leave was granted by the High Court. The High Court after hearing, set aside the order of the learned District Judge and allowed the appeal with costs.

In the original court the learned District Judge in arriving at his decision placed much emphasis in the reported case, *David Kannangara Vs. Central Finance Ltd. 2004 (2) SLR 311*. However the learned High Court Judge in his Judgment distinguish David Kannangara's case and state that it is not applicable to the case in hand. I fully agree with the views of the learned High Court Judge that the case reported above was not about the jurisdiction of court but dealt with the issues of whether a party is permitted to make a claim directly to the court or fiscal. The instant case deals with the jurisdiction of court in a



particular given situation for which specific procedure has been provided in the procedural law and leaves no room for interpretation.

In the case in hand the fiscal of the District Court of Pugoda seized the properties which were found or kept in the Defendant's premises situated at Pelahela-Dekatana (within the jurisdiction of the District Court of Pugoda). The first proviso to section 241 is more than clear and plain, there is no ambiguity at all and what the fiscal is expected to do is explained clearly, where the property liable to seizure is found and seized outside the local limits of the jurisdiction of the court which passed the decree. If a claimant objects or offer a claim that the property is not liable to seizure the fiscal need to report to the court within the jurisdiction of court of the District or division within the local limits of which such seizure of property effected by the fiscal.

*Maxwell on The Interpretation of Statutes 12<sup>th</sup> Ed –  
General Principles of Interpretation.*

Pg. 28/29.

If there is nothing to modify, alter or qualify the language which the statute contains, it must be construed in the ordinary and natural meaning of the words and sentences. The safer and more correct course of dealing with a question of construction is to take the words themselves and arrive if possible at their meaning without, in the first instance, reference to cases.

The rule of construction is “to intend the Legislature to have meant what they have actually expressed.” The object of all interpretation is to discover the intention of Parliament, “but the intention of Parliament must be deduced from the language used,” for “it is well accepted that the beliefs and assumptions of those who frame Acts of Parliament cannot make the law.”

Where the language is plain and admits of but one meaning, the task of interpretation can hardly be said to arise.

David Kannangara’s case the facts are entirely different to the case in hand. In the said case even before a writ of execution was issued an application was made to claim the property. By that time the fiscal had not seized the property. The learned District Judge in the said case refused the application and remarked that the claimant must make its application at the proper stage. In these circumstances Justice Amaratunge’s views expressed in David Kannangara’s case would apply to that case and that case only, since steps taken to claim was prior to seizure. In the case in hand the fiscal had seized the properties, within the jurisdiction of the District Court of Pugoda.

I will refer to the relevant Paragraph in ‘*David Kannangara’s case* pg. 312, of the said Judgment to explain the position that the case in hand differ on certain material facts in comparison to David’s case.

At pgs. 312-2004 (2) SLR 312.

Before Writ of execution was issued, the present respondent finance company made an application to Court claiming that it was the absolute owner of the said vehicle and

therefore the said vehicle should be released to the respondent company. By that time the fiscal has not seized the vehicle in execution of the decree entered by Court. The learned Judge having observed that that was not the stage in which such application could be made, refused the application and remarked that the finance company should make its application at the proper stage.

I have no hesitation to affirm the Judgment of the learned High Court Judge. When a statute in very clear terms lays down the procedure, all concerned need to follow same and apply the procedure contemplated by the statute. That would be the intention of parliament. I had the benefit of perusing the written submission of either party, no doubt assisted court to arrive at this decision in the best interest of justice.

*Dr. Amarasinghe J. in Fernando vs. Sybil Fernando And Others 1997*

(3) *SLR pg. 1* had made the following remarks in an important Judgment in this regard.

There is substantive law and there is the procedural law. Procedural law is not secondary: The maxim *ubi ius ibi remedium* reflects the complementary character of civil procedure law. The two branches are also interdependent. It is by procedure that the law is put into motion, and it is procedural law which puts life into substantive law, gives it remedy and effectiveness and brings it into action”.

“The concept of the laws of civil procedure being a mere vehicle in which parties should be safely conveyed on the road to justice is misleading, for it leads to the incorrect notion that the laws of civil procedure are of relatively minor importance, and may therefore be disobeyed or disregarded with impunity.”

In all the above facts and circumstances of this case the Judgment of the High Court dated 23.06.2011 is affirmed. As such, we proceed to dismiss this appeal without costs.

Appeal dismissed.

Priyasath Dep P.C. J.

I agree.

JUDGE OF THE SUPREME COURT

Upaly Abeyrathne J.

I agree.

JUDGE OF THE SUPREME COURT

JUDGE OF THE SUPREME COURT