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

In the matter of an Application for Special Leave to Appeal to the Supreme Court of the Democratic Socialist Republic of Sri Lanka in terms of Article 128(2) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

1. Colonel P.K.D.C. Alwis,
No. 709, Pokuna Mawatha,
Ambalanwatta,
Galle.
And 02 others
Petitioners

S.C.SPL. LA No. 301/2022

C.A.(Writ) Application No. 346/2019

Vs.

1. Lieutenant General N.U.M.M.W. Senanayake,
Commander of the Army,
Army Headquarters,
Colombo 03.

1(a) Lieutenant General L.H.S.C. Silva,
Commander of the Army,
Army Headquarters,
Colombo 03.

2. Major General S.W.L. Dalugala,
Commandant,
Sri Lanka Army Volunteer Force,
Army Camp,
Salawa, Kosgama.

3. Brigadier Chanaka Weragoda,
Director,

Sri Lanka Army Directorate of Pay and Record,
Army Cantonment,
Panagoda.

3(a) Brigadier W.A.A.C.P. Weragoda,
Director,
Sri Lanka Army Directorate of Pay and Record,
Army Cantonment,
Panagoda.

4. Major General M.M.S. Perera,
Director,
National Cadet Corps,
No.15, Dutugemunu Street,
Pamankada.

5 A. Jagath D. Dias,
Director General of Pensions,
Maligawatta,
Colombo 10.

6. J.J. Rathnasiri,
Secretary,
Ministry of Public Administration and Disaster Management,
Independence Square,
Colombo 07.

7. Lieutenant General S.H.S.Kottegoda,
Secretary,
Ministry of Defence,
15/5, Baladaksha Mawatha,
Colombo 03.

7(a) Major General Kamal Gunaratne,
Secretary,
Ministry of Defence,
15/5, Baladaksha Mawatha,
Colombo 03.

8 H.A. Chandana Kumarasinghe,

Director General of Establishment (Act.),
Ministry of Public Administration,
Disaster Management and Rural Economic Affairs.

9. P.B.S.C. Nonis,
Director General of Budgets,
2nd Floor,
Ministry of Finance,
The Secretariat,
Colombo 01.

10. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

And Now

1. Lieutenant General N.U.M.M.W. Senanayake,
Commander of the Army,
Army Headquarters,
Colombo 03.

1(a) Lieutenant General L.H.S.C. Silva,
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Ministry of Public Administration,
Disaster Management and Rural Economic Affairs.

8. P.B.S.C.Nonis,
Director General of Budgets,
2nd Floor,
Ministry of Finance,

The Secretariat,
Colombo 01.

9. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondent-Petitioners

Vs.

1. Colonel P.K.D.C. Alwis,
No. 709, Pokuna Mawatha,
Ambalanwatta,
Galle. **(Deceased)**

1A Muriel Ederaarachchi
No. 709, Pokuna Mawatha,
Ambalanwatta,
Galle.

Substituted 1st Petitioner-Respondent

2. Lieutenant Colonel S.G. Hewawitharana
No.11/3/C,
Kandaluwawa,
Bemmulla, Gampaha.

3. Lieutenant Colonel E.M.U.W.L. Boyagoda
No.119, Amunugama,
Gunnapanna

Petitioner-Respondents

AND

4. Major General M.M.S. Perera,
Director,
National Cadet Corps,
No.15, Dutugemunu Street,
Pamankada.

Respondent- Respondent

BEFORE : **HON.E.A.G.R. AMARASEKARA,J.**
HON. ACHALA WENGAPPULI,J.
HON. MAHINDA SAMAYAWARDHENA,J.

COUNSEL : Susantha Balapatabendi (P.C.) A.S.G. with Zuhri Zain D.S.G. for the Respondent-Appellants.

Sanjeewa Jayawardena PC with Ranmali Meepagala instructed by Shayamali Athukorala for the Petitioner-Respondents.

ARGUED ON : 16th January, 2024.

ORDER ON : 04th June, 2025

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ACHALA WENGAPPULI, J.

This is an application by which the Respondent-Petitioners (hereinafter referred to as "the Petitioners") sought Special Leave to Appeal from this Court against an order made by the Court of Appeal on 29.09.2022.

The Petitioner-Respondents (hereinafter referred to as the "Respondents") by their application (CA (Writ) Application No. Writ/346/2019) invoked the jurisdiction conferred on that Court under Article 140 of the Constitution. In that application, the Respondents collectively prayed from the Court of Appeal for orders, in the nature of Writs of *Certiorari* and *Mandamus* to be against the Petitioners.

The Petitioners have resisted granting any relief to the Respondents. After an inquiry into the merits of the applications, the Court of Appeal held in favour of the Respondents, but limited their relief only to an order in the nature of Writ of *Mandamus*. It is against the said order that the Petitioners have invoked the appellate jurisdiction of this Court by this application.

When this matter was taken up on 16.01.2024, for consideration of granting Special Leave to Appeal, learned President's Counsel, who represented the Respondents raised a preliminary objection challenging the maintainability of the instant application.

It was submitted by the learned President's Counsel that, in seeking Special Leave to Appeal, the Petitioners have "*deliberately*" violated the mandatory Rule No. 4 of the Supreme Court Rules 1990, when they "*surreptitiously and in the most illegal manner, abstained from*" making and naming the petitioners in the other two "connected" applications in the instant application. In support of the said preliminary objection, learned President's Counsel relied on the reasoning contained in the judgments of ***Ibrahim v Nadaraja*** (1991) 1 Sri L.R. 131, ***Kesara Senanayake v Attorney General*** (2010) 1 Sri L.R. 149, ***Kulenthiran et al v Perinpanayagam et al*** (SC Appeal No. 148/2018 – decided on 06.04.2023) and ***Attorney General v Nishantha Bandara*** (SC Appeal No. 220/2012 – decided on 10.03.2023). He thereupon moved this Court for the dismissal of the application *in limine,* in view of the manner in which the Petitioners have violated Rule 4.

In seeking to counter the said preliminary objection, learned Additional S.G. contended on behalf of the Petitioners that the "*defect*" complained of by the Respondents is a curable one and, as the situation under consideration is

"*unique*" to the instant matter and, in the absence of a specific Rule dealing with such a situation, a mere failure to comply with Rule 4 should not be considered as a fatal defect that warrants dismissal of their application *in limine*.

Learned Additional S.G., relied on the judgments of ***Kiriwantha and another v Navaratne and another*** (1990) 2 Sri L.R. 393, where this Court stated that "*… the law does not require or permit an automatic dismissal of the application or appeal of the party in default.*" He further relied on the pronouncement made in ***Abeyratne v Jay-kay marketing Services (Pvt) Ltd,*** (SC Appeal No. 199/2012 – decided on 15.02.2017) in support of his submission.

In view of the particular ground on which the Respondents have raised their preliminary objection and the points raised in the reply submissions made by the Petitioners to counter that objection, it is necessary to refer to the nature of the proceedings that was held before the Court of Appeal, in order to consider the preliminary objection in the correct perspective.

Perusal of the proceedings conducted before the Court of Appeal reveals that the learned President's Counsel, who represents the Respondents (who were the petitioners in CA Writ Application No. Writ/346/2019), also represented them before that Court on 18.09.2019, along with two other group of petitioners in CA (Writ) Application Nos. Writ/384/2019 and Writ/389/2019. He proceeded to support all three applications together on the footing that they are "*connected*" to each other and moved for the issuance of formal notice on the respondents (the present Petitioners).

After the Respondents have satisfied the Court of Appeal of the threshold requirement, it had decided to issue formal notice on the Petitioners and accordingly made that order in CA (Writ) Application No. Writ/346/2019. The

Court of Appeal further ordered that the same order is made applicable to the other two "*connected*" applications as well.

After completion of pleadings before the Court of Appeal, the inquiry into the said three 'connected' applications proceeded along, on the basis that a common order would be pronounced in CA (Writ) Application No. Writ/346/2019, which is also applicable to application Nos. CA (Writ) Application Nos. Writ/384/2019 and Writ/389/2019, as well. The Court of Appeal made a specific mention of that fact in the body of its impugned order.

This procedural step was adopted by the Court of Appeal, based on the consensus among the parties that all three applications are almost identical in the nature of the alleged grievances and also of the reliefs they have prayed for therein. Furthermore, the parties also agreed that it is appropriate to pronounce a consolidated order on these three 'connected' applications.

The post inquiry written submissions of the Petitioners that were tendered before the Court of Appeal also indicate that the Petitioners are fully aware of this course of action to which the parties have conceded to, as it states " *[T]hese written submissions are tendered upon the direction of Your Lordship's Court on 20 June 2022 with respect to all three connected matters, i.e., Writ/346/2019, Writ/389/2019 and Writ/384/2019. The underlying fact with respect to all three matters are identical, with only the Petitioners in the three matters differing.*"

Since all parties to the said applications have agreed to abide by the order of Court in CA (Writ) Application No. Writ/346/2019, the Court of Appeal pronounced its order in that application. After the Court of Appeal held in favour of the Respondents and also in respect of petitioners of CA (Writ) Application Nos. Writ/384/2019 and Writ/389/2019, and issued an order in the

nature of a Writ of *Mandamus* in CA (Writ) Application No. Writ/346/2019, the Petitioners sought to impugn that order in the instant application. The Petitioners have sought to set aside the order of the Court of Appeal in Writ Application No. CA/ Writ/346/2019 in their prayer to the instant application. However, in the same prayer, the Petitioners also prayed the following specific relief;

> "*(f) Dismiss the Petition of the Respondents in CA Writ Application 346/2019 and connected petitions in Writ/389/2019 and Writ/384/2019".*

Thus, in effect, the Petitioners have moved this Court that the order of the Court of Appeal dated 29.09.2022 made Writ Application in CA/ Writ/346/2019, which was also made applicable to Writ Application Nos. Writ/389/2019 and Writ/384/2019, be set aside, along with issuance of an order dismissing all three petitions. In doing so, the Petitioners, either failed or omitted to name any of the petitioners in CA (Writ) Application Nos. Writ/384/2019 and Writ/389/2019, as parties to the instant application.

In view of the submissions made by the contesting parties for and against the preliminary objection and notwithstanding the fact that the Petitioners have accepted that there is in fact a "*defect*" in their application, the status of the parties, who have been left out from the instant application is a very relevant consideration, which must nonetheless be examined and assessed by this Court. This undertaking became necessary because, in the event the Petitioners are granted leave and consequently the appeal is determined in their favour, the extent to which the rights of those unnamed parties thereby would be prejudiced, particularly in a situation where they were not afforded an

opportunity of being heard, should have a bearing on the determination of the consequences for such a "*defect*" would ensue.

The consideration of the status of the petitioners in Writ Application Nos. Writ/389/2019 and Writ/384/2019 is also relevant factor, in view of the contention advanced by the learned Additional S.G., seeking to counter the said preliminary objections. Learned Additional S.G. contended that the situation that arisen in the instant case is a "*unique*" one, which has not been specifically addressed by the Supreme Court Rules of 1990.

Delivery of a consolidated judgment or an order, determining a similar issue or issues, that had arisen out of several factually similar applications, is not at all a '*unique*' to the situation now being considered and, in my opinion, the instant application cannot be distinguished with any other such application, where a Court delivered a consolidated order or a judgment. That is quite a regular occurrence, both in the original and appellate Courts.

In such a situation, the most important factor to note is that, all the parties who consented to accept a consolidated judgment or an order, are made to bound by that consolidated order or judgment. Perhaps due to administrative reasons, it had been the practice of the Judges, either an identical copy of the consolidated order or judgment is caused to be filed in each of the original Court records of all such connected matters, for the purpose of formally terminating proceedings on those individual matters before that Court or, in the alternative, a specific order is made in all the connected matters, making reference to the consolidated order or judgment.

In the absence of any indication to the contrary, it is reasonable to assume that, with the pronouncement of the 'consolidated' order in CA (Writ)

Application No. Writ/346/2019, identical orders are attached to Writ Application Nos. Writ/389/2019 and Writ/384/2019 and thus marking the formal termination of proceedings of the three individual applications before that Court.

Since the Petitioners have filed only one application in seeking leave of this Court, they have effectively kept out the petitioners of the remaining two Writ Applications (Writ/389/2019 and Writ/384/2019), from the proceedings that are being conducted before this Court, even though the same consolidated order was made in favour of them as well. This failure could not be taken as mere oversight of the draftsman of the application. He was very much conscious of the fact that the order is a consolidated one, which binds all the parties to the three "*connected*" applications. This is evident from that fact that the Petitioners, despite making any of those petitioners as respondents to this application, nonetheless prayed this Court to "… *[D]ismiss the Petition of the Respondents in CA Writ Application 346/2019 and connected Petitions in Writ/389/2019 and Writ/384/2019*".

In view of Additional S.G.'s contention, it becomes necessary for this Court to consider whether the Supreme Court Rules of 1990, did not lay down any procedure applicable to a situation such as this.

Rules 2 to 6 of the Supreme Court Rules lay down the general procedure by which an applicant, if he wished to impugn an order or a judgment of the Court of Appeal, should follow. It is apparent upon the perusal of Rules 2 to 6, that they were formulated primarily to cater for a situation, where a party to a particular matter determined by the Court of Appeal and wishes to invoke appellate jurisdiction of this Court against that determination. In making that

application, the applicant is required by Rule 4 to name the all the other parties, who are specified in that Rule, as respondents.

If there is an application for leave against a 'consolidated' order or judgment of the Court of Appeal, in the absence of a Rule specifying a different procedure, an applicant is expected to follow the Rules 2 to 6, which expects such an applicant to file separate applications for each of the matters that were considered and determined by the Court of Appeal by its 'consolidated' order or judgment. Perusal of Rule 14 also indicates that the Rules 2 to 6 were formulated with that procedure in mind.

But the situation presented before this Court and, currently under its consideration, is slightly different from this general situation. Here, we are concerned with a consolidated order made by the Court of Appeal in respect of three 'connected' applications, to which all the parties of the three applications are bound to comply with, but being challenged by one application with parties only to one of the three 'connected' applications are named as respondents. The unnamed parties, who too are bound by the same order, were left out from the proceedings before this Court as they are not named as respondents in the instant application.

The "*unique*" situation arose when the Petitioners have moved this Court to make order that the instant application as well as the two remaining two applications are dismissed, but without naming those petitioners as parties, to the instant application. This is where the Respondents contend that the violation of the Rule 4 by the Petitioners occurred.

In view of this factual scenario, and in the light of the contention advanced by the learned Additional S.G., a question that necessarily arises in one's mind is,

whether there is in fact a procedure laid down in the Supreme Court Rules 1990, that cater to such situations ?

Rule 14 provides an answer to this question in the affirmative, as it states "*[W]here there are two or more applications for special leave to appeal arising out of the same matter, or involving the same questions of law, the Supreme Court may direct that such applications be consolidated, or taken up for hearing together, it is of the opinion that such a direction would be for the convenience of the Court and all parties concerned.*"

The said Rule permits this Court to consolidate several matters seeking leave that are pending before it, provided if they either "*arising out of the same matter*" or "*involving the same questions of law*". It could therefore reasonably be inferred that the said Rules were formulated in such a way that a party, who seek Special Leave to Appeal from this Court, is expected to file separate applications in each of such matters, where a 'consolidated' order of judgment was made.

Since Rule 14 specifically permits this Court for consolidation of appeals that "… *arising out of same matter, or involving the same questions of law*, …" and direct that they be taken up for hearing together. The provisions of Rule 14, therefore confirms the proposition that the Rules 2 to 6, expects an applicant to file separate applications in respect of each such matters that were pending before the Court of Appeal, if he were to seek Special Leave to Appeal against a 'consolidated' order or a judgment pronounced by that Court. Thus, the application of the Petitioners in fact contains a "defect".

With the said conclusion being reached on one segment of the contention of the learned Additional S.G., I now turn to deal with the remaining segment of his contention, presented to convince this Court as to why the application should

not be dismissed *in limine,* as moved by the learned President's Counsel for the Respondents.

It was contended that notwithstanding the said "*defect*" in the instant application, which, according to him, being a curable defect, does not therefor necessarily warrant the dismissal of the application *in limine.* In support of the said contention, learned Additional S.G. relied heavily on the reasoning contained in ***Kiriwanthe and Another v Navaratne and Another*** (1990) 2 Sri L.R. 393, in order to impress upon this Court of the point that "… *the law does not require or permit an automatic dismissal of the application or appeal of the party in default*." He also relied on a series of decisions where the superior Courts have decided on the violations of the procedural requirements of Section 770 of the Civil Procedure Code, particularly in situations where proper parties were not named by the appellants.

The preliminary objection raised by the Respondents was founded on the failure to comply with Rule 4. It is the Rule 4 that requires an applicant, who seeks Special Leave to Appeal from this Court against an order of judgment of the Court of Appeal, to name the parties in whose favour the impugned order was made, as respondents to his application.

Rule 4 of the SC Rules of 1990 reads thus:

> *"[I]n every such application, there shall be named as respondent, the party or parties, (whether complainant or accused, in a criminal case or matter, or whether plaintiff, petitioner, defendant, respondent, intervenient or otherwise, in a civil cause or matter), in whose favour the judgment or order complained against was delivered, or adversely to whom such application is preferred, or whose interest may be adversely affected by the*

success of the appeal, and the names and present addresses of all such respondents shall be set in full."

The requirement to name the necessary parties could also be found in Rules 25(3) and 28(5), which deals with the appeals.

The failure of an applicant to name a necessary party, in an application seeking Special Leave to Appeal from this Court, as envisaged in Rule 4, had already been considered by this Court, and accepted such a failure as a clear violation of the said Rule.

The judgment of ***Ibrahim v Nadarajah*** (*ibid*) deals with an instant where a preliminary objection was raised on the premise that the appellant had failed to make the second substituted plaintiff-appellant before the Court of Appeal, a party respondent in the appeal to this Court. This Court was of the view that it is a violation of Rules 4 and 28 of the Supreme Court Rules, 1978. The scope of the Rule 4 in 1978 Rules did not change its text, when it was re-produced in Supreme Court Rules, 1990.

In ***Ceylon Electricity Board and Others v Ranjith Fonseka*** (2008) 1 Sri L.R. 337, this Court dealt with a situation where the caption of the petition, by which leave was sought, is found to be defective, and the petitioner failed to cure that defect within a reasonable time until an objection was taken on that basis. Having noted that (at p. 342) *"[A] petition with an incorrect title therefore would not be acceptable for the purpose of making an application for Special Leave to Appeal in terms of Rule 2 of the Supreme Court Rules 1990",* this Court proceeded to hold that "*… thereby it is apparent that there had been non-compliance with the said Rule*".

Similarly, in the case of ***Kesara Senanayake v Attorney General*** (*supra*), this Court dealt with an instance where the appellant failed to name a necessary party to his application, although Special Leave to Appeal was granted on that application and the appeal was eventually taken up for hearing before this Court. When the respondent took it up as a preliminary objection to the maintainability of the appeal, this Court, after considering the effect of the Rules 4, 28(1) and 28(5), noted (at p. 161) that the " … *totality of the aforementioned Rules indicates the necessity for all parties, who may be adversely affected by the success or failure of the appeal to be made parties to the appeal*" is a violation of those Rules and therefore held, (at p. 161) that " *[I]n terms of the Supreme Court Rules, for the purpose of proper constitution of an appeal, it is vital that all parties, who may be adversely affected by the result of the appeal should be made parties.*" Thus, it is clear that the failure to name all necessary parties in an application before this Court had consistently been accepted as a violation of Rule 4.

Rule 4, in specifying the parties who ought to be named as respondents in an application to this Court, does not restrict that requirement to the parties named in the caption to the matter decided by the Court of Appeal. The very wording used in the description of the parties, as indicated in the said Rule, makes it obligatory for the applicant to name any party "… *whose interest may be adversely affected by the success of the appeal*".

It is obvious, that the petitioners of the Writ Application Nos. Writ/389/2019 and Writ/384/2019 too are qualified to be roped in under at least two of the three categories of respondents, that are contemplated by Rule 4. Not only they are parties "*in whose favour the judgment or order complained against was delivered*", they are also parties "*whose interest may be adversely affected by the success of the appeal*". Since they are the petitioners in Writ Application Nos.

Writ/389/2019 and Writ/384/2019, that were filed before the Court of Appeal, they ought to have been treated as the "respondents" in terms of Rule 4, which makes a specific reference to such a "… *petitioner … in whose favour the judgment or order complained against was delivered*", by the Court of Appeal, on his application.

It has been referred to earlier on in this judgement that the learned Additional S.G. submitted that the failure to name a necessary party should be treated as a curable defect. In this regard, it must be noted that the superior Courts thought it fit to declare more than once, of the nature of consequences, such a failure would ensue.

The judgments of ***Ibrahim v Nadarajah*** (*ibid*), ***Ceylon Electricity Board and Others v Ranjith Fonseka*** (*supra*), ***Kesara Senanayake v Attorney General*** (*supra*) dealt with situations where the failure to name a necessary party and determined that it is a violation of Rule 4. These judicial precedents clearly indicate that this Court, also have considered the circumstances under which the violation occurred, in the exercise of its discretion against the respective applicants when deciding to dismiss their applications or appeals.

The judgment of ***Ibrahim v Nadarajah*** (*ibid*) indicates that this Court, having held that there was a violation of Rules 4 and 28 of the Supreme Court Rules, 1978 decided that the appeal should to be dismissed.

Amerasinghe J, rejecting the submissions that, if it appeared to the Court that any person who was a party to the action in the Court below but not been made a party to the appeal before this Court, the hearing could be adjourned to a future date and directing the appellant that such a person be made a respondent, stated (at p. 133) *"[T]hat was done by the Court in the exercise of its discretionary*

power in terms of Section 770 of the Civil Procedure Code when some good excuse was given for non-joinder or when it was not very apparent that the parties not joined might be affected by the appeal, or where the defect was not of an obvious character which could not reasonably have been foreseen and avoided" and accepted the submissions to the effect that " *the Court no longer has that discretion under the prevailing laws and rules and that in any event there are no circumstances in this case warranting the granting of any indulgence*" and concluded that " *[W]e are in agreement with him*".

This has been the view consistently taken by this Court since the pronouncement of the judgment of ***Ibrahim v Nadarajah*** (*supra*).

In ***Ceylon Electricity Board and Others v Ranjith Fonseka*** (2008) 1 Sri L.R. 337 this Court, dealt with a situation where the caption to the petition seeking leave found to be defective, but the petitioner failed to cure that defect within a reasonable time until the objection was taken.

Having noted that (at p. 342) "*[A] petition with an incorrect title therefore would not be acceptable for the purpose of making an application for Special Leave to Appeal in terms of Rule 2 of the Supreme Court Rules 1990, and thereby it is apparent that there had been non-compliance with the said Rule*" and the Court thereupon proceeded to dismiss the application of the petitioner for Special Leave to Appeal.

In the judgment of ***Premawathie and Others*** *v* ***Thilakaratne and Others*** (SC/HCCA/LA/119/2015 – decided on 21.10.2021) *Amarasekara* J, in an application seeking leave to appeal, considered the fact of "*… not naming substituted 7th ,23rd and 24th Defendants as respondents*" as a factor "*fatal to this application*". Similarly, in ***Illangakoon v Anula Kumarihamy*** (S.C. H.C.C.A. L.A. 277/11 – decided on 21.01.2013), when the petition of the petitioner, failed to

name two of the defendants and also failed to specifically pray that Leave to Appeal be granted, the application too was dismissed.

Learned Additional S.G.'s submission that, in this instance this Court should exercise its discretion in favour of the Petitioner, should be considered along with the submissions of the learned President's Counsel for the Respondents that not naming the necessary parties to the instant application is a "*deliberate*" act on the part of the Petitioners, which is indicative of wilful violation of Rule 4, warranting dismissal *in limine.*

It was noted earlier on in this order that the learned Additional S.G. placed heavy reliance on the judgments of ***Kiriwanthe and Another v Navaratne and Another*** (supra) and ***Abeyratne v Jay-kay marketing Services (Pvt) Ltd.*** (*supra*) and thereby inviting this Court to consider the *"bigger picture".*

The judgment of ***Kiriwanthe and Another v Navaratne and Another*** (supra) cannot be considered as a decision, which expressed the view that the Court would always exercise its discretion in favour of an applicant to excuse his act of non-compliance with a mandatory Rule. A close scrutiny of the said decision in ***Kiriwanthe and Another v Navaratne and Another*** (supra) would reveal that it was clearly emphasised by this Court of the fact that, it would be necessary for the Court to determine the issue whether such non-compliance could be excused, before proceeding to impose a sanction on the consideration of the totality of the circumstances that were presented in such an instance, which would invariably vary with of each such instance. It was a situation where application was dismissed by the Court of Appeal "*solely on account of the failure (a) to produce the determination with the petition, and (b) to disclose its contents in the petition*" in terms of Rule 46.

Mark Fernando J, after consideration of a series of judicial precedents and Maxwell (***Interpretation of Statutes***, 12th ed. pgs. 314-5), considered the principle governing mandatory statutory requirements used in the sense of "*imperative*" or "*absolute*" or "*obligatory*", as opposed to "*directory*" or "*permissive*", and held (at p. 401) that " *… the requirements of Rule 46 must be complied with, but that strict or absolute compliance is not essential; it is sufficient if there is compliance which is "substantial"" - this being judged in the light of the object and purpose of the Rule. It is not to be mechanically applied, as in the case now before us; the Court should first have determined whether the default had been satisfactorily explained, or cured subsequently without unreasonable delay, and then have exercised a judicial discretion either to excuse the non-compliance, or to impose a sanction; dismissal was not the only sanction. That discretion should have been exercised primarily by reference to the purpose of the Rules, and not as a means of punishing the defaulter*".

However, the judgment of ***Abeyratne v Jay-kay marketing Services (Pvt) Ltd.*** (*supra*) on which the Petitioners have relied on is not relevant to the determination of the preliminary objection raised by the Respondents in this particular instance. In that matter, the dispute was referable to a right of way and the issuance of interim relief.

Therefore, in my opinion, the 'defect' conceded by the Petitioners, in their failure to name necessary parties is a violation of the explicit provisions laid down in Rule 4, and such a violation could not be taken as a 'curable defect', when considered in the light of the factual considerations referred to earlier on in this judgment and in "*… reference to the purpose of the Rules …"* as *Fernando* J observed in ***Kiriwanthe and Another v Navaratne and Another*** (supra) .

Therefore, I am inclined to agree with the application of the learned President's Counsel for the Respondents that the application of the Petitioners should be dismissed *in limine*, without considering its merits, on the basis of violation of Rule 4.

The preliminary objection raised on behalf of the Respondents by the learned President's Counsel is accordingly entitle to succeed. The petition addressed to this Court, containing the application of the Petitioners seeking Special Leave to Appeal against the impugned consolidated order of the Court of Appeal, is dismissed *in limine.*

I make no order as to costs.

JUDGE OF THE SUPREME COURT

E.A.G.R. AMARASEKARA, J.

I agree.

JUDGE OF THE SUPREME COURT

MAHINDA SAMAYAWARDHENA, J.

I agree.

JUDGE OF THE SUPREME COURT