

IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of an Application for Leave to Appeal in terms of Section 5(2) of the High Court of the Provinces (Special Provisions) Act No. 10 of 1996 read with Chapter LV111 of the Civil Procedure Code from the Order/reasons of the Commercial High Court of Colombo dated 31st May 2022 consequent to an order made in the matter of an Application for Leave to Appeal under Section 5C of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended by Act No. 54 of 2006.

SC HCCA LA 147/2022
WP/HCCA/COL/143/2022/LA
DSP/00136/22

Pattiyage Harsha Kamal Gomes
Sole Proprietor of
Vishmitha Enterprises
No.18, Turbo Houses
Pitawella Road
Boralessgamuwa

Plaintiff-Petitioner

Vs.

1. Sri Lanka Rupavahini
Corporation
P.O. Box 2204, Independence
Square, Colombo 07.

2. Sonala Digath Weerawickrema.
Gunawardana
The Chairman
P.O. Box 2204, Independence
Square, Colombo 07.

Defendant- Respondents

2A. Asanka Priyanath Jayasuriya
The Chairman
P.O. Box 2204,
Independence Square,
Colombo 07.

Before : Jayantha Jayasuriya, PC, CJ
L.T.B. Dehideniya, J
A.L Shiran Gooneratne, J.

Counsel : Dislrukshi Dias Wickremasinghe, PC with Dilumi de
Alwis and Sithari Perera instructed by Sanjay Fonseka for the
Plaintiff-Petitioner

Palitha Kumarasinghe, PC with Viraj Bandaranayake
for the 1st and 2nd Defendant-Respondents.

Argued on : 07.09.2022

Written Submissions : 13.09.2022 by the 1st Defendant-Respondent
filed on. 15.09.2022 by the Plaintiff-Petitioner

Decided on : 26.09.2022

Jayantha Jayasuriya, PC, CJ

In this matter the Plaintiff-Petitioner-Appellant (hereinafter called the “appellant”) invoked the jurisdiction of this Court by way of an application for leave to appeal in terms of section 5(2) of the High Court of the Provinces (Special Provisions) Act No 10 of 1996 as amended, read with provisions of Chapter LVIII of the Civil Procedure Code.

Court heard the learned President's Counsel for the appellant, in support of granting leave to appeal. The learned President's Counsel for the respondent, while associating himself with the submissions made on behalf of the appellant, submitted that the issues raised in this matter needs early resolution as they revolve around proper administration of justice. It was further contended that the issues raised in the instant application involves practices and procedures adopted in the High Court of Western Province established under Article 154P of the Constitution, commonly referred to as the "Commercial High Court of Colombo" and vested with jurisdiction under section 2(1) of the High Court of the Provinces (Special Provisions) Act No 10 of 1996 as amended.

Having considered the submissions of both President's Counsel, this court decided to grant leave on questions of law referred to in sub-paragraphs (a) to (h) of paragraph 18 of the petition of the appellant dated 16th June 2022. Having granted leave to appeal, this court taking into account the nature of the issue involved in this application, with the consent of learned President's Counsel for the appellant and the respondent, proceeded to hear the appeal forthwith.

The appellant in these proceedings is impugning the document produced marked 'A' - "Reasons for returning the District Court Colombo Case No. 00136/22 DSP" - made by Judge of Commercial High Court. The appellant is seeking this court *inter alia* to;

- set aside the said order / reasoning of the learned High Court Judge;
- make order directing the Learned High Court Judge to register the appellant's action in the Provincial High Court of the Western Province exercising civil and commercial jurisdiction or In the alternative make order directing the District Court Judge to register the appellant's action in the District Court of Colombo.

It is pertinent to observe that the aforesaid document signed by the High Court Judge is undated. Surprisingly it is copied to Director, Sri Lanka Judges Institute and the Secretary, Judicial Service Commission. These "reasons" are attached to a document

signed by the Registrar of the Commercial High Court addressed to the Registrar of the District Court of Colombo, dated 31 May 2022. These facts raise the issue as to whether the matter impugned is a judicial order. Nonetheless, I am of the view that the facts revealed in the course of the hearing warrants intervention of this court.

The letter dated 31 May 2022 signed by the Registrar of the Commercial High Court bears My No: KO/VANI/MAHADHI/LEKHA/2022 and Your Number: KO/DISA/ADHI/na.a.00136/22/DSP. By this letter, the registrar of the Commercial High Court informs the registrar of the District Court that the docket in the Colombo District Court Case No 00136/22 DSP is returned on directions of the High Court Judge, and the “Observations” of the High Court Judge are enclosed for the attention of the learned District Judge.

Before considering the contents of the impugned document signed by the High Court Judge it is necessary to set out all the facts and circumstances surrounding this matter to comprehend the exact issues raised before this court.

The appellant, who was aggrieved by the conduct of the respondent who terminated a commercial agreement between the two parties, initially had taken steps to institute action against the respondent in the Commercial High Court of Colombo. However, at that stage the Registered Attorney of the appellant had been informed, that the action could not be filed in the Commercial High Court as no monetary claim was sought. It is pertinent to note that no case had been registered, no case record had been constructed and no judicial order had been made by the Commercial High Court, at that stage. To utter surprise and dismay of this court it was the registrar or a clerk attached to the registry who had returned all the papers to the appellant on the basis that proceedings should be instituted in the District Court as the Commercial High Court has no jurisdiction.

The abovementioned events had resulted the appellant instituting action in the District Court, which had assigned the case number DSP 00136/2022. The appellant had claimed *inter alia* a declaration that the plaintiff is entitled to specific performance of the agreement and also had sought several injunctions against the defendant.

The learned District Judge thereafter had refused to issue an interim injunction at an *ex parte* hearing and the appellant being aggrieved by the said order had invoked the jurisdiction of the High Court of the Civil Appeals. In the High Court of the Civil Appeals, the respondent had raised an objection to the jurisdiction on the basis that the District Court had no jurisdiction to hear the matter instituted by the appellant. The Learned Judges of the Civil Appellate High Court having heard both parties by its' order dated 05.04.2022 directed the District Court to transfer the case to the Commercial High Court. It was in consequent to this order that the learned District Judge had transferred the case to the Commercial High Court and on 31.05.2022 the Registrar of the Commercial High Court had returned the case record back to the District Court with the 'observations' of the Judge of the Commercial High Court.

Learned President's Counsel for the Appellant as well as the learned President's Counsel for the respondent submit that it is the Commercial High Court which has the jurisdiction to hear the appellant's case. They contend that the judge of the Commercial High Court erred by directing the registrar of the Commercial High Court to return the case record back to the District Court. Furthermore, they submit that the procedure adopted by the Commercial High Court judge in this instance is unlawful and does not accord with the practice of the court.

It is pertinent to observe that the Commercial High Court is vested with the jurisdiction to hear and determine "civil actions and matters" as provided by the High Court of the Provinces (Special Provisions) Act No 10 of 1996 as amended and the District Court was vested with such jurisdiction to hear and determine such matters prior to the enactment of the aforesaid Special Provisions Act. Chapter VII of the Civil Procedure Code sets out the mode of institution of action. Section 46(2) specifically identifies the situations in which the court, in its' discretion may refuse to entertain a plaint. While the Civil Procedure Code had made provision to take such measures, it is of immense importance that when refusing to entertain a plaint it is mandatory that the court acts as provided by section 48 of the Civil Procedure Code.

Section 48 of the Civil Procedure Code reads thus:

*“Every order returning or rejecting a plaint shall specify the date when the plaint was presented and so returned or rejected, the name of the person by whom it was presented and whether such person was plaintiff or registered attorney, and the fault or defect constituting the ground of return or rejection; and every **such order shall be in writing signed by the judge, and filed of record**”.* (emphasis added)

Therefore, a judicial order is a matter of *sine qua non* for the rejection or refusal to entertain a plaint, under the Civil Procedure Code. Leaving such process in the hands of an administrative officer – the registrar – is not only unlawful but is deplorable to say the least and such process cannot be condoned. Such process impacts on the proper administration of justice, adversely. Lawful procedures and practices should be adhered to by courts at all times and should not be compromised for convenience.

In my view, the Commercial High Court had failed to adhere to the procedure and practice as provided by law when it refused to accept and / or returned the plaint at the initial stage, which resulted in the appellant instituting action in the District Court under case number DSP 00136/2022.

Furthermore, the learned President’s Counsel for the appellant submitted that the impugned document signed by the Commercial High Court judge which accompanied the letter signed by the registrar of the High Court on 31 May 2022 was made available only upon her insistence. This court observes that the said undated document signed by the judge of the Commercial High Court does not comply with section 48 of the Civil Procedure Code. Furthermore, I am surprised and fail to comprehend the reason the judge of the Commercial High Court copied this document to the Director, Sri Lanka Judge’s Institute and the Secretary, Judicial Service Commission. The only inference that can be drawn from this conduct is that the judge had not being mindful of the need to pronounce a judicial order recognised by law.

Learned Civil Appellate High Court Judges in considering the appellant’s appeal against the order of the District Court refusing to grant enjoining orders as prayed for by the appellant, considered the objection of the respondent on the jurisdiction of the District Court to hear the matter. Learned High Court Judges had come to the conclusion that the jurisdiction to hear the matter lies with the Commercial High

Court and had been of the view that the District Judge should have referred the matter to the Commercial High Court as provided under section 9 of the Act. Hence, the learned judges of the Civil Appellate High Court had directed the District Court to refer the matter to the Commercial High Court.

In reaching this decision the learned Civil Appellate High Court Judges had relied on the decision of this court in **Cornel and Company Ltd v Mitsui and Company Ltd and others** [2000] 1 SLR 57. Furthermore, this court in **Trans Orbit Global Logistics (Pvt) Limited, v People's Bank**, S.C. Appeal No. 92/2020, (SC minutes of 13.12.2021), also had considered the jurisdiction of the Commercial High Court.

Section 2(1) of the High Court of the Provinces (Special Provisions) Act No 10 of 1996 reads :

“Every High Court established by Article 154P of the Constitution for a Province shall, with effect from such date as the Minister may, by Order published in the Gazette appoint, in respect of such High Court have exclusive jurisdiction and shall have cognizance of and full power to hear and determine, in the manner provided for by written law, all actions, applications and proceedings specified in the First Schedule to this Act if.....”

First Schedule of the abovementioned Act *inter alia* reads :

“All actions where the cause of action has arisen out of commercial transactions (including causes of actions relating to banking, the export or import of merchandise, services and construction of any mercantile document) in which the debt, damage or demand is for a sum exceeding one million rupees or such other amount as may be fixed by the Minister.....”

As submitted by the learned President's Counsel for the respondent Act No 10 of 1996 does not make provision for enabling the Commercial High Court to 'transfer' a case to the District Court, even though section 9 of the said Act, enables the District Court to transfer a case to the Commercial High Court depending on the value of the action. This Court in **Cornel and Company Ltd** (supra) has considered the

applicability of section 47 of the Civil Procedure Code in the context of the possibility of transferring a case filed in the Commercial High Court to the District Court along with the scope of sections 9 and 7 of Act No 10 of 1996. The Court had observed:

“Where an action, which should have been filed in the High Court, is filed in the District Court, section 9 compels transfer to the correct Court; it does not require or permit dismissal of the action on that ground. But the 1996 Act makes no provision for the converse case, where an action that should have been filed in the District Court is filed in the High Court: expressio unius, exclusio alterius, and so the inference would be that transfer to the District Court was not permissible. That seems even to exclude the principle recognised in section 47 of the Civil Procedure Code:” (at page 73)

It is pertinent to note at this stage that there is no appeal before this court arising from the aforesaid order of the Civil Appellate High Court and the instant application is not to examine the legality of the said Order. Therefore, this court will not make any pronouncement relating to the validity of the said order, in these proceedings.

Furthermore, as observed hereinbefore, there is no proper judicial order of the Commercial High Court. The impugned document signed by the High Court Judge, which is produced marked ‘A’ lacks attributes of a judicial order as discussed hereinbefore. Therefore, this court does not wish to examine the said document.

I am of the view that the practice and the procedure adopted by the Commercial High Court in returning and / or refusing to accept the plaint at the initial stage and the case record subsequently, is not consonant with the law and practice of court.

Therefore, we direct that:

- (a). All the judges and the registrar of the Commercial High Court of the Western Province to desist from continuing with any practice in relation to acceptance and / or rejection of plaints and / or any other pleadings, which is inconsistent or violative of relevant laws and practices, forthwith;

(b). The registrar of the Commercial High Court to recall his letter dated 31st May 2022 bearing No. KO/VANI/MAHADHI/LEKHA/2022 and accept the case record in Colombo District Court case 00136/22 DSP and register a case in the Commercial High Court, without any delay;

(c). Registrar of the Commercial High Court of Western Province to list the case registered as per direction (b) above before a Judge of the Commercial High Court of the Western Province, other than the judge who signed the document “Reasons for returning District Court Colombo Case No 00136/22 DSP”, for necessary steps as provided by law, without undue delay;

(d). Registrar of the Supreme Court to take necessary steps and deliver copies of this Order to all the judges and the registrar of the Commercial High Court forthwith.

This court also wishes to note with concern the untold hardships the appellant would have had to undergo in seeking to vindicate his legal rights and therefore reiterate that all endeavours should be made for an expeditious disposal of this matter.

Chief Justice

L.T.B. Dehideniya, J

I agree.

Judge of the Supreme Court

A.L. Shiran Gooneratne, J.

I agree.

Judge of the Supreme Court