

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

In the matter of an application under and in terms of Section 5C of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended by High Court of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006.

SC/APPEAL No. 191/2012

SC/LA/Application No.

SC/HCCA/LA/223/2012

CP/HCCA/Kandy/03/2011

(Revision)

Civil Appellate High Court of
Kandy Case No.

CP/HCCA/Kandy/559/2004(F)

DC Nuwara Eliya Case No. **L/966**

1. T. B. Tambimuttu
2. S.K.R. Tambimuttu
both of No. 56A, Horton Place,
Colombo 07.

PLAINTIFFS

vs

1. R. Selvaratnam
2. C. Selvaratnam,
Both of No. 22, Church Road,
Nuwaara Eliya.

Presently at –
No.25/47, Kalinga Mawatha,
Colombo 05.

DEFENDANTS

And

1. R. Selvaratnam

2. C. Selvaratnam,
Both of No. 22, Church Road,
Nuwaara Eliya.

Presently at –
No.25/47, Kalinga Mawatha,
Colombo 05.

DEFENDANTS - APPELLANTS

VS

1. T. B. Tambimuttu
2. S.K.R. Tambimuttu
both of No. 56A, Horton Place,
Colombo 07.

PLAINTIFFS – RESPONDENTS

And Between

1. R. Selvaratnam
2. C. Selvaratnam,
Both of No. 22, Church Road,
Nuwaara Eliya.

Presently at –
No.25/47, Kalinga Mawatha,
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**DEFENDANTS – APPELLANTS –
PETITIONERS**

VS

1. T. B. Tambimuttu

2. S.K.R. Tambimuttu
both of No. 56A, Horton Place,
Colombo 07.

**PLAINTIFFS – RESPONDENTS –
RESPONDENTS**

And now between

1. T. B. Tambimuttu
2. S.K.R. Tambimuttu
both of No. 56A, Horton Place,
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**PLAINTIFFS – RESPONDENTS –
RESPONDENTS – APPELLANTS**

VS

1. R. Selvaratnam
2. C. Selvaratnam,
Both of No. 22, Church Road,
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Presently at –
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Colombo 05.

**DEFENDANTS – APPEALLNTS –
PETITIONERS - RESPONDENTS**

BEFORE

: Janak De Silva, J.
Menaka Wijesundera, J.
M. Sampath K. B. Wijeratne J.

COUNSEL

: Ravi Algama with Randika Mudannayake
instructed by Panchali Ekanayaka for the
Plaintiffs – Respondents – Respondents -
Appellants.

Anuruddha Dharmaratne with Zahara Hassim
instructed by Koggala Wellala Bandula for the
Defendants – Appellants - Petitioners -
Respondents.

ARGUED ON : 04.11.2025

DECIDED ON : 28.07.2026

M. Sampath K. B. Wijeratne J.

Factual Background

The Plaintiffs-Respondents-Respondents-Appellants (hereinafter referred to as the “Appellants”) instituted action in the District Court seeking, *inter alia*, a declaration of title to the property in dispute and the ejectment of the Defendants-Appellants-Petitioners-Respondents (hereinafter referred to as the “Respondents”).

Upon summons being duly served, the Respondents failed to enter appearance before the District Court. Consequently, the trial proceeded *ex parte*, and judgment was entered in favour of the Appellants (‘X2’).

Thereafter, the Respondents sought to purge their default and to set aside the *ex parte* judgment entered against them. Following an inquiry, the learned District Judge, by order dated December 01, 2004, refused the said application.

Aggrieved by the said order, the Respondents preferred an appeal to the Court of Appeal, which was subsequently transferred to the High Court established under the High Court of the Provinces (Special Provisions) Act, No. 54 of 2006 (commonly referred to as the Civil Appellate High Court and/or the High Court of Civil Appeals), holden in Kandy.

While the appeal was pending, the District Court allowed the Appellants’ application for execution of the decree notwithstanding the pendency of the

appeal, and the Respondents were accordingly ejected from the premises in dispute.

Thereafter, the Respondents, who were the Appellants before the Civil Appellate High Court, were required to deposit the prescribed brief fees. However, they failed to comply with that requirement. Consequently, by order dated March 20, 2009 ('X5'), the Civil Appellate High Court dismissed the appeal for non-payment of brief fees. It is noteworthy that the said order was made by a single Judge.

Subsequently, the Respondents moved the Civil Appellate High Court by an application made under Section 839 of the Civil Procedure Code ('X6') seeking to set aside the aforesaid order of dismissal on the ground that they had not received notice requiring payment of brief fees. Their position was that, having been ejected from the premises in suit, they had been compelled to reside at various locations and, as a result, had not received the relevant communication from Court.

By order dated May 5, 2010 ('X7'), the Civil Appellate High Court rejected the Respondents' application to restore the appeal and refused to set aside the order dismissing the appeal for failure to deposit the prescribed brief fees. The Civil Appellate High Court, having considered the relevant judicial precedents and having extensively analysed the question as to whether the Respondents had been given "due notice" of the requirement to pay brief fees, held that the Respondents were not entitled to the relief prayed for.

Thereafter, the Respondents filed a further application before the Civil Appellate High Court under Section 839 of the Civil Procedure Code seeking to revise and set aside the *ex parte* judgment of the District Court dated March 14, 2003 ('X2'), as well as the orders/judgments of the Civil Appellate High Court dated March 20, 2009 and May 5, 2010.

The Respondents contended that the said orders were made *per incuriam*, having failed to take into consideration the relevant statutes and applicable law.

The Civil Appellate High Court, after permitting the Appellants to file their objections ('X9') and having heard their submissions (*vide* journal entry at page 30 of the appeal brief), by order dated May 15, 2012, set aside the order dated March 20, 2009 ('X5') dismissing the appeal for non-payment of brief fees, as well as the order dated May 5, 2010 refusing to relist the appeal.

Being aggrieved by the said decision, the Appellants sought leave to appeal from this Court. Upon hearing the submissions of both parties, this Court granted leave to appeal on the following five questions of law.

1)Whether a single Judge of the Civil Appellate High Court is empowered by Act No.54 of 2006 to make an order dismissing an appeal whilst sitting alone on the ground of non-payment of brief fees?

2)In any event, whether the making of an order in respect of an appeal or which brief fees has not been paid is a judicial act or a ministerial act?

3)In view of the order dated 05.05.2010, whether the present order is correct in view of the fact that 2 Judges have made order dated 05.05.2010?

4)In any event, whether the Respondents' present application to the High Court is misconceived in law?

5)Whether the Defendants-Respondents are guilty of laches?

Analysis

1. Whether a single Judge of the Civil Appellate High Court is empowered by Act No.54 of 2006 to make an order dismissing an appeal whilst sitting alone on the ground of non-payment of brief fees?

The relevant statutory and regulatory provisions applicable to the present case are found in the High Court of the Provinces (Special Provisions) Act and the Supreme Court Rules.

Section 5A (2) of the High Court of the Provinces (Special Provisions) Act provides that any reference in any written law applicable to the exercise of the jurisdiction of the Court of Appeal shall be read and construed as including a reference to the High Court established under Article 154P of the Constitution for a Province. Section 5A (2) reads as follows:

“ The provisions of sections 23 to 27 of the Judicature Act, No. 2 of 1978 and sections 753 to 760 and sections 765 to 777 of the Civil Procedure Code (Chapter 101) and of any written law applicable to the exercise of the jurisdiction referred to in subsection (1) by the Court of Appeal, shall be read and construed as including a reference to a High Court established by Article 154P of the Constitution for a Province and any person aggrieved by any judgment, decree or order of a District Court or a Family Court, as the case may be, within a Province, may invoke the jurisdiction referred to in that subsection, in the High Court established for that Province ”

(...)

Accordingly, the Supreme Court (Court of Appeal, Appellate Procedure, Copies of Records) Rules, 1978, published in Government Gazette Extraordinary No. 18/6 dated January 10, 1979, shall also apply to the High Court of Civil Appeals.

Section 5B of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990, as amended by Act No. 54 of 2006, which defines the composition of the bench required for the adjudication of cases in the High Court, reads as follows:

*“The jurisdiction of a High Court of Province referred to in Section 5A, shall be **ordinarily exercised at all times by not less than two judges** of that court, sitting together as such High Court.”*

The relevant rule under which the learned High Court Judge dismissed the appeal, namely Rule No. 13, reads as follows:

“13. (a) Where the appellant fails to make application for copies in accordance with the requirements of these rules; or

(b) where the appellant fails to pay the fees due under these rules,

The Court of Appeal may direct the appellant to comply with such directions as the Court may think fit to give, and may reject such appeal if the appellant fails to comply with such directions.”

However, the Rule does not specify whether such power is to be exercised by a single Judge or by a bench comprising two or more Judges. Nevertheless, a plain reading of the Rules in their entirety makes it evident that, wherever it was intended that a particular power be exercised by a single Judge, the Rules have expressly so provided.

For instance, Rule 10 of the Supreme Court Rules (1990), published in Extraordinary Gazette No. 665/32 dated June 07, 1991, provides that a single Judge of the Supreme Court sitting in chambers may refuse to entertain any application for special leave to appeal on the grounds stated therein. Rule 27(4) of the same Rules provides that where any party is dissatisfied with the decision of the Registrar as to the exclusion of any document or any part thereof, such matter may be submitted to a single Judge sitting in chambers for review.

Additionally, Rules 7¹, 4(C)², 12, 10(1)³, 16(4)⁴, 27(5)⁵, 37(2)(a), 40⁶, 41 and 44(7)(a)⁷, expressly refer to instances in which certain powers are to be exercised, or duties performed, by a single Judge.

It is important to note that, in the context of the Court of Appeal, the construction of the relevant provisions, namely Article 146(2) of the Constitution, is

¹ Supreme Court Rules 1978.

² The Court of Appeal (Appellate procedure) Rules 1990.

³ The Supreme Court Rules 1990 published in the Gazette of the Democratic socialist Republic of Sri Lanka (Extraordinary) No.665/32.

⁴ The Supreme Court Rules 1990.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

materially different from Section 5B of the High Court of the Provinces (Special Provisions) Act.

Article 146(2) provides that the jurisdiction of the Court of Appeal may be exercised in different matters at the same time by several Judges of the Court sitting separately. Accordingly, the jurisdiction in respect of judgments and orders of the High Court pronounced at a trial-at-Bar shall be exercised by not less than three Judges⁸. The jurisdiction in respect of other judgments and orders of the High Court shall be exercised by not less than two Judges⁹.

Further, Section 11A of the Tax Appeals Commission Act, No. 23 of 2011, as amended by Act No. 20 of 2013, provides that the jurisdiction in respect of an appeal from the Tax Appeals Commission to the Court of Appeal may be exercised by two or more Judges¹⁰. The jurisdiction in respect of other matters shall be exercised by a single Judge of the Court, unless the President of the Court of Appeal directs otherwise¹¹. In the event of any difference of opinion between two Judges, such decision shall stand suspended until it is reviewed by a bench of three Judges¹².

Accordingly, it is evident that the jurisdiction must be exercised by a bench constituted in accordance with the number of Judges prescribed by the Constitution, the relevant statute, or the applicable Rules, as the case may be.

I have been unable to identify any statutory provision or Rule that authorises any power of the High Court of Civil Appeals to be exercised by a single Judge. In contrast, Section 5B provides that “*The jurisdiction of a High Court of Province (...) ordinarily exercised at all times by not less than two judges of that court (...)*”

⁸ Article 146 (2)(i)(a) of the Constitution.

⁹ Article 146 (2)(i)(b) of the Constitution.

¹⁰ Section 11A (6) of the Tax Appeals Commissions Act as amended by Act No 20 of 2013.

¹¹ Article 146 (2)(iii) of the Constitution.

¹² Article 146 (3) of the Constitution.

The judicial system in our country is structured on a well-established hierarchy, wherein each tier of courts is entrusted with distinct and significant functions. In this context, the requirement that a bench be constituted by the prescribed number of Judges is not a mere procedural formality, but one that serves to preserve the authority of this hierarchical framework.

Any departure from such requirement would tend to blur the distinction between the different tiers of courts and thereby undermine the rationale underlying the allocation of varying degrees of authority and responsibility within the judicial structure. On the other hand, the specification of the number of Judges who must sit on a bench to hear a case cannot be taken lightly, as the size of the bench impacts the authority of judicial decisions, facilitates the adjudication of important legal issues, promotes legal consistency, and ensures compliance with constitutional and statutory requirements.

Failure to comply with the requirement as to the prescribed number of Judges constituting a bench would, therefore, render the resulting judgment vulnerable, not only for having been delivered in disregard of statutory mandate, but also for being devoid of the necessary institutional authority. Accordingly, I hold that a single Judge of the Civil Appellate High Court is not vested with the power to dismiss an appeal on the basis of non-payment of brief fees when sitting as a sole Judge.

The inquiry does not end with the finding that the learned single Judge lacked the requisite authority. The consequential issue that now requires examination is whether such lack of authority renders the said order a nullity. This requires an analysis of the principle of *per incuriam*. A judgment is ruled *per incuriam* when it is given in ignorance of the terms of a statute, or of a rule having the force of a statute. In *Black's Law Dictionary*¹³, the term *per incuriam* is defined as follows,

¹³ Black's Law Dictionary, 11th edn.

“(Of a judicial decision) wrongly decided, because the judge or judges were ill-informed about the applicable law.

There is at least one exception to the rule of stare decisis. I refer to judgments rendered per incuriam. A judgment per incuriam is one which has been rendered inadvertently. Two examples come to mind: first, where the judge has forgotten to take account of a previous decision to which the doctrine of stare decisis applies. For all the care with which attorneys and judges may comb the case law, errare humanum est, and sometimes a judgment which clarifies a point to be settled is somehow not indexed, and is forgotten. It is in cases such as these that a judgment rendered in contradiction to a previous judgment that should have been considered binding, and in ignorance of that judgment, with no mention of it, must be deemed rendered per incuriam; thus, it has no authority ...The same applies to judgments rendered in ignorance of legislation of which they should have taken account. For a judgment to be deemed per incuriam, that judgment must show that the legislation was not invoked.” Louis - Philippe Pigeon, Drafting and Interpreting Legislation 60(1988).

“As a general rule the only cases in which decisions should be held to have been given per incuriam are those of decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned, so that in such cases some features of the decision or some step in the reasoning on which it is based is found on that account to be demonstrable wrong. (...)”

Lord Chief Justice Goddard in Huddersfield Police Authority v. Watson ¹⁴said that, 'What is meant by giving a decision per incuriam' is giving a decision when a case or statute has not been brought to the attention of the court, and they have given the decision in ignorance or forgetfulness of the existence of that case or that statute.”

¹⁴ *Huddersfield Police Authority vs Watson* (1947) 2 ALL ER 193 AT 196.

As cited by former Justice Priyasad Dep, PC. J in one of his judgments¹⁵, the case of Morelle Ltd. V Wakeling (1955)1 All ER 708, at page 718, Sir Raymond Evershed MR states that:

“As a general rule the only cases in which decisions should be held to have been given per incuriam are those of decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned so that in such cases some part of the decision or some step in the reasoning on which it is based is found, on that account, to be demonstrably wrong.”

If I now look into the present case at hand, I am of the view that the order made by a single Judge sitting alone in the High Court of Civil Appeals on March 20, 2009, rejecting the appeal for failure to deposit the prescribed brief fees, is *per incuriam* for reasons set out above and consequently void in law.

2. Whether the dismissal of an appeal on the failure to deposit brief fees is a judicial act or a ministerial act.

Starting from the Constitution, the Judicature Act and several other statutes have laid down the judicial duties and powers to be exercised by judges within their respective jurisdictions. As per *Black's Law Dictionary*, the term “judicial act” is defined as an act involving the exercise of judicial power.¹⁶

Nevertheless, it should be noted that not all acts performed by judges are necessarily classified as judicial acts; conversely, judicial acts are not performed exclusively by judges of courts of law. Quasi-judicial bodies, such as tribunals and commissions which make determinations affecting legal rights, also perform judicial acts. Furthermore, judges of courts of law discharge various functions which do not fall within the category of judicial acts, such as administrative and ministerial acts necessary for the effective functioning of the justice system. Therefore, neither the legislature nor the judiciary can exhaustively enumerate

¹⁵ *Habeebu Mohamedge Masahima Umma vs Mohamed Sifan Najimudeen and others*, SC HC CA LA 127/2014 & SC HC CA LA 128/2014.

¹⁶ *Blacks' Law Dictionary*, Bryan A. Garner, 11th edn at page 31.

all acts that fall within the scope of judicial or ministerial functions. Rather, the classification depends upon the nature and character of the power exercised, rather than the designation of the authority exercising it.

In the present case, the contention advanced by the Respondents is that the order dated March 20, 2009 falls within the ambit of a judicial act, as it involves the exercise of judicial power, determination, and discretion, and is not a mere ministerial act. The impugned order was made by a Judge and resulted in the final disposal of the appeal, thereby directly determining the rights of the parties. It involved the application of legal principles relating to non-compliance with procedural requirements, assessment of default, and the consequential dismissal of proceedings. It also carried finality within the appellate process, affecting substantive rights of the parties and the continuation of litigation. Therefore, in view of its nature and the legal consequences flowing therefrom, the said order bears all the characteristics of a judicial act.

Be that as it may, irrespective of whether the act is characterised as judicial or ministerial in nature, the applicable Rules provide that upon failure to deposit the prescribed brief fees, the appeal is liable to be dismissed.

It is true that, in such an instance, the merits of the appeal are not adjudicated upon. Nevertheless, the order finally disposes of the appeal.

Furthermore, it is not a mere ministerial act, such as the entry of a decree consequent upon the delivery of judgment. Rule 13(b) provides that the Court may direct the appellant to deposit the brief fees and, upon non-compliance with such directions, the Court may dismiss the appeal. The use of the word “may” vests the Court with discretion in the matter.

Accordingly, the dismissal of an appeal under Rule 13(b) is not a mere ministerial act but a judicial act involving the exercise of judicial discretion.

3) In view of the order dated 05.05.2010, whether the present order is correct in view of the fact that 2 Judges have made order dated 05.05.2010?

The third question, as framed, is somewhat vague. Nevertheless, it is to be noted that, although the order dated May 5, 2010 was made by a bench comprising two Judges, a part of that order affirmed the dismissal of the appeal by a single Judge on account of non-payment of brief fees. In light of the foregoing analysis, that part of the order is not legally sustainable. Hence, the present order by which the order dated May 5, 2010 was set aside and the appeal was ordered to be relisted once brief fees are paid is correct in law.

4) In any event, whether the Respondent's[present] application to the High Court is misconceived in law?

The Respondents initially moved the High Court of Civil Appeals under Section 839 of the Civil Procedure Code seeking to set aside its own order dated March 20, 2009, pursuant to which the Court made its order dated May 5, 2010. Thereafter, a further application under the same Section 839 was filed, resulting in the impugned order dated May 15, 2012, whereby the Respondents sought to have both of the aforementioned orders set aside.

Accordingly, it would appear that, instead of challenging the order dated May 5, 2010 before a higher forum, the Respondents elected to re-agitate the matter before the very Court that made the order. Nevertheless, this Court has found that the order dated March 20, 2009 and the relevant part of the order dated May 5, 2010 were made *per incuriam*. It is settled law that where a decision is *per incuriam*, the court has an inherent power to rectify the said decision. *Per Wijetunga, J. in Gunasena vs Bandaratileke (S.C)*, it was held that,¹⁷

"The authorities.....clearly indicate that a court has inherent power to repair an injury caused to a party by its own mistake. Once it is recognized that a court would not allow a party to suffer by reason of its own mistake, it must follow that corrective action should be taken as expeditiously as possible, within the framework of the law, to remedy the injury caused thereby. The modalities are best left to such court, and would depend on the nature of the error."

¹⁷ *Gunasena vs Bandaratileke* [2000] 1 Sri LR 292

In ***Sivapathalingam vs Sivasubramaniam***¹⁸ it was ruled that, “A Superior Court has jurisdiction in the exercise of its inherent power to direct a Court inferior to it to remedy an injury done by its act.” It is noteworthy that the power to rectify a *per incuriam* judgment is not confined to a superior court; rather, it may also be exercised by the court that originally delivered the impugned judgment. This was clearly laid down in the case of ***Caroline Perera and Another vs Martin Perera and Another (CA)***¹⁹ wherein Justice Weerasuriya held that, “A Court whose act has caused injury to a suitor, has an inherent power to make restitution- this power is exercisable by a Court of original jurisdiction as well as by a superior Court.”

Similarly, in ***Kariawasam vs Priyadharshani***²⁰ Dissanayake J., was of the opinion that,

“Having regard to the above definitions and the many instances where the court has held that it has stated *per incuriam* in situations which do not come within Lord Goddard's definition, I think the facts and circumstances of the instant case may well be regarded as coming within the broader parameters of the concept of *per incuriam*. Even otherwise, as the earlier Judgment contained a manifest error, the court of Appeal had inherent power to correct the same, in order that a party did not suffer by reason of a lapse on the part of the court. The procedure adopted by the Court of Appeal was what it considered most appropriate in the circumstances. I see nothing objectionable in that procedure.”

The *per incuriam* finding in the judgment of the matter before me presently has been made as a result of Justice Wigneswaran's attention not being drawn to the second page of the final decree in case No.34801/P where M.A.Girigoris Perera has been allotted the shares of the plaintiff, the 1st and 2nd defendants in that case.

¹⁸ *Sivapathalingam vs Sivasubramaniam* [1990] vol 01 page 378

¹⁹ *Caroline Perera vs Martin Perera* [2002] 2 Sri LR.1.

²⁰ *Kariawasam vs Priyadharshani* [2004]1 Sri Lr 189 at 193 and 194.

Having regard to the above definition of "per incurriam" order and the many instances where the Courts have held that "per incurriam" orders have to be corrected, I think the facts and circumstances of the instant case warrant the exercise of inherent powers of this Court to rectify the mistake made in the judgment of Justice Wigneswaran, to prevent injustice to be caused to the plaintiff-appellant-petitioner."

Hence, the High Court of Civil Appeals possesses the power to correct its own error, even in the absence of a formal or properly constituted application by the aggrieved party. In those circumstances, the Respondents' application to the High Court of Civil Appeals, inviting the Court to rectify its own error, cannot be regarded as misconceived in law.

5. Whether the Defendants-Respondents are guilty of laches?

Laches is a commonly relied upon principle which may operate to deny relief in cases of inordinate delay. However, the precise period that constitutes "*laches*" cannot be defined in absolute terms, as it must always be assessed in the light of the facts and circumstances of each case.

In ***Biso Menika vs Cyril de Alwis***²¹ [1982] 1 Sri L.R. 368 at 379, Sharvananda J. observed that "*What is reasonable time and what will constitute delay will depend upon the facts of each particular case.*"

Similarly, in ***Rajapaksha Appuhamilage Lionel Ranjith vs Suraweera Arachchige Dona Leelawathi and others***²², Samayawardhena J. observed that the question of delay and what constitutes unreasonable delay must necessarily depend on the facts and circumstances of each case.

"It must be emphasised that mere delay, however prolonged, does not per se amount to laches. In other words, laches cannot be determined solely by reference to the length of time taken to make the application. The relevant question is not how many months or years have elapsed since the application

²¹ [1982] 1 Sri LR 368 at 379.

²² SC/APPEAL/100/2020, SC Minute dated 14.05.2025.

ought to have been made (...), but whether the delay is unreasonable and unjustifiable in the context of the particular case. (...) Where the delay is satisfactorily explained, relief ought not to be refused on the ground of laches."

In ***Wijayapala Mendis vs P.R.P. Perera and Others***²³ case, **Per Fernando, J.**

"Delay is never an absolute bar, particularly where the challenge is to jurisdiction. In any event, a plea of delay must be considered on equitable grounds; as for instance, whether the conduct of the petitioner indicates acquiescence or a waiver of his rights and whether any appreciable prejudice had been caused to the adverse party by that delay. Nothing of that kind has been alleged."

Therefore, to answer this question, I will examine the circumstances related to the impugned orders that were delivered. Due to the non-payment of brief fees, the appeal was rejected by a single Judge on March 20, 2009. Subsequently, the first application to the Civil Appellate High Court was filed by the Respondents on October 23, 2009, after a lapse of about seven months from the initial order, and the corresponding order was delivered dismissing that application on May 5, 2010.

Thereafter, the Respondents, after a further lapse of about eight months, filed their second application to the Civil Appellate High Court on January 12, 2011, and the corresponding order was delivered on May 15, 2012, by the incumbent High Court Judge, setting aside both the above orders.

When the time intervals are considered, there has undoubtedly been delay in invoking the jurisdiction of the Civil Appellate High Court. However, the mere delay does not amount to *laches*. On the other hand, as already explained in detail, where an impugned order is erroneous in law, the delay by itself will not justify such an order to stand.

²³ [1999] Volume 2, at Page No. 110.

Conclusion

For the reasons set out above, I hold that the order made by the single Judge of the High Court, sitting alone, dismissing the appeal for non-payment of brief fees was rendered *per incuriam*. Consequently, the subsequent order of the two Judges of the High Court affirming that decision must also be regarded as *per incuriam*. Accordingly, the impugned order dated May 15, 2012, by which both of those orders were set aside, is legally valid. I therefore answer the questions of law as follows.

1) No.

2) A judicial act.

3) Yes.

4) No.

5) No.

Accordingly, the appeal is dismissed.

The parties shall bear their own costs.

JUDGE OF THE SUPREME COURT

Janak De Silva, J.

I agree.

JUDGE OF THE SUPREME COURT

Menaka Wijesundera, J.

I agree.

JUDGE OF THE SUPREME COURT