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

W.T. S. Nilantha Fernando,
59, Central Niwasa,
Kaswalagalla, Raddolugama.
Defendant-Appellant-Respondent-Appellant

SC/APPEAL/65/2025
CA/RII/15/2022
WP/HCCA/NEG/12/2021(F)
DC NEGOMBO 3221/P

Vs.

P.M.S. Nilanthi Perera,
74/4/12, Central Garden,
Kaswalagalla, Raddolugama.
Plaintiff-Respondent-Petitioner-Respondent

Before: Hon. Chief Justice P. Padman Surasena
Hon. Justice Mahinda Samayawardhena
Hon. Justice Sampath B. Abayakoon

Counsel: Prabhath De Silva with Ramanie Fernando for the Defendant-Appellant-Respondent-Appellant.

J.M. Wijebandara with Dimithri Pandiwita for the Plaintiff-Respondent-Petitioner-Respondent.

Argued on: 15.05.2025

Written submissions:

By the Appellant and the Respondent on 15.07.2025

Decided on: 10.10.2025

Samayawardhena, J.

Introduction

Nearly ten years after the decree of divorce was entered, the plaintiff instituted this action in the District Court of Negombo against the defendant seeking partition of a land in equal shares on the basis that the parties were legally divorced. The defendant moved for dismissal of the action on the ground that the plaintiff was holding the half share of the land in trust for the defendant. After trial, the District Court entered judgment in favour of the plaintiff as prayed for. On appeal by the defendant, the Provincial High Court of Civil Appeal of Negombo set aside the judgment of the District Court and dismissed the plaintiff's action.

Against the judgment of the Provincial High Court of Civil Appeal of Negombo, the plaintiff did not file a leave to appeal application in this Court within six weeks (42 days) from the date of pronouncement of the judgment (excluding the date of delivery of the judgment but including all Saturdays, Sundays, public holidays, and the date of filing the application) as required by Rule 7 read with Rule 28(1) of the Supreme Court Rules 1990 and section 5C of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990, as amended by Act No. 54 of 2006. *Vide Jinasena v. Hemamali* [2011] 1 Sri LR 337 and *Board of Investment of Sri Lanka v. Million Garments (Pvt) Ltd* [2014] 1 Sri LR 286. Instead, the plaintiff filed an application for "*revision or restitutio in integrum*" in terms of Article 138 of the Constitution in the Court of Appeal on the 44th day from the date of pronouncement of the judgment.

In the Court of Appeal, the defendant raised a preliminary objection to the maintainability of the said application on the ground that the Court of Appeal has no jurisdiction to entertain, in any form—whether by way of appeal, revision, or *restitutio in integrum*—a challenge to a judgment of the Provincial High Court of Civil Appeal pronounced in the exercise of its appellate jurisdiction, as such jurisdiction lies exclusively with the Supreme Court. By order dated 15.11.2022, the Court of Appeal overruled this objection and fixed a date for the defendant to file objections to the substantive application. This appeal, preferred by the defendant with leave obtained, is from that order of the Court of Appeal, and leave was granted by this Court on the same question of law.

Establishment of Provincial High Courts

According to Article 105 of the Constitution, in the judicial hierarchy, after the Supreme Court of the Republic of Sri Lanka and the Court of Appeal of the Republic of Sri Lanka, the Constitution recognises the High Court of the Republic of Sri Lanka.

Article 111(1) of the Constitution, as originally stood, read as follows:

> *The highest Court of First Instance exercising criminal jurisdiction and created by law shall be called and known as "The High Court of the Republic of Sri Lanka" and shall exercise such jurisdiction and powers as Parliament may by law vest or ordain.*

At that time, the High Court of the Republic of Sri Lanka exercised only original criminal jurisdiction.

The 11th Amendment to the Constitution, certified on 6th May 1987, repealed Article 111(1) and replaced it with a new sub-Article. After this Amendment, Article 111(1) reads as follows:

There shall be a High Court of Sri Lanka, which shall exercise such jurisdiction and powers as Parliament may by law vest or ordain.

This Amendment substituted the title "High Court of the Republic of Sri Lanka" with "High Court of Sri Lanka" and eliminated the limitation to criminal jurisdiction, thus allowing Parliament to determine its jurisdiction without such restriction.

Article 154P of the Constitution, introduced by the 13th Amendment and certified on 14th November 1987, provides for the establishment of a High Court for each Province, commonly referred to as a Provincial High Court, with jurisdiction to be exercised within the limits of the respective Province.

These Provincial High Courts were established as part of the scheme of devolution of power under the 13th Amendment to the Constitution, with the objective of decentralising certain judicial functions, enhancing access to justice, and alleviating delays in the administration of justice. Prior to this Amendment, all appeals from District Courts, Magistrates' Courts, Labour Tribunals, and similar fora throughout the country were heard by the Court of Appeal, thereby substantially contributing to the persistent problem of law's delays at the appellate level. At that time, delays were more acute in the Court of Appeal than in the original courts.

Article 154P of the Constitution reads as follows:

154P (1) There shall be a High Court for each Province with effect from the date on which this Chapter comes into force. Each such High Court shall be designated as the High Court of the relevant Province.

(2) The Chief Justice shall nominate from among Judges of the High Court of Sri Lanka such number of Judges as may be necessary to each such High Court. Every such Judge shall be transferable by the Chief Justice.

(3) Every such High Court shall—

(a) exercise according to law, the original criminal jurisdiction of the High Court of Sri Lanka in respect of offences committed within the Province;

(b) notwithstanding anything in Article 138 and subject to any law, exercise, appellate and revisionary jurisdiction in respect of convictions, sentences and orders entered or imposed by Magistrates Courts and Primary Courts within the Province;

(c) exercise such other jurisdiction and powers as Parliament may, by law, provide.

(4) Every such High Court shall have jurisdiction to issue, according to law—

(a) orders in the nature of habeas corpus, in respect of persons illegally detained within the Province; and

(b) order in the nature of writs of certiorari, prohibition, procedendo, mandamus and quo warranto against any person exercising, within the Province, any power under—

(i) any law; or

(ii) any statutes made by the Provincial Council established for that Province, in respect of any matter set out in the Provincial Council List.

(5) The Judicial Service Commission may delegate to such High Court, the power to inspect and report on, the administration of any Court of First Instance within the Province.

(6) Subject to the provisions of the Constitution and any law, any person aggrieved by a final order, judgment or sentence of any such Court in the exercise of its jurisdiction under paragraphs (3)(b) or (3)(c) or (4), may appeal therefrom to the Court of Appeal in accordance with Article 138.

It may be noted that although the 11th Amendment to the Constitution amended Article 111(1) by substituting the term "High Court of Sri Lanka" for "High Court of the Republic of Sri Lanka", it is clear that, for all practical purposes, both expressions have been used interchangeably to refer to the same judicial body, namely, the High Court of Sri Lanka.

After the 13th Amendment to the Constitution by which Provincial High Courts were established, Article 111 was further amended by the 17th Amendment to the Constitution, certified on 3rd October 2001. Article 111 now reads as follows:

111(1) There shall be a High Court of Sri Lanka, which shall exercise such jurisdiction and powers as Parliament may by law vest or ordain.

(2) The Judges of the High Court shall—

(a) on the recommendation of the Judicial Service Commission, be appointed by the President by warrant under his hand and such recommendation shall be made after consultation with the Attorney-General;
(b) be removable and be subject to the disciplinary control of the President on the recommendation of the Judicial Service Commission.

(3) Subject to the provisions of paragraph (2) of this Article, Parliament may by law provide for matters relating to the retirement of the Judge of such High Court.

(4) Any Judge of the High Court may resign his office by writing under his hand addressed to the President.

In terms of Article 111(2) of the Constitution, as introduced by the 17th Amendment, the appointment, removal, and disciplinary control of Judges of the High Court are vested in the President, based on the recommendation of the Judicial Service Commission. In the case of appointments, such recommendation must be made after consultation with the Attorney-General. Judges are appointed by the President as Judges of the High Court of Sri Lanka. The Constitution contains no separate provision for the appointment of Judges specifically as Judges of the Provincial High Courts established under Article 154P. All High Court Judges belong to a single cadre, and may, in terms of the Constitution and relevant statutes, be assigned to exercise jurisdiction. Article 111H(1)(a), introduced by the 17th Amendment, provides that *"The Judicial Service Commission is hereby vested with the power to transfer Judges of the High Court."*

Article 154P(3) of the Constitution states:

Every Provincial High Court shall—

(a) exercise according to law, the original criminal jurisdiction of the High Court of Sri Lanka in respect of offences committed within the Province;

(b) notwithstanding anything in Article 138 and subject to any law, exercise, appellate and revisionary jurisdiction in respect of convictions, sentences and orders entered or imposed by Magistrates Courts and Primary Courts within the Province;

(c) exercise such other jurisdiction and powers as Parliament may, by law, provide.

It is by virtue of this enabling provision contained in Article 154P(3)(c) of the Constitution that different types of Provincial High Courts, including the Permanent High Court at Bar, have been established.

The first category of the High Court of the Provinces established under Article 154P of the Constitution was constituted by the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990. This court primarily exercises criminal jurisdiction and, in substance, corresponds to the traditional High Court that existed prior to the establishment of the Provincial High Courts, which exercised original criminal jurisdiction in respect of grave offences. In addition, it is vested with appellate and revisionary jurisdiction in respect of judgments and orders of the Magistrates' Courts, Primary Courts, Labour Tribunals, and similar fora within the Province.

By the High Court of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006, section 5 of Act No. 19 of 1990 was amended by the insertion of subsections 5A to 5D, whereby appellate and revisionary jurisdiction in respect of judgments and orders delivered by any District Court, Family Court or Small Claims Court within such Province was conferred on the Provincial High Court. This category of Provincial High Courts primarily exercises civil appellate jurisdiction. They are known as High Courts of Civil Appeal.

The High Courts of the Provinces (Special Provisions) Act No. 10 of 1996 introduced High Courts vested principally with original civil jurisdiction in specific commercial matters, commonly referred to as Commercial High Courts.

Jurisdiction of the Court of Appeal

In order to address the question of law on which leave to appeal was granted, careful consideration of the scope of the jurisdiction of the Court of Appeal is required.

Article 138 of the Constitution deals with the jurisdiction of the Court of Appeal.

> *138(1) The Court of Appeal shall have and exercise subject to the provisions of the Constitution or of any law, an appellate jurisdiction for the correction of all errors in fact or in law which shall be committed by the High Court, in the exercise of its appellate or original jurisdiction or by any Court of First Instance, tribunal or other institution and sole and exclusive cognizance, by way of appeal, revision and restitutio in integrum, of all causes, suits, actions, prosecutions, matters and things of which such High Court, Court of First Instance, tribunal or other institution may have taken cognizance:*
>
> *Provided that no judgement, decree or order of any court shall be reversed or varied on account of any error, defect or irregularity, which has not prejudiced the substantial rights of the parties or occasioned a failure of justice.*
>
> *(2) The Court of Appeal shall also have and exercise all such powers and jurisdiction, appellate and original, as Parliament may by law vest or ordain.*

As held by a Five Judge Bench of the Supreme Court in *Tennakoonwela v. Director General, Commission to Investigate Allegations of Bribery or Corruption* (SC/TAB/4/2023, SC Minutes of 07.10.2024 at page 20), a party dissatisfied with any judgment or order of the Provincial High Court cannot,

as of right, invoke the appellate jurisdiction of the Court of Appeal under Article 138 of the Constitution.

The rationale is clear and straightforward. Article 138 of the Constitution is not an entrenched provision but only an enabling provision. As Article 138(1) expressly states, the jurisdiction of the Court of Appeal to be exercised "*by way of appeal, revision and restitutio in integrum*" is "*subject to the provisions of the Constitution or of any law*". This makes it abundantly clear that the scope and availability of such jurisdiction are dependent upon specific constitutional or statutory authority. Article 138(2) reinforces this position by stipulating that "*The Court of Appeal shall also have and exercise all such powers and jurisdiction, appellate and original, as Parliament may by law vest or ordain.*" Accordingly, Article 138 serves as the constitutional foundation for conferring appellate, revisionary, and *restitutio in integrum* jurisdiction, but it does not, in and of itself, create an inherent or automatic right of appeal. In the phrase "*subject to the provisions of the Constitution or of any law*", the term "*any law*" in this context must be understood in the sense given by Article 170 of the Constitution, which defines "*law*" as "*any Act of Parliament and any law enacted by any legislature at any time prior to the commencement of the Constitution and includes an Order in Council.*"

Article 154P(6), which provides that "*subject to the provisions of the Constitution and any law, any person aggrieved by a final order, judgment or sentence of any such Court in the exercise of its jurisdiction under paragraphs (3)(b) or (3)(c) or (4), may appeal therefrom to the Court of Appeal in accordance with Article 138*", must also be understood in the same tenor. It commences with the phrase "*subject to the provisions of the Constitution and any law*" and ends with "*may appeal therefrom to the Court of Appeal in accordance with Article 138*". Like Article 138, Article 154P(6) is not an entrenched provision, but is expressly conditioned to operate "*subject to the provisions of the Constitution and any law.*"

It was held in the landmark case of *Martin v. Wijewardena* [1989] 2 Sri LR 409 that Article 138(1) only defines the jurisdiction of the Court of Appeal and does not create or confer new rights of appeal. Jameel J. (with the concurrence of Ranasinghe C.J. and Amerasinghe J.) stated at 413:

> *Article 138 is an enabling provision which creates and grants jurisdiction to the Court of Appeal to hear appeals from Courts of First Instance, Tribunals and other Institutions. It defines and delineates the jurisdiction of the Court of Appeal. It does not, nor indeed does it seek to, create or grant rights to individuals viz-a-viz appeals. It only deals with the jurisdiction of the Court of Appeal and its limits and its limitations and nothing more. It does not expressly nor by implication create or grant any rights in respect of individuals.*

Martin v. Wijewardena has been consistently followed in later cases including *Gamhewa v. Maggie Nona* [1989] 2 Sri LR 250, *Gunaratne v. Thambinayagam* [1993] 2 Sri LR 355, *Malegoda v. Joachim* [1997] 1 Sri LR 88, *Bandara v. People's Bank* [2002] 3 Sri LR 25, *The People's Bank v. Camillus Perera* [2003] 2 Sri LR 358, *Wickramasekera v. Officer-in-Charge, Police Station, Ampara* [2004] 1 Sri LR 257, *Jayawardena v. Sampath Bank* [2005] 2 Sri LR 83, *Bakmeewewa, Authorised Officer of People's Bank v. Konarage Raja* [1989] 1 Sri LR 231, *Hatton National Bank v. Thejasiri Gunethilake* [2016] 1 Sri LR 276, *DFCC Bank v. Rajitha Fernando* [2024/25] BLR 106.

In *Swasthika Textile Industries Ltd v. Thantrige Dayaratne* [1993] 2 Sri LR 348, the question before the Supreme Court was whether section 3 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990, read with Article 154P of the Constitution, empowered a Provincial High Court to hear and determine appeals from orders of Labour Tribunals, notwithstanding the provisions of Article 138 of the Constitution. The respondent contended that appellate jurisdiction in respect of Labour

Tribunals was vested in the Court of Appeal under Article 138(1), and that Article 154P(3)(c) did not authorise Parliament to divest a jurisdiction constitutionally vested in the Court of Appeal and to confer it upon the Provincial High Court, save by way of a constitutional amendment or an Act passed with a special majority as stipulated in Articles 82 and 84.

Mark Fernando J. (with the agreement of Bandaranayake J. and Kulatunga J.), making reference to the Supreme Court Determination on the Agrarian Services (Amendment) Bill, stated at 352-353:

> *Apart from jurisdictions constitutionally vested and entrenched, directly or indirectly, Parliament may, by ordinary legislation, abolish, alter or transfer jurisdictions; Parliament may create a new jurisdiction or transfer an existing jurisdiction, so long as such jurisdiction is vested in a person or body constitutionally entitled to exercise the judicial power of the people;*
>
> *The appellate and revisionary jurisdiction of the Court of Appeal under Article 138(1) is not entrenched, as it is "subject to the provisions of the Constitution or of any law"; it may therefore be abolished, amended or transferred. By contrast, its jurisdictions under Articles 140 and 141 are entrenched; but for the proviso inserted by the First Amendment, its jurisdiction under Article 140 cannot be transferred even to the Supreme Court;*
>
> *The jurisdiction of the High Court under Article 111, originally and after the Thirteenth Amendment, was neither defined nor entrenched and had to be conferred by Parliament, by ordinary law. Article 154P(3)(b) conferred jurisdiction on the High Court "notwithstanding anything in Article 138", thus avoiding any possibility of an argument that these provisions were contradictory, and manifesting an intention to confer a concurrent jurisdiction. That jurisdiction was also "subject to any law",*

and therefore (as in the case of Article 138) was not entrenched, and was liable to alteration by Parliament by ordinary law.

Article 111(1) and 138 enabled Parliament by ordinary law, to transfer an existing jurisdiction of the Court of Appeal under Article 138, to the High Court. Accordingly, there is no justification for adopting a restrictive interpretation of Article 154P(3)(c), inconsistent with those provisions—as, for instance, by requiring a law passed by a special majority; its plain meaning and effect is to empower Parliament to confer any "other" jurisdiction on the High Court, i.e. in addition to the "original criminal jurisdiction", and the "appellate and revisionary jurisdiction in respect of convictions, (etc.) by Magistrates Courts and Primary Courts", "appellate and revisionary jurisdiction in respect of orders made by Labour Tribunals" is "other" jurisdiction.

It is therefore beyond argument that section 3 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990, read with Articles 111, 138 and 154P(3)(c), conferred concurrent appellate and revisionary jurisdiction on the High Court in respect of orders of Labour Tribunals; and section 31D(3) of the Industrial Disputes Act, as amended by Act No. 32 of 1990, made that jurisdiction exclusive (thereby taking away the jurisdiction of the Court of Appeal in that respect). Those provisions were enacted in the exercise of the powers conferred by the Constitution, and were not in any way an amendment of the Constitution, and the question of compliance with Article 82 did not arise; nor were they inconsistent with the Constitution, and the question of compliance with Article 84 did not arise. There being no inconsistency between the provisions of those amending Acts, and the Constitution, those provisions cannot, by any process of interpretation, be treated as inoperative or ineffective. Insofar as the validity of those provisions is concerned, Article 80(3) precludes this Court from

inquiring into, pronouncing upon, or in any manner calling in question, the validity of those provisions.

The view of the Supreme Court in *Swasthika Textile Industries Ltd* case was that, since Article 138(1) is not an entrenched provision, section 3 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990, read with section 31D of the Industrial Disputes Act as amended by the Industrial Disputes (Amendment) Act No. 32 of 1990, lawfully vested exclusive appellate and revisionary jurisdiction in respect of orders made by Labour Tribunals in the Provincial High Court, thereby divesting the Court of Appeal of such jurisdiction. The Supreme Court affirmed that Parliament, by ordinary legislation, may reallocate appellate jurisdiction from the Court of Appeal to the Provincial High Court, since Article 138(1) is not entrenched and does not confer an immutable jurisdiction. It was further emphasised that such legislation did not amount to a constitutional amendment and therefore did not require compliance with the special procedures prescribed in Articles 82 and 84 of the Constitution.

By way of further illustration, section 36A of the Partition Law No. 21 of 1977, which originally provided that "*any person dissatisfied with an order made by the court under section 36 may prefer an application for leave to appeal to the Court of Appeal, with the leave of the Court of Appeal first had and obtained*", was amended by the Partition (Amendment) Act No. 27 of 2024 to read that "*any person dissatisfied with an order made by the court under section 36 may prefer an application for leave to appeal to the relevant High Court established by Article 154P of the Constitution in terms of subsection (2) of section 754 of the Civil Procedure Code (Chapter 101) against such order*". In line with the above dicta in *Swasthika Textile Industries Ltd* case, the effect of this amendment is to divest the Court of Appeal of appellate jurisdiction in respect of such orders and to confer it exclusively on the Provincial High Court.

In *Sriyawathie v. Superintendent Hapugastenne Estate and Others* [1997] 1 Sri LR 1 at 5, Kulatunga J. (with the agreement of G.P.S. De Silva C.J. and Amarasinghe J.) stated:

> *I cannot accept the submission that the decision in Swastika Textile Industries Ltd. case (supra) is per incuriam. The ratio in Martin v. Wijewardena (supra) cited by the appellant's Counsel in support of his argument is that a right of appeal is a statutory right and must be expressly created and granted by Statute; and that Article 138 is only an enabling article which confers the jurisdiction to hear and determine appeals to the Court of Appeal. The right to avail of or take advantage of that jurisdiction is governed by the several statutory provisions in various legislative enactments.*

In *Weragama v. Eksath Lanka Wathu Kamkaru Samithiya and Others* [1994] 1 Sri LR 293, the issue concerned the writ jurisdiction of the Provincial High Court under Article 154P(4) of the Constitution. In that case, a writ application was filed in a Provincial High Court seeking writs of *certiorari* and *mandamus* against the President of a Labour Tribunal. The Supreme Court held that Article 154P did not confer writ jurisdiction on the Provincial High Courts in respect of Presidents of Labour Tribunals, nor had Parliament by law conferred such jurisdiction on the Provincial High Courts under Article 154P(3)(c). The Supreme Court further observed that where a law or statute relates to a subject in the Provincial Council List, but not otherwise, the exercise of powers thereunder is subject to the writ jurisdiction of the Provincial High Court. Presidents of Labour Tribunals did not fall within the Provincial Council List.

Mark Fernando J. (with the agreement of Dheeraratne J. and Wadugodapitiya J.) explained the law at pages 299–300 as follows:

By the Thirteenth Amendment, Parliament could have taken away (or diminished) even an entrenched jurisdiction of the Court of Appeal, because a constitutional provision can be amended by a later constitutional amendment. But Parliament cannot, by a constitutional amendment, give itself a blanket authorisation to affect an entrenched jurisdiction by means of a subsequent ordinary law. For example, Parliament cannot confer an entrenched jurisdiction of this Court (e.g. under Articles 125 to 127) on High Courts, by an Act passed under and in terms of Article 154P(3). However, the jurisdiction of the Court of Appeal under Article 138 is not an entrenched jurisdiction, because Article 138 provides that it is subject to the provisions "of any law"; hence it was always constitutionally permissible for that jurisdiction to be reduced or transferred by ordinary law (of course, to a body entitled to exercise judicial power). That is the reason why I held in Swastika Textile Industries Ltd. v. Dayaratne, that section 3 of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990, conferred concurrent, appellate and revisionary jurisdiction on the High Courts in respect of Labour Tribunals, and that thereafter section 31D3 of the Industrial Disputes Act, as amended by Act No. 32 of 1990, made that jurisdiction exclusive, thereby taking away the jurisdiction of the Court of Appeal in that respect. And it was the absence of such a provision that made Parliament unable to reduce or affect the jurisdiction of the Court of Appeal under Article 140: because "its jurisdictions under Articles 140 and 141 are entrenched; but for the proviso inserted by the First Amendment, its jurisdiction under Article 140 cannot be transferred even to the Supreme Court" (Determination in re the Agrarian Services (Amendment) Bill – SC Special Determinations Nos 2 & 4 of 1991 decided on 07.02.1991). It had first to remove the entrenchment, thereby giving Parliament the power, by subsequent ordinary law, to transfer part of that jurisdiction to this Court. If a constitutional amendment was necessary in order to transfer part of

> *an entrenched jurisdiction from the Court of Appeal to a higher Court, it would be anomalous indeed if a transfer to an inferior court was possible without such an amendment.*

Subsequent cases such as *Sunil Chandra Kumara v. Veloo* [2001] 3 Sri LR 91, *Wickramasekera v. Officer-in-Charge, Police Station, Ampara* [2004] 1 Sri LR 257, *Priyadharshani v. Ammasi Krishna* (SC/APPEAL/62/2018, SC Minutes of 24.03.2025) followed *Weragama*. I must note that even in *Gunawardane v. Muthukumarana* [2020] 3 Sri LR 306 at 313, which I will address separately, the Supreme Court endorsed the dicta expressed in *Weragama*.

Purposive interpretation of constitutional provisions

In general, the principles governing the interpretation of a Constitution differ from those applicable to ordinary statutes. Constitutional interpretation must be broad, purposive, and dynamic, for a Constitution is a living instrument, intended to endure and to guide the governance of the people through changing circumstances. Its provisions must therefore be construed in a manner that gives effect to their underlying purpose, upholds the democratic spirit, and facilitates social progress, while eschewing interpretations that would impede the effective functioning of the institutions it establishes.

Samarakoon C.J. in *Wadigamangawa and Others v. Wimalasuriya* [1981] 1 Sri LR 287, observed at 293:

> *As was stated by Lord Wilberforce in Minister of Home Affairs v. Fisher (1973) 3 All ER 21 at 26, a Constitution is a document sui generis "calling for principles of interpretation of its own, suitable to its character…, without necessary acceptance of all the presumptions that are relevant to legislation of private law."*

N.S. Bindra, *Interpretation of Statutes*, 13th Edition (2023), page 656 states:

> *Constitutional provisions are required to be understood and interpreted with an object-oriented approach. A constitution must not be construed in a narrow and pedantic sense. The words used may be general in terms but, their full import and true meaning, has to be appreciated considering the true context in which the same are used and the purpose which, they seek to achieve. A Constitution is not just a document in solemn form, but a living framework for the government of the people exhibiting a sufficient degree of cohesion and its successful working depends upon the democratic sprit underlying it being respected in letter and in sprit. Hence, the Supreme Court is not bound to accept an interpretation which retards the progress or impedes social integration.*

The Indian Supreme Court in *Ashok Tanwar v. State of HP and others* (AIR 2005 SC 614), whilst stating that "*the constitutional provisions cannot be cut down by technical construction rather it has to be given liberal and meaningful interpretation. The ordinary rules and presumptions, brought in aid to interpret the statutes, cannot be made applicable while interpreting the provisions of the Constitution*" cited with approval the celebrated decision of the US Supreme Court in *McCulloch v. Maryland*, 17 US (4 Wheat.) 316 at 407 (1819), in which Marshall C.J. emphasised that the interpretation of the Constitution should be guided by its broad framework rather than minute details:

> *A constitution, to contain an accurate detail of all the subdivisions of which its great powers will admit, and of all the means by they may be carried into execution, would partake of the prolixity of a legal code, and could scarcely be embraced by the human mind. It would probably never be understood by the public. Its nature, therefore, requires that only its great outlines should be marked, its important objects*

> *designated, and the minor ingredients which compose those objects be deduced from the nature of the objects themselves… we must never forget, that it is a constitution we are expounding.*

In the same case, the Supreme Court of India also cited the following passage from the judgment of the Supreme Court of Canada in *Hunter v. Southam Inc.* (1984) 2 SCR 145 at 156, where the same sentiments were echoed:

> *It is clear that the meaning of 'unreasonable' cannot be determined by recourse to a dictionary, nor for that matter, by reference to the rules of statutory construction. The task of expounding a constitution is crucially different from that of construing a statute. A statute defines present rights and obligations. It is easily enacted and as easily repealed. A Constitution, by contrast, is drafted with an eye to the future. Its function is to provide a continuing framework for the legitimate exercise of governmental power and, when joined by a Bill or a Charter of Rights, for the unremitting protection of individual rights and liberties. Once enacted, its provisions cannot easily be repealed or amended. It must, therefore, be capable of growth and development over time to meet new social, political and historical realities often unimagined by its framers. The judiciary is the guardian of the Constitution and must, in interpreting its provisions, bear these considerations in mind. Professor Paul Freund expressed this idea aptly when he admonished the American Courts 'not to read the provisions of the Constitution like a last will and testament lest it become one'.*

Thus, across all major jurisdictions it is recognised that a Constitution must be read as a living and organic instrument, to be construed broadly and purposively so as to promote its objectives and values, rather than narrowly as an ordinary statute.

Jurisdiction of the Court of Appeal over judgments of the Provincial High Court exercising appellate jurisdiction

The Court of Appeal has no jurisdiction to entertain appeals from judgments and orders pronounced by Provincial High Courts in the exercise of their appellate jurisdiction, as such jurisdiction vests exclusively in the Supreme Court.

Section 9 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 defines the forum jurisdiction in relation to appeals under the Act.

> *9. Subject to the provisions of this Act or any other law, any person aggrieved by–*
>
> *(a) a final order, judgment, decree or sentence of a High Court established by Article 154P of the Constitution in the exercise of the appellate jurisdiction vested in it by paragraph (3) (b) of Article 154P of the Constitution or section 3 of this Act or any other law, in any matter or proceeding whether civil or criminal which involves a substantial question of law, may appeal therefrom to the Supreme Court if the High Court grants leave to appeal to the Supreme Court ex mere motu or at the instance of any aggrieved party to such matter or proceedings:*
>
> *Provided that the Supreme Court may, in its discretion, grant special leave to appeal to the Supreme Court from any final or interlocutory order, judgment, decree or sentence made by such High Court, in the exercise of the appellate jurisdiction vested in it by paragraph (3) (b) of Article 154P of the Constitution or section 3 of this Act, or any other law where such High Court has refused to grant leave to appeal to the Supreme Court, or where in the opinion of the Supreme Court, the case or matter is fit for review by the Supreme Court:*

Provided further that the Supreme Court shall grant leave to appeal in every matter or proceeding in which it is satisfied that the question to be decided is of public or general importance; and

(b) a final order, judgment or sentence of a High Court established by Article 154P of the Constitution in the exercise of its jurisdiction conferred on it by paragraph (3) (a), or (4) of Article 154P of the Constitution may appeal therefrom to the Court of Appeal.

Paragraphs (3)(a) and (4) of Article 154P of the Constitution set out the instances in which a Provincial High Court exercises original jurisdiction, as distinct from its appellate jurisdiction, within the Province.

Section 11 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990, defines the appellate jurisdiction of the Court of Appeal in respect of judgments of the Provincial High Courts, thereby establishing the statutory framework through which appeals from the Provincial High Courts are directed to the Court of Appeal. Significantly, section 11(1) provides that the jurisdiction of the Court of Appeal shall be exercised "*subject to the provisions of this Act or any other law*", thereby underscoring that Parliament, by ordinary legislation, may amend, restrict, or reallocate that jurisdiction. This is consistent with the principle affirmed in several cases including *Swasthika Textile Industries Ltd*, that appellate jurisdiction under Article 138 is not entrenched and may be altered by ordinary law without recourse to a constitutional amendment.

11(1) The Court of Appeal shall have and exercise, subject to the provisions of this Act or any other law, an appellate jurisdiction for the correction of all errors in fact or in law which shall be committed by any High Court established by Article 154P of the Constitution in the exercise of its jurisdiction under paragraph (3) (a), or (4) of Article 154P of the Constitution and sole and exclusive cognizance by way of

appeal, revision and restitutio in integrum of all causes, suits, actions, prosecutions, matters and things of which such High Court may have taken cognizance:

Provided that, no judgment, decree or order of any such High Court, shall be reversed or varied on account of any error, defect, or irregularity which has not prejudiced the substantial rights of the parties or occasioned a failure of justice.

(2) The Court of Appeal may in the exercise of its jurisdiction, affirm, reverse, correct or modify any order, judgment, decree or sentence according to law or it may give directions to any High Court established by Article 154P of the Constitution or order a new trial or further hearing upon such terms as the Court of Appeal shall think fit.

(3) The Court of Appeal may further receive and admit new evidence additional to, or supplementary of, the evidence already taken in any High Court established by Article 154P of the Constitution touching the matters at issue in any original case, suit, prosecution or action, as the justice of the case may require.

In sum, under section 9(a) of Act No. 19 of 1990, where the Provincial High Court pronounces its final order, judgment, decree or sentence in the exercise of its *appellate jurisdiction* in terms of Article 154P(3)(b) of the Constitution, section 3 of Act No. 19 of 1990, or any other law, an appeal lies to the Supreme Court and not to the Court of Appeal. Conversely, under section 9(b) read with section 11(1) of Act No. 19 of 1990, where the Provincial High Court pronounces its final order, judgment or sentence in the exercise of its *original jurisdiction* in terms of Article 154P(3)(a), Article 154P(4) of the Constitution, or any other law, an appeal lies to the Court of Appeal and not to the Supreme Court.

As I have already observed, Article 154P(6), which provides that "*subject to the provisions of the Constitution and any law, any person aggrieved by a final order, judgment or sentence of any such Court in the exercise of its jurisdiction under paragraphs (3)(b) or (3)(c) or (4), may appeal therefrom to the Court of Appeal in accordance with Article 138*", must be construed in its proper context. The provision begins with the phrase "*subject to the provisions of the Constitution and any law*" and concludes with the words "*may appeal therefrom to the Court of Appeal in accordance with Article 138*." Both Articles 138 and 154P(6) are not entrenched provisions, and each is expressly conditioned to operate subject to the Constitution and to any law enacted by Parliament.

Appeal against judgments and orders of Provincial Criminal High Court exercising revisionary jurisdiction

The Provincial High Court exercises not only original and appellate jurisdiction but also revisionary jurisdiction, as provided in Article 154P(3)(b) of the Constitution. Section 9 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990, stipulates that a party aggrieved by a final order, judgment, decree or sentence of a Provincial High Court in the exercise of its appellate jurisdiction may appeal to the Supreme Court with leave obtained. By way of illustration, section 74(2) of the Primary Courts' Procedure Act No. 44 of 1979, expressly provides that no appeal lies against an order made under section 66 of that Act. In such circumstances, an aggrieved party may invoke the revisionary jurisdiction of the Provincial High Court to challenge such orders.

Since section 9 of Act No. 19 of 1990 states that appeals to the Supreme Court lies against judgments and orders made by the Provincial High Court "*in the exercise of the appellate jurisdiction*", in cases such as *Gunaratne v. Thambinayagam* [1993] 2 Sri LR 355, *Abeygunasekera v. Setunga* [1997] 1 Sri LR 62, and *Abeywardene v. Ajith De Silva* [1998] 1 Sri LR 134, this Court

held that a party aggrieved by a judgment or order of a Provincial High Court in the exercise of its revisionary jurisdiction, as opposed to its appellate jurisdiction, cannot directly appeal to the Supreme Court, and such a party must first invoke the appellate jurisdiction of the Court of Appeal, and only thereafter, if unsuccessful, may appeal to the Supreme Court. In *Abeywardene v. Ajith De Silva*, at page 137, the Supreme Court observed: *"if in consequence of these decisions there would be an undesirable increase of litigation, that is the matter for the legislature*."

It is this anomaly that has contributed, for instance, to inordinate delays in the conclusion of applications under section 66 of the Primary Courts' Procedure Act, notwithstanding that such applications are intended only to result in a provisional order preserving the *status quo* until the substantive issues are determined in a civil action.

The legislative intent in withholding a right of appeal against orders made under section 66 was not to prolong litigation but to ensure its expeditious disposal. Where no right of appeal is granted by law, it would be illogical to permit two successive appeals to lie—first to the Court of Appeal and thereafter to the Supreme Court—whereas in situations where an appeal is expressly provided, only one appeal lies directly to the Supreme Court.

In this backdrop, I would strongly recommend that the legislature consider amending sections 9 and 10 of Act No. 19 of 1990 by interpolating the words "or revisionary" after the phrase "in the exercise of the appellate", so that the provision would read: *"a party aggrieved by a judgment or order of the High Court in the exercise of the appellate or revisionary jurisdiction may appeal therefrom to the Supreme Court*."

Appellate and revisionary jurisdiction of the Provincial High Court against judgments and orders of the District Court

By the High Court of the Provinces (Special Provinces) (Amendment) Act No. 54 of 2006, sections 5A, 5B and 5C were introduced to the Principal Act No. 19 of 1990. This was done to confer appellate and revisionary jurisdiction to the Provincial High Courts against judgments and orders of the District Courts of the relevant Provinces. These High Courts are commonly referred to as High Courts of Civil Appeal.

In general, the procedure to be followed in the Provincial High Court of Civil Appeal is the same as that followed in the Court of Appeal. Section 5A(2) of Act No. 19 of 1990 provides that the provisions of sections 23 to 27 of the Judicature Act No. 2 of 1978, sections 753 to 760 and sections 765 to 777 of the Civil Procedure Code, and any written law applicable to the exercise of jurisdiction by the Court of Appeal, shall apply to the Provincial High Court. Article 170 of the Constitution defines "written law" to mean *"any law and subordinate legislation and includes statutes made by a Provincial Council, Orders, Proclamations, Rules, By-laws and Regulations made or issued by any body or person having power or authority under any law to make or issue the same."* It is in this context that the Rules of the Court of Appeal and the Rules of the Supreme Court (insofar as they are applicable to the Court of Appeal), made by the Chief Justice together with three Judges of the Supreme Court under Article 136 of the Constitution, apply with equal force to proceedings before the Provincial High Courts of Civil Appeal.

After the said amendment by Act No. 54 of 2006, section 5A of the Principal Act No.19 of 1990 reads as follows:

> *5A(1) A High Court established by Article 154P of the Constitution for a Province, shall have and exercise appellate and revisionary*

jurisdiction in respect of judgments, decrees and orders delivered and made by any District Court, Family Court or Small Claims Court within such Province and the appellate jurisdiction for the correction of all errors in fact or in law, which shall be committed by any such of a District Court, of a Family Court or of a Small Claims Court as the case may be.

(2) 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 or of a Small Claims 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:

Provided that no judgment or decree of a District Court or of a Family Court, as the case may be, shall be reversed or varied by the High Court on account of any error, defect or irregularity, which has not prejudiced the substantial rights of the parties or occasioned a failure of justice.

Appeals against judgments and orders of the Provincial High Court of Civil Appeal

Section 5C governs appeals from judgments and orders of the Provincial High Court of Civil Appeal. It makes the legislative intention unmistakably clear by providing for a single direct appeal to the Supreme Court, with leave obtained, thereby excluding any intermediate appeal to the Court of Appeal. The section uses the clear and unequivocal expression "*An appeal shall lie*

directly to the Supreme Court", underscoring the exclusivity of this appellate route. This statutory structure is consistent with the enabling framework of Article 138 of the Constitution, which recognises the appellate jurisdiction of the Court of Appeal but makes its exercise "*subject to the provisions of the Constitution or of any law.*"

> *5C(1) An appeal shall lie directly to the Supreme Court from any judgment, decree or order pronounced or entered by a High Court established by Article 154P of the Constitution in the exercise of its jurisdiction granted by section 5A of this Act, with leave of the Supreme Court first had and obtained. The leave requested for shall be granted by the Supreme Court, where in its opinion the matter involves a substantial question of law or is a matter fit for review by such Court.*
>
> *(2) The Supreme Court may exercise all or any of the powers granted to it by paragraph (2) of Article 127 of the Constitution, in regard to any appeal made to the Supreme Court under subsection (1) of this section.*

The statutory scheme contemplates only two tiers of appellate scrutiny: an appeal from the District Court to the Court of Appeal *or* to the Provincial High Court, and thereafter to the Supreme Court. It does not permit three tiers of appellate scrutiny, such as from the District Court to the Provincial High Court, then to the Court of Appeal, and thereafter to the Supreme Court. Any other construction would frustrate the clear intention of the legislature, for one of the principal objectives in establishing Provincial High Courts was to arrest delays in the administration of justice—not to multiply them, complicate the appellate process, or defer the attainment of finality in litigation. In the High Court of the Provinces (Special Provisions) (Amendment) Bill Determination (SC/SD/12/2006, SC Minutes of 20.11.2006), the Supreme Court *inter alia* stated that the intended provisions "*would contribute to an expeditious disposal of the alarming backlog of cases now pending in the Court of Appeal.*"

As Sansoni C.J. stated in *Cassim v. Government Agent, Batticaola* (1966) 69 NLR 403 at 404 "*There must be finality in litigation, even if incorrect orders have to go unreversed.*"

The aforementioned position cannot vary according to the mode by which the Court of Appeal is approached. A party dissatisfied with a judgment of the Provincial High Court cannot create a third tier of appellate scrutiny by describing the route as revision or *restitutio in integrum*. In the impugned order, the Court of Appeal, following *Gunawardane v. Muthukumarana* [2020] 3 Sri LR 306, held that such a party may invoke its revisionary jurisdiction on the basis that it is distinct from its appellate jurisdiction. I am unable to agree with that view.

Consider, for instance, a situation in which a Provincial High Court, in the exercise of its appellate jurisdiction, enters judgment for the plaintiff. Two defendants, independently contesting the case, thereafter pursue divergent appellate remedies: one appeals to the Supreme Court with leave obtained, whilst the other files a revision application before the Court of Appeal. If the Supreme Court were to affirm the judgment of the Provincial High Court while the Court of Appeal were simultaneously to set it aside, the result would be an untenable jurisdictional conflict. Such a situation would not only create inconsistency and uncertainty in the administration of justice, but would also erode the hierarchical finality envisaged by the Constitution, which recognises the Supreme Court as the apex judicial body.

Recognition of such a practice would also encourage "judge shopping" or "forum shopping" to secure a favourable forum, which a Five Judge Bench of this Court in *JMC Jayasekara Management Centre (Pvt) Limited v. Commissioner General of Inland Revenue* [2024/25] BLR 557 at 566 emphatically declared "*must be stopped at any cost*".

At the hearing before this court, it was submitted that the reason for filing the application in revision and *restitutio in integrum* before the Court of Appeal was the plaintiff's desire to secure an early resolution of the matter, given the heavy workload of this court. In response, it is pertinent to recall the words of Samarakoon C.J. in *Ranasinghe v. Ceylon State Mortgage Bank* [1981] 1 Sri LR 121 at 127:

> *I know of no law in Sri Lanka which states that the expeditious disposal of a case should guide a litigant in deciding the form in which and the Court in which his action should be filed. Nor does the law state that such considerations should guide a court in deciding whether it is to entertain an action or not. If prudence be the guide, then no doubt such considerations will hold sway. The law does not however lay down such a condition.*

After the introduction of the Provincial High Courts by the 13th Amendment to the Constitution, the Court of Appeal and the Provincial High Court have been vested with concurrent appellate jurisdiction. This was emphasised in all leading cases including *Swasthika Textile Industries Ltd v. Thantrige Dayaratne* [1993] 2 Sri LR 348, *Gunaratne v. Thambinayagam* [1993] 2 Sri LR 355 and *Abeywardene v. Ajith De Silva* [1998] 1 Sri LR 134.

This is clear from the constitutional provisions as well as statutory provisions embodied in several Acts including Acts No. 19 of 1990 and No. 54 of 2006. As Mark Fernando J. pointed out in *Swasthika Textile Industries Ltd*, at page 352, "*Article 154P(3)(b) conferred jurisdiction on the High Court "notwithstanding anything in Article 138", thus avoiding any possibility of an argument that these provisions were contradictory, and manifesting an intention to confer a concurrent jurisdiction.*" As I have explained previously, the procedure adopted in the Court of Appeal and Provincial High Courts is the same.

The fact that, following the establishment of the Provincial High Courts by the 13th Amendment to the Constitution, both the Court of Appeal and the Provincial High Courts have been vested with concurrent appellate jurisdiction is made abundantly clear by sections 5D and 12 of Act No. 19 of 1990. Through these provisions, the legislature has expressly authorised appeals and applications to be heard and determined either in the Court of Appeal or in the Provincial High Court, thereby providing an alternative appellate forum.

Section 5D of Act No. 19 of 1990 reads as follows:

> *5D(1) Where any appeal or application in respect of which the jurisdiction is granted to a High Court established by Article 154P of the Constitution by section 5A of this Act is filed in the Court of Appeal, such appeal or application, as the case may be, may be transferred for hearing and determination to an appropriate High Court as may be determined by the President of the Court of Appeal and upon such reference, the said High Court shall hear and determine such appeal or the application, as the case may be, as if such appeal or application was directly made to such High Court.*
>
> *(2) The President of the Court of Appeal in consultation with the Chief Justice, may issue directions from time to time pertaining to appeals, applications in revision and restitutio in integrum pending in the Court of Appeal on the date of the coming into operation of this section, to be removed for hearing and determination to an appropriate High Court established by Article 154P of the Constitution. Any such direction may be made by reference to the year in which the appeal or application, as the case may be, was filed in the Court of Appeal and such High Court shall be vested with jurisdiction to hear and determine such appeal or application, as the case may be, in accordance with the provisions of*

section 5A of this Act, as if such appeal or application was filed directly in such High Court.

Section 12 of Act No. 19 of 1990 reads as follows:

12(a) Where any appeal or application is filed in the Court of Appeal and an appeal or application in respect of the same matter has been filed in a High Court established by Article 154P of the Constitution invoking jurisdiction vested in that Court by paragraph (3) (b) or (4) of Article 154P of the Constitution, within the time allowed for the filing of such appeal or application, and the hearing of such appeal or application by such High Court has not commenced, the Court of Appeal may proceed to hear and determine such appeal or application or where it considers it expedient to do so, direct such High Court to hear and determine such appeal or application:

Provided, however, that where any appeal or application which is within the jurisdiction of a High Court established by Article 154P of the Constitution is filed in the Court of Appeal, the Court of Appeal may if it considers it expedient to do so, order that such appeal or application be transferred to such High Court and such High Court shall hear and determine such appeal or application.

(b) Where the Court of Appeal decides to hear and determine any such appeal or application, as provided for in paragraph (a), the proceedings pending in the High Court shall stand removed to the Court of Appeal for its determination.

(c) No appeal shall lie from the decision of the Court of Appeal under this section to hear and determine such appeal or application or to transfer it to a High Court.

> *(d) Nothing in the preceding provisions of this section shall be read and construed as empowering the Court of Appeal to direct a High Court established by Article 154P of the Constitution to hear and determine any appeal preferred to the Court of Appeal from an order made by such High Court in the exercise of the jurisdiction conferred on it by paragraph (4) of Article 154P of the Constitution.*

In this context, it would be legally impermissible and institutionally unsound for the Court of Appeal, *in pari materia*, to sit in appeal over judgments and orders pronounced by a Provincial High Court in the exercise of its appellate or revisionary jurisdiction. A party cannot pursue successive appeals before two courts of coordinate jurisdiction in respect of the same matter. This strikes at the very root of the issue. Such a practice is inimical to legislative intent, imposes unnecessary burdens on the judicial system, and undermines the principle of finality in litigation. These considerations make clear that concurrent jurisdiction was intended to provide an alternative forum for appellate review, not to create an additional tier in the appellate hierarchy.

In the Supreme Court case of *Wickramasekera v. Officer-in-Charge, Police Station, Ampara* [2004] 1 Sri LR 257, the question of law referred to the Supreme Court under Article 125 of the Constitution was as follows:

> *Does the Court of Appeal have appellate jurisdiction in terms of Article 138(1) of the Constitution read with Article 154(P)(6) in respect of decisions of the Provincial High Court made in the exercise of its appellate jurisdiction, or is it the Supreme Court that has jurisdiction in appeals from the Provincial High Court as set out in section 9 of the High Courts of the Provinces (Special Provisions) Act No. 19 of 1990?*

Bandaranayake J. (as she then was), with the concurrence of Yapa J. and Jayasinghe J., while emphasising at page 265 that Article 138 is an

enabling provision which expressly provides that the Court of Appeal shall exercise appellate jurisdiction subject to the provisions of the Constitution or of any law, answered the above question in the following manner at page 267:

> *The Court of Appeal does not have appellate jurisdiction in terms of Article 138(1) of the Constitution read with Article 154P(6) in respect of decisions of the Provincial High Court made in the exercise of its appellate jurisdiction and it is the Supreme Court that has the jurisdiction in respect of appeals from the Provincial High Court as set out in section 9 of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990.*

In *Balaganeshan v. OIC, Police Station, Seeduwa* (SC/SPL/LA/79/2015, SC Minutes of 01.04.2016), Dep J. (as he then was) with the agreement of Wanasundara J. and Jayawardena J. held:

> *When the Provincial High Court exercises appellate jurisdiction, it exercises appellate jurisdiction hitherto exclusively vested in the Court of Appeal. It exercises a parallel or concurrent jurisdiction with the Court of Appeal. The High Court when it exercises appellate jurisdiction it is not subordinate to the Court of Appeal. That is the basis for conferring jurisdiction on the Supreme Court under section 9 of the High Court of Provinces (Special Provisions) Act No. 19 of 1990 to hear appeals from the judgments of the High Court when it exercises appellate jurisdiction. I hold that the Accused Appellant–Petitioner should have filed a Special Leave to Appeal application against the judgment of the High Court exercising Appellate Jurisdiction to the Supreme Court in the first instance instead to the Court of Appeal.*

In *Sharif and Others vs. Wickramasuriya and Others* [2010] 1 Sri LR 255 at 265, Eric Basnayake J. expressed similar sentiments:

> *I am of the view that the jurisdiction enjoyed by the Court of Appeal through Article 138 remains intact. Through Article 138 one has the liberty to invoke the jurisdiction of the Court of Appeal or to resort to a Provincial High Court in terms of Article 154P(3)(b). If one chooses to go to the High Court, an appeal would lie to the Supreme Court with leave first obtained from the High Court (Section 9 of the Act 19 of 1990). If one invokes the jurisdiction of the Court of Appeal under Article 138 an appeal would lie from any final order or judgement of the Court of Appeal to the Supreme Court with leave of Court of Appeal first obtained (Article 128(1) of the Constitution). It is thus clear that both courts enjoy concurrent jurisdiction on matters referred to in Article 154P(3)(b). The jurisdiction enjoyed by the Court of Appeal had not been disturbed by Articles of the Constitution or by the Acts of Parliament.*

The same conclusion was reached by Chithrasiri J. in *Sajith Dilhan Aluthwatta v. Bandutissa* (CA/40/2009, CA Minutes of 27.03.2009):

> *However, the appellate jurisdiction in respect of appeals and revisions of the judgments, decrees and orders delivered and made by a District Court or a Family Court including the applications of restitutio in integrum has been exercised exclusively by the Court of Appeal until the High Courts of Provinces (Special Provisions) (Amendment) Act No.54 of 2006 came into operation. Thus, it is clear that with the enactment of the aforesaid Act No.54 of 2006, appellate and revisionary jurisdiction in respect of judgments, decrees and orders delivered and made by a District Court or a Family Court are now being exercised concurrently by the Court of Appeal and the High Courts established under Article 154(P) of the Constitution.*

In *Nishantha Fernando v. Attorney-General* (CA/MC/RE/4/2017, SC Minutes of 08.06.2018), Amarasekara J. (with the agreement of Nawaz J.) held:

> *The petitioner had filed revision applications in Gampaha High Court seeking revision of the said orders made by the learned magistrate and the said high court has dismissed the applications. It must be noted that high courts now exercise the same revisionary jurisdiction once this court exercised over magistrate courts. As he has filed revision applications on the same orders previously in the High Court of Gampaha he has exhausted his remedy. His position is that his lawyers have not brought to the notice of High Court the facts averred in this petition. A party to an action cannot be given a chance to have a second bite of the same cherry. If this court allows this application it may create a bad precedent to allow a party who fails to present his case properly file another application.*

In *Seylan Bank PLC v. Christobel Daniels* (CA/PHC/APN/58/2014, CA Minutes of 14.12.2016), Nawaz J. opined:

> *The structure of Article 138 would also prevent this Court exercising revisionary jurisdiction when the sole and exclusive jurisdiction has been vested in the Supreme Court. The revisionary jurisdiction is bestowed in the Court of Appeal thus in Article 138 of the Constitution.*
>
> *"..... and sole and exclusive cognizance by way of appeal, revision and restitutio in integrum, of all causes, suits, actions, prosecutions, matters and things which such High Court, Court of First Instance, tribunal or other institution may have taken cognizance".*
>
> *It is crystal clear beyond any scintilla of doubt that the revisionary power of this Court lies only against orders made by such High Court, Court of First Instance, tribunal or other institution when they have*

> *taken cognizance of causes, suits, actions, prosecutions, matters and things. The words "such High Court, Court of First Instance, tribunal or other institution" must be read ejusdem generis and such collocation of words read together with the words causes, suits, actions, prosecutions, matters and things clearly indicates that these Courts exercise original jurisdiction. Only when the High Court of First Instance, tribunal or other institution has exercised original jurisdiction, revision lies to this court. In other words, only when the High Court has exercised original jurisdiction, the revisionary jurisdiction of this Court can be invoked. In my view Article 138 intentionally suggests such a deliberate intendment of Parliament and when the High Court has sat in its appellate jurisdiction as has happened in this case, no revision lies to this Court.*

Gunaratne v. Indika Sampath (CA/PHC/APN/54/2013/REV, CA Minutes of 23.09.2013) was a partition action in which the plaintiff sought to invoke the revisionary jurisdiction of the Court of Appeal against the judgment of the Provincial High Court of Civil Appeal. Dismissing the application *in limine* without issuing notice, Salam J. observed:

> *The question that now arises for consideration is whether the Court of Appeal can exercise its revisionary powers under Article 138 of the Constitution in respect of a judgment of the High Court pronounced under the Provisions of Act No 54 of 2006 when the proper remedy is to appeal to the Supreme Court. Appreciably, Section 5A of Act No 54 of 2006 quite specifically states that all relevant written laws applicable to an appeal, in the Court of Appeal are applicable to the High Court as well. This undoubtedly demonstrates beyond any iota of doubt that the scheme provided by Act No 54 of 2006 to facilitate an appeal being heard by the Provincial High Court is nothing but a clear transfer of jurisdiction and in effect could be said that as far as appeals*

> *are concerned both the High Court and the Court of Appeal rank equally and are placed on par with each other. Arising from this statement of law, it must be understood that if the Court of Appeal cannot act in revision in respect of a judgment it pronounces in a civil appeal, then it cannot sit in revision over a judgment entered by the High Court in the exercise of its civil appellate jurisdiction as well, for both courts are to be equally ranked when they exercise civil appellate jurisdiction.*

In *Ramalingam v. Parameswary* [2000] 2 Sri LR 340 at 348 Wigneswaran J. reiterated the principle that when two courts exercise concurrent jurisdiction, they stand on the same footing within that sphere of jurisdiction:

> *The whole purpose of the Thirteenth Amendment establishing a High Court in every province was to confer jurisdiction in respect of certain matters in the High Court granting it concurrent jurisdiction with the Court of Appeal. When concurrent or parallel jurisdiction is given by Law to two Courts the question of a superior and inferior Court would not arise. As far as the jurisdiction granted to the two Courts in certain matters goes, they are equal.*

In *Laksiri v. Officer in Charge Anti Vice Squad and Another* [2012] 1 Sri LR 131 at 135, Ranjith Silva J. with the agreement of Abrew J. stated:

> *Therefore we find that Court of Appeal will not have the jurisdiction to entertain a matter by way of revision in derogation of the statutory powers specifically conferred on the Supreme Court by the 13th Amendment to the Constitution read with Section 9 of the High Court of the Province (Special Provisions) Act No. 19 of 1990, even in exceptional circumstances.*

Commercial High Courts

In respect of appeals against judgments and orders of the Provincial High Courts established under the High Court of the Provinces (Special Provisions) Act No. 10 of 1996, to hear and determine specified commercial disputes, commonly referred to as Commercial High Courts, the statutory scheme provides for only a single appeal, which lies directly to the Supreme Court. Section 5 of the Act reads as follows:

> *5(1) Any person who is dissatisfied with any judgement pronounced by a High Court established by Article 154P of the Constitution, in the exercise of its jurisdiction under section 2, in any action, proceeding or matter to which such person is a party may prefer an appeal to the Supreme Court against such judgement for any error in fact or in law.*
>
> *(2) Any person who is dissatisfied with any order made by a High Court established by Article 154P of the Constitution, in the exercise of its jurisdiction under section 2 in the course of any action, proceeding or matter to which such person is, or seeks to be, a party, may prefer an appeal to the Supreme Court against such Order for the correction of any error in fact or in law, with the leave of the Supreme Court first had and obtained.*
>
> *(3) In this section, the expressions "judgment" and "order" shall have the same meanings respectively, as in section 754(5) of the Civil Procedure Code (Chapter 101).*

It has been consistently held in a series of decisions including *Merchant Bank of Sri Lanka Ltd v. Perera* [2012] BLR 14, *Australanka Exporters (Pvt) Ltd v. Indian Bank* [2001] 2 Sri LR 156, *Senanayake v. Koehn* [2002] 3 Sri LR 381, *Kosala Bandara Bakmeewewa v. The Finance PLC* (CA/PHC/APN/97/2007, CA Minutes of 13.06.2016), and *Kumara Perera v. Merchant Bank of Sri Lanka Ltd* [2019] 2 Sri LR 533 that the Court of

Appeal has no jurisdiction to set aside judgments or orders of the Commercial High Court by way of final appeal, revision, or *restitutio in integrum*, as such jurisdiction is vested exclusively in the Supreme Court.

It is significant to note that substantially the same language has been employed in section 5C of Act No. 19 of 1990 in relation to appeals against judgments and orders of the Provincial High Courts of Civil Appeal, and there is no justification for drawing a distinction between the two provisions. Both must therefore be construed in a consistent manner.

In *Merchant Bank of Sri Lanka Ltd v. Perera* [2012] BLR 14, the defendant filed a revision application before the Court of Appeal against an order made by the Provincial High Court in the Western Province established by the High Court of the Provinces (Special Provisions) Act, No. 10 of 1996. The Supreme Court held that, following the enactment of that Act, a person dissatisfied with any judgment or order of a Provincial High Court established thereunder may appeal only to the Supreme Court in terms of section 5, and that the Court of Appeal has no jurisdiction to entertain *an appeal or revision application* against a judgment or order pronounced by such a Provincial High Court. Suresh Chandra J., with the concurrence of Marsoof J. and Ekanayake J., observed at page 18:

> *The sequence of the enactment of the Acts makes it evident that in relation to a matter in the District Court the Right to Appeal from a judgment would be to the Court of Appeal and then if leave is granted an appeal would lie to the Supreme Court. By the enactment of Act No.10 of 1996 it is clear that in any civil matter dealt with in the High Court, the Right of Appeal lies only to the Supreme Court. This seems to be the clear intention of the Legislature with regard to matters dealt in the High Court. When the above special provisions are being considered in the High Court, if revisionary jurisdiction to the Court of Appeal is given then it would give the party applying for revision in a*

situation as in the present case a favourable position by granting an additional opportunity of review as against a party who comes within the purview of the civil jurisdiction of the High Court regarding other matters as they will be entitled only to the right to appeal to the Supreme Court. This would be due to the fact that if the revisionary jurisdiction to the Court of Appeal is allowed then if need be the party would have the option to go further to the Supreme Court by way of canvassing the judgment of the Court of Appeal in such instances. This would give the party in such circumstances two opportunities of review of the preliminary judgment when the clear intention of the Legislature is that there should be only an appeal to the Supreme Court from any judgment or order of the High Court in the exercise of its Civil Jurisdiction in terms of Sections 5(1) and 5(2). Further it would be illogical to consider that a party is entitled to have recourse to the Court of Appeal to exercise its Revisionary jurisdiction (and consequently an appeal therefrom to the Supreme Court) if it is in relation to a matter under S.329 where an appeal is denied, while an appeal is available to a party only to the Supreme Court in other matters where the High Court has been granted civil jurisdiction.

In *Australanka Exporters (Pvt) Ltd v. Indian Bank* [2001] 2 Sri LR 156 at 159, Raja Fernando J. stated:

Section 5 of the High Court of the Provinces (Special Provisions) Act No. 10 of 1996 has clearly enacted that "Any person who is dissatisfied with any judgment pronounced by a High Court established by Article 154(P) of the Constitution, in the exercise of its jurisdiction under Section 2, in any action proceeding on matters to which such person is a party may prefer an appeal to the Supreme Court against such judgment, for any error in fact or in law." Appellate jurisdiction in respect of judgments and orders of the High Court of the Provinces

made in the exercise of its civil jurisdiction is vested exclusively in the Supreme Court.

In *Kumara Perera v. Merchant Bank of Sri Lanka Ltd* [2019] 2 Sri LR 533, it was held that "*the Court of Appeal lacks jurisdiction to entertain an application for restitutio in integrum from the judgment of the Commercial High Court.*"

Applications for *restitutio in integrum*

It must be observed that neither Article 154P of the Constitution nor any provision of Act No. 19 of 1990 expressly confers jurisdiction in *restitutio in integrum* on the Provincial High Courts. By section 5A(1) of Act No. 19 of 1990, the Provincial High Courts were vested only with "appellate and revisionary jurisdiction" in respect of judgments and orders of the District Court, Family Court and Small Claims Court within the Province. This omission is of particular significance since applications for *restitutio in integrum* are filed against judgments of District Courts in partition cases.

Taking advantage of this ambiguity, litigants who are unable to exercise a statutory right of appeal against judgments of the District Court tend to approach the Court of Appeal under Article 138 of the Constitution, invoking its jurisdiction by way of revision and *restitutio in integrum*, on the footing that the Provincial High Courts of Civil Appeal lack *restitutio in integrum* jurisdiction. Such an approach, however, defeats the legislative intent underlying the establishment of the Provincial High Courts of Civil Appeal.

Nevertheless, by section 5D(2) of Act No. 19 of 1990, the legislature has not altogether excluded the Provincial High Courts of Civil Appeal from entertaining such applications. That provision expressly empowers the President of the Court of Appeal to transfer to the relevant Provincial High Court of Civil Appeal pending appeals, applications in revision, and

applications for *restitutio in integrum* for hearing and determination. If the Provincial High Courts were entirely devoid of *restitutio in integrum* jurisdiction, the statutory authority to transfer such applications would be rendered meaningless, and the receiving court would lack competence to determine the matter. Section 5D(2), which authorises the President of the Court of Appeal to transfer such applications to the Provincial High Courts of Civil Appeal, reflects the legislative intention that those courts should possess jurisdiction to hear and determine *restitutio in integrum* applications in appropriate cases.

In *Aluthwatta v. Bandutissa and Others* (CA/40/2009, CA Minutes of 27.03.2009) Chithrasiri J. highlighted this aspect in the following manner:

> *This is an application made in terms of Article 138(1) of the Constitution of the Democratic Socialist Republic of Sri Lanka by which all appellate jurisdiction for the correction of all errors in fact or in law which shall be committed by any Court of First Instance, tribunal or other institution has been conferred upon the Court of Appeal.*
>
> *At this stage, it is necessary to mention that all restitutio in integrum applications also could be covered by a revision application even though all revisions do not fall into the category of restitution. However, it is difficult to define applications of restitutio in integrum specifying clear boundaries. Therefore, it is possible to invoke jurisdiction of this Court even for reversionary matters if those are coupled with restitution. This will pave the way to have almost all revision applications being filed in this Court. More importantly, such a situation would permit to overcome the object of the Legislature of having appellate jurisdiction over judgments and orders of District Courts to the High Courts established in the respective Provinces.*

> *However, it is pertinent to mention that in terms of Section 5(D)(1) of the Act No.54 of 2006, the President of the Court of Appeal has the power to transfer new cases that are filed in the Court of Appeal to the appropriate High Court for determination. Under those circumstances, we are of the view that this case be referred to the President of the Court of Appeal in order to transfer this case to the appropriate High Court in terms of the provisions contained in Section 5(D)(1) of the High Court of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006.*

In consequence, in *Aluthwatta's* case, the Court of Appeal directed that the said application for revision and *restitutio in integrum* be transferred to the relevant Provincial High Court for hearing and determination.

Given that the Provincial High Court of Civil Appeal is expressly vested with appellate and revisionary jurisdiction in respect of judgments, decrees, and orders of the District Court, Family Court, and Small Claims Court within the Province, it would be incongruous in practice to exclude *restitutio in integrum*, as applications in revision and *restitutio in integrum* are commonly pleaded together and operate in a complementary manner. I agree with the observations made by Chithrasiri J. in *Aluthwatta's* case that "*all restitutio in integrum applications also could be covered by a revision application even though all revisions do not fall into the category of restitution.*"

In this backdrop, I would strongly recommend that the legislature amend section 5A(1) of Act No. 19 of 1990 so as to state the position expressly. For clarity, section 5A(1), which presently reads "shall have and exercise appellate and revisionary jurisdiction", may usefully be amended to read: "shall have and exercise appellate, revisionary, and *restitutio in integrum* jurisdiction".

Gunawardane v. Muthukumarana

The Court of Appeal relied heavily on the judgment of this court in *Gunawardane v. Muthukumarana* [2020] 3 Sri LR 306 in overruling the preliminary objection raised by the defendant on jurisdiction. In that case, at page 310, this court held as follows:

> *Section 9 of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990, as amended, does not oust the revisionary jurisdiction of the Court of Appeal in respect of decisions made by a Provincial High Court exercising its appellate powers. Therefore, the revisionary jurisdiction of the Court of Appeal referred to in Article 138 of the Constitution of the Republic of Sri Lanka can be invoked in order to canvass a decision made by a Provincial High Court exercising its appellate powers.*

With all due respect, I am unable to agree with that conclusion. That judgment is predominantly premised on the conceptual separation of revision from appeal, in the manner adopted by Sansoni C.J. in the oft-quoted decision in *Mariam Beebee v. Seyed Mohomed* (1965) 68 NLR 36, where it was observed at page 38:

> *The power of revision is an extraordinary power which is quite independent of and distinct from the appellate jurisdiction of this Court. Its object is the due administration of justice and the correction of errors, sometimes committed by this Court itself, in order to avoid miscarriages of justice. It is exercised in some cases by a Judge of his own motion, when an aggrieved person who may not be a party to the action brings to his notice the fact that, unless the power is exercised, injustice will result. The Partition Act has not, I conceive, made any change in this respect, and the power can still be exercised in respect of any order or decree of a lower Court.*

When *Mariam Beebee v. Seyed Mohomed* was decided in 1965, Sri Lanka was governed by the Soulbury Constitution. Neither the Soulbury Constitution nor the First Republican Constitution of 1972 contained any provision equivalent to Article 138 of the present Constitution of 1978, which expressly enacts the appellate, revisionary, and *restitutio in integrum* jurisdiction of the Court of Appeal, to be exercised "subject to the provisions of the Constitution or of any law."

Indeed, the Supreme Court in *Gunawardane*, at page 314, acknowledged: "*At the outset, it must be borne in mind that the revisionary jurisdiction of the Court of Appeal is a Constitutional mandate. Its genesis lies in Article 138 of the Constitution.*" However, both the Supreme Court in *Gunawardane* and the Court of Appeal in the instant case failed to properly appreciate that Article 138 is not an entrenched provision but an enabling one. Article 138(1) itself makes plain that the appellate jurisdiction of the Court of Appeal "*by way of appeal, revision and restitutio in integrum*" is "*subject to the provisions of the Constitution or of any law*". Nevertheless, both courts proceeded on the footing that, in the absence of an express exclusion, the Court of Appeal continues to retain revisionary jurisdiction over judgments of the Provincial High Court.

At page 316 of *Gunawardane*, it was further stated: *"As I observed earlier, the revisionary jurisdiction of the Court of Appeal is a Constitutional mandate which, undoubtedly, is subject to the provisions of statutory law. Nevertheless, owing to its genesis in the Constitution, any restriction or modification which the Legislature seeks to introduce must be introduced by way of express wording."* In my view, this reasoning is untenable. Whilst conferring revisionary jurisdiction on the Court of Appeal, the Constitution itself expressly stipulates that such jurisdiction is "*subject to the provisions of the Constitution or of any law.*" When the Constitution at the outset makes clear that the revisionary jurisdiction is conditional and not absolute, there

is no need for express words of exclusion. Parliament, by ordinary legislation, is empowered to regulate, modify, or reallocate such jurisdiction. To hold otherwise would elevate Article 138(1) to a status of entrenchment which the Constitution has not conferred.

This is consistent with the principle affirmed in *Swasthika Textile Industries Ltd v. Dayaratne*, where the Supreme Court held that appellate and revisionary jurisdiction under Article 138(1) is not entrenched and can be altered by ordinary law. In that case, the Supreme Court held that section 31DD, introduced into the Industrial Disputes Act by Act No. 32 of 1990, which provides that: *"Any workman, trade union or employer who is aggrieved by any final order of a High Court established under Article 154P of the Constitution, in the exercise of the appellate jurisdiction vested in it by law or in the exercise of its revisionary jurisdiction vested in it by law, in relation to an order of a Labour Tribunal, may appeal therefrom to the Supreme Court with the leave of the High Court or the Supreme Court first had and obtained"*, removed the appellate and revisionary jurisdiction of the Court of Appeal in respect of final orders of the High Court made in relation to orders of Labour Tribunals, and vested such jurisdiction exclusively in the Supreme Court. In that instance also, there was no express removal of the revisionary jurisdiction of the Court of Appeal. This position was subsequently accepted as correct by a Bench of five Judges of this court in *Abeywardene v. Ajith De Silva* [1998] 1 Sri LR 134 at 140.

As I have emphasised repeatedly, Provincial High Courts were vested with special jurisdiction under Acts Nos. 19 of 1990, 10 of 1996, and 54 of 2006 with the specific objective of arresting delays in the administration of justice. Sansoni C.J. in *Mariam Beebee v. Seyed Mohomed* did not recognise the revisionary power as an absolute and unqualified principle of law; rather, His Lordship acknowledged that its exercise is subject to legislative intent. This is apparent from his explicit observation in the above excerpt

that "*The Partition Act has not, I conceive, made any change in this respect, and the power [of revision] can still be exercised in respect of any order or decree of a lower Court*", thus recognising that the legislature could, through statute, alter or limit the scope of revisionary powers.

Unlike the Partition Act considered in *Mariam Beebee*, Acts Nos. 19 of 1990, 10 of 1996, and 54 of 2006 expressly restructure appellate jurisdiction and, by their terms, exclude any intermediate recourse to the Court of Appeal from judgments and orders of Provincial High Courts exercising their appellate jurisdiction. The legislative design, read together with the enabling nature of Article 138, leaves no scope for the Court of Appeal to invoke its appellate, revisionary or *restitutio in integrum* jurisdiction in such instances, without disregarding the clear statutory command and frustrating the very object of the Provincial High Court scheme.

The Supreme Court in *Gunawardane*, at pages 310–311, declined to follow *Merchant Bank of Sri Lanka Ltd v. Perera* [2012] BLR 14 and *Australanka Exporters (Pvt) Ltd v. Indian Bank* [2001] 2 Sri LR 156, which held that the Court of Appeal has no jurisdiction, whether by way of appeal or revision, over judgments and orders of the Provincial High Courts established under Act No. 10 of 1996 on the ground that "*both these cases had dealt with the issues pertaining to appeals arising out of matters where the Provincial High Court had exercised its original jurisdiction, whereas the case before us raises issues with regard to its appellate jurisdiction. Therefore, I am of the opinion that these decisions do not have a direct bearing on the matter at hand.*" I regret my inability to agree with that reasoning. If, under Act No. 10 of 1996, the exercise of original jurisdiction by a Provincial High Court admits only a single direct appeal to the Supreme Court, it would be logically inconsistent to contend that, when the Provincial High Court exercises appellate jurisdiction, whether by way of final appeal, revision, or

restitutio in integrum, the law permits two successive appeals, first to the Court of Appeal and thereafter to the Supreme Court.

Gunawardane has not been followed in several subsequent decisions, including *Abeydasa v. People's Bank* (CA/CPA/124/2021, CA Minutes of 05.06.2023) and *Malwatta v. Softlogic Finance PLC and Others* (CA/CPA/152/2022, CA Minutes of 31.08.2023). In the latter case, Prasantha De Silva J., *inter alia*, identified several practical difficulties that would arise if the Court of Appeal were permitted to review judgments and orders of the Provincial High Courts made in the exercise of their appellate jurisdiction. That case concerned a party who, being dissatisfied with a judgment of the Provincial High Court of Civil Appeal delivered in the exercise of its revisionary jurisdiction, sought once again to invoke the revisionary jurisdiction of the Court of Appeal against the judgment of the Provincial High Court. In practical terms, this amounted to two successive applications in revision being pursued in respect of the same judgment of the District Court, although the second application was formally directed against the judgment of the Provincial High Court.

> *Moreover, if litigants are allowed to file a revision application in the Court of Appeal against a judgment or order given by the Provincial High Court exercising revisionary jurisdiction it would lead to unnecessary duplication of court proceedings. This could result in a revision application being filed in the Court of Appeal while an appeal is pending in the Supreme Court. It would also have the effect of the Court of Appeal being given an opportunity to overrule a judgment of the Supreme Court if the revision application is successful while the appeal to the Supreme Court is not, which is an unintended absurdity.*
>
> *(……)*

It is highly unlikely that parliament or the legislative draftsmen intended to manifestly complicate the appeal process when the Provincial High Courts have been introduced to reduce and simplify the court process not to complicate it even further. According to the legal maxim 'Boni judicis est lites dirimere, ne lis ex lite oritur, et interest republicae ut sint fines litium', it is the duty of a good judge to prevent litigations, that suit may not grow out of suits, and it concerns the welfare of the State that an end be put to litigation. It would be contrary to the practice of a good judge to interpret statutes in a manner that would give rise to unnecessary complications in the judicial process.

I would also mention here that allowing an appeal or a revision application from a judgment or order from the Provincial High Court would also lead to, the Court of Appeal having revisionary jurisdiction over an instance where the Provincial High Court exercises its revisionary jurisdiction as is requested for in the instant case. In effect, the Court of Appeal would lie in revision of a revision application. Seeing as Revisionary jurisdiction is to be exercised in exceptional circumstances, allowing a revision application on a revision application would be conceptually contradictory to the spirit of a revision application. In the instant case, for example, this court is invited to lie in revision of a revision application filed in the Provincial High Court.

Conclusion

In my view, the reasoning in *Gunawardane v. Muthukumarana* [2020] 3 Sri LR 306 cannot be reconciled with the clear statutory scheme established by Acts Nos. 19 of 1990, 10 of 1996, and 54 of 2006, read in conjunction with Article 138 of the Constitution. The approach adopted by the Supreme Court in *Merchant Bank of Sri Lanka Ltd v. Perera* [2012] BLR 14 accords with both the constitutional framework and the legislative intent and, in my respectful view, ought to be preferred. I would further add that the dicta in

Merchant Bank of Sri Lanka Ltd v. Perera applies not only to Provincial High Courts established under Act No. 10 of 1996, but equally to those established under Act No. 19 of 1990, as amended by Act No. 54 of 2006.

Hence, I hold that the Court of Appeal has no jurisdiction, whether by way of final appeal, revision, or *restitutio in integrum*, to review the judgments or orders of the Provincial High Court, whether in the exercise of its appellate jurisdiction under Act No. 19 of 1990, as amended by Act No. 54 of 2006, or in the exercise of its original jurisdiction under Act No. 10 of 1996. Such jurisdiction is vested exclusively in the Supreme Court.

I answer the question of law on which special leave to appeal was granted in favour of the defendant-appellant. The order of the Court of Appeal dated 15.11.2022 is set aside and the appeal is allowed. The application filed by the plaintiff-respondent against the judgment of the Provincial High Court of Civil Appeal shall stand dismissed. The defendant is entitled to costs in all three courts.

Judge of the Supreme Court

P. Padman Surasena, C.J.
I agree.

Chief Justice

Sampath B. Abayakoon, J.
I agree.

Judge of the Supreme Court