

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

*In the matter of an Appeal against the judgment dated 31<sup>st</sup> May 2024 pronounced in Case No. WP/HCCA/COL/16/2021(LA) under and in terms of section 5(c)(1) of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended by the High Court of the Provisions (Special Provisions) (Amendment) Act No. 54 of 2006.*

**SC HCCA LA:**  
**247/2024**

Chamila Dilanthi Ranasinghe,  
No. 29, Jambugasmulla Road,  
Nugegoda.

**WP/HCCA/COL:**  
16/2021(LA)

**PLAINTIFF**  
**Vs.**

**D.C. Colombo Case No:**  
DSP/37/2017

1. Peoples Bank,  
No. 75, Sir Chittampalam A Gardiner  
Mawatha,  
Colombo 02.

2. Mutu Hennadige Saman Wijesekara,  
No. 190/3, Peter De Perera Mawatha,  
Dutugemunu Street,  
Kohuwala.

**DEFENDANTS**

**AND BETWEEN**

Chamila Dilanthi Ranasinghe,  
No. 29, Jambugasmulla Road,  
Nugegoda.

**PLAINTIFF-APPELLANT**

**Vs.**

1. Peoples Bank,  
No. 75, Sir Chittampalam A Gardiner  
Mawatha,  
Colombo 02.

2. Mutu Hennadige Saman Wijesekara,  
No. 190/3, Peter De Perera Mawatha,  
Dutugemunu Street,  
Kohuwala.

**DEFENDANT-RESPONDENTS**

**AND NOW BETWEEN**

Peoples Bank,  
No. 75, Sir Chittampalam A Gardiner  
Mawatha,  
Colombo 02.

**1<sup>st</sup> DEFENDANT-RESPONDENT-  
PETITIONER**

**Vs.**

Chamila Dilanthi Ranasinghe,  
No. 29, Jambugasmulla Road,  
Nugegoda.

**PLAINTIFF-PETITIONER-**

**RESPONDENT**

Mutu Hennadige Saman Wijesekara,  
No. 190/3, Peter De Perera Mawatha,  
Dutugemunu Street,  
Kohuwala.

**2<sup>nd</sup> DEFENDANT-RESPONDENT-**

**RESPONDENT**

- Before** : Achala Wengappuli, J.  
: Menaka Wijesundera, J.  
: Sampath B. Abayakoon, J.
- Counsel** : Kaushalya Nawaratne, P.C. with Neranjan  
Vitharana instructed by Ms. Sandamali Nisansala  
for the 1<sup>st</sup> Defendant-Respondent-Petitioner.  
: Upul Jayasuriya, P.C. for the Plaintiff-Appellant-  
Respondent.  
: Suren Fernando instructed by Ishara  
Gunawardena for the 2<sup>nd</sup> Defendant-Respondent-  
Respondent.
- Considered on** : 03-12-2025
- Written Submissions** : 10-12-2025 (By the 2<sup>nd</sup> Defendant-Respondent-  
Respondent)

: 14-12-2025 (By the 1<sup>st</sup> Defendant-Respondent-  
Petitioner)

**Order on** : 12-05-2026

**Sampath B. Abayakoon, J.**

The 1<sup>st</sup> defendant-respondent-petitioner (hereinafter referred to as the 1<sup>st</sup> defendant) filed this application seeking leave to appeal to challenge the judgment pronounced on 31-05-2024 by the Provincial High Court of the Western Province holden in Colombo while exercising its civil appellate jurisdiction.

From the impugned judgment, the High Court, having considered an appeal preferred by the plaintiff in District Court of Colombo Case No. DSP/37/2017 challenging the order made by the District Court of Colombo on 05-03-2021, allowed the said appeal. The High Court, having set aside the order dated 05-03-2021 where the action of the said plaintiff was dismissed on a preliminary objection raised as to the maintainability of the action before the District Court, ordered the District Court to proceed with the trial from the point where the issues were settled. The High Court also ordered the plaintiff-appellant to pay a cost of Rs. 52,500/- to the 1<sup>st</sup> defendant of the District Court action, namely the 1<sup>st</sup> defendant-respondent-petitioner.

When this application was taken up for the purpose of granting leave to appeal, the learned President's Counsel who represented the plaintiff-appellant-respondent raised a preliminary objection as to the maintainability of the 1<sup>st</sup> defendant's application for leave to appeal. It was his position that the impugned judgment of the High Court is a judgment pronounced on 31-05-2024 and the petition seeking leave to appeal from the said judgment has been filed by the 1<sup>st</sup> defendant on 12-07-2025, which was the last day permitted to file an application of this nature for a dissatisfied party from an appellate judgment.

He pointed out that although the relevant petition had been filed naming several Attorneys-at-Law as the Attorneys-at-Law of the 1<sup>st</sup> defendant, no proxy in order to give power to any such Attorney-at-Law to represent the 1<sup>st</sup> defendant has been filed along with the petition. He contended that the relevant proxy has been filed only on 15-07-2024, and hence, the 1<sup>st</sup> defendant had no *locus standi* to maintain this application at the time of filing the petition, which was in violation of the relevant Supreme Court Rules. Accordingly, it was his submission that the application for leave to appeal should be dismissed *in limine*.

When this objection was taken up before this Court for consideration on 03-12-2025, this Court heard the oral submissions of the learned President's Counsel in relation to his objection and also the submissions of the learned President's Counsel who represented the 1<sup>st</sup> defendant, where it was argued that this is an objection highly technical in nature, and therefore, the Court should proceed to consider the merits of the application rather than deciding the matter on a preliminary objection which has no justification.

Having considered the submissions of the parties, this Court allowed both sides to file their respective written submissions in relation to the stand taken up by them for the consideration of the Court. Accordingly, this Court had the opportunity of considering the respective written submissions as well for the purpose of determining this preliminary objection.

There cannot be any dispute as to the facts relating to the objection raised by the learned President's Counsel on behalf of the plaintiff.

The 1<sup>st</sup> defendant, who is a licensed bank, has filed the relevant application by way of a petition on 12-07-2024, where the 1<sup>st</sup> defendant is seeking to challenge a judgment pronounced by the High Court on 31-05-2024. The said petition bears several names stating that the 1<sup>st</sup> defendant is appearing through them as its registered Attorneys-at-Law. Although the petition says so, there is no dispute that the 1<sup>st</sup> defendant has failed to tender a proxy as required by law, giving power to an Attorney-at-Law to represent the 1<sup>st</sup> defendant as the Registered Attorney. Admittedly, the proxy nominating a

Registered Attorney on behalf of the 1<sup>st</sup> defendant has been filed on 15-07-2024 and not along with the petition seeking leave to appeal.

It was the submission of the learned President's Counsel on behalf of the plaintiff that the 1<sup>st</sup> defendant has filed the application seeking leave to appeal on the final day such an application should have been filed in terms of Rule 7 of the Supreme Court Rules of 1990, where such an application should be made within 6 weeks of the judgment or order sought to be challenged. It was his view that since the 1<sup>st</sup> defendant has failed to attach a duly signed proxy, although it has claimed that it is appearing through Registered Attorneys-at-Law, the said petition has no validity before the law. It was his position that a proxy tendered on 15-07-2024 cannot cure the aforesaid defect for the reason that at the time of filing of the petition, there was no Registered Attorney-at-Law and the proxy had been tendered out of time; therefore, the application before the Court is time barred.

The learned President's Counsel cited several judgments to stress his point that the petition should be dismissed *in limine*, since the 1<sup>st</sup> defendant has failed to follow mandatory provisions of the Supreme Court Rules, which entitles the 1<sup>st</sup> defendant to support this application for leave to appeal.

The learned President's Counsel conceded that a defective proxy can be cured subsequently. However, it was his position that this is not a situation of such nature but a situation where the 1<sup>st</sup> defendant has failed to file a proxy at all, which means it has not given any authority to an Attorney-at-Law to appear on behalf of the 1<sup>st</sup> defendant.

On the contrary, submission of the learned President's Counsel on behalf of the 1<sup>st</sup> defendant was that our Superior Court, time and again, have determined that an irregularity in appointment of a Registered Attorney-at-Law can be cured subsequently and it should not be a reason to dismiss an application without considering its merits. He too cited several judgments of our Superior Courts to substantiate his arguments and also was of the view that mere technicalities should not fetter the authority of the Courts to decide on a matter, depriving a party before a Court of law of a due hearing.

Having considered the facts in relation to this preliminary objection and the respective stands taken by the parties, it is my view that this is a matter where the relevant Supreme Court Appellate Procedure Rules should be interpreted having in mind the *ratio decidendi* of the views expressed by our Superior Courts in considering objections of this nature, and also having in mind that it is the justice that should be served. The 1<sup>st</sup> defendant is a bank. It is common knowledge that banks have a separate legal department staffed by several Attorneys-at-Law. It is safe to presume that by naming several Attorneys-at-Law in the petition as the 1<sup>st</sup> defendant's Attorneys-at-Law and giving the address and the contact telephone number of the instructing Attorney-at-Law as the 1<sup>st</sup> defendant bank's address and telephone number, it had referred to the Attorneys-at-Law employed by the bank as the registered Attorney-at-Law, although it had failed to tender the relevant proxy as such together with the petition.

It is not a disputed fact that the 1<sup>st</sup> defendant has tendered a proxy nominating an Attorney-at-Law as the Registered Attorney on 15-07-2024, which appears to be the next available working day of the Court after the filing of the petition. There is nothing to suggest from the case record that any step in relation to this application has been taken by the Court from the date of filing of the petition and up to the date of submitting the proxy 3 days after such filing.

Hence, it is my view that no prejudice has been caused to any party to the action because of the obvious lapse as to the procedure of filing a leave to appeal application without a proxy being tendered. I am in agreement with the submissions of the learned President's Counsel that although a proxy was not submitted at the time of filing the petition, the Attorney-at-Law who later filed the proxy had the full authority from the 1<sup>st</sup> defendant-respondent-petitioner bank to act on its behalf as the facts and the circumstances of the case clearly suggest.

The case of **S.P. Gunatilake Vs. S.P. Sunil Ekanayake (2010) 2 SLR 192** was a case where the Attorney-at-Law who represented the substituted plaintiff before the District Court failed to file a proxy. When the judgment of the learned District Judge in the case was challenged by way of a final appeal before the Civil Appellate High Court, a preliminary objection was taken that there was no proxy filed on behalf of the substituted plaintiff in the District Court and there was no proper application before the Court to substitute the substituted plaintiff or even to represent him by an Attorney-at-Law. Although the Civil Appellate High Court allowed the appeal determining that the judgment of the learned District Judge is null and void because there was no valid proxy, setting aside the said appellate judgment, the Supreme Court held;

1. Even when an Attorney is incapable of appearing or making applications due to the total failure to file proxy such default should not in any way affect the validity of the proceedings.

Per J.A.N. de Silva, C.J.

*“The aforementioned facts in my opinion provides a sufficiently strong indication that the substituted plaintiff had at the material times granted Mr. Iddawela the authority to appear and make applications on behalf of him despite the substituted plaintiff not filing a proxy as an overt manifestation of the granting of such authority.”*

2. The substituted plaintiff by virtue of filing a proxy belatedly had succeeded in ratifying the appearances and applications of the registered Attorney and thereby supplying all such acts with legal validity.

The above view was reiterated by the Supreme Court in the case of **Auriya Vinothini Yogaraja nee Poopalarathnam Vs. Riyal Mohommed Rizwan and Others SC/Appeal/33/2020 decided on 02-12-2024** where it was stated:

*“Chief Justice J.A.N. de Silva in **Gunatilake Vs. Sunil Ekanayake (2010) 2 SLR 191** removed all doubts when he held (with agreement of Siripawan, J. and Ekanayake, J.) at page 202 that “even in the case of an Attorney when he is incapable of appearing or making application due to the total failure to file the proxy, such default should not in any way affect the validity of the proceedings”, if the Attorney had in fact the authority of his client to do what he did without a proxy. In Gunatilake’s case there was no proxy at all, nor that the proxy was defective, although the Attorney appeared for the client nonetheless. The Supreme Court clarified that a proxy could be filed subsequently to rectify prior actions taken.”*

Having considered the above pronouncements, it is my considered view that the question whether proceedings in a civil case should stand null and void due to a defective proxy or in a situation where no proxy has been filed should be determined based on the facts and circumstances of each case. If the proceedings before the Court clearly establish the fact that even though there was no valid proxy, the Attorney-at-Law who acted on behalf of his client had the full authority to act during the relevant period, such a defect can be cured by filing a proxy subsequently, as has happened in the instant action.

As I have considered earlier, there is no doubt the Attorney-at-Law has the full authority of the 1<sup>st</sup> defendant-respondent-petitioner bank to file the leave to appeal application before the Supreme Court when it was filed on 12-07-2024. Since no steps had been taken by the Court in relation to the application by 15-07-2024, the date upon which the proxy was filed, no prejudice has been caused to any party by the said procedural defect.

I do not find merit in the argument of the learned President’s Counsel that since the proxy has been filed only on the 15-07-2024 validating the appeal

filed on 12-07-2024, which was the last legally available date to file the leave to appeal petition, the application is time barred. I am of the view that the petitioner has filed the application within the stipulated time allowed to file such an application although it may be the last possible day. The proxy filed subsequently has only corrected a procedural defect, and therefore, it cannot be concluded that the petition is time-barred.

For the reasons as considered above, I find no basis to agree with the preliminary objection raised by the learned President's Counsel on behalf of the plaintiff-appellant-respondent. Accordingly, the preliminary objection is dismissed. The matter is set for the consideration of granting leave to appeal from the impugned order pronounced by the High Court of Civil Appeal on 31-05-2024.

There will be no costs.

**Judge of the Supreme Court**

**Achala Wengappuli, J.**

I agree.

**Judge of the Supreme Court**

**Menaka Wijesundera, J.**

I agree.

**Judge of the Supreme Court**