

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

SC. HC. LA. No. 89/2022

High Court Case No.CHC/11/2020/CO

An application for leave to Appeal under in terms
of the chapter LVIII of Civil Procedure Code from
the order of the Commercial High Court dated
02.09.2022.

1. Muhandiramge Dona Rohini Jayawardana
No. 240E, Pelanwatta, Pannipitiya.

PETITIONER-PETITIONER

Vs.

1. Greenways Residencies (Pvt) Ltd,
No. 274A, Old Road, Nawinna,
Maharagama.
2. Nikapitiya Gedara Thilina Pathum Nikapitiya ,
No. 274A, Old Road, Nawinna,
Maharagama.
3. Perterz Jude Lal
No. 52/4, Manaveriya,
Kochchikade.
4. S.S.V.S. Corporate & Managemenr Services
(Pvt) Ltd,
No. 7/B 1, Fife Road,
Colombo 05.

RESPONDENTS-RESPONDENTS

BEFORE : P. PADMAN SURASENA, J.
A.L. SHIRAN GOONERATNE, J.
JANAK DE SILVA, J.

COUNSEL : Rehan Almeida with Ms. Indunil Kumarasinghe instructed by Nalin Samarakoon for the Petitioner-Petitioner.

ARGUED &
DECIDED ON : 29.05.2024

JANAK DE SILVA, J.

At the commencement, Mr. Thishya Weragoda who appeared for the 2nd and 3rd Respondent-Respondents previously informed Court that he has no instructions from his clients to participate in the hearing before Court.

We observe that on the last date i.e., 10.11.2023, Court has made order that no further dates would be granted to the Respondent-Respondents to oppose this petition. In these circumstances, the Court proceeded to hear the submissions of the learned Counsel for the Petitioner-Petitioner.

Having considered the submissions, Court decides to grant Leave to Appeal in respect of the following questions of law;

- 1) Has the learned High Court Judge failed to consider that the inquiry in question was to determine the application of the Petitioner for the interim order under prayer (g) of the Petition?

- 2) By reaching findings on the final relief, when the scope of the written submissions tendered by the Petitioner was to specifically address the interim order inquiry, has the learned High Court Judge failed to abide by the principles of natural justice?

With the consent of the Petitioner and acting in terms of the Proviso to Rule 16 of the Supreme Court Rules, we proceed to hear and determine the above questions of law.

The principle submission of the learned Counsel for the Petitioner- Petitioner is that the learned High Court Judge proceeded to hear and determine the substantive application when the parties were heard only on the question of interim relief. We observe according to the proceedings dated 13.03.2020, the learned Counsel for the Petitioner- Petitioner specifically stated that he reserves the right to support the matters set out in the two petitions in fuller detail at the appropriate stage subsequent to appearance and objections being filed by the Respondents.

We observe that the parties have filed written submissions only on the interim relief. Written submissions of the 1st, 2nd & 3rd Defendant-Respondents dated 27.07.2022 specifically states that they are filed on the interim relief application. Written submissions filed by the Petitioner-Petitioner dated 27.06.2022 also states that the written submissions are on the granting of the interim orders prayed for.

Nevertheless, the learned High Court Judge has proceeded to determine the substantive application and dismissed it. In these circumstances, we observe that the learned High Court Judge has failed to give a fair hearing to the Petitioner by proceeding to determine the substantive matter of the application whereas the parties were heard only on the question of interim relief.

Accordingly, we answer the questions of law (1) and (2) above in the affirmative. The judgment of the learned High Court Judge dated 02.09.2022 is set aside.

Learned Counsel for the Petitioner informs that there is no necessity now for any interim relief as prayed for in the petition before the Commercial High Court.

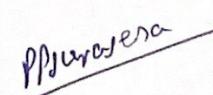
Accordingly, the learned Commercial High Court Judge is directed to proceed according to law to hear and determine the substantive matter before Court.

Appeal is partly allowed.


JUDGE OF THE SUPREME COURT

P. PADMAN SURASENA, J.

I agree


JUDGE OF THE SUPREME COURT

A.L. SHIRAN GOONERATNE, J.

I agree


JUDGE OF THE SUPREME COURT

NT/-