

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

In the matter of an application for Special Leave to Appeal or Revision against the order dated 13.08.2015 of the Provincial High Court of Panadura arising from S.18A of the Rent Act No.7 of 1972 as amended.

SC/Spl/LA 188/2015

L. S. Weerakone
of No.178, Batadobatuduwa Road,
Alubomulla.

Applicant-Owner
Vs.

P.T.Weerakoon
of No.308, “Florance”
Batadobaguduwa Road,
Alubomulla.

Tenant-Respondent

AND BETWEEN

P. T. Weerakoon
of No.308, “Florence”
Batadobatuduwa Road,
Alubomulla.

Tenant-Respondent-Petitioner

Vs.

1. L. S. Weerakoon
No.178, Batadobatuduwa
Road, Alubomulla

Applicant-Owner-respondent

2.Mrs.G.Lekha Geethanjali Perera
of No.89, Kaduwela Road,
Battaramulla.

Former Western Province Housing
Commissioner-Respondent

3.Mrs. P. H. Colombage
Of dNo.89, Kaduwela Road
Battaramulla.

Substituted Former Western
Province Housing Comissioner-
Respondent-Respondent

AND NOW BETWEEN

P. T. Weerakoon
of No.308, “Florance”
Batadombaguduwa Road,
Alubomulla.

Tenant-Respondent-Petitioner-
Petitioner

Vs.

1 .L. S. Weerakoon
of No.178
Batadobatuduwa Road,
Alubomulla.

Applicant-Owner-Respondent-
Respondent

2. Mrs.G.Lekha Geethanjali Perera
of No.89, Kaduwela Road,
Battaramulla.

Former Western Province Housing
Commissioner-Respondent

3.Mrs. P. H. Colombage
Of dNo.89, Kaduwela Road
Battaramulla.

Present Western Province Housing
Commissioner-Respondent-
Respondent

BEFORE: **B.P.ALUWIHARE, PC.,J**
UPALY ABEYRATHNE, J &
ANIL GOONARATNE, j

COUNSEL: Rohana Jayawardana for the Respondent-Petitioner-Petitioner
C. J. Ladduwahetty with Keerthi Gunawardena instructed by
Lakini Silva for the Owner-Respondent-Respondent.
Rajitha Perera SSC for the 3rd Commissioner Respondent-
Respondent.

ARGUED ON: 18.07.2016

DECIDED ON: 03.08.2017

ALUWIHARE P.C.,J:

When this matter came up for support on 18th July,2016, the learned Counsel for the Applicant-owner-Respondent-Respondent (hereinafter referred to as the Respondent) raised the following preliminary objection.

(a) The Tenant-Respondent-Petitioner-Petitioner (hereinafter referred as the Petitioner) has filed this application for special Leave to Appeal or Revision in the Supreme Court without availing himself of the right of appeal provided in section 11(1) of the Court of Appeal (Procedure for Appeals from High Court) Rules 1988.

In the circumstances the Petitioner cannot come to the Supreme Court without first availing himself of the right of appeal given in section 11 (1) of the said Rules.

(b) The Petitioner is seeking Special Leave to Appeal or Revision to the Supreme Court from an order made in a Writ application by the Learned High Court of Panadura established under article 154P(4) of the Constitution.

Tenant-Respondent-Petitioner-Petitioner (hereinafter referred to as the Petitioner) has filed an application for Special Leave to Appeal or Revision against an order of the Provincial High Court of Panadura (hereinafter referred to as the High Court).

The Petitioner sought from the High Court a writ of certiorari, invoking the jurisdiction of the High Court under Article 140 of the Constitution read with Section 7 of the High Court of the Provinces (Special Provision) Act no. 19 of 1990 as amended.

The learned High Court Judge having considered the material furnished and after hearing the submissions of the Counsel for Petitioner, by his considered order dated 13th August, 2015 refused to have notices issued on the Respondents cited.

Aggrieved by the said order of the Learned High Court Judge, the Petitioner has filed the present application before this Court.

In supporting the preliminary objection, the learned Counsel for the Respondent drew the attention of Court to Section 11 (1) of the High Court of Provinces (Special Provisions) Act No.19 of 1990.

The said Section reads thus:-

“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.”

It is clear that in terms of Section 11 of the said Act, the Court of Appeal is vested with appellate jurisdiction for correction of all errors in fact and the law which are committed by any High Court in the exercise of its jurisdiction under paragraph 4 of Article 154 (P) of the Constitution.

Paragraph (4) of Article 154 (P) states:

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 respects of any matter set out in the Provincial Council List.

Further, complimenting the statutory provisions referred to above, Supreme Court Rules applicable to the Court of Appeal {Procedure for Appeals from High Court} Rules 1988} spells out the mode of preferring appeals to the Court of Appeal.

“PART II” of the said Rules states:~

“Appeals from an order made by a High Court in the exercise of its jurisdiction under Article 154 (4) of the Constitution, **may prefer an appeal to the Court of Appeal against such order for any error in fact or in law.”**

Thus the Petitioner cannot invoke the jurisdiction of this court not having first exercised his right of appeal to the Court of Appeal.

Considering the above, I am of the view that this application is misconceived in law and cannot be maintained. Accordingly, I uphold the preliminary objections raised on behalf of the Respondent and dismiss the application in limine.

In the circumstances of the case I make no order with regard to costs.

Application dismissed

JUDGE OF THE SUPREME COURT.

UPALY ABEYRATHNE, J.

I agree.

JUDGE OF THE SUPREME COURT

ANIL GOONARATNE, J.

I agree.

JUDGE OF THE SUPREME COURT

