

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

In the matter of an appeal in terms of Article 154P of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Section 7 of the High Courts of the Provinces (Special Provisions) Act No. 19 of 1990.

The Nedigamwila, Ikkapallama,
Co-operative Society Limited.
Ikkapallama, Tissamaharama.

Complainant

Case No: CA(PHC) 273/2003

High Court Case No: HCA 129/2001

Vs.

Wijenayake Kankanamge Ariyapala,
Gangasirigama, Gonagamuwu,
Tissamaharama.

Accused

AND

Wijenayake Kankanamge Ariyapala,
Gangasirigama, Gonagamuwu,
Tissamaharama.

Accused – Appellant

Vs.

The Nedigamwila, Ikkapallama,

Co-operative Society Limited.
Ikkapallama, Tissamaharama.

Complainant – Respondent

AND

Wijenayake Kankanamge Ariyapala,
Gangasirigama, Gonagamuwa,
Tissamaharama.

Accused – Appellant – Petitioner

Vs.

01.L.P.A. Samarajeewa,
Commissioner of Co-operative
Development and Registrar of
Southern Province,
Pettigalawatta, Galle.

02.Siril Kosgolla,
Deputy Commissioner of Co-
operative Development
Co-operative Development
Department, Hambanthota.

03.The Nedigamwila, Ikkapallama,
Co-operative Society Limited,
Ikkapallama, Tissamaharama.

Respondents

AND NOW BETWEEN

Wijenayake Kankanamge Ariyapala,
Gangasirigama, Gonagamuwa,
Tissamaharama.

**Accused – Appellant – Petitioner –
Appellant**

Vs.

04.L.P.A. Samarajeewa,
Commissioner of Co-operative
Development and Registrar of
Southern Province,
Pettigalawatta, Galle.

05.Siril Kosgolla,
Deputy Commissioner of Co-
operative Development
Co-operative Development
Department, Hambanthota.

06.The Nedigamwila, Ikkapallama,
Co-operative Society Limited,
Ikkapallama, Tissamaharama.

Respondent – Respondents

Before : W.M.M. Malani Gunarathne, J

: P.R.Walgama, J

Counsel : Isuru Somadasa for the Appellant.

: I.Kulasuriya, ASA for the 1st & 2nd Respondents.

Argued on : 10.12.2015

Decided on: 09.06.2016

CASE- NO- CA (PHC)- 273/ 2003- JUDGMENT- 09.06.2016

P.R.Walgama, J

The Petitioner – Appellant has appealed to this Court, against the order of the Learned High Court Judge dated 29.09.2003, to have the said order set aside.

The facts emerged from the appeal, albeit brief are as follows;

The 3rd Defendant Society held an inquiry in terms of Section 44 of the Co operative Society Law No. 5 of 1972 and has sent summons indicating that there is a shortage of a sum of Rs. 78941.71 and a sum of Rs. 12588/as the interest is due to the 3rd Respondent Society.

The Petitioner – Appellant had moved for a mandate in the nature of writ of Certiorari to have the said order quashed and for rejecting the appeal made to the Commissioner by the document marked P3. The said appeal was rejected on the ground that the deposit required for the acceptance of the appeal in terms of Rule 49 (XII) (b) has not been deposited

Nevertheless it is stated that the Petitioner – Appellant has appealed to the Minister concerned within 14 days, the Respondent has filed the Arbitrators certificate in

the Magistrate Court of Hambantota in the case bearing No. 56350 to recover the said amount.

However after the Appellant received the notice from the Magistrate Courts he filed an application in the Provincial High Court holden at Hambantota to have the arbitral award quashed by a writ of Certiorari and for a writ of Mandamus compelling the 1st Respondent to hold an inquiry in to alleged shortage which has been indicated at the inquiry which was held in terms of Section 44 of the Co operative Societies law No. 5 1972.

The Learned High Court Judge handed down his judgment on 29.09.2003 and dismissed the application of the Petitioner - Respondent.

The said application has been rejected on the basis that the Petitioner - Appellant has not complied with the Rule 49 (xii)(a) and had rejected his application in terms of the above Rule. It is contended by the appellant that as per rational in Sebastian Fernando .VS Katana Multi purpose Co operative Society, and has stressed the fact that the refusal of the appeal by the 1st Respondent is repugnant to the sections in the said Act.

It is pertinent to note the out come of Sections 58(2), (3), (4) of the said Act which the powers had been conferred on the Registrar and his decisions which has a bearing on the dispute resolution.

Section 58 (4) it is explicitly stated that no party shall be entitled ,either by himself or by any representative to appear before and be heard by the Registrar on such appeal.

Further it is to be noted that in terms of Section 58(5) gives wide powers to the Registrar by stating that a decision of the Registrar under subsection(2) or in appeal under Subsection (3) shall be final and shall not be called in question in civil court.

On a perusal of the impugned order of the Learned High Court Judge it is apparent that the said order is based on two main issues. It has been observed by the Learned High Court Judge that the Petitioner - Appellant has sought relief from the High Court against the 1st Respondent after expiration of 11 months from the alleged order marked as P4 being the decision of the Arbitrator who has refused to accept the appeal in terms of the Rule 49 (XII) (b).

The next point the Learned High Court was compelled to reject the Petitioner's application was that, the documents that were tendered along with the application were not originals nor certified copies of the same.

Therefore it is contended by the Respondent that the afore said laps on the part of the Petitioner - Appellant is a violation of Court of Appeal Rules 3(1) (a) which states thus;

“3 (1)(a) every application made to the Court of Appeal for the exercise of the powers vested in the Court of Appeal by Articles 140 or 141 of the Constitution shall be by way of petition, together with an affidavit in support of the averments therein, and shall be accompanied by the originals of documents material to such application(or duly certified copies thereof) in the form of exhibits. Where the Petitioner is unable to tender any such document, he shall state the reason for such inability and seek the leave of Court to furnish such documents later. Where a Petitioner fails to comply with such provisions of the Rule the Court may , ex mero motu or at the instance of any party, dismiss such application.

Therefore in the above exposition of the Legal and factual matrix this Court is of the view that the appeal should fail.

Accordingly appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

W.M.M.Malinie Gunarathne, J
I agree,

JUDGE OF THE COURT OF APPEAL