

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

In the matter of an Appeal against
judgment of Provincial High Court
exercising its revisionary jurisdiction.

C A (PHC) / 181 / 2011

Provincial High Court of

Western Province (Colombo)

Case No. HCRA 136/2010

Magistrate's Court Nugegoda

Case No. 12728/66

Warnadhipathiya Kurukulasuriya

Paththini Hennadige Indrajith

Rodrigo,

No. 19,
1st Lane,
Jambugasmulla Road,
Nugegoda.

PLAINTIFF PETITIONER -
PETITIONER - APPELLANT

-Vs-

1. Eulin Hemalatha Perera,

No. 17 A,

1st Lane,

Jambugasmulla Road,

Nugegoda.

2. Koralage Jayasena,

No. 17 A,

1st Lane,

Jambugasmulla Road,
Nugegoda.

RESPONDENT-RESPONDENT -
RESPONDENTS

Before: K K Wickremasinghe J

P. Padman Surasena J

Counsel; Dayani Panditharathna for the Respondent - Respondent -
Respondents.

Decided on : 2017 - 10 - 02

JUDGMENT

P Padman Surasena J

Learned counsel for the Respondent-Respondent-Respondents when this case came up on 2017-07-04 before us, agreed to have this case disposed by way of written submissions. This agreement had been recorded on 2017-05-08 also. Therefore, this judgment would be based on the material adduced by parties in their pleadings and the contents of their written submissions.

Perusal of the minutes in the docket shows that the Plaintiff Petitioner - Petitioner - Appellant had been consistently absent in this Court. Although this Court had taken steps to issue notices on him, he had not responded. Minutes show that the Appellant had paid the brief fees. This shows that he is aware of this appeal being pending in this Court. Thus, if he had changed his address and if he was interested in prosecuting his appeal, he should have taken steps to make his present address known to Court. He had not done so. In these circumstances, this Court had proceeded to dispose this appeal by considering the merits of this appeal.

The Plaintiff - Petitioner – Petitioner - Appellant (hereinafter sometimes referred to as the Appellant) had filed an information in the Magistrate's Court of Nugegoda under section 66 (1) (b) as a private information.

Learned Magistrate having inquired into this complaint, by his order dated 2010-08-03, had held that the Court had already made certain orders regarding the dispute complained of and that this dispute could be adjudicated in the case pending in the District Court. Learned Magistrate had refused the application on that basis.

Being aggrieved by the said order of the learned Magistrate, the Appellant had made a revision application in the Provincial High Court of Western Province holden in Colombo urging the Provincial High Court to revise the order of the learned Magistrate.

The Provincial High Court after hearing parties, by its judgment dated 2011-10-18 had refused the said application for revision and proceeded to dismiss it with costs. The Provincial High Court has taken the view that there is no ground to interfere with the learned Magistrate's order.

It is against that judgment that the Appellant has filed this appeal in this Court.

Considering the material adduced in this case before Court we also see no basis to deviate from the conclusions of the Courts below. Thus, we proceed to dismiss this appeal with costs.

Appeal is dismissed with costs.

JUDGE OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL