

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

In the matter of an application for
revision against judgment of Provincial
High Court exercising its revisionary
jurisdiction.

C A (PHC) APN / 89 / 2016

Provincial High Court of

Central Province (Kandy)

Case No. HC RA 41/2015

Magistrate's Court Kandy

Case No. 74226/14

Ananda Wanigasekara,

No 10,

Dharmaraja Passage,

Kandy.

RESPONDENT - PETITIONER -
PETITIONER

-Vs-

1. Geetha Indrani,
Divisional Secretary,
Manikhinne.

APPLICANT - RESPONDENT -
RESPONDENT

2. Hon Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENT - RESPONDENT

Before: P. Padman Surasena J (P/ CA)

K K Wickremasinghe J

Counsel; Lahiru Glappathige for the Respondent - Petitioner - Petitioner.
Indula Ratnayake SC for the Respondents.

Decided on : 2018 - 05 - 21

ORDER

P Padman Surasena J

The Respondent Petitioner - Petitioner (hereinafter sometimes referred to as the Petitioner) had filed the instant revision application before the Provincial High Court of Central Province holden in Kandy seeking a revision of the order dated 2015-05-29 made by the Primary Court of Kandy. Perusal of the journal entries of the record of the Provincial High Court shows that the said revision application had first been called before court on 2015-08-03. The said journal entries show that the Provincial High Court had afforded an opportunity for the applicant - Respondent - Respondent (hereinafter sometimes referred to as the 1st Respondent) to file objections also.

When the case was called on 2015-11-26 learned Provincial High Court Judge has fixed the case for 2016-01-19. This appears to be for the parties to tender written submissions.

When the case was called on 2016-01-19 learned Provincial High Court Judge had again fixed the case for 2016-02-23 for written submissions.

The journal entry number 08 dated 2016-01-20 shows that both the Petitioner and the 1st Respondent had filed their respective written submissions.

The journal entry number 09 dated 2016-02-23 shows that this case has been called before court on that day. However, while the journal entry dated 2016-01-19 states that the case was fixed for 2016-02-23, the typed proceedings of the same date shows that the case was fixed for 2016-02-25. Therefore, the position of the Petitioner that the case was fixed for 2016-02-25 cannot be rejected. If that is the case, there is no reason or basis for court to call this case on the date it had dismissed it.

The journal entry dated 2016-02-23 is to the following effect

"... Petitioner not present

Counsel not present

Petition dismissed ... "

Journal entry number 10 and 11 dated 2016-03-11 and 2016-03-17 respectively shows that an attorney at law on behalf of the Petitioner had supported an application for relisting. However learned Provincial High Court Judge has not allowed the said application. Petitioner has filed this application before this court seeking the intervention of this court having the said order dated 2016-03-17 made by the learned Provincial High Court Judge revised.

The purpose as to why this case has come up before the Provincial High Court is for the parties to file their written submissions. As has been

mentioned before, both parties by that time had filed their written submissions in the registry of the Provincial High Court. This Fact had been recorded on the previous journal entry, which is journal entry number 08 dated 2016-01-20, which was available for the perusal for the Provincial High Court judge when she made the impugned order on 2016-02-23.

It is the observation of this court that the dismissal was not the only option that the learned Provincial High Court Judge has had on 2016-02-23. She should have fixed the case for the argument as the written submissions by both parties have been filed by that time.

Even if one assumes that the action of dismissal by the learned Provincial High Court judge is justifiable on the basis that neither the Petitioner or the counsel was present at court on that day learned Provincial High Court Judge has failed to give any reason as to why she did not allow the application by the Petitioner to have this case relisted. Her order only contains the words "ඉල්ලීමට අවසර නොදෙමි. ඉල්ලීම ප්‍රතික්ෂේප කරමි."

Indeed this is the order that is being canvassed by the Petitioner before this court.

Thus, this Court is of the opinion that the said orders made by the learned Provincial High Court Judge are not appropriate orders.

Therefore, this Court decides to set aside the order dated 2016-03-17 and the order dated 2016-02-23 made by the learned Provincial High Court Judge.

This court directs the learned Provincial High Court Judge to restore this application in the pending list of its cases and proceed with the case according to law.

PRESIDENT OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL