

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

In the matter of an application for Revision  
and/ or Restitutio in Integrum under Article  
138 (1) of the Constitution

Anthiya Neeladevi,  
No. 46/7 A,  
Puwakwatta Road,  
Nayakkanda,  
Hendala, Wattala.

**1<sup>st</sup> Defendant-Petitioner**

**C.A. Revision Application No:  
CA/RI/09/2018  
District Court of Colombo  
Case No: 00115/09 DLM**

-Vs-

Safar Shiraz Jeevunjee,  
No. 5/1, Gower Street,  
Colombo 05.

**Plaintiff-Respondent**

Jude Tyrone Phillip,  
No. 30/19,  
Circular Road,  
Kandana.

**Respondents**

**Before : A.L. Shiran Gooneratne J.**

**&**

**Mahinda Samayawardhena J.**

**Counsel :** Asthika Devendra with Wasantha Sandaruwan for the 1<sup>st</sup>  
Defendant-Petitioner.

Geethaka Goonewardhena, PC and Kushlan Seneviratne for  
the Plaintiff-Respondent.

**Supported on :** 10/06/2019

**Decided on :** 05/07/2019

### **Order**

#### **A.L. Shiran Gooneratne J.**

The Counsel for the Petitioner heard in support of the application for notice and interim order. The President's Counsel is also heard in opposition.

This application arises from impugned orders dated 30/06/2017, marked P6, where the learned District Judge has ordered the 1<sup>st</sup> Defendant- Petitioner a pre-payment of costs to be paid on or before 9.a.m. on the next date and in the event of failure, the Plaintiff- Respondent (Respondent) to be entitled to have the

reliefs as prayed for in the plaint and also the order dated 27/10/2017, marked P10, affirming the previous order and a decree to be entered in favour of the Plaintiff.

The said impugned orders were made by the learned District Judge taking into consideration an application made by the Respondent when the Petitioner appearing in person requested a postponement of the trial due to the non-appearance of counsel.

The said impugned orders are challenged, *inter alia*, in terms of Section 27 and 28 of the Civil Procedure Code, on the basis that when a registered Attorney is on record a party cannot do any act on its own without revoking the proxy given to the Attorney at Law and that the learned District Judge failed to consider that the instructing attorney for the Petitioner had revoked proxy on the day the learned Judge made order for pre-paid costs and entered decree in favour of the Plaintiff.

It is observed that the impugned orders sought to be set aside consists not only questions of law alone but also are mixed questions of fact and law.

Therefore, until such time the questions of law raised in this application are decided the Court is of the view that granting an interim relief as sought in the Petition is justified.

Accordingly, the Court decides to issue notice as prayed for in Paragraph A and an interim order as prayed for in paragraphs E, staying the proceedings in case bearing No. DLM 115/2009, until the final determination of this application.

**JUDGE OF THE COURT OF APPEAL**

**Mahinda Samayawardhena, J.**

**I agree.**

**JUDGE OF THE COURT OF APPEAL**