

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

In the matter of an Appeal made in terms of
Article 138 (1) and 154 P (6) of the
Constitution of the Democratic Socialist
Republic of Sri Lanka read with the
Supreme Court (Appellate Procedure) Rules

Court of Appeal Case No:
CA (PHC) 96/2015
PHC Chilaw Case No:
HCR 11/15
MC Chilaw Case No: **68829**

Vimal Jayantha Rathnasiri,
Mahagama,
Mugunuatawana,
Chilaw.

Respondent-Petitioner-Appellant

-Vs-

Ranpata Dewage Shama Damayanthi,
No. 02, Seeduwa Estate,
Inigodawela,
Chilaw.

Applicant-Respondent-Respondent

Before : A.L. Shiran Gooneratne J.

&

Mahinda Samayawardhena J.

Counsel : Chathura Galhena with Manoja Gunawardana and Dharani Weerasinghe for the Respondent-Petitioner-Appellant.

Aruna Pathirana Arachchi with Randi Amarasinghe for the Applicant-Respondent-Respondent.

Written Submissions: By the Applicant-Respondent-Respondent on 23/11/2018

By the Respondent-Petitioner-Appellant on 29/11/2018

Argued on : 14/11/2019

Judgment on : 10/12/2019

A.L. Shiran Gooneratne J.

The Respondent-Petitioner-Appellant, (hereinafter referred to as the Appellant) is before this Court to set aside the order of the High Court of Chilaw, dated 13/08/2015, affirming the interim maintenance order given by the Magistrates Court of Chilaw dated 02/07/2015, granting the Applicant-Respondent-Respondent (hereinafter referred to as the Respondent) a monthly allowance of Rs. 14,000/- as maintenance for two minor children in terms of Section 11 of the Maintenance Act No. 37 of 1999 (hereinafter referred to as the Act).

Section 11 (1) of the Act states as follows;

(1) Every application for an order of maintenance or to enforce an order of maintenance shall be supported by an affidavit stating the facts in support of the application, and the Magistrate shall, if satisfied that the facts set out in the affidavit are sufficient, issue a summons together with a copy of such affidavit, on the person against whom the application is made to appear and to show cause why the application should not be granted:

Provided however the Magistrate may in his discretion at any time make an interim order for the payment of monthly allowance which shall remain operative until an order on the application is made, unless such interim order is earlier varied or revoked, and such interim order shall have effect from the date of the application or from such later date as the Magistrate may fix.

(2)-----

According to the proviso to Section 11(1) of the Act, an interim order for the payment of a monthly allowance shall remain operative until an order on the application is made. A party aggrieved by an order made by a Magistrate under Section 2 or 11 of the Act, has a right of appeal to the High Court in terms of Section 14(1) of the Act.

Section 14(2) of the Act states as follows;

“(2) Any person dissatisfied with an order made by a High Court in the exercise of its appellate jurisdiction under this section, may prefer an appeal therefrom to the Supreme Court, on a question of law with the leave of the High Court, and where such leave is refused, with the special leave of the Supreme Court, first had an obtained.”

It is observed that instead of an appeal, the Appellant has filed a revision application before the High Court to have the order of the learned Magistrate set aside. The Appellant has failed to adduce reasons for doing so.

In *N.A. Ramani Vs. K.S. Nagaratne, CA (PHC) 238/02*, K.T. Chitrasiri J. held thus:

“Section 14 (2) of the Maintenance Act No. 37/1999, stipulates that any person dissatisfied with an order made by a High Court in the exercise of its appellate jurisdictions may prefer an appeal therefrom to the Supreme Court on a question of law, with the leave of the High Court.” In view of the above provisions in law, this Court has no jurisdiction to entertain this appeal.

“In terms of Section 14 (2) of the Maintenance Act, the appeals filed to challenge the decision of a High Court Judge is to be preferred to the Supreme Court. Therefore, having looked at Section 14 (2) of the Maintenance Act No. 37 of 1999,

we decide that this Court has no jurisdiction to entertain this appeal.” (W.A. Ranasinghe Vs. Malanie Hemalatha, CA (PHC) 142/2002).

Accordingly, a person aggrieved by an order of the High Court exercising appellate jurisdiction should prefer an appeal to the Supreme Court, in terms of Section 14(2) of the Act. The Appellant instead of seeking special leave of the Supreme Court or with the leave of the High Court, as provided in Section 14(2) of the Act, has preferred an appeal to this Court. This Court has no jurisdiction to entertain this appeal.

Accordingly, the Appeal is dismissed with costs fixed at Rs. 10,000/-.

JUDGE OF THE COURT OF APPEAL

Mahinda Samayawardhena, J.

I agree.

JUDGE OF THE COURT OF APPEAL