

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

In the matter of an application for the exercise of the revisionary jurisdiction in terms of Article 138 of the Constitution read together with the provisions of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990.

**Court of Appeal Case No:**  
**CA/CPA/0009/2023**  
**(CA/CPA/0010/2023)**

**HC ALT No:**  
HCR/LTA/2/2018

**LT Case No:**  
6E/4769/2003

**K. A. D. Darshana Anid,**  
No. 34. Sevanagala North,  
Sevanagala

**Applicant**

**Vs.**

1. **Lanka Sugar Company (Pvt) Limited,**  
No. 27, Melbourne Avenue,  
Colombo 4.
2. **Lanka Sugar Company (Pvt) Limited,**  
Sevanagala Sugar Factory,  
Sevanagala.
3. **Sevanagala Sugar Industries Limited,**  
No. 362, Colombo Road,  
Pepiliyana.
4. **Sevanagala Sugar Industries Limited,**  
Sevanagala Sugar Factory,  
Sevanagala.

**Respondents**

**AND THEN BETWEEN**

**1. Lanka Sugar Company (Pvt) Limited**

No. 27, Melbourne Avenue,  
Colombo 4.

**2. Lanka Sugar Company (Pvt) Limited,**

Sevanagala Sugar Factory,  
Sevanagala.

**3. Sevanagala Sugar Industries Limited,**

No. 362, Colombo Road,  
Pepiliyana.

**Respondent-Appellants**

**Vs.**

**K. A. D. Darshana Anid,**

No. 34. Sevanagala North,  
Sevanagala

**Applicant-Respondent**

**AND NOW BETWEEN**

**K. A. D. Darshana Anid,**

No. 34. Sevanagala North,  
Sevanagala

**Applicant-Respondent-Petitioner**

**Vs.**

**1. Lanka Sugar Company (Pvt) Limited**

No. 27, Melbourne Avenue,  
Colombo 4.

**2. Sevanagala Sugar Industries Limited,**

No. 362, Colombo Road,  
Pepiliyana.

**Respondent-Appellant-Respondents**

Before : **D. THOTAWATTA, J.**  
**K. M. S. DISSANAYAKE, J.**

Counsel : Nishika Fonseka instructed by Lakmini  
Amarasinghe on behalf of the Legal Aid  
Commission for the Applicant-Respondent-  
Petitioner.

Pasindu Widyananda with Shalani  
Jayasinghe instructed by Ranga Jayasena  
for the 1<sup>st</sup> Respondent-Appellant-  
Respondent.

Written Submissions  
of the Applicant-Respondent  
-Petitioner tendered on : 13.06.2024 and 03.03.2026

Written Submissions  
of the 1<sup>st</sup> and 2<sup>nd</sup> Respondent-  
Appellant-Respondents  
tendered on : 05.06.2024 and 11.02.2026

Decided on : 06.03.2026

**K. M. S. DISSANAYAKE, J.**

When the instant application in revision came on before us for support of the application for notice, the 1<sup>st</sup> and 2<sup>nd</sup> Respondent-Appellant-Respondents (hereinafter called and referred to as ‘the 1<sup>st</sup> and 2<sup>nd</sup> Respondents’) who had come to Court on direct notices, had indicated to Court that they wish to raise an objection with regard to the jurisdiction of this Court over the instant matter. This Court then, directed parties to file written submissions on the jurisdictional objection so raised by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and the written submissions had thus, had been filed in Court by the parties. Today, this matter comes on before us for order on the jurisdictional issue so raised to Court by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

Let me now, examine the nature of the jurisdictional issue so raised to Court by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

As is discernible from the written submissions of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, the jurisdictional issue is based on section 31DD of the Industrial Disputes Act No. 43 of 1950 as amended (hereinafter called and referred to as ‘the Industrial Disputes Act’) to be read with section 9 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended (hereinafter called and referred to as ‘the Act’) in that it was contended that direct appeal will lie to the Supreme Court from the order sought to be impugned in the instant application in revision and therefore, revision will not lie and hence, this Court is bereft of any jurisdiction to hear and determine the instant application in revision and therefore, it should be dismissed *in-limine*. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents sought to rely on the decision in **SC/Appeal/65/2025-SC-Minutes of 10.10.2025** in support of the jurisdictional objection.

On the other hand, it was contended in the written submissions by the Petitioner in resisting the jurisdictional objection that the Petitioner did not seek to by-pass the appellate structure in that he had first invoked the jurisdiction of the Supreme Court and thereafter approached this Court invoking its revisionary

jurisdiction only after full disclosure of all material facts and therefore, he came to this Court with clean hands invoking not a technical device but the constitutional supervisory jurisdiction designed to prevent grave miscarriage of justice and therefore, denying him a hearing on jurisdictional grounds at this stage would leave the Petitioner who had been seeking justice in the instant matter for over 20 years, without any effective judicial recourse. The Petitioner sought to rely on the decision in **SC/Appeal/111/2015-SC-Minutes of 27.05.2020** to resist the jurisdictional objection.

It is to be noted at this juncture, that learned Counsel for the Applicant-Respondent-Petitioner in the connected application in revision bearing No. CA/CPA/0010/23 informed Court that the Applicant-Respondent-Petitioner will abide by the decision of this Court in the present application in revision, namely; CA/CPA/0009/23. Hence, order in the instant application in revision will bind the Applicant-Respondent-Petitioner in the connected application in revision bearing No. CA/CPA/0010/23 too, as indicated to Court by learned Counsel.

The Petitioner in the instant application in revision seeks to revise and set aside the Judgement dated 25.10.2022, made by the learned High Court Judge of the Sabaragamuwa Province holden at Embilipitiya in an Appeal bearing No. LTA 02/2021 in the exercise of the appellate jurisdiction vested in it by section 31D(3) of the Industrial Dispute Act to be read with section 3 of the Act and the Articles 154P(3)(b) and 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka (hereinafter called and referred to as ‘the Constitution’), and to affirm the order of the Labour Tribunal of Rathnapura/ Embilipitiya dated 15.03.2018, a certified copy of which was annexed to the petition furnished to this Court by Petitioner marked as **P1(I)** (hereinafter called and referred to as ‘the MC order’) whereby, the learned High Court Judge of the Sabaragamuwa Province holden at Embilipitiya had made order allowing the appeal and setting aside the order of the Labour Tribunal of Rathnapura/ Embilipitiya dated 15.03.2018, (**P1(I)**).

It is not in dispute that the order impugned (**P2**) is a final order made by the learned High Court Judge of the Sabaragamuwa Province holden at Embilipitiya in an appeal bearing No. LTA 02/2021 in the exercise of the appellate jurisdiction vested in it by section 31D(3) of the Industrial Dispute Act to be read with section 3 of the Act and the Articles 154P(3)(b) and 138 of the Constitution.

The pertinent question that would now, arise for our consideration is **whether an order made by a High Court established by Article 154P of the Constitution in the exercise of the appellate jurisdiction vested in it by section 31D(3) of the Industrial Dispute Act to be read with section 3 of the Act and the Articles 154P(3)(b) and 138 of the Constitution in respect of an order of the Labour Tribunal, is amendable to an extra-ordinary revisionary jurisdiction of this Court when section 31DD of the Industrial Dispute Act to be read with sections 9 and 10 of the Act and Articles 127 and 128(4) of the Constitution “expressly”, confers upon a party aggrieved by such an order a right of appeal to the Supreme Court with leave of the High Court or the Supreme Court first had and obtained.** [Emphasis is mine]

Article 138(1) of the Constitution enacts that,

“The Court of Appeal shall have and exercise subject to the provisions of the Constitution or of any law, an appellate jurisdiction for the correction of all errors in fact or in law which shall be [committed by the High Court, in the exercise of its appellate or original jurisdiction or by any Court of First Instance], tribunal or other institution and sole and exclusive cognizance, by way of appeal, revision and restitutio in integrum, of all causes, suits, actions, prosecutions, matters and things [of which such High Court, Court of First Instance], tribunal or other institution may have taken cognizance...”

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It was *inter-alia*, held by the Supreme Court in **Weragama v. Eksath Lanka Wathu Kamkam Samithiya and others-1994[1] SLR 329**, that "...however, the jurisdiction of the Court of Appeal under Article 138 is not an entrenched jurisdiction, because Article 138 provides that it is subject to the provisions "of any law"; hence it was always constitutionally permissible for that jurisdiction to be reduced or transferred by ordinary law (of course, to a body entitled to exercise judicial power). That is the reason why I held in *Swastika Textile Industries Ltd. v. Dayaratne*, that section 3 of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990, conferred concurrent, appellate and revisionary jurisdiction on the High Courts in respect of Labour Tribunals, and that thereafter section 31D3 of the Industrial Disputes Act, as amended by Act No. 32 of 1990, made that jurisdiction exclusive, thereby taking away the jurisdiction of the Court of Appeal in that respect.

It was *inter-alia*, held by the Supreme Court in **SC/Appeal/65/2025-Decided on 10.10.2025** at page 32 that, "In this context, it would be legally impermissible and institutionally unsound for the Court of Appeal, in *pari materia*, to sit in appeal over judgments and orders pronounced by a Provincial High Court in the exercise of its appellate or revisionary jurisdiction. A party cannot pursue successive appeals before two courts of coordinate jurisdiction in respect of the same matter. This strikes at the very root of the issue. Such a practice is inimical to legislative intent, imposes unnecessary burdens on the judicial system, and undermines the principle of finality in litigation. These considerations make clear that concurrent jurisdiction was intended to provide an alternative forum for appellate review, not to create an additional tier in the appellate hierarchy."

Hence, it becomes manifest that the jurisdiction of the Court of Appeal under Article 138 is not entrenched and therefore, not absolute and as such it is inherently, conditional and it can thus, be altered by ordinary law as held by Supreme Court in **Weragama v. Eksath Lanka Wathu Kamkam Samithiya and**

**others (Supra) and in Swasthika Textiles Industries Ltd Vs Dayaratne-1993 [2] SLR 348**

The Thirteenth Amendment to the Constitution enacted Article 154P(1) to the Constitution and it reads thus;

“There shall be a High Court for each Province with effect from the date on which this Chapter comes into force. Each such High Court shall be designated as the High Court of the relevant Province.”

Hence, Article 154P(1) of the Constitution so enacted by the Thirteenth Amendment, made provisions for the establishment of the High Courts in the provinces.

Article 154P(3)(b) of the Constitution enacted by the Thirteenth Amendment to the Constitution, reads thus;

“Every such High Court shall –

(b) **notwithstanding anything in Article 138 and subject to any law**, exercise, appellate and revisionary jurisdiction in respect of convictions, sentences and orders entered or imposed by Magistrates Courts and Primary Courts within the Province;” [Emphasis is mine]

Hence, Article 154P(3)(b) conferred upon the High Court so established under Article 154P(1) the appellate and revisionary jurisdiction in respect of convictions, sentences and orders entered or imposed by Magistrates Courts and Primary Courts within the Province **notwithstanding anything in Article 138 and subject to any law**. [Emphasis is mine]

Article 154P(6) of the Constitution enacted by Thirteenth Amendment to the Constitution confers upon any person aggrieved by a final order, judgment or sentence of any such High Court so established under Article 154P(1) of the Constitution made in the exercise of its jurisdiction under paragraphs (3)(b) or

(3)(c) or (4) a right of appeal to the Court of Appeal in accordance with Article 138 of the Constitution subject to the provisions of the Constitution and any law and it reads thus;

“(6) **subject to the provisions of the Constitution and any law**, any person aggrieved by a final order, judgment or sentence of any such Court, in the exercise of its jurisdiction under paragraphs (3)(b) or (3)(c) or (4) may appeal there from to the Court of Appeal **in accordance with Article 138.**”

[Emphasis is mine]

However, no provision was made with regard to the procedure to be followed in such High Courts. With a view to providing for the lacuna in the law with regard to the procedure to be followed in the High Court of the Provinces, so established under Article 154P(1) of the Constitution which enacted by the Thirteenth Amendment to the Constitution, the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990 (hereinafter called and referred to as ‘the Act’) was enacted making provision “regarding the procedure to be followed in, and the right to appeal to, and from, the High Court established under Article 154P of the Constitution”.

The Act also made provision for the appeals to be brought in before the Court of Appeal as well as the Supreme Court from the High Court. While section 9 of the Act provides for the appeals to Supreme Court from High Court, section 11 thereof provides for appeals to Court of Appeal from the High Court established under Article 154P of the Constitution.

Section 9 of the Act reads thus;

“9. **Subject to the provisions of this Act or any other law**, any person aggrieved by

(a) **a final order, judgment, decree or sentence** of a High Court established by Article 154P of the Constitution in the exercise of the

appellate jurisdiction vested in it by paragraph (3) (b) of Article 154P of the Constitution **or section 3 of this Act** or any other law, in any matter or proceeding whether civil or criminal which involves a substantial question of law, **may appeal therefrom to the Supreme Court if the High Court grants leave to appeal to the Supreme Court ex mero motu or at the instance of any aggrieved party to such matter or proceedings :**

**Provided that** the Supreme Court may, **in its discretion, grant special leave to appeal to the Supreme Court from “any final” or “interlocutory order”**, judgment, decree or sentence made by such High Court, in the exercise of the appellate jurisdiction vested in it by paragraph (3) (b) of Article 154P of the Constitution or **section 3 of this Act**, or any other law **where such High Court has refused to grant leave to appeal to the Supreme Court, or where in the opinion of the Supreme Court, the case or matter is fit for review by the Supreme Court:**

Provided further that the Supreme Court shall grant leave to appeal in every matter or proceeding in which it is satisfied that the question to be decided is of public or general importance; and

(b) a final order, judgment or sentence of a High Court established by Article 154P of the Constitution in the exercise of its jurisdiction conferred on it by paragraph (3) (a), or (4) of Article 154P of the Constitution may appeal therefrom to the Court of Appeal.”[Emphasis is mine]

Section 10 of the Act which sets out the powers of the Supreme Court on appeal, enacts thus;

“(1) The Supreme Court shall, subject to the Constitution be the final Court of appellate jurisdiction within Sri Lanka for the correction of all errors in fact or in law which shall be committed by a High Court established by Article 154P of the Constitution, in the exercise of the appellate jurisdiction vested in it by paragraph (3) (b) of Article 154P of the Constitution or

section 3 of this Act, or any other law and the judgments and orders of the Supreme Court shall, in such cases, be final and conclusive in all such matters.

(2) The Supreme Court shall, in the exercise of its jurisdiction, have sole and exclusive cognizance by way of appeal from any order, judgment, decree or sentence made by a High Court established by Article 154P of the Constitution, in the exercise of the appellate jurisdiction vested in such High Court by paragraph (3) (b) of Article 154P of the Constitution or section 3 of this Act or any other law and it may affirm, reverse or vary any such order, judgment, decree or sentence of such High Court and may issue such directions to such High Court or Court of First Instance or order a new trial or further hearing in any proceedings as justice may require and may also call for and admit fresh or additional evidence if the interests of justice so demands and may in such event, direct that such evidence be recorded by such High Court, or any Court of First Instance.”

Section 3 of the Act enacts thus;

“A High Court established by Article 154P of the Constitution for a Province shall, **subject to any law**, exercise appellate and revisionary jurisdiction **in respect of orders made by Labour Tribunals within that Province** and orders made under section 5 or section 9 of the Agrarian Services Act, No. 58 of 1979, in respect of any land situated within that Province”.  
[Emphasis is mine]

Article 127 of the Constitution which sets out the appellate jurisdiction of the Supreme Court, enacts thus;

“(1) The Supreme Court shall, subject to the Constitution, be the final Court of civil and criminal appellate jurisdiction for and within the Republic of Sri Lanka for the correction of all errors in fact or in law which shall be committed by the Court of Appeal or any Court of First Instance,

tribunal or other institution **and the judgments and orders of the Supreme Court shall in all cases be final and conclusive in all such matters.**” [Emphasis is mine]

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Article 128(4) of the Constitution enacts thus;

“An appeal shall lie directly to the Supreme Court **on any matter and in the manner specifically provided for by any other law passed by Parliament.**” [Emphasis is mine]

Section 31DD(1) of the Industrial Dispute’s Act 43 of 1950 (as amended) enacts thus;

“Any workman, trade union or employer who is aggrieved **“by any final order”** of a High Court established under Article 154P of the Constitution, **in the exercise of the appellate jurisdiction vested in it by law** or in the exercise of its revisionary jurisdiction vested in it by law, **in relation to an order of a labour tribunal**, may appeal therefrom to the Supreme Court **with the leave of the High Court or the Supreme Court** first had and obtained.”

Upon a careful analysis of section 9(a) of the Act, it becomes manifestly, clear that, subject to the provisions of the Act or any other law, any person aggrieved by **a final order, judgment, decree or sentence** of a High Court established by Article 154P of the Constitution in the exercise of the appellate jurisdiction vested in it by paragraph (3)(b) of Article 154P of the Constitution **or section 3 of the Act** or any other law, in any matter or proceeding whether civil or criminal which involves a substantial question of law, **may appeal therefrom to the Supreme Court if the High Court grants leave to appeal to the Supreme Court ex mero motu or at the instance of any aggrieved party to such matter or proceedings.**

Similar provision can be found in section 31DD(1) of the Industrial Disputes Act as amended which provides that “Any workman, trade union or employer who is aggrieved **“by any final order”** of a High Court established under Article 154P of the Constitution, **in the exercise of the appellate jurisdiction vested in it by law** or in the exercise of its revisionary jurisdiction vested in it by law, **in relation to an order of a labour tribunal**, may appeal therefrom to the Supreme Court **with the leave of the High Court** or **the Supreme Court** first had and obtained.”.[Emphasis is mine]

Article 128(4) of the Constitution also makes similar provision which enacts thus;

“An appeal shall lie directly to the Supreme Court **on any matter and in the manner specifically provided for by any other law passed by Parliament.**” [Emphasis is mine]

Section 31DD(1) of the Industrial Disputes Act is **“any other law passed by parliament”** as envisaged by Article 128(4) of the Constitution and therefore, it inevitably, follows that an appeal shall lie **“directly”** to the Supreme Court thereunder from an order of a High Court established under Article 154P of the Constitution made in the exercise of appellate jurisdiction vested in it by law or in the exercise of its revisionary jurisdiction vested in it by law in relation to an order of a Labour Tribunal **on any matter and in the manner specifically provided for by it** as enumerated above. [Emphasis is mine]

The cumulative effect of the provisions enumerated above, is to expressly, and unambiguously, provide for a right of appeal **“only”** and **“directly”** to the Supreme Court from **a final order** made by a High Court established under Article 154P of the Constitution in the exercise of its appellate jurisdiction vested in it by law or in the exercise of its revisionary jurisdiction vested in it by law in relation to an order of a Labour Tribunal **on any matter and in the manner specifically provided for by it** as enumerated above. [Emphasis is mine]

The pertinent question that would then, arise for our consideration is; What was the specific objective that the legislature intended to achieve by expressly, unequivocally and unambiguously, providing for a right of appeal “**only**” and “**directly**” to the apex Court in the judicial hierarchy of this country-the Supreme Court, to an aggrieved party by enacting section 31DD of the Industrial Dispute Act to be read with section 9(a) of the Act and Articles 127 and 128(4) of the Constitution “**from a final order**” made by a High Court established by Article 154P of the Constitution in the exercise of the appellate jurisdiction vested in it by law as morefully enumerative above, in relation to an order of the labour tribunal with leave of the High Court or the Supreme Court first had and obtained?.

In my view, the specific objective intended to be achieved by the legislature thereby, was to arrest delays in the administration of justice by conferring finality upon a matters under review for; **the judgments and orders of the Supreme Court shall in all cases be final and conclusive in all such matters.**” as enumerated by Article 127(1) of the Constitution which would in turn, result in the early and expeditious disposal of the disputes arising out of labour matters for; resolution of disputes as such expeditiously, is an essential element for the smooth and fast economic growth of this Country. [Emphasis is mine]

The question that would next arise for our consideration in view of the jurisdictional objection so raised to us by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents would be;

**in the light of the law set out above, does the Court of Appeal have a revisionary jurisdiction in terms of Article 138 of the Constitution in respect of a decision of the Provincial High Court made in the exercise of the appellate jurisdiction in terms of section 31D of the Industrial Dispute Act No. 43 of 1950 as amended?.** [Emphasis is mine]

It was observed by the Supreme Court in **Gunawardane And Others Vs. Muthukumarana and Others (Supra)** at page 314 that, “*At the outset, it must be*

*borne in mind that the revisionary jurisdiction of the Court of Appeal is a Constitutional mandate. Its genesis lies in Article 138 of the Constitution. There is no question that the Constitution is the supreme law of the land (vide In Re Reference under Article 125(1) of the Constitution. In those circumstances, any ouster or restriction of a Court's jurisdiction which is founded on the Constitution, in so far as it is permitted under the Constitution, must be made in express language. In Re the Nineteenth Amendment to the Constitution, a bench of 7 judges unequivocally opined that "This manifests a cardinal rule that applies to the interpretation of a Constitution, that there can be no implied amendment of any provision of the Constitution" (at page 110). Therefore, it is only right and befitting that this Court insists that every provision which restricts or modifies a Court's Constitutional mandate is express and set out in no uncertain terms."*

It is in this context, I would think it expedient at this juncture to direct my judicial mind to the observations explicitly, made by the Supreme Court in a later case in **W.T.S. Nilantha Fernando Vs. P.M.S. Nilanthi Perera (Supra)**, dealing with the observations so made by the Supreme Court in **Gunawardane v. Muthukumarana (Supra)**, and they may be reproduced *verbatim* the same as follows to the extent that would be necessary for the proper resolution of the jurisdictional objection so raised by the Respondent before us as enumerated above;

*"The Court of Appeal relied heavily on the judgment of this court in Gunawardane v. Muthukumarana [2020] 3 Sri LR 306 in overruling the preliminary objection raised by the defendant on jurisdiction. In that case, at page 310, this court held as follows: Section 9 of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990, as amended, does not oust the revisionary jurisdiction of the Court of Appeal in respect of decisions made by a Provincial High Court exercising its appellate powers. Therefore, the revisionary jurisdiction of the Court of Appeal referred to in Article 138 of the Constitution of the Republic of Sri Lanka can be invoked in order to*

*canvass a decision made by a Provincial High Court exercising its appellate powers.*

*With all due respect, I am unable to agree with that conclusion. That judgment is predominantly premised on the conceptual separation of revision from appeal, in the manner adopted by Sansoni C.J. in the oft quoted decision in *Mariam Beebee v. Seyed Mohomed* (1965) 68 NLR 36, where it was observed at page 38:*

*The power of revision is an extraordinary power which is quite independent of and distinct from the appellate jurisdiction of this Court. Its object is the due administration of justice and the correction of errors, sometimes committed by this Court itself, in order to avoid miscarriages of justice. It is exercised in some cases by a Judge of his own motion, when an aggrieved person who may not be a party to the action brings to his notice the fact that, unless the power is exercised, injustice will result. The Partition Act has not, I conceive, made any change in this respect, and the power can still be exercised in respect of any order or decree of a lower Court.*

*When *Mariam Beebee v. Seyed Mohomed* was decided in 1965, Sri Lanka was governed by the Soulbury Constitution. Neither the Soulbury Constitution nor the First Republican Constitution of 1972 contained any provision equivalent to Article 138 of the present Constitution of 1978, which expressly enacts the appellate, revisionary, and restitutio in integrum jurisdiction of the Court of Appeal, to be exercised “subject to the provisions of the Constitution or of any law.”*

*Indeed, the Supreme Court in *Gunawardane*, at page 314, acknowledged: “At the outset, it must be borne in mind that the revisionary jurisdiction of the Court of Appeal is a Constitutional mandate. Its genesis lies in Article 138 of the Constitution.” However, both the Supreme Court in *Gunawardane* and the Court of Appeal in the instant case failed to properly appreciate that*

*Article 138 is not an entrenched provision but an enabling one. Article 138(1) itself makes plain that the appellate jurisdiction of the Court of Appeal “by way of appeal, revision and restitutio in integrum” is “subject to the provisions of the Constitution or of any law”. Nevertheless, both courts proceeded on the footing that, in the absence of an express exclusion, the Court of Appeal continues to retain revisionary jurisdiction over judgments of the Provincial High Court.*

*At page 316 of Gunawardane, it was further stated: “As I observed earlier, the revisionary jurisdiction of the Court of Appeal is a Constitutional mandate which, undoubtedly, is subject to the provisions of statutory law. Nevertheless, owing to its genesis in the Constitution, any restriction or modification which the Legislature seeks to introduce must be introduced by way of express wording.” In my view, this reasoning is untenable. Whilst conferring revisionary jurisdiction on the Court of Appeal, the Constitution itself expressly stipulates that such jurisdiction is “subject to the provisions of the Constitution or of any law.” When the Constitution at the outset makes clear that the revisionary jurisdiction is conditional and not absolute, there is no need for express words of exclusion. Parliament, by ordinary legislation, is empowered to regulate, modify, or reallocate such jurisdiction. To hold otherwise would elevate Article 138(1) to a status of entrenchment which the Constitution has not conferred.*

*This is consistent with the principle affirmed in Swasthika Textile Industries Ltd v. Dayaratne, where the Supreme Court held that appellate and revisionary jurisdiction under Article 138(1) is not entrenched and can be altered by ordinary law. In that case, the Supreme Court held that section 31DD, introduced into the Industrial Disputes Act by Act No. 32 of 1990, which provides that: “Any workman, trade union or employer who is aggrieved by any final order of a High Court established under Article 154P of the Constitution, in the exercise of the appellate jurisdiction vested in it*

*by law or in the exercise of its revisionary jurisdiction vested in it by law, in relation to an order of a Labour Tribunal, may appeal therefrom to the Supreme Court with the leave of the High Court or the Supreme Court first had and obtained”, removed the appellate and revisionary jurisdiction of the Court of Appeal in respect of final orders of the High Court made in relation to orders of Labour Tribunals, and vested such jurisdiction exclusively in the Supreme Court. In that instance also, there was no express removal of the revisionary jurisdiction of the Court of Appeal. This position was subsequently accepted as correct by a Bench of five Judges of this court in Abeywardene v. Ajith De Silva [1998] 1 Sri LR 134 at 140.*

*As I have emphasised repeatedly, Provincial High Courts were vested with special jurisdiction under Acts Nos. 19 of 1990, 10 of 1996, and 54 of 2006 with the specific objective of arresting delays in the administration of justice. Sansoni C.J. in Mariam Beebee v. Seyed Mohamed did not recognise the revisionary power as an absolute and unqualified principle of law; rather, His Lordship acknowledged that its exercise is subject to legislative intent. This is apparent from his explicit observation in the above excerpt that “The Partition Act has not, I conceive, made any change in this respect, and the power [of revision] can still be exercised in respect of any order or decree of a lower Court”, thus recognising that the legislature could, through statute, alter or limit the scope of revisionary powers.*

*Unlike the Partition Act considered in Mariam Beebee, Acts Nos. 19 of 1990, 10 of 1996, and 54 of 2006 expressly restructure appellate jurisdiction and, by their terms, exclude any intermediate recourse to the Court of Appeal from judgments and orders of Provincial High Courts exercising their appellate jurisdiction. The legislative design, read together with the enabling nature of Article 138, leaves no scope for the Court of Appeal to invoke its appellate, revisionary or restitutio in integrum jurisdiction in such instances,*

*without disregarding the clear statutory command and frustrating the very object of the Provincial High Court scheme.”*

I would therefore, hold following the decision of a bench of five judges of the Supreme Court in **Abeywardene v. Ajith De Silva 1998 [1] SLR 134 at Page 140** and the decision of the Supreme Court in **Swasthika Textile Industries Ltd v. Dayaratne (Supra)** and the recent decision of the Supreme Court in **W.T.S. Nilantha Fernando Vs. P.M.S. Nilanthi Perera (Supra)**, that while conferring revisionary jurisdiction on the Court of Appeal, the Constitution itself expressly enunciates that such jurisdiction is “subject to the provisions of the Constitution or of any law” and therefore, its exercise is subject to legislative intent; and that when the Constitution at the outset makes clear that the revisionary jurisdiction is conditional and not absolute, there is no need for express words of exclusion; and that Parliament, by ordinary legislation, is thus, empowered to regulate, modify, or re-allocate such jurisdiction; and that to hold otherwise would elevate Article 138(1) to a status of entrenchment which the Constitution has not conferred; and that in the result, appellate and revisionary jurisdiction under Article 138(1) which is not entrenched, can be altered by ordinary law; and that **more particularly**, section 31DD which introduced into the Industrial Disputes Act by Act No. 32 of 1990, which provides that: “Any workman, trade union or employer who is aggrieved by any final order of a High Court established under Article 154P of the Constitution, in the exercise of the appellate jurisdiction vested in it by law or in the exercise of its revisionary jurisdiction vested in it by law, in relation to an order of a Labour Tribunal, may appeal therefrom to the Supreme Court with the leave of the High Court or the Supreme Court first had and obtained”; to be read with sections 9 and 10 of the Act and Articles 127(1) and 128(4) of the Constitution had clearly, **removed the revisionary jurisdiction of the Court of Appeal in respect of the final orders of the High Court established under Article 154P of the Constitution**, made in the exercise of the appellate jurisdiction vested in it by section 31D(3) of the Industrial Dispute Act to be read together with section 3 of the Act or in the

exercise of its revisionary jurisdiction vested in it by law in relation to orders of Labour Tribunals, and **vested such jurisdiction “exclusively” in the Supreme Court** for; in that instance too, there was no express removal of the revisionary jurisdiction of the Court of Appeal. [Emphasis is mine]

In view of the jurisdictional objection so raised by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, the pivotal question that arose before this Court for our consideration is;

**Does the Court of Appeal have a revisionary jurisdiction in terms of Article 138 of the Constitution in respect of an order of the Provincial High Court made in the exercise of the appellate jurisdiction in terms of section 31D(3) of the Industrial Dispute Act No. 43 of 1950 as amended to be read with section 3 of the Act?**

And therefore, legal effect of section 31DD(1) of the Industrial Dispute’s Act, to be read with sections 9 and 10 of the Act and Articles 127(1) and 128(4) had directly, come before us for our consideration, whereas, the pivotal question that arose before the Supreme Court in the decision in ***Gunawardane v. Muthukumarana (Supra)*** for its consideration was whether “Having failed to exercise the right to file an appeal in terms of section 9 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended, could a person invoke the revisionary jurisdiction of the Court of Appeal referred to in Article 138 of the Constitution of the Republic of Sri Lanka in order to canvass a decision made by a Provincial High Court exercising its appellate powers?”, and hence, the legal effect of section 31DD(1) of the Industrial Dispute’s Act, to be read with sections 9 and 10 of the Act and Articles 127(1) and 128(4) had never been the subject matter of the said case that had come before the Supreme Court for its consideration, and therefore, Supreme Court had no occasion to examine the legal effect of section 31DD(1) of the Industrial Dispute’s Act, to be read with sections 9 and 10 of the Act and Articles 127(1) and 128(4) and hence, the facts of this case are different from the facts of the said Supreme Court decision and therefore, the decision of the Supreme Court in ***Gunawardane v.***

***Muthukumarana (Supra)*** can clearly, be distinguishable from the facts of the instant application in revision before us and therefore, I would most respectfully, and humbly, state that the decision of the Supreme Court in ***Gunawardane v. Muthukumarana (Supra)*** has no bearing on the instant application in revision before us.

In view of the foregoing, I would hold that the Court of Appeal does not have revisionary jurisdiction vested in it in terms of Article 138 of the Constitution in respect of a final order of the Provincial High Court established by Article 154P of the Constitution and made in the exercise of the appellate jurisdiction in terms of section 31D(3) of the Industrial Dispute Act to be read together with section 3 of the Act and Articles 154P(3)(b) and 138 of the Constitution in relation to an order of a Labour Tribunal by reason of the fact that section 31DD(1) of the Industrial Dispute's Act, to be read with sections 9 and 10 of the Act and Articles 127(1) and 128(4) had clearly, removed the revisionary jurisdiction of the Court of Appeal in respect of a final order of the High Court established under Article 154P of the Constitution made in the exercise of the appellate jurisdiction vested in it by section 31D(3) of the Industrial Dispute Act to be read with section 3 of the Act or in the exercise of its revisionary jurisdiction vested in it by law in relation to orders of Labour Tribunals, and vested such jurisdiction "exclusively" in the Supreme Court.

In the circumstances, I would hold that the jurisdictional objection so raised by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents is entitled to succeed both in fact and law.

Hence, I would proceed to uphold the same.

In the result, I would dismiss the instant application in revision *in limine* with costs.

Since, the Petitioner in the connected application in revision bearing No. CA/CPA/0010/23 undertook to abide by the order of this Court in the instant application in revision, I would order that the Petitioner in the connected

application in revision bearing No. CA/CPA/0010/23 is bound by the order of the instant application in revision.

In the circumstances, I would dismiss the connected application in revision bearing No. CA/CPA/0010/23 *in limine* with costs.

Registrar is directed to file a copy of order of the instant application in revision, of record in the connected application in revision bearing No. CA/CPA/0010/23.

***JUDGE OF THE COURT OF APPEAL***

**D. THOTAWATTA, J.**

I agree.

***JUDGE OF THE COURT OF APPEAL***