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

In the matter of an application for revision under Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal Case No: CA/CPA/0003/2023

Hight Court of Homagama Case No: Appeal/06/2022

Magistrates Court of Kaduwela Case No: 63770/Maintenance

Bandaranayake Mudiyanselage Shyamika Nayomi Bandaranayake,
No. 148-2D, Parakrama Mawatha,
Hokandara North.
Presently in
No. 30 D, St. Mary's Road, Welivita,
Kaduwela.

Applicant

Vs.

Poshitha Gamini Wanaguru,
No. 515, Hokandara North,
Hokandara

Respondent

AND BETWEEN

Bandaranayake Mudiyanselage Shyamika Nayomi Bandaranayake,
No. 148-2D, Parakrama Mawatha,
Hokandara North.

Presently in
No. 30 D, St. Mary's Road, Welivita,
Kaduwela.

Applicant-Appellant

Vs.

Poshitha Gamini Wanaguru,
No. 515, Hokandara North,
Hokandara

Respondent-Respondent

AND NOW BETWEEN

Poshitha Gamini Wanaguru,
No. 515, Hokandara North,
Hokandara

Respondent-Respondent-Petitioner

1. **Bandaranayake Mudiyanselage Shyamika Nayomi Bandaranayake**,
   No. 148-2D, Parakrama Mawatha,
   Hokandara North.
   Presently in
   No. 30 D, St. Mary's Road, Welivita,
   Kaduwela.

Applicant-Appellant-Respondent

2. **Honourable Attorney General**,
   Attorney General Department,
   Colombo 12.

Respondent

Before	:	**D. THOTAWATTA, J.** **K. M. S. DISSANAYAKE, J.**
Counsel	:	Shehan De Silva with Nuwan Premadasa, Helindu Abeywardena instructed by Sanjeewa Kodithuwakku for the Respondent-Respondent-Petitioner. Nilshantha Sirimanne with Nelundi Herath for the Applicant-Appellant-Respondent. The Respondent is absent and unrepresented.
Written Submissions of the Respondent-Respondent -Petitioner tendered on	:	16.12.2025
Written Submissions of the Applicant-Appellant -Respondent tendered on	:	02.12.2025
Written Submissions of the Respondent tendered on	:	Not tendered

Decided on : 06.03.2026

K. M. S. DISSANAYAKE, J.

The Respondent-Respondent-Petitioner (hereinafter called and referred to as 'the Petitioner") in the instant application in revision seeks to revise and set aside the order dated 12.07.2022, made by the learned High Court Judge of the Western Province holden at Homagama in an appeal bearing No. Appeal/06/2020 in the exercise of the appellate jurisdiction vested in it by section 14(1) of the Maintenance Act No. 37 of 1999 (hereinafter called and referred to as 'the Maintenance Act), to be read with sections 4,5 and 6 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended (hereinafter called and referred to as 'the Act') and 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"), a certified copy of which was annexed to the petition furnished to this Court by Petitioners marked as **P3(a)** (hereinafter called and referred to as 'the HC order").

At the outset of the argument in the instant application in revision, an objection has been raised by the Applicant-Appellant-Respondent (hereinafter called and referred to as 'the Respondent") with regard to the jurisdiction of this Court over the instant matter on the following premise;

> "Whether the Court of Appeal has a revisionary jurisdiction under Article 138 of the Constitution to review and revise a High Court order made in the exercise of its appellate jurisdiction under the Maintenance Act No. 37 of 1999, notwithstanding section 14(2) thereof, which provides for appeals to the Supreme Court."

The Respondent seeks to mainly, rely on the decision in **W.T.S. Nilantha Fernando Vs. P.M.S. Nilanthi Perera-SC-APPEAL 65/2025-Decided on 10.10.2025** in support thereof.

On the other hand, the Petitioner seeks to mainly, rely on the decision in **Gunawardane and Others Vs. Muthukumarana and Others-2020 [3] SLR 306** by resisting it.

At the outset, it is to be observed that the order impugned (**P3(a)**) is an order made by the learned High Court Judge of the Western Province holden at Homagama in an appeal bearing No. Appeal/06/2020 in the exercise of the appellate jurisdiction vested in it in terms of section 14(1) of the Maintenance Act, to be read with sections 4,5 and 6 of the Act as amended and Articles 154P(3)(b) and 138 of the Constitution.

Hence, the pivotal question that would now, arise for our consideration is as follows;

> "**Having failed to exercise the right of appeal to the Supreme Court in terms of section 14(2) of the Maintenance Act, to be read with sections 9(a) and 10 of the Act and Articles 154P(3)(b) and 138 of the Constitution, could the Petitioner invoke the extra-ordinary revisionary jurisdiction of this Court vested in it under Article 138 of the Constitution to revise and set aside the order made by the learned High Court Judge of the Western Province holden at Homagama in an appeal bearing No. Appeal/06/2020 (P3(a)) in the exercise of the appellate jurisdiction vested in it by section 14(1) of the Maintenance Act, to be read with sections 4,5 and 6 of the Act and Articles 154P(3)(b) and 138 of the Constitution**"[Emphasis is mine]

The pertinent question that would then, arise for our consideration would be;

> "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 14(1) of the Maintenance Act to be read with sections 4,5 and 6 of the Act and Articles 154P(3)(b) and 138 of the Constitution, is amendable to an extra-ordinary revisionary jurisdiction of this Court when section 14(2) of the Maintenance Act, to be read with sections 9(a) and 10 of the

Act and Articles 154P(3)(b) and 138 of the Constitution expressly, confers upon a party aggrieved by such an order a right of appeal to the Supreme Court with special leave to appeal first had and obtained.

It may now, be examined.

Article 138(1) of the Constitution enacts thus;

> "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..." [Emphasis is mine]
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> Proviso-not reproduced.

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 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]

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** and where such leave is refused, with the special leave of the Supreme Court, first had and obtained.

Similar provision to that of the one contained in section 9(a) of the Act, can be found in section 14(2) of the Maintenance Act which provides that,

> "**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 and obtained**." [Emphasis is mine]

Upon a careful analysis of section 14(2) of the Maintenance Act in conjunction with sections 9(a) and 10 of the Act, and the Articles 154P(3)(b) and 138 of the Constitution, it becomes abundantly, clear that section 14(2) of the Maintenance Act expressly, provides for a right of appeal to the Supreme Court **with leave of the High Court** or **the Supreme Court** first had and obtained from an **"order"** of a High Court established under Article 154P of the Constitution made **in the exercise of the appellate jurisdiction vested in it by section 14(1) of the** Maintenance Act **to be read with sections 4, 5 and 6 of the Act** and Articles 154P(3)(b) and 138 of the Constitution. [Emphasis is mine]

The cumulative effect of section 14(2) of the Maintenance Act, Articles 138, 154P(3)(b) of the Constitution, and Sections 9(a) and 10 of the Act is that the legislature in section 14(2) of the Maintenance Act, had expressly, and unambiguously, provided for a right of appeal **"only"** to the Supreme Court from **an order** made by such High Court as established by Article 154P of the Constitution in the exercise of the appellate jurisdiction vested in it by section 14(1) of the Maintenance Act to be read with Articles 138, 154P(3)(b) of the Constitution and Sections 4,5 and 6 of the Act, with leave to appeal from the High Court, and where such leave is refused, with the special leave of the Supreme Court, first had and obtained under any of those circumstances as enumerated therein. [Emphasis is mine]

Now, the pertinent question is; What then, was the specific objective intended to be achieved by the legislature by expressly, unequivocally and unambiguously, providing by section 14 (2) of the Maintenance Act to be read with Articles 138,

154P(3)(b) of the Constitution, and Sections 9(a) and 10 of the Act for a right of appeal "**only**" to the Apex Court of this country-the Supreme Court, to an aggrieved party **"from an order"** made by a High Court established by Article 154P of the Constitution in the exercise of the appellate jurisdiction vested in by section 14(1) of the Act to be read with Articles 138, 154P(3)(b) of the Constitution, and Sections 4,5 and 6 of the Act with leave to appeal from the High Court, and where such leave is refused, with the special leave of the Supreme Court, first had and obtained under any of those circumstances as enumerated therein?.

In my view, the specific objective intended to be achieved by the legislature by conferring upon a party aggrieved by an order of a High Court established under Article 154P in the exercise of its appellate jurisdiction vested in it by section 14(1) of the Maintenance Act to be read with sections 4,5 and 6 of the Act and Articles 154P(3)(b) and 138 of the Constitution, a right of appeal to the Apex Court in the judicial hierarchy of this Country, namely; the Supreme Court, was to arrest delays in the administration of justice specially, and particularly, in the field of maintenance and to ensure early and expeditious disposal of matters pertaining to the maintenance without prolonging them for; it would otherwise, seriously, and prejudicially, affect the welfare and sustenance of those who are in need of maintenance. In other words, it was the legislative intent to ensure that orders made by Courts in relation to maintenance under the Maintenance Act are not unduly, delayed or prolonged in view of the parties availing themselves of appeals and/or revisions with a ulterior motive to delay or circumvent the orders made against them by Court for; in view of Article 127(1) of the Constitution, the judgement and orders of the Supreme Court shall in all cases, be final and conclusive in all such matters.

The next question that would then arise for our consideration in view of the jurisdictional objection so raised to us by the respondent 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 14(1) of the Maintenance Act?."

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 Mohomed 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."

However, the learned Counsel for the Petitioner in resisting the jurisdictional objection had sought to distinguish the Judgement in **SC Appeal 65/2025(Supra)** on the premise that it dealt with specific statutes (Acts No. 19 of 1990, No. 54 of 2006, and No. 10 of 1996) which contain express provisions creating exclusive Supreme Court jurisdiction using language such as "An appeal shall lie directly to the Supreme Court"; and that The Maintenance Act No. 37 of 1999 contains no such express provision and therefore falls outside the specific statutory framework addressed in SC Appeal 65/2025 (Supra); and that the Supreme Court's holding in that case was explicitly predicated on the existence of express exclusionary statutory language, which is absent in the Maintenance Act.

It may now, be examined.

Section 9(a) of the Act provides for an appeal to the Supreme Court from High Court and it enacts thus;

> "(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 mere 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"

Upon a careful perusal of section 9(a) of the Act, it becomes manifestly, clear that it does not in any manner, use the language such as "An appeal shall lie directly, to the Supreme Court" as contended by the learned Counsel for the Petitioner but the language used therein is "**may appeal therefrom to the Supreme Court**".

On the other hand, section 5(1) and (2) of the High Court of the Provinces (Special Provisions) Act No. 10 of 1996 provides for right of appeal and it enacts thus;

"(1) Any person who is dissatisfied with any judgement pronounced by a High Court established by Article 154P of the Constitution, in the exercise of its jurisdiction under section 2, in any action, proceeding or matter to which such person is a party **may prefer an appeal to the Supreme Court** against such judgement, for any error in fact or in law.

(2) Any person who is dissatisfied with any order made by a High Court established by Article 154P of the Constitution, in the exercise of its jurisdiction under section 2 in the course of any action, proceeding or matter to which such person is, or seeks to be, a party, **may prefer an appeal to the supreme Court against such Order** for the correction of any error in fact or in law, **with the leave of the Supreme Court first had and obtained**."

Similarly, section 5 (1) and (2) of the High Court of the Provinces (Special Provisions) Act No. 10 of 1996, too does not in any manner, use the language such as "An appeal shall lie directly, to the Supreme Court" as contended by the

learned Counsel for the Petitioner but the language used therein is "**may prefer an appeal to the Supreme Court**".

A similar provision to that of the one contained in section 9(a) of the Act and section 5(1) and 5(2) of the High Court of the Provinces (Special Provisions) Act No. 10 of 1996 is found in section 14(2) of the Maintenance Act and it enacts thus;

> "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 and obtained." [Emphasis is mine]

Hence, it clearly, appears that the Petitioner had sought to distinguish the judgement in **SC Appeal 65/2025(Supra)** on a totally, erroneous basis apparently, by reason of his total failure to construe the provisions contained therein, in its proper and correct perspective and as such the contention so advanced by the Petitioner cannot sustain both in fact and law and as such it should be rejected.

It is in this context, let me now examine the provisions contained in Article 128(4) and 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 14(2) of the Maintenance 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 **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 section 14(1) of the Maintenance Act to be read with sections 4, 5 and 6 of the Act and Articles 154P(3)(b) and 138 of the Constitution **on any matter and in the manner specifically provided for by it** as enumerated above. [Emphasis is mine]

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 14(2) of the Maintenance Act, which provides that: "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 and obtained", to be read with sections 9(a) and 10 of the Act and Articles 154P(3)(b) and 138 of the Constitution had clearly, **removed the revisionary jurisdiction of the Court of Appeal in respect of any 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 14(1) of the Maintenance Act to be read with sections 4, 5 and 6 of the Act and Articles 154P(3)(b) and 138 of the Constitution 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 question that arose before this Court for our consideration, namely; "**Whether the Court of Appeal has a revisionary jurisdiction under Article 138 of the Constitution to review and revise a High Court order made in the exercise of its appellate jurisdiction under the Maintenance Act No. 37 of 1999, notwithstanding section 14(2) thereof, which provides for appeals to the Supreme Court**", the pivotal question as to the cumulative effect of sections 14(2) of the Maintenance Act to be read with sections 9(a) and 10 of the Act and Articles 154P(3)(b) and 138 of the Constitution 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 question as to the cumulative effect of sections 14(2) of the Maintenance Act to be read with sections 9(a) and 10 of the Act and Articles 154P(3)(b) and 138 of the Constitution 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 if I may

say so with all due respect, no occasion to examine cumulative effect of sections 14(2) of the Maintenance Act to be read with sections 9(a) and 10 of the Act and Articles 154P(3)(b) and 138 of the Constitution 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 an 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 14(1) of the Maintenance Act to be read with sections 4,5 and 6 of the Act and Articles 154P(3)(b) and 138 of the Constitution by reason of the fact that section 14(2) of the Maintenance Act to be read with sections 9(a) and 10 of the Act and Articles 154P(3)(b) and 138 of the Constitution had clearly, removed the revisionary jurisdiction of the Court of Appeal in respect of an 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 14(1) of the Maintenance Act to be read with sections 4,5 and 6 of the Act and Articles 154P(3)(b) and 138 of the Constitution and vested such jurisdiction "exclusively" in the Supreme Court.

It is to be observed that the jurisdictional objection had undisputedly, been raised by the Respondent only at the stage of the argument of the instant application in revision.

However, in view of my findings as aforesaid, the Court of Appeal does not have revisionary jurisdiction vested in it in terms of Article 138 of the Constitution in respect of an 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 14(1) of the Maintenance Act to be read with sections 4,5 and 6 of the Act and Articles 154P(3)(b) and 138 of the Constitution by reason of the fact that section 14(2) of the Maintenance Act to be read with sections 9(a) and 10 of the Act and Articles 154P(3)(b) and 138 of the Constitution had clearly, removed the revisionary jurisdiction of the Court of Appeal in respect of an 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 14(1) of the Maintenance Act to be read with sections 4,5 and 6 of the Act and Articles 154P(3)(b) and 138 of the Constitution and vested such jurisdiction "exclusively" in the Supreme Court which constitute a patent lack of jurisdiction and therefore, this Court is subjected to a total want of, and/or patent lack of jurisdiction to hear and determine the instant application in revision.

It is trite law that a plea of total want of, and/or patent lack of jurisdiction can be raised at any stage of the proceedings including for the first time in appeal for; no amount of acquiescence, waiver or inaction will cure a such a defect as parties cannot expressly, or impliedly, confer jurisdiction on a Court where none exists-Vide-**Perera Vs. Commissioner of National Housing 77 NLR 361, State Timber Corporation Vs. Moiz Goh Pte Ltd 2002 BALR 44, Ittepana vs Hemawathie 1981 [1] SLR 476, Suriyaarachchi and Others Vs. Liyanage and Another-CA Case No. 272/1997, CA Minutes of 08.06.2018 and JMC Jayasekara Management Centre (Pvt) Ltd Vs. Commissioner General of Inland Revenue SC APPEAL No.05/2021-Decided on 05.03.2025**-all of which were referred to us in the submissions by the Respondent.

In view of all the above facts and the circumstances, I would hold that the jurisdictional objection so raised by the Respondent is entitled to succeed both in fact and law.

I would therefore, uphold the jurisdictional objection so raised by the Respondent.

Hence, I would hold that this Court suffers from a patent lack of jurisdiction to hear and determine the instant application in revision.

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

JUDGE OF THE COURT OF APPEAL

D. THOTAWATTA, J.

I agree.

JUDGE OF THE COURT OF APPEAL