

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

**CA Application No.**  
**COC/42/2024**

*In the matter of Contempt of Court  
under and in terms of the Contempt of  
a Court, Tribunal or Institution Act No.  
8 of 2024 for the offence of Contempt  
of Court of a Court of First Instance  
and the Court of Appeal read together  
with Article 105(3) of the Constitution  
of the Democratic Socialist Republic of  
Sri Lanka.*

1. Lelwala Godakandage Piyananda  
No. 213/7, Aladeniya,  
Werellagama.
2. Delmar Lanka (Private) Limited  
Werellagama, kandy.

**Complainants**

Vs.

1. Godakanda Herbal (Private)  
Limited  
Kandy Road, Weweldeniya.
2. Lelwela Godakandage  
Godakanda  
No. 102, Kandy Road,  
Weweldeniya.

3. Tangaraja Thavayogaraja  
No. 102, Kandy Road,  
Weweldeniya.

**Respondents – Accused**

Before : **Hon. Rohantha Abeysuriya PC, J.(P/CA)**

: **Hon. K. Priyantha Fernando, J.(CA)**

Counsel : Dr. Harsha Cabral, P.C. with Kushan  
Illangatillake and Chamaka Ambagahawita  
for the Complainants.

Dr. Sunil F.A. Cooray with Hemantha Botheju,  
E.M.D. Upali and Nemindu Kariyawasam  
instructed by Thilanka Blok for the accused –  
Respondents.

Written Submissions on : 14.10.2025 for the Accused – Respondents.

Supported on : 28.07.2025

Decided on : 20.02.2026

**K. Priyantha Fernando, J.(CA)**

1. The Petitioner has invoked the jurisdiction of this court seeking the issuance of a Rule against the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents who are Directors of the 1<sup>st</sup> Respondent Company in terms of Section 14 of the Contempt of a Court, Tribunal or Institution Act, No. 8 of

2024 for allegedly violating the Terms of Settlement entered into on 27.09.2024 in the Commercial High Court in case bearing No. HC (Civil) 22/2024/IP.

2. The Respondents having alleged that the charges of contempt have been maliciously filed against them and are an abuse of the judicial process have urged this court to grant leave for the Respondents to file Counter Affidavit before a Rule is issued against them.

THE POSITION OF THE COMPLAINANTS:

3. The Complainants submitted that the action bearing No. HC (Civil) 22/2024/IP was instituted by Plaint dated 03.07.2024, following which the Accused filed Statement of Objections dated 26.08.2024. However, during the interim injunction inquiry the parties agreed to enter into settlement and thus Decree dated 27<sup>th</sup> September 2024 was entered into in terms of the Terms of Settlement (marked 'X3').
4. It was agreed as follows through the said Terms of Settlement:

*“The Defendant agrees and undertakes to the Honourable Court and the Plaintiffs, from the date hereof a minimum period of 24 months, to limit the manufacture, marketing, sale and/or offering for sale any soap product under any trademark that consists of the name ‘VOLIN’ in uppercase, lower case and/or title case (hereinafter referred to as the name ‘VOLIN’) to cartons or other presentations the artwork of which are annexed hereto marked as ‘A1’, ‘A2’, ‘A3’, ‘A4’, ‘A5’, ‘A6’ and ‘A7’.*

*The Defendant agrees and undertakes to withdraw all its products contained in cartons or presentations marked as 'P27b', 'P30b', 'P32b', 'P34b', 'P34c' and or 'P34d' to the Plaintiff and/or all its products bearing the Trademark 'VOLIN' other than those contained in cartons or presentations annexed hereto marked as 'A1', 'A2', 'A3', 'A4', 'A5', 'A6' and 'A7'; from the market within a period of one (1) month from the date hereof.*

*All parties agree and undertake not to directly or indirectly, whether by itself or through any third party, engage in any act or conduct which would result in discrediting, disparaging, ridiculing, bringing into hatred or otherwise lowering the reputation of the products of the other party and/or trademarks of the other party and/or directors, shareholders or employees of the other party.”*

5. The Complainants by their Affidavit made 4 main allegations against the Respondents:

- a. The Respondents have failed to withdraw its products contained in the cartons or presentations marked as 'P27b', 'P30b', 'P32b', 'P34b', 'P34c' and or 'P34d' to the Plaintiff, even after the lapse of 1 month following the date on which the said Terms of Settlement was entered into;
- b. Engaging in activities which demean and lower the reputation of the Complainant by the;

- i. Circulation of leaflets among schools by post through an organisation called “ආර්භෝගික ආරක්ෂක සංවිධානය”.
- ii. Article published in Ceylon Wire News on 15.09.2024 titled “බාල බේබි සබන්තිපදවූ ප්‍රසිද්ධ සමාගම උසාවියේදී වරද පිළිගනී”.
- iii. Circulation of discrediting posts on Whatsapp via the No. 0772675610 belonging to the 2nd Respondent-Accused.
- iv. Interview conducted by a Youtube Channel named ‘Sathya vlogs’ uploaded on or around 01.11.2024 wherein discrediting and ridiculing statements were made about the products of the Complainant by the 2<sup>nd</sup> Respondent.

6. The Complainants contend that the alleged acts of the Respondent are *ex-facie* contemptuous as per the Contempt of a Court, Tribunal or Institution Act, No. 8 of 2024 as they have been carried out in willful disobedience and breach of a decree of the court and with the intention of bringing the authority of the court into disrespect.

#### THE POSITION OF THE RESPONDENTS:

7. The Respondents contended that the material presented by the Complainants’ Affidavit includes fabrications and falsehoods of electronic evidence and misleading statements of facts while suppressing material facts. As such, the Respondents alleged that the charges of contempt against them have been maliciously filed against them and are an abuse of the judicial process. Thus, the Respondents have urged this court to grant leave for the Respondents to file Counter Affidavit before a Rule is issued against them so

that the Complainants do not gain a commercial advantage by eliminating the Respondents from market competition. The Respondents contended that this court has the opportunity to allow the Respondents to present their side of the case and show cause as to why the Complainant's evidence is false and illegal prior to the issuance of a Rule under Section 10(3)(a) owing to this court's inherent judicial power and jurisdiction to do so. Moreover, the Respondents were of the view that such an approach would be consistent with the principles of natural justice.

8. The Respondents submitted that the matter at hand is one that is both familial and commercial in nature. The 1<sup>st</sup> Complainant and 2<sup>nd</sup> Accused-Respondent are brothers and whereas the business owned by the 2<sup>nd</sup> Complainant is run by close relatives of the 1<sup>st</sup> Complainant. Thus, it was the Respondent's contention that this seemingly commercial application is also littered with familial issues.

9. The Respondents further submitted that the issuance of a Rule would cause irreparable prejudice and commercial harm to the Respondents as they are renowned businessmen, and would tarnish their professional and personal reputation. For that reason, the Respondents submitted that in light of such "extraordinary circumstances" a hearing ought to be allowed.

10. The Respondents in their assessment of Section 10 of the Contempt of a Court, Tribunal or Institution Act, No. 8 of 2024 specifically highlighted that the Act is silent on whether or not the Respondent should be heard at this stage to determine whether or not a *prima facie* case exists. The Section does not contain exclusionary language nor

does it prohibit that the Court refers to materials from the Accused before arriving at a decision.

11. Moreover, in terms of what the phrase “satisfying itself” means, the Respondents contended that it is a judicial duty that is more than a mere acceptance of the Complainants’ allegations. The Respondents cited and relied upon the observations set out in *Media Image Ltd v Dissanayake, Wimalachandra* (2006) 3 SLR 215 in which it was held that “*in order to form an opinion, the learned judge may examine the affidavit and other documentary evidence placed before the court disclosing sufficient grounds upon which the contempt charge is framed*”. The Respondents submitted that the procedural provisions of the Act ought to be interpreted in a manner which allows to “facilitate justice, not obstruct it”.

12. Furthermore, the Respondents contended that as held by His Lordship Arjuna Obeysekera J. in *Kahapola Arachige Prabhath, Anuradha Nilupul Fernando v Urban Council Kesbewa and others* CA/COC/05/2018 decided on 28.06.2023, the charge of contempt is very serious in nature, and hence care should be exercised when issuing Rules and summoning the accused before the court.

#### ANALYSIS:

13. Section 10 of the Contempt of Court Act of 2024 sets out the procedure by which the Court of Appeal may assume jurisdiction over contempt of court committed against a court of first instance. However, even the Court of Appeal is not empowered to issue process merely upon the invocation of its jurisdiction. In terms of section 10(3), the Court of Appeal must first peruse the reference, motion, or affidavit filed under

subsection (1) and satisfy itself that a prima facie case of contempt has been established against the person alleged to have committed such contempt before causing a rule to be issued. Section 10(3) reads as follows:

*“The Court of Appeal shall, after perusing the reference made or the motion or affidavit filed under subsection (1), as the case may be, and satisfying itself that a prima facie case of contempt of a court, tribunal or institution, as the case may be, has been established against the person alleged to have committed such contempt, cause a rule to be issued on such person.”*

14. In the recently decided case of *Virgina Perera v M.B.A. Systems (Pvt) Ltd.* SC/CHC/APPEAL/18/2018 delivered on 23.07.2025, it is stated that *“It is sometimes overlooked that contempt is an offence committed against the court itself, and not against any individual party. The confusion frequently arises, as in the present case, when a party invokes the contempt jurisdiction, in effect, on behalf of the court. In this context, it must be emphasised that **there should be no room for overly technical objections in contempt proceedings, although, regrettably, prevailing practice tends to suggest otherwise.**”* (the emphasis was added)

15. His Lordship Justice Samayawardhena goes on to state that: *“The fact that, in proceedings for contempt of court, the matter lies between the court and the alleged contemnor was underscored by the Supreme Court of India in D.N. Taneja v. Bhajan Lal [1988] 3 S.C.R. 888 at 894, in the following terms: A contempt is a matter between the court and the alleged contemnor. Any person who moves the machinery of the court for contempt only brings to the notice of the court certain facts constituting contempt of court. After furnishing such information he may still assist the court, but it must*

*always be borne in mind that in a contempt proceeding there are only two parties, namely, the court and the contemnor.”*

16. The above revelation provides the answer for the submission of the respondents-Accused of this application that they be granted permission to file detailed counter-affidavit demonstrating the falsehoods, fabricated evidence and malicious intent contained in the Complainants’ affidavit, and detailing why no prima facie case has been established. However, such an opportunity cannot and should not be granted since respondents are given notice of the application only as a practice prevailed in this Court which is not necessary at all under the scheme of the Act and the above quoted judgment of the Supreme Court.

17. Through the judgment of *Virgina Perera v M.B.A. Systems (Pvt) Ltd.* SC/CHC/APPEAL/18/2018 delivered on 23.07.2025, His Lordship Justice Mahinda Samayawardhena J. provides an in-depth analysis on the history and source of the charge of Contempt of Court and its modern application in light of the Contempt of a Court, Tribunal or Institution Act, No. 8 of 2024. It was held that **a uniform operation of the contempt of court jurisdiction was necessary especially following the passing of the Contempt of Court Act.**

18. The judgment focuses on the overall position of the Act which has set out that its provisions are “*notwithstanding the provisions of any other written law, but subject to the provisions of the Act*” and highlighted that courts of first instance are vested with the power of hearing and determining such matters, while the Court of Appeal has the concurrent jurisdiction to do so.

19. The judgment reads as follows:

*“I hold that section 18 of the Judicature Act applies to offences of contempt committed against, or in disrespect of, **the authority of any High Court, including the High Court established under Article 154P of the Constitution, whether such contempt is committed in facie curiae or ex facie curiae.** In addition, under Article 105(3) of the Constitution, the Court of Appeal has concurrent jurisdiction to punish for contempt of any court of first instance, including the High Court. Similar provisions have been introduced in section 6(3) of the Contempt of Court Act of 2024, which enacts as follows: 6(3) The Court of Appeal shall have the power to punish for contempt of a Court of First Instance or tribunal or institution, whether committed in its presence or hearing or elsewhere: **Provided however, the provisions of this section shall not prejudice or affect the rights of a Court of First Instance to punish for contempt of itself.** ” (the emphasis was added)*

20. In the instant application, the subject matter or the main case has been instituted in the Commercial High Court on **3<sup>rd</sup> July 2024** (X1) and terms of settlement has been entered on **27<sup>th</sup> September 2024**. The case record containing all the relevant material as well as all the relevant parties have appeared before the Commercial High Court. If the Respondents have violated the settlement decree entered by the Commercial High Court thus, committing the offence of contempt, question arises as to why the Commercial High Court cannot deal with this application when it has been specifically vested with such power by the legislature.

21. The concurrent jurisdiction to deal with contempt vested with the Superior Courts and the Courts of First Instance prevails same before and after the enactment of Contempt of Court, Tribunal or Institution Act No. 8 of 2024.

22. According to the caption of the Motion dated 3<sup>rd</sup> December 2024, the Complainants have filed this application to invoke the jurisdiction vested in this Court under the Contempt of a Court, Tribunal or Institution Act No. 8 of 2024 read together with Article 105(3) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

It would be convenient to reproduce here Article 105(3) of the Constitution which reads as follows:

*“The Supreme Court of the Republic of Sri Lanka and the Court of Appeal of the Republic of Sri Lanka shall each be a superior court of record and shall have all the power of such court including the power to punish for contempt of itself, whether committed in the court itself or elsewhere, with imprisonment or fine or both as the court may deem fit. The power of the Court of Appeal shall include the power to punish for contempt of any other court, tribunal or institution referred to in paragraph 1(c) of this Article, whether committed in the presence of such court or elsewhere:*

*Provided that **the preceding provisions of this Article shall not prejudice or affect the rights now or hereafter vested by any law in such other court, tribunal or institution to punish for contempt of itself**’.*(the emphasis was added)

Article 105(1) provides as follows:

*“Subject to the provisions of the Constitution, the institution for the administration of justice which protect, vindicate and enforce the rights of people shall be:*

*(a) The Supreme Court of the Republic of Sri Lanka,*

*(b) The Court of Appeal of the Republic of Sri Lanka,*

*(c) The High Court of the Republic of Sri Lanka and such other Courts of First Instance, tribunals or such institutions as parliament may from time to time ordain and establish.”*

23. It is important to note that section 18 of the Judicature Act has specifically provided that High Court with the jurisdiction to deal with instances where contempt of court and has also specified the sentence that it could impose on such accused. Section 18 of the Judicature Act provides as follows:

***“The High Court shall have power and authority to take cognizance of and try in a summary manner any offence of contempt committed against or in disrespect of its authority, and on conviction to commit the offender to jail for a period not exceeding five years. Such imprisonment shall be simple or rigorous as the court shall direct and the offender may, in addition thereto, or in lieu thereof, in the discretion of the court be sentenced to pay a fine not exceeding five thousand rupees”.***(the emphasis was added)

24. In the case of **Mary Jean Varma vs. Dr. Chrisantha Nicholas Antony Nonis**-CA (CC) Application No. 11/2016 decided on 24.01.2017, His Lordship P. Padaman Surasena J. (as His Lordship then was) was of the view that there is absolutely no

bar for the Petitioner to file that action in the very High Court (Commercial High Court) before which the very case is pending. After discussing the effect of Article 105 and Section 18 of the Judicature Act, His Lordship has stated as follows:

*“The other aspect which has to be highlighted at this moment is that this is a case involving exercise of original jurisdiction (as opposed to the appellate jurisdiction). Although Article 105(3) of the Constitution has enabled the Court of Appeal to punish for contempt of any court, tribunal or other institution referred to in paragraph 1 (c) of that Article, it should not be taken as if, it is the Court of Appeal that should deal with all the situations of committing contempt of court in any of those institutions referred to in paragraph 1 (c) of that Article throughout the whole country.*

*Number of judges designated to those institutions referred to in paragraph 1(c) of that Article is indeed very much more than the mere twelve judges in the Court of Appeal. Thus, it is manifestly clear that it would not be practically possible for this Court to deal with all such contempt matters if litigants from all over the country start filing such cases before the Court of Appeal. In these circumstances, it is clear that the power given to the Court of Appeal by Article 105(3) of the constitution is a power which the Court of Appeal may use, when necessary, in circumstances that it thinks warrants the exercise of that power.*

***The petitioner has not adduced any acceptable reason as to why it is the Court of Appeal and the Court of Appeal alone which should deal with this case. There is absolutely no bar for the Petitioner to file this case in the very High Court which the very case is pending. Indeed, it would be the learned High Court Judge***

*who is already possessed of the facts and circumstances of this case and who has access to all the material adduced in this case, who would undoubtedly be the best judge to deal with this case.*

*This court has taken a similar view in the case of Metthananda vs. Kushan Fernando in which a similar objection was upheld by this Court. **This court dismissed that application and directed the petitioner to institute that action in the District Court where the alleged subject matter of the complaint was said to have been occurred.***” (the emphasis was added)

25. The situation described above which prevailed before the enactment of new Contempt Act No. 08 of 2024 is unaffected even after the said Act came into force. **Section 6** of the Contempt of a Court, Tribunal or Institution Act, No. 8 of 2024 states as follows:

*“6. (1) The Supreme Court and the Court of Appeal shall have the power to punish for contempt of itself, whether committed in its presence or hearing or elsewhere.*

*(2) Where the Supreme Court or the Court of Appeal, as the case may be, in the exercise of its jurisdiction as referred to in subsection (1), takes cognizance*

*(a) of contempt of court committed in its presence or hearing, the Supreme Court or the Court of Appeal shall hear and determine such matter in accordance with the procedure set out in section 8; and*

*(b) of contempt of court committed otherwise than in its presence or hearing, the Supreme Court or the Court of Appeal shall hear and determine such matter in accordance with the procedure set out in section 9.*

*(3) The Court of Appeal shall have the power to punish for contempt of a Court of First Instance or tribunal or institution, whether committed in its presence or hearing or elsewhere: **Provided however, the provisions of this section shall not prejudice or affect the rights of a Court of First Instance to punish for contempt of itself.***

*(4) Where the Court of Appeal, in the exercise of its jurisdiction as referred to in subsection (3), takes cognizance of contempt of a Court of First Instance or tribunal or institution referred to in that subsection, the Court of Appeal shall hear and determine such matter in accordance with the procedure set out in section 10.”(the emphasis was added)*

26. It is clear from the above Section 6 (3), that the power vested in the Court of Appeal has not affected the rights of the Courts of First Instance to punish for contempt. Situation of concurrent jurisdiction that prevailed even before the Contempt of Court, Tribunal or Institution Act, No. 8 of 2024 has not changed by the new Contempt Act of 2024.

27. With the enactment of the Contempt of a Court, Tribunal or Institution Act, No. 8 of 2024, all courts of first instance—namely, the High Court of the Republic of Sri Lanka, the High Court for a Province established under Article 154P of the Constitution, the District Court, the Family Court, the Small Claims Court, the Magistrate’s Court, and the Primary Court—have been vested with jurisdiction to punish for contempt of court, whether such contempt is committed in *facie curiae* or *ex facie curiae*. This position is evident from the overall scheme of the Act, and particularly from sections 7(1), 11(1) and 15. Section 11(1) of the Contempt of Court Act of 2024 reaffirms the position that all courts of first instance are now vested with jurisdiction to deal with contempt

committed both in facie curiae and ex facie curiae. In terms of section 11, **all High Courts**, District Courts, Family Courts, Small Claims Courts, Magistrates' Courts, and Primary Courts are required to follow the procedure set out in Chapter LXV of the Civil Procedure Code, irrespective of whether the alleged contempt committed is in facie curiae or ex facie curiae.

28. On the totality of all the above circumstances, **although there is a prima facie case to issue a Rule**, I am of the view that the Petitioners should not be allowed to maintain the instant application in this Court, instead of the Commercial High Court for the reasons enumerated above. They are at liberty to file a fresh application in the Commercial High Court. Accordingly, this application is dismissed without costs.

**Judge of the Court of Appeal**

**Hon. Rohantha Abey Suriya PC, J.(P/CA)**

I agree.

**President of the Court of Appeal**