

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

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

**Court of Appeal Revision Application
No: CPA 60/2025**

High Court of Negombo Revision
Application No: HC Rev 13/24
Magistrate's Court of Welisara
Case No: 87361/23.

Batangala Koralalage Dona Nathindra Ashali,
No. 557/2, Heenkenda, Ragama.

Applicant

Vs.

Jayasinghe Mudiyansele Athula Jayasinghe,
No. 26/5, Wimalawatta Road,
Kattiya Junction, Nugegoda.

(Appearing by his Power of Attorney Holder,
Pothpitiyage Don Ravindra Jayarathna,
Jaya Mawatha, Remunagoda, Kalutara South.)

Respondent

AND

Jayasinghe Mudiyansele Athula Jayasinghe,
Unit 23/17-21, Ganges Street,
West End, Qld 4101, Australia.

(Appearing by his Power of Attorney Holder,
Pothpitiyage Don Ravindra Jayarathna,
Jaya Mawatha, Remunagoda, Kalutara South.)

Respondent- Petitioner

Vs.

Batangala Koralalage Dona Nathindra Ashali,
No. 557/2, Heenkenda, Ragama.

Applicant- Respondent

AND NOW BETWEEN

Jayasinghe Mudiyanseelage Athula Jayasinghe,
Unit 23/17-21, Ganges Street,
West End, Qld 4101, Australia.

(Appearing by his Power of Attorney Holder,
Pothpitiyage Don Ravindra Jayarathna.
Jaya Mawatha, Remunagoda, Kalutara South.)

Respondent- Petitioner- Petitioner

Vs.

Batangala Koralalage Dona Nathindra Ashali,
No. 557/2, Heenkenda, Ragama.

Applicant- Respondent- Respondent

Before: **Damith Thotawatte, J.**
K.M.S. Dissanayake, J.

Counsels: Dimuth Senerath Bandara instructed by Shashimini Gunarathna for
the Respondent- Petitioner-Petitioner.
Tharanath Palliyaguruge with Isuru Nanayakkara for the Applicant-
Respondent-Respondent.

Supported: 25.08.2025

Order Delivered: 23.10.2025

Thotawatte, J.

The Respondent-Petitioner-Petitioner (hereinafter sometimes referred to as the "Petitioner") is the Respondent in the maintenance application No. 87361/23 in the Magistrate's Court, Welisara, filed by the Applicant-Respondent-Respondent (hereinafter sometimes referred to as the "Applicant").

The Petitioner had submitted before the learned Magistrate that the Applicant in the maintenance proceedings did not fall within the category of persons entitled to claim maintenance under Section 2 of the Maintenance Act, No. 37 of 1999 (hereinafter sometimes referred to as the "Maintenance Act"), and therefore is not entitled to maintain the said application. However, the learned Magistrate, without having considered the submissions made (paragraph 06 of the petition) on behalf of the Petitioner, had issued an interim order dated 06.12.2023 under Section 11 of the Maintenance Act directing the Petitioner to pay a monthly sum of Rupees Sixty Thousand (Rs. 60,000/-) to the Applicant with effect from November 2023.

The Petitioner had again made an application before the learned Magistrate on 13.12.2023, seeking permission to tender his written submission regarding the said interim order, which was also refused by the Court as reflected in the journal entry dated 13.12.2023 of the attached copy of the Magistrate Court case record.

Being aggrieved by the said interim order dated 06.12.2023 (marked 'B1') and the order of refusal dated 13.12.2023 (marked 'B2'), the Petitioner had filed Revision Application No. HC REV 13/24 before the Provincial High Court of the Western Province holden in Negombo on 19.05.2024, on the following grounds;

- I. The learned Magistrate had granted interim relief without affording the Petitioner an opportunity to establish that the Applicant was not a spouse entitled to maintenance under Section 2 of the Maintenance Act, thereby defeating the purpose of the Act.
- II. The learned Magistrate had disregarded the mandatory provisions of Section 11 of the Maintenance Act.
- III. Relief had been granted to a party who had not approached the Court with clean hands.
- IV. The interim order had been made without affording the Petitioner a fair hearing and without considering all relevant circumstances, in violation of the principles of natural justice.

The High Court had on 13.12.2024, issued an order staying the impugned interim order of the learned Magistrate until the final determination of the Revision Application before the High Court, and thereafter the matter had been fixed for inquiry.

The Petitioner alleges that, on 21.03.2025, the date fixed for inquiry, a different High Court Judge had assumed duties, and without taking up the inquiry, had dismissed the said application observing inter alia;

- i. An application for a declaration of nullity of the marriage was already pending before the District Court of Nugegoda.
- ii. The Petitioner had not exercised his right of appeal against the impugned interim maintenance order.
- iii. Accordingly, there were no grounds to maintain the revision application.
- iv. The parties could, if necessary, apply to the Magistrate to expedite the hearing of the maintenance case.

Being aggrieved by the above-mentioned order dated 21.03.2025, the Petitioner has filed the instant application in this Court on 03.07.2025 seeking, *inter alia*, the following reliefs:

- c) Stay the interim maintenance order dated 06.12.2023 and the related subsequent order dated 28.05.2025 in Welisara Magistrate's Court Case No: 87361/23, until final determination of this Application,
- d) Set aside the order dated 21.03.2025 delivered by the learned judge of the High Court of Negombo in Case No: HC REV 13/24.

On 25.08.2025, the counsel for the Petitioner was heard in support and the counsel for the Applicant heard in opposition to the application.

It has taken the Petitioner nearly four months to challenge the order of the learned High Court Judge. The explanation for this delay, as explained by the Petitioner, is that, acting on the observations of the learned High Court Judge, he had attempted to get the maintenance inquiry concluded expeditiously. However, the learned Magistrate, observing that there is no stay on the interim payment order, had on 28.05.2025, ordered that arrears of the interim payments be made prior to the commencement of the maintenance inquiry and had re-fixed the matter for 27.06.2025. The Petitioner further states that before filing this application, the said matter was scheduled to be called again in court to consider as to how the arrears of payments are to be made.

Again, dissatisfied with the order of the learned Magistrate dated 28.05.2025, the Petitioner has filed this revision application in order to revise all preceding orders.

The Section 14 of the Maintenance Act is as follows;

14.
 - (1) Any person who shall be dissatisfied with any order made by a Magistrate under section 2 or section 11 may prefer an appeal to the relevant High Court established by Article 154P of the Constitution in like manner as if the order was a final order

pronounced by Magistrate's Court in a criminal case or matter, and sections 320 to 330 (both inclusive) and sections 357 and 358 of the Code of Criminal Procedure Act, No. 15 of 1979 shall, *mutatis mutandis*, apply to such appeal:

Provided however, notwithstanding anything to the contrary in section 323 of the Criminal Procedure Code Act, No. 15 of 1979 such order under section 2 shall not be stayed by reason of such appeal, unless the High Court directs otherwise for reasons to be recorded:

Provided further that the Magistrate in forwarding the record to the High Court shall retain a copy of his order for purposes of enforcement.

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

The Maintenance Act stipulates that a person dissatisfied with any order made by a Magistrate under section 11 may prefer an appeal to the relevant High Court. Revision is an extraordinary, discretionary remedy. Revision exists to correct grave miscarriages of justice or exceptional procedural irregularities when no ordinary remedy, such as an appeal, is not available. A revision cannot be maintained when a right of appeal is expressly provided by statute, unless the right of appeal has lapsed without fault of the party seeking revision and exceptional circumstances exist showing that the appellate remedy is inadequate, or there is a possibility of a grave miscarriage of justice. However, it appears that these stringent conditions have escaped the attention of the then High Court Judge when issuing notices in this matter.

The Petitioner's principal ground of challenge to the order of the learned High Court Judge is that the matter was dismissed without being taken up for inquiry. However, on perusal of the certified copy of the High Court record, it appears that the final order of dismissal should be considered together with the lengthy order made on the previous day (13.12.2024) by the previous High Court Judge of the Negombo High Court regarding the extension of the stay order.

The order made pursuant to the extensive submissions (as reflected from pages 321 to 323 of the brief) indicates that the learned High Court Judge had acknowledged that the circumstances had changed since the order dated 29.05.2024, and that the central issue now concerned the existence or validity of the marriage. It is in this context that the succeeding High Court Judge concluded that such matters do not fall within the purview of the High Court.

Considering the facts and circumstances of the case I am of the view that the learned High Court Judge had correctly decided to dismiss the revision application.

By reverting to the Magistrate's Court and seeking to expedite the proceedings, the Petitioner has, albeit reluctantly, acted in conformity with the observations of the High Court and thereby submitted to the jurisdiction of the Magistrate's Court, implicitly accepting the order of the High Court. It is only subsequent to the learned Magistrate directing payment of arrears of interim maintenance that the Petitioner has chosen to challenge the order of the learned High Court Judge. In these circumstances, the Petitioner is now estopped from challenging the order of the learned High Court Judge dated 21.03.2025.

The Petitioner has averred no acceptable exceptional grounds to justify this revision. As such, I refuse to issue notices formally on the Respondents and dismiss this application subject to a cost of Rs. 20,000/- to be paid by the Respondent-Petitioner-Petitioner.

Judge of the Court of Appeal

K.M.S. Dissanayake, J.

I agree

Judge of the Court of Appeal