

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

In the matter of an application for Restitutio-in-  
Integrum/Revision under and in terms of Article  
138 of the Constitution of the Republic of Sri  
Lanka.

**Court of Appeal Case No.CA/RII/31/2025**

**DC Nugegoda Case No.D/3526/17**

Aloka Ruwanthie Marleen Honemeyer,  
No.70/7A, Dehiwela Road,  
Papiliyana.

**And presently at**

S.T. No.12 Villa No.10  
Sharjha,  
U.A.E.

**PLAINTIFF**

**Vs.**

Shaminda Dhanawardhana Guruge,  
No.884, Weligampitiya,  
Ja-ela.

**DEFENDANT**

**AND NOW**

Aloka Ruwanthie Marleen Honemeyer.  
No.70/7A, Dehiwela Road,  
Papiliyana.

**And presently at**

S.T. No.12 Villa No.10,  
Sharjha,  
U.A.E.

**PLAINTIFF-PETITIONER**

**Vs.**

Shaminda Dhanawardhana Guruge,  
No.884, Weligampitiya,  
Ja-ela.

**DEFENDANT-RESPONDENT**

**Before:** **R. Gurusinghe J.**

**&**

**Dr. Sumudu Premachandra J.**

**Counsel:** Varuna Nanayakkara for the Plaintiff-Petitioner.

Chathura Galhena with Devmini Bulegoda Instructed  
by Dharani Weerasinghe for the Defendant-  
Respondent.

**Written Submissions:** By the Petitioner Not filed.

By the Respondents – Not filed.

**Supported On** : 06/06/2025

**Argued On** : 14/01/2026

**Order On** : 12/02/2026

**Dr. Sumudu Premachandra J.**

1] In this application, the Plaintiff-Petitioner prays that this Court be pleased to:

-

- a) Issue Notice on the Defendant-Respondent,
- b) Revise and/or set aside and/or vary the orders of the Learned District Judge of Nugegoda marked X13, X14 and X15,
- c) Allow the Plaintiff-Petitioner to cross-examine the Defendants' credibility and character, and in respect of his extramarital relationships and cruelty on the part of the plaintiff (wife) by marking the photographs marked P1 to P12,
- d) Issue an order, recalling the Defendant-Respondent to be cross-examined in respect of his credibility and character and cruelty if the evidence of the witness is concluded,
- e) Order costs and,
- f) Grant such other and further relief as Your Lordships Court shall seem meet.

2] The brief history of this case is as follows. The Petitioner (the wife) originally sought a divorce on the ground of constructive malicious desertion and permanent alimony of Rs. 50 million, and child custody against the Respondent (Husband). In response, the Respondent filed a cross-claim seeking a divorce on the ground of malicious desertion and Rs. 75 million in damages.

3] The core of this specific application challenges three orders made by the learned District Judge of Nugegoda marked X13, X14 and X15. Basically, these

orders prevented the Petitioner from marking photographs as P1 to P12 and cross-examining the Respondent regarding his alleged relationship with another woman and a child born out of wedlock. The Petitioner argues that these rulings are legally flawed, as they allegedly violate Section 175(2) of the Civil Procedure Code<sup>1</sup> and Section 146 of the Evidence Ordinance<sup>2</sup>, effectively blocking her from testing the Respondent's credibility and proving "cruelty."

4] It is seen that following the dismissal of the revision application of WP/HCCA/MT/07/2024/RA, which was delivered by the Civil Appeal High Court in December on 19/12/2024 (marked as X18), the Petitioner is now invoking the "Restitutio-in-Integrum" and revisionary jurisdiction of this Court.

5] The Petitioner contends that the lower court's refusal to allow evidence of the Respondent's sexual conduct has caused her grave prejudice and a miscarriage of justice. She requests that the impugned orders be set aside, arguing that no other remedy is available to her because she could not appeal to the Supreme Court in time due to her residence abroad.

6] The Respondent's primary legal argument is that the Petitioner has failed to establish the "exceptional circumstances" required for the Court of Appeal to exercise its revisionary jurisdiction, especially since a similar revision application was already dismissed with costs by the Civil Appellate High Court of Mount Lavinia as mentioned above.

7] The core of the dispute involves the Petitioner's attempt to introduce photographic evidence of an alleged adulterous relationship during cross-examination. The Respondent argues that the District Court judge was correct to disallow this evidence because the Petitioner did not originally plead adultery

---

<sup>1</sup> "175(2) A document which is required to be included in the list of documents filed in court by a party as provided by subparagraph (ii) of paragraph (b) of section 79B and which is not so included or not permitted by court under section 142D shall not, without the leave of the court, be received in evidence at the trial of the action:

*Provided that nothing in this subsection shall apply to documents produced for cross examination of the witnesses of the opposite party or handed over to a witness merely to refresh his memory."*

<sup>2</sup>"When a witness is cross-examined, he may, in addition to the questions herein before referred to, be asked any questions which tend(a) to test his accuracy, veracity, or credibility; (b) to discover who he is, and what is his position in life; or (c) to shake his credit, by injuring his character"

as a cause of action. Therefore, the Respondent requests to dismiss the application in limine (at the threshold) for lack of jurisdiction and grant costs in favour of the Respondent.

8] On 14/01/2026, when this matter was to be supported for formal notices, the Learned Counsel for the Respondent raised a preliminary objection with regard to the jurisdiction and maintainability of this action. The objection was that in view of the S.C. /Appeal/ 65/2025, **W.T. S. Nilantha Fernando vs P.M.S. Nilanthi Perera** , dated 10/10/2025, the Court of Appeal does not have jurisdiction over the orders delivered by the High Court of Civil Appeals in exercising revisionary jurisdiction. In that, His Lordship Samayawardhena, J. has stressed with regard to the jurisdiction as follows;

*“Hence, I hold that the Court of Appeal has no jurisdiction, whether by way of final appeal, revision, or restitutio in integrum, to review the judgments or orders of the Provincial High Court, whether in the exercise of its appellate jurisdiction under Act No. 19 of 1990, as amended by Act No. 54 of 2006, or in the exercise of its original jurisdiction under Act No. 10 of 1996. Such jurisdiction is vested exclusively in the Supreme Court.”*

9] The Learned Counsel for the Petitioner said that they have not sought to revise the order of WP/HCCA/MT/07/2024/RA delivered by the Civil Appeal High Court in December on 19/12/2024, (marked as X18), but to revise the orders of the Learned District Judge of Nugegoda marked X13, X14 and X15.

10] When perusing the X18, it is abundantly clear that the orders were sought from the Mount Lavinia Civil Appeal High Court to set aside the very same orders of the learned District Judge of Nugegoda marked X13, X14 and X15. The learned Judges of the High Court of the Civil Appeal, Mount Lavinia, have dismissed the application after due consideration.

11] This court is of the view that if the application is allowed, it will indirectly set aside the order of WP/HCCA/MT/07/2024/RA, which was delivered by the Civil Appeal High Court in December on 19/12/2024.

12] The legal maxim is "*what cannot be done directly, cannot be done indirectly*" (*quando aliquid prohibetur ex directo, prohibetur et per obliquum*). Thus, we are of the view that the Petitioner, has prayed to set aside the District Court orders, if it was allowed, it will indirectly affect the High Court Order.

13] His Lordship Janak De Silva J. in **P.S. Weeraratne v. Public Service Commission**, CA Writ 410/2009 decided on 03/05/2019, has refused to grant relief in applying the aforesaid legal maxim stating that would indirectly impugn the decisions of the Public Service Commission based on "an established rule of interpretation" that a court cannot do something prohibited directly, indirectly.

14] We are of the view that there cannot be revision over revision in parallel jurisdictions. Thus, we uphold the preliminary objection.

15] Be that as it may, as the dispute involves the Petitioner's attempt to introduce photographs of an unidentified female with the Respondent to prove an adulterous relationship. The ground of adultery was never pleaded in the original divorce plaint, nor was the female in question named as a co-defendant, which violates the rules of natural justice, if allowed the application amidst the tail end of the trial.

16] Further, there is a remedy for the Petitioner for the dismissal of the High Court case, that is to file a Special Leave case to the Supreme Court, which was never exercised. The reason stated was that the Petitioner was abroad and thus, the Special Leave application cannot be filed is not an acceptable ground as she has already instructed to proceed with the District Court Case and Civil Appeal High Court Case without any hindrance, while overseas. We specifically see that

the original case was filed on 20/09/2017, and the main matter was delayed due to these incidental issues.

17] In the above circumstances, we see no merit in this application. Thus, we refuse to issue formal notice. The application for Restitutio-in-Integrum / Revision is dismissed. No Costs.

JUDGE OF THE COURT OF APPEAL

R. GURUSINGHE J.

I agree

JUDGE OF THE COURT OF APPEAL