

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

In the matter of an application for Injunctions under and in terms of Article 143 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Sherrene Patience Christabel Fernando
Wijeyaratne,
No.716/3, D.P. Wijesinghe Mawatha,
Pelawatta,
Battaramulla.

PETITIONER

Case No.CA/INJ/07/2023

Vs.

1. S and L Investments (Pvt) Ltd.,
No.28, Elibank Road.
Colombo 05.
2. S and L Property Management (Pvt) Ltd.,
No.13, Dickman's Lane,
Colombo 04.
3. Ceylinco Ltd.,
Ceylinco House,
No.69, Janadipathi Mawatha,
Colombo 01.
4. Naullage Lalith Amarasinghe,
No. 90/A/12B, Midland Watta,
Seeduwa Road,
Kotugoda.

5. Kankanamge Sarath Dharmasiri Priyanjana
Wanniarachchi,
No.104/93, Sri Bodhi Place,
Janaraga Mawatha,
Colombo Road,
Gampaha.
6. Godellawatta Arachchige Nishmi Rasangika,
No.295/03, 2nd Lane,
Samagi Mawatha,
Hewagama,
Kaduwela.
7. Palenda Liyanage Saman Kumara,
No.507/A16, Privilege Homes,
Maharagama Road,
Arangala,
Malabe.
8. Nirosha Priyadarshanie Daundage,
No.72, Yogasrama Mawatha,
Thelawala,
Mount-Lavinia.
9. Halpandeniyaage Dinesh Sandaruwan
Jayaweera,
No.160 B, Perakum Mawatha,
Bangalawatta,
Kottawa.
10. Hewa Pathiranage Chandi Rasika,
No.224, Aruggoda Road,
Alubomulla.

11. Liyana Arachchige Anjantha Kumudini
Liyantarachchi,
In front of the Temple,
Ihala Bopitiya,
Pelmadulla.
12. Mithuro Café (Pvt) Ltd.,
No.09,
R.A.De Mel Mawatha,
Colombo 4.
13. Climax Consultants (Pvt) Ltd.,
No.13,
Dickman's Lane,
Colombo 4.

RESPONDENTS

AND NOW

In the matter of a motion filed under and in terms of Section 9 of the Contempt of a Court, Tribunal or Institution Act. No.8 of 2024 read together with Article 105 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Sherrene Patience Christabel Fernando
Wijeyaratne,
No.716/3, D.P. Wijesinghe Mawatha,
Pelawatta,
Battaramulla.

PETITIONER

Vs.

1. Mithuro Café (Pvt) Ltd.,
No.09, R.A. de Mel Mawatha,
Colombo 04.
2. Nirosha Priyadarshanie Daundage,
No.72, Yogasrama Mawatha,
Thelawala,
Mount-Lavinia.
3. Daundage Asela Sanjeewa,
No.72, Yogasrama Mawatha,
Telawala,
Mount-Lavinia.
4. Kaburawala Withanaga Nimantha Shehan
Withanage,
No. 195 B/2, Gramodaya Mawatha,
Lihiniywawa,
Meegahathanna.

CONTEMNOR-RESPONDENTS

Before: R. Gurusinghe J.

&

Dr. Sumudu Premachandra J.

Counsel: Eraj De Silva PC with Daminda Wijayaratne, Zul Luthufi, Instructed by Vidanapathirana Associates for the Petitioner.

Ali Sabry PC with Shehani Alwis and Vimukthi Karunarathna for the Respondents,

Written Submissions: Written Submissions on behalf of the 7th and 8th Respondents on 16th July 2025.

Written Submissions on behalf of the 3rd to 6th Respondents filed on 14th July 2025.

Written Submissions on behalf of the 1st, 2nd and 3rd Contemnor Respondents filed on 14th July 2025.

Written Submissions of the Petitioner – Not filed.

Inquiry held On: 26/06/2025.

Order On: 28/08/2025.

Order on Recalling Contempt Summons

1] The Petitioner, filed a motion under and in terms of Section 9 of the Contempt of a Court, Tribunal or Institution Act. No.8 of 2024 read together with Article 105 of the Constitution of the Democratic Socialist Republic of Sri Lanka against Contemnor Respondents.

2] The Petitioner states that they were a depositor of Golden Key Credit Card Company Ltd. (GKCCCL) and a party in SC (FR) 191/2009 before the Supreme Court, which declared that the Petitioner-Respondent and her daughters had no valid shareholding or directorship in the 1st and 2nd Respondent Companies. The Supreme Court ordered that all such shares be transferred to a Special Purpose Vehicle (SPV) to settle depositors' funds, nullified any contrary transactions, and directed the Attorney General to take action against any obstruction. The SPV was later dissolved, and its assets were transferred to GKCCCL solely for the purpose of settling deposits. The Petitioner alleges that the Petitioner-Respondent has misled the Court by falsely claiming ownership

and initiating this case in bad faith, despite clear Supreme Court directives nullifying such claims.

3] Further, the Petitioner asserts that Respondents 3 to 13 unlawfully acquired properties belonging to the 1st and 2nd Respondent Companies, in direct violation of Supreme Court orders and bail conditions of Lalith Kotelawala. These transactions were declared null and void, and the Supreme Court has since directed the CID to investigate the illegal acquisitions, with contempt proceedings currently ongoing under SC (Contempt) 004/2024. That was the previous standing of the related (main) case.

4] The Petitioner filed CA/INJ/07/2023 seeking injunctive relief under Article 143 of the Constitution. Interim orders were issued ex parte on 01/12/2024, including Order C (iv), which prevents Respondents from “receiving benefits” from the assets of the 1st to 3rd Respondent Companies and the Sicille Kotelawala Trust. The Respondents raised several preliminary objections, including that the application is beyond the scope of Article 143, is not maintainable, and that the Petitioner acted without utmost good faith

5] The Contemnor Respondents say that the Petitioner subsequently filed this contempt application alleging a breach of interim order C (iv). This was supported on 12/03/2025 without due notice to the Contemnor Respondents, who only received notices on the same day. It is submitted that the interim order in question is vague, excessively broad, and incapable of being interpreted clearly. Business activities carried out by the 1st Contemnor (Mithuro Café Pvt Ltd) were routine and unrelated to any prohibited benefit under the order.

6] The Contemnor Respondents say that contempt cannot be sustained where the underlying order is ambiguous. Furthermore, issuing summons without sufficient grounds violates procedural fairness, and courts have the inherent power to recall such summons. Further they say that the Petitioner has a history of failed litigation on similar facts, has misused Article 143, and failed to act in good faith, including misleading the Court and suppressing notice of the contempt motion. Thus, they sought that both the main application and

contempt proceedings should be dismissed, and the summons recalled. This order only considers whether the contempt summons should be recalled or not.

7] It should be noted that contempt summons is issued under section 9 of the Contempt of a Court, Tribunal or Institution Act. No.8 of 2024. The section says;

“9. (1) The Supreme Court or the Court of Appeal, as the case may be, may take cognizance of contempt of court committed against it, or in disrespect of its authority, other than contempt of court committed in its presence or hearing, on-

(a) its own motion;

(b) a motion filed by the Attorney-General, together with any document or thing in support of the motion; or

(c) a motion filed by any other person, together with an affidavit and any document or thing in support of the motion.

(2) Every motion or affidavit filed under subsection (1) shall set out the particulars of the contempt of court alleged to have been committed by the person alleged to have committed the contempt of court.

(3) The Supreme Court or the Court of Appeal, as the case may be, shall, after perusing the motion, and the affidavit, document or thing filed under subsection (1) and satisfying itself that a prima facie case of contempt of court has been established against the person alleged to have committed such contempt;

(a) cause a rule to be issued on such person signed by the Registrar of the Court, giving particulars in writing of the contempt of court with which he is charged;

(b) direct that such rule, together with a copy of the document filed under subsection (1), be served personally on such person; and

(c) fix a date for the hearing of the charge”

8] Article 105(3) of the Constitution sets out the power of contempt proceedings as follows;

“105 (3) 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 powers 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.”

9] Initially, this was a constitutional injunction sought under Article 143 of the Constitution. The Article says;

“143. The Court of Appeal shall have the power to grant and issue injunctions to prevent any irremediable mischief which might ensue before a party making an application for such injunction could prevent the same by bringing an action in any Court of First Instance:

Provided that it shall not be lawful for the Court of Appeal to grant an injunction to prevent a party to any action in any court from appealing to or prosecuting an appeal to the Court of Appeal or to prevent any party to any action in any court from insisting upon any ground of action, defence or appeal, or to prevent any person from suing or prosecuting in any court, except where such person has instituted two separate actions in two different courts for and in respect of the same cause of action, in which case the Court of Appeal shall have the power to intervene by restraining him from prosecuting one or other of such actions as to it may seem fit.”

10] The Injunctions were given ex parte on 01/12/2023. When the matter was called on 15/12/2023, the learned President’s Counsel for the 3rd to 6th

Respondents had made arrangements with the Petitioner's President Counsel and undertook not to alienate properties or shares. Thus, interim orders issued on the Respondents varied; however, it was extended till 11/02/2025, and the application for contempt was filed. The notices to be sent on Contemnor Respondents when tendered by the Petitioner. On 04/03/2025, notices were dispatched and the matter was to be supported on 11/03/2025. On that day, the Petitioner moved to amend the papers. On 12/03/2025, contempt papers were supported and the rule was issued. It is seen within six working days the matter was supported. If the papers were amended the amended papers should be reissued on Contemnor Respondents. The record shows that it was not done. On 02/04/2025, without pleading to the charge, Contemnor Respondents move that the rule and summons on contempt should be recalled. This matter was supported on 26/06/2025. That was the backdrop of this application.

11] The rule issued in relation to prayer C(iv) is shown as;

“preventing the 4th to the 13th Respondents and/or any one or more of them from directly/ and/ or indirectly dealing with and/or receiving benefits from the assets of the 1st, 2nd and 3rd Respondents Companies and/or the asset belonging to the Sicille Kotalawala Trust including those set out in the schedule hereto”

12] Eight (8) contempt charges have been levelled against the Contemnor Respondents. The Respondent has filed an affidavit along with a letter of the Ratmalana Post Master stating that rule and summons were served on 12/03/2025, the day the Rule was issued. The court notes that therefore ex parte rule was issued.

13] Despite the above fact, the Contemnor Respondents say that interim Order C(iv) is excessively wide, lacks clarity, not precise and not specified to cover the contempt. The application to recall contempt summons is based on the above facts.

14] I now consider the merits of the application. It was held that in **PERIANNAN VS BANDARAWELA MULTI-PURPOSE CO-OPERATIVE SOCIETY AND ANOTHER**, [2006] 1 SLR 169, His Lordship JAGATH BALAPATABENDI, J. held;

“The summons or the charge sheet served on the respondents-accused do not disclose any violation of the judgment of the Court of Appeal and further the summons or the charge sheet do not specify the offences committed by the respondents accused...”

A person should not be punished for contempt of court unless a charge is formulated either specifically or in the form of a rule nisi”.

15] In ***Moses v Welaratne*** [2007] 1 Sri L.R 78, Her Ladyship Rohini Perera, J., held;

“It is a well-recognized principle of law that no person ought to be punished for contempt of Court, unless the specific charge against him be distinctly stated and opportunity of answering it had been given to him.”

16] It should be noted that when the matter was called on 15/12/2023, the learned President’s Counsel for the 3rd to 6th Respondents had made arrangements with the Petitioner’s President Counsel and undertook not to alienate properties or shares. Thus, interim orders were issued on the Respondents varied. Thus, there is no bar apart from alienating properties or shares. This situation itself shows that the interim orders issued are ambiguous and not precise.

16] In ***Media Image Ltd Vs. Dissanayake*** [2006] 3 SLR 215, Wimalachandra. J. held that;

“(1) ...

(2) Contempt proceedings even to punish for Court contempt are in the nature of criminal proceedings, even if contempt is not a crime it bears a criminal character.

(3) In contempt proceedings, as in any other criminal case instituted in a Magistrate's Court, before issuing summons the Court has to be satisfied that the petitioner has disclosed sufficient grounds to proceed against the respondents.

(4) The trial judge should form an opinion as to whether there were sufficient grounds for him to issue summons under section 793”

17] In **Herath Mudiyanseleage Vijitha Herath vs K.M. Mahinda Siriwardana**, SC /Contempt No. 02/2023, Decided on: 14/11/2023, their Lordships of the Supreme Court considered the mental element of contempt and cited with approval the views of the court in *Sectorguard plc v Dienne Plc* [2009] EWHC 2693 (Ch), that:

“...failure to perform an impossible undertaking is not a contempt. The mental element required of a contemnor is not that he either intends to breach or knows that he is breaching the court order or undertaking, but only that he intended the act or omission in question, and knew the facts which made it a breach of the order.

Nonetheless, even a mental element of that modest quality assumes that the alleged contemnor had some choice whether to commit the relevant act or omission. An omission to do that which is in truth impossible involves no choice at all. Failure to comply with an order to do something, where the doing of it is impossible, may therefore be a breach of the order, but not, in my judgment a contempt of court”

18] It is to be mindful that when the Court is deciding whether an offence of contempt appears to have been committed, the Court should consider four elements, namely: (a). existence of an undertaking or an order, (b). knowledge of the undertaking or order, (c). ability to comply with the undertaking or the order, (d). willful contumacious disobedience of undertaking or order. The Petitioner should satisfy the court that there is sufficient evidence for the Court to conclude that the Respondents had the ability to comply with the said order. The contempt may be in-facie curiae or ex-facie curiae.

19] In the case in hand, all the Respondents of the main case contend that no constitutional injunction lies for the Petitioner, thus issuing contempt summons is ex facie bad. As we noted above, the impugned orders were made ex parte on the day of inquiry, and the summonses were served. This violates the rules of natural justice. Moreover, it is unclear whether the original interim orders were

relaxed and reduced on the limited undertaking, which does not cover order C(iv). The impugned breach was not done in facie curiae (in front of the court) but ex facie curiae (outside the court); thus, this court cannot take notice whether there is any breach. Since contempt is a criminal category, it has to be proved beyond reasonable doubt by the Petitioner. We do not see that a prima facie case has been made out on the available facts.

20] In **MALINIE GUNARATNE, ADDITIONAL DISTRICT JUDGE, GALLE v. ABEYSINGHE AND ANOTHER** [1994] 3 SLR 196, His Lordship S. N. Silva, J., P/CA (As he then was), considered what needs to be considered on issuing summons on private complaint under 139 of the Criminal Procedure as;

“The words “sufficient ground” embraces both the ingredients of the offence and the evidence of its commission. Since the opinion relates to the existence of sufficient ground for proceeding against the person accused, the material acted upon by the Magistrate should withstand an objective assessment.

The proper test is to ascertain whether on the material before Court, prima facie, there is sufficient ground on which it may be reasonably inferred that the offence alleged in the complaint or plaint has been committed by the person who is accused of it.”

21] On the above circumstances, we are compelled to quash the rule and recall the contempt summons which was issued against the Contemnor Respondents.

JUDGE OF THE COURT OF APPEAL

R. GURUSINGHE J.

I agree

JUDGE OF THE COURT OF APPEAL