

**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(1) of the Constitution of the Democratic Socialist Republic of Sri Lanka against the order of the High Court in Kurunegala in the case No. HCR 08/2015 dated 26<sup>th</sup> June 2015

Ratnasinghe Arachchige Biso Padma,  
Pitakanda Road, Mawathagama.

**Applicant**

**Vs.**

Jayasingheghe Premarathne Jayasinghe  
Pamunuwa, Minuwangoda.

**Respondent.**

**Court of Appeal case no.  
CA/PHC/APN/142/2016**

**H.C. Kurunegala case  
no. HCR 08/15**

**M.C. Kurunegala case  
no. 46456**

**AND**

Jayasingheghe Premarathne Jayasinghe  
Pamunuwa, Minuwangoda.

**Respondent Petitioner.**

**Vs.**

Ratnasinghe Arachchige Biso Padma,  
Pitakanda Road, Mawathagama.

**Applicant Respondent.**

**AND NOW**

Jayasinghege Premarathne Jayasinghe  
Pamunuwa, Minuwangoda.

**Respondent Petitioner Petitioner.**

**Vs.**

Ratnasinghe Arachchige Biso Padma,  
Pitakanda Road, Mawathagama.

**Applicant Respondent Respondent.**

**Before** : H.C.J.Madawala J.  
: L.T.B. Dehideniya J.

**Counsel** : D. Karanaratne for the Respondent Petitioner Petitioner.

**Supported on:** 02.12.2016

**Decided on** : 08.12.2016

**L.T.B. Dehideniya J.**

This is a revision application filed against an order of the High Court of Kurunegala pronounced on a revision application canvassed the order delivered on a maintenance application by the Magistrate Court. The learned High Court Judge dismissed the revision application and this application is to revise the said order.

Without filing an appeal, whether a revision application can be maintained against an order made on a revision application is in issue. This application is to revise an order of the High Court made on an

application for maintenance filed under the Maintenance Ordinance. The Ordinance was repealed by the Maintenance Act No 37 of 1999. The section 20 of the Maintenance Act it has provided that;

*20. (1) Notwithstanding the repeal of the Maintenance Ordinance-*

*(a) all proceedings instituted under that Ordinance; and*

*(b) all appeals from orders made under that ordinance,*

*and pending on the day preceding the date of commencement of this Act shall be heard and disposed of, in all respects, as though such Ordinance had not been repealed.*

*(2) Every order made under the Maintenance Ordinance and pending on the day preceding the date of commencement of this Act, shall be deemed to be an order made under this Act and may be enforced accordingly.*

Under this section only the appeals pending before the on the day of commencement of the Act are to be heard under the repealed Ordinance. This revision application is filed long after the commencement of the Maintenance Act. Therefore the provisions of the new Act shall apply to this application.

Under section 14 of the Act the procedure for appeal is provided. The section reads;

*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.*

As per subsection (2) of section 14, the appeal from the High Court is to the Supreme Court, not to the Court of Appeal. Therefore when the appellate jurisdiction is specifically vested with the Supreme Court by the Legislature, can a party file a revision application, which is also exercised as a part of the appellate jurisdiction, is questionable. The case of *Abeywardene V. Ajith De Silva* [1998] 1 Sri L R 134 was decided on the issue of Appellate jurisdiction on the matters where the High Court pronounced orders on revision applications. In that case the Court held that “A direct appeal does not lie to the Supreme Court from the order of the High Court in the exercise of its revisionary jurisdiction. An appeal from such order should be made to the Court of Appeal”. Whether this authority can be applied to the Maintenance Act is a matter to be argued

because the Maintenance Act is being a special law which has been enacted after the said judgment with specific provision where the appellate jurisdiction was vested in the Supreme Court by the Legislature.

Under these circumstances, I assume that this Court shall not make a determination on these issues without having the privilege of hearing both parties. Therefore, without making a decision and without prejudice to any objection, on jurisdiction, I proceed to consider the merits of the application.

The Respondent Petitioner's (the Petitioner) application to the High Court was to set aside the orders of the learned Magistrate dated 06.08.2001 and 04.08.2015. The facts of this application are that the Applicant Respondent (the Respondent) made an application for maintenance of herself and two minor children. The Court at the first instance ordered to pay maintenance to the children with consent of the Petitioner. The application in relation to the maintenance of the wife has taken a considerable time and on 06.08.2001 the Court ordered to pay Rs. 1000.00 per month as maintenance to the Respondent. Being aggrieved by the said decision the Petitioner filed an appeal in the High Court. A copy of the petition of appeal is attached to the certified copy of the case record of the Magistrate Court marked P1. The Petitioner is absolutely silent in his application to this Court as well as in the application to the High Court on this appeal. Thereafter the Court enhanced the amount of maintenance to Rs. 4000.00 on 08.07.2014. The Petitioner filed one revision application in the High Court of Kurunegala to revise the both orders of the learned Magistrate dated 06.08.2001 and 04.08.2015.

The learned High Court Judge has come to the conclusion that there is a delay in making the application to revise the order dated

06.08.2001 and has not disclosed the fact that there was an appeal prior to this application. I am in total agreement with the learned High Court Judge on this finding. The Petitioner has failed to explained the delay even in this Court.

*Seylan Bank v. Thangaveil [2004] 2 Sri L R 101 at 105,*

*In this application in revision the petitioner seeks to set aside the orders dated 7.3.2002 and 10.01.2002 made by the learned District Judge. The petitioner has filed this application on 17.7.2003. It appears that there is a delay of one year and four months in respect of the order dated 7.3.2002 and a delay of seven months from the order dated 10.01.2003. The petitioner has not explained the delay. Unexplained and unreasonable delay in seeking relief by way of revision, which is a discretionary remedy, is a factor which will disentitle the petitioner to it. An application for judicial review should be made promptly unless there are good reasons for the delay. The failure on the part of the petitioner to explain the delay satisfactorily is by itself fatal to the application.*

In the present case there is an unexplained delay of 14 years.

The learned High Court Judge was of the view that the relevant documents were not tendered to the Court with the revision application. Under the Rule 3(1) of the Court of Appeal (Appellate Procedure) Rules 1990, the material documents have to be filed with the application. Failure to submit the material documents is considered as a fatal defect by the superior courts. In this Court we are considering whether the order made by the learned High Court Judge is erroneous. The defect made in the High Court by the Petitioner by not submitting the relevant documents with the revision application, cannot be rectified by tendering them to this Court. The application made to the High Court will remain as

a defective application. Therefore the order of the learned High Court Judge that the application is bad correct and it will not become incorrect by tendering those documents to this Court.

Under these circumstances, I see no reason to issue notice on the Respondent.

Notice refused and the application dismissed.

Judge of the Court of Appeal

**H.C.J.Madawala J.**

I agree.

Judge of the Court of Appeal