

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

Court of Appeal Case No.
CA (PHC)/0235/2019

Revision Application No.
HCRA 56/2019
Magistrate's Court Kandy
Case No. 16048/18

Vs

Officer in Charge
Miscellaneous Division
Police Station
Kandy.

Complainant

1. Kosangegedara Pushpa Ramya
Rajani
Ranasinghe, No.36 A, Vidyala
Mawatha, Mawilmada, Kandy.

1st Party

2. Sri Nishanka Udugedara
Nidharshana
No.21 C, Dhammasidi Mawatha,
Asgiriya
Kandy
3. Sri Nishanka Udugedara Darshana
No. 182D, Edaduwawa Road,
Peradeniya.
4. Shesha Nihathamani Gunaratna,
No.259, Thalathuoya Road,
Gurudeniya.

2nd Party

AND BETWEEN

1. Sri Nishanka Udugedara
Nidharshana
No.21 C, Dhammasidi Mawatha,
Asgiriya
Kandy
2. Sri Nishanka Udugedara Darshana
No. 182D, Edaduwwa Road,
Peradeniya
3. Shesha Nihathamani Gunaratna,
No.259, Thalathuoya Road,
Gurudeniya.

2nd Party Petitioners

Vs.

Kosangegedara Pushpa Ramya Rajani
Ranasinghe, No.36 A, Vidyala
Mawatha, Mawilmada, Kandy.

1st Party Respondent

AND NOW BETWEEN

1. Sri Nishanka Udugedara
Nidharshana
No.21 C, Dhammasidi Mawatha,
Asgiriya
Kandy
2. Sri Nishanka Udugedara Darshana
No. 182D, Edaduwwa Road,
Peradeniya

3. Shesha Nihathamani Gunaratna,
No.259, Thalathuoya Road,
Gurudeniya.

2nd Party Petitioner-Appellants

Vs

Kosangegedara Pushpa Ramya Rajani
Ranasinghe, No.36 A, Vidyala
Mawatha, Mawilmada, Kandy.

1st Party Respondent Respondent

Before : **D. THOTAWATTA, J.**
K. M. S. DISSANAYAKE, J.

Counsel : H.D.C.D. Hathurusingha with
Shiral Lakthilaka instructed by Aftab
Jameel for the 2nd Party Petitioner-
Appellants.

Shantha Jayawardena with Azra
Basheer for the 1st Party Respondent-
Respondent.

Written Submissions
of the 2nd Party Petitioner-Appellant
Petitioner tendered on : 29.05.2026

Written Submissions
of the 1st Party -Respondent
-Respondent

tendered on : Not tendered.

Decided on : 31.07.2026

K. M. S. DISSANAYAKE, J.

When this matter came on before us on 30.04.2026 for argument, attention of this Court has been drawn to the fact that the instant appeal had been filed against an interlocutory order dated, 09.12.2019 (hereinafter called and referred to as ‘the HC order’) made by the learned High Court Judge of the Central Province holden in Kandy (hereinafter called and referred to as ‘the learned High Court Judge of the Province’) vacating and dissolving the enjoining order issued by it on 22.05.2019 staying the order dated 26.04.2019, made by the learned Primary Court Judge of Kandy in the case bearing No. 16048/18. Hence, this Court had having decided to hear and determine the jurisdictional issue, directed the parties to file written submissions dealing with the same. However, it is to be observed that, the written submissions had been filed only by the 2nd Party Petitioners-Appellants-Petitioners (hereinafter called and referred to as ‘the Petitioners’) and thus, the 1st Party-Respondent-Respondent (hereinafter called and referred to as ‘the Respondent’) had made default in filing written submissions.

Hence, I would proceed to the order on the jurisdictional issue on the strength of the written submissions so furnished to Court by the Petitioner and on the law governed by it.

As observed by me elsewhere in this order, the HC order that is now, sought to be impugned in the instant appeal, is an interlocutory order made by the learned High Court Judge of the Province in the exercise of the revisionary jurisdiction vested in it by Article 154P(1) of the Constitution of the Democratic Socialist Republic of Sri Lanka (hereinafter called and referred to as ‘the Constitution’) to be read with Article 154P(3)(b) thereof.

It is in this context, I would think it pertinent and appropriate at this juncture to examine Article 154P(6) of the Constitution and it enacts thus;

“(6) **subject to the provisions of the Constitution and any law**, any person aggrieved by a final order, judgment or sentence of any such Court, in the exercise of its jurisdiction under paragraphs (3)(b) or (3)(c) or (4) may appeal there from to the Court of Appeal **in accordance with Article 138.**” [Emphasis is mine]

In the light of the Article 154P(6) of the Constitution, **subject to the provisions of the Constitution and any law**, any person aggrieved by a **final order, judgment or sentence** of any such Court, in the exercise of its jurisdiction under paragraphs (3)(b) or (3)(c) or (4) may appeal there from to the Court of Appeal **in accordance with Article 138.** [Emphasis is mine]

Furthermore, section 2(1) of the Court of Appeal (Procedure for Appeals from High Courts) Rules 1988 enacts thus;

“Any person who shall be dissatisfied with **any judgement or final order or sentence** pronounced by a High Court in the exercise of the appellate or revisionary jurisdiction vested in it by Article 154P(3)(b) of the Constitution may prefer an appeal to the Court of Appeal against such judgement for any error in law or in fact...”. [Emphasis is mine]

In the light of Rule 2(1) of the Court of Appeal (Procedure for Appeals from High Courts) Rules 1988; any person who shall be dissatisfied with **any judgement or final order or sentence** pronounced by a High Court in the exercise of the appellate or revisionary jurisdiction vested in it by Article 154P(3)(b) of the Constitution may prefer an appeal to the Court of Appeal against such judgement for any error in law or in fact... [Emphasis is mine]

Now, the pertinent question is whether the order sought to be impugned in the instant appeal can be considered as one falling within the ambit of a “final order, judgement or sentence” of a provincial High Court made in the exercise of its jurisdiction under paragraphs (3)(b) or (3)(c) or (4) of Article 154P of the

Constitution as envisaged by Article 154P(6) thereof and Rule 2(1) of the Court of Appeal (Procedure for Appeals from High Courts) Rules 1988?

I would think it pertinent at this juncture to examine the criterion laid down by a fuller bench of the Supreme Court comprising of seven judges in **SC Appeal No.41/2015 - decided on 04.08.2017** in determining whether an order is a final judgment or not, and it may be re-produced *verbatim* the same as follows;

“In order to decide whether a order is a final judgment or not. it is my considered view that the proper approach is the approach adopted by lord Esher in Salaman vs Warner (supra) which was cited with approval by Lord Denning in Salter Rex vs Gosh (supra).It stated:

“If their decision which ever way it is given, will if it stands finally dispose of the matter in dispute, I think that for the purpose of these Rules it is final. On the other hand, if their decision, if given in one way, will finally dispose of the matter in dispute , but, if given in the other, will allow the action to go on, then I think it is not final, but interlocutory”.”

Although the said pronouncement was made by the Supreme Court under section 754(1) and (2) of the Civil Procedure Code as amended, the criterion laid down therein, would in my view, be applicable to a situation arisen in this case too, with equal force in determining whether an order sought to be impugned is a final judgment or not within the meaning of Article 154P(6) of the Constitution.

In this instance, the learned High Court Judge of the Province had in the HC order, vacated and/or dissolved the enjoining order issued by Court in an earlier occasion.

Hence, it becomes abundantly, clear that the learned High Court Judge of the Province had in the HC order, not in any manner, proceeded to finally, determine and adjudicate upon the rights of the parties to the application

before it in revision upon its merits, instead he had merely, proceeded to vacate and/or dissolve the enjoining order issued by Court in an earlier occasion.

Applying the criterion laid down by the Supreme Court in the **SC Appeal No.41/2015 (Supra)** to the facts of the instant appeal, if the impugned decision whichever way it given, will if it stands finally, dispose of the matter in dispute, order impugned is final. On the other hand, if the impugned decision, if given in one way, will finally, dispose of the matter in dispute but, if given in the order, will allow the application to go on, then it is not final, but interlocutory.

However, it clearly, appears that the impugned order being an enjoining order which is by its inherent nature, a temporary order, whichever way the impugned order is given, namely; either vacating it or extending it any further, the application will nevertheless, proceed to decide and finally, adjudicate upon the rights of the parties on its merits.

Hence, the impugned order cannot in any manner, be construed as a final order within the meaning of by Article 154P(6) of the Constitution but, an interlocutory order.

In the result, an appeal will not lie under Article 154P(6) of the Constitution or Rule 2(1) of the Court of Appeal (Procedure for Appeals from High Courts) Rules 1988 to this Court from the impugned order.

Hence, the instant appeal is misconceived in law and therefore, cannot sustain in law on this ground too.

Moreover, I find it settled law that an appeal is a statutory right and must be expressly, created and granted by a Statute.

Upon a careful analysis of Article 154P(6) of the Constitution and the Rule 2(1) of the Court of Appeal (Procedure for Appeals from High Courts) Rules 1988, it becomes abundantly, clear that an appeal has not been expressly, created and granted either by Article 154P(6) of the Constitution or Rule 2(1)

of the Court of Appeal (Procedure for Appeals from High Courts) Rules 1988 from an interlocutory order that may be made by a High Court established by Article 154P(1) of the Constitution in the exercise of the revisionary jurisdiction vested in it by Article 154P(3)(b) of the Constitution.

Besides, the authorities cited to in the written submissions and relied on by the Petitioners do not in any manner, support the contention advanced by them therein, that final appeal will lie from an interlocutory order, sought to be impugned by them in the instant appeal.

In the light of the law set out above, I would hold that a final appeal will not lie to this Court from the HC order for; it is neither a judgement nor a sentence nor a final order within the meaning of Article 154P(6) of the Constitution and Rule 2(1) of the Court of Appeal (Procedure for Appeals from High Courts) Rules 1988 but that an interlocutory order.

I would therefore, hold that the appeal is misconceived and therefore, bad in law and hence, the Petitioners cannot have and maintain the instant appeal as it is presently, constituted.

In the circumstances, I would hold that the jurisdictional issue is entitled to succeed in law.

In the result, I would dismiss the instant appeal with costs fixed at Rs. 25,000/.

JUDGE OF THE COURT OF APPEAL

D. THOTAWATTA, J.

I agree.

JUDGE OF THE COURT OF APPEAL