

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

In the matter of an Application for Leave to Appeal in terms of Section 331 read with Section 340 of the Code of Criminal Procedure Act, No. 15 of 1979, read with Section 11 of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990, against the Order dated 18th June 2026 of the learned High Court Judge of Embilipitiya.

Court of Appeal Case No.
CA/LTA/09/2026

High Court of Embilipitiya
Case No: Execution 1/2024

Peoples Leasing and Finance PLC,
Head Office, No 1161, Maradana Road,
Colombo-08

Petitioner

Vs

1. Siripala Vitharana,
2. Vitharanage Davith
Both at No 810, New Town Road, Aluth
Omare Gedara, Pallegama, Embilipitiya.

Respondents

AND BETWEEN

Vitharanage Jayarathne,
No 810, New Town Road, Aluth Omare
Gedara, Pallegama, Embilipitiya.

Claimant-Petitioner

Vs

Peoples Leasing and Finance PLC,
Head Office, No 1161, Maradana Road,
Colombo-08.

Petitioner-Respondent

1. Siripala Vitharana
2. Vitharanage Davith

Both at No 810, New Town Road, Aluth
Omare Gedara, Pallegama, Embilipitiya.

Respondents-Respondents

AND NOW BETWEEN

Peoples Leasing and Finance PLC,
Head Office, No 1161, Maradana Road,
Colombo-08

Petitioner-Respondent-Petitioner

Vs

Vitharanage Jayarathne,
No 810, New Town Road, Aluth Omare
Gedara, Pallegama, Embilipitiya.

Claimant-Petitioner-Respondent

3. Siripala Vitharana
4. Vitharanage Davith

Both at No 810, New Town Road, Aluth
Omare Gedara, Pallegama, Embilipitiya.

Respondents-Respondents-Respondents

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

Counsel : Keerthi Thilakaratne with Chanuka
Ekanayake for the Petitioner-
Respondent-Petitioner.

G. Wijemanna with Roy Granville
Perera for the Claimant Petitioner-
Respondent.

Respondents-Respondents-
Respondents are absent and
unrepresented.

Argued on : 06.07.2026

Written Submissions
of the Petitioner-Respondent-
Petitioner tendered on : 14.07.2025

Written Submissions
of the Claimant-Petitioner

-Respondent tendered on : 14.07.2026

Written Submissions of the
Respondents-Respondents-

Respondents tendered on : Not tendered.

Decided on : 31.07.2026

K. M. S. DISSANAYAKE, J.

The Petitioner-Respondent-Petitioner (hereinafter called and referred to as ‘the Petitioner’) has preferred to this Court the instant application for leave to appeal seeking *inter-alia*, leave to appeal against the order of the High Court of the Sabaragamuwa Province holden at Embilipitiya (hereinafter called and referred to as ‘the High Court of the Province’) dated 18.06.2026, a copy of which was annexed to the Petition marked as ‘Y3’, whereby, the learned High Court Judge of the Sabaragamuwa Province holden at Embilipitiya (hereinafter called and referred to as ‘the learned High Court Judge of the Province’) had decided to hear and determine the claim preferred to it by the Claimant-Petitioner-Respondent (hereinafter called and referred to as ‘the Claimant’) under section 241 of the Civil Procedure Code by way of a motion, which had previously, been dismissed by the predecessor in office of the incumbent High Court Judge of the Province by its order dated 25.06.2025, a copy of which was annexed to the instant petition and furnished to this Court marked as ‘Y1’.

We have heard the learned Counsel for the Petitioner in support of the application for leave to appeal. We also have heard the learned Counsel for the Claimant in opposition to the application for leave to appeal. We have also

considered the written submissions furnished to this Court by the Counsel on both side in this regard.

A careful perusal of the order dated 25.06.2025 (Y1), made by the predecessor in office of the incumbent High Court Judge of the Province, clearly, shows that the application made by the claimant before the High Court of the Province by way of a motion under section 241 of the Civil Procedure Code had been dismissed by him.

However, the incumbent learned High Court Judge of the Province had notwithstanding the dismissal by his predecessor in title of the application made by the claimant before the High Court of the Province by way of a motion under section 241 of the Civil Procedure Code, allowed the application made to Court by the claimant by his motion dated 15.06.2026, a copy of which was annexed to the petition marked as 'Y2' and decided to hear and determine the application of the claimant which had already, been so dismissed by the predecessor in office of the incumbent High Court Judge of the Province by its order dated 25.06.2025 (Y1).

However, it is to be observed that there is nothing on the record to show that the order so made by the predecessor in office of the incumbent High Court Judge of the Province by its order dated 25.06.2025 (Y1) had been set aside by an appellate forum by way of appeal or otherwise or else it had been set aside by the High Court of the Province acting on the doctrine of rule *per incurium* or otherwise.

In the circumstances, it clearly, appears that the incumbent learned High Court Judge of the Province has no jurisdiction to revive and or re-open the said application and hear and determine the same for; it had once, been dismissed by the predecessor in office of the incumbent High Court Judge of the Province by its order dated 25.06.2025 (Y1) and therefore, there has been no application to hear and determine by the incumbent High Court Judge of the Province.

Hence, I would hold that the Petitioner had made out a case from his petition that there is a serious question of law to be adjudicated upon by this Court at the hearing.

In the circumstances, I would proceed to grant leave to appeal on the questions of law formulated by the Petitioner in paragraph 21 (a), (b), (c), (d), (f), (g), (h), (i), (j) and (k) of the petition dated 30.06.2026 as prayed for in prayer (b) thereof.

Furthermore, I would make order staying the proceedings of the High Court of the Province in the instant case bearing No. 01/2024 Writ, effective for 14 days as prayed for in (f) of the petition.

Registrar of this Court is directed to forthwith communicate this order to the High Court of the Province.

Registrar of this Court is further directed to list this matter for hearing in due course.

JUDGE OF THE COURT OF APPEAL

D. THOTAWATTA, J.

I agree.

JUDGE OF THE COURT OF APPEAL