

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

In the matter of an application for Revision under and in terms of Article 138 and 154()(4)(1) of the Constitution of the Republic of Sri Lanka read with High Courts of Provinces (Special Provisions) Act No. 19 of 1990 and Section 753 of the Civil Procedure Code.

Court of Appeal Case No:
CPA/0104/25
High Court of Ratnapura
Case No.
WA 11/2022

1. Imbulpe Heen Mudiyansele
Wasantha Kumara,
No. 288, Dewalayagawa,
Ratnapura.

Petitioner

Vs.

1. Dilini Dharmadhasa,
Cooperative Commissioner/Registrar,
Department of Co-operative
Development,
Sabaragamuwa Provincial Council,
New Town, Ratnapura.

1A. Nishantha Saman Kumara,
Cooperative Commissioner/Registrar,

Department of Co-operative
Development, Sabaragamuwa
Provincial Council,
New Town, Ratnapura.

Substituted 1st Respondent

2. Co-operative Society Limited,

No. 656,
New Town, Ratnapura.

3. Hon. Attorney General,

Attorney General's Department,
Colombo 12.

Respondents

AND NOW

**Imbulpe Heen Mudiyansele
Wasantha Kumara,**

No. 288, Dewalayagawa, Ratnapura.

Petitioner-Petitioner

Vs.

1. Dilini Dharmadhasa,

Cooperative Commissioner/Registrar,
Department of Co-operative
Development,
Sabaragamuwa Provincial Council,
New Town, Ratnapura.

1A. Nishantha Saman Kumara,

Cooperative Commissioner/Registrar,
Department of Co-operative
Development, Sabaragamuwa
Provincial Council,
New Town, Ratnapura.

Substituted 1st Respondent

**2. M/S Multipurpose Co-operative
Society Limited,**

No. 656,
New Town, Ratnapura.

3. Hon. Attorney General,

Attorney General's Department,
Colombo 12.

Respondents-Respondents

Before : **D. THOTAWATTA, J.**
K. M. S. DISSANAYAKE, J.
Counsel : T. Palliyaguruge instructed by Isuru
Nanayakkara for the Petitioner-Petitioner.

Pulina Jayasuriya, SC for the 1st and 3rd
Respondents-Respondents.

Shantha Jayawardana and Maithri
Amarasinghe for the 2nd Respondent-
Respondent.

Argued on : 11.05.2026

Written Submissions
of the Petitioner-Petitioner
tendered on : Not tendered

Written Submissions
of the Substituted 1st Respondent
-Respondent and the 3rd Respondent
-Respondent tendered on : Not tendered

Written Submissions
of the 2nd Respondent-Respondent
tendered on : 23.03.2026

Decided on : 17.07.2026

K. M. S. DISSANAYAKE, J.

Instant application in revision arises from an order dated 26.09.2023, made by the learned High Court Judge of the Sabaragamuwa Province holden at Ratnapura in the exercise of the writ jurisdiction vested in it by Article 154P(4) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

When this matter came on before us on 09.03.2026, for support of the application for notice, the learned State Counsel for the Substituted-1st Respondent-Respondent and 3rd Respondent-Respondent had indicated to Court that he would be taking up a preliminary objection with regard to the maintainability of the instant application in revision.

This Court heard all the Counsel on the Preliminary Objection and reserved the order for today.

The preliminary objection is mainly, twofold, namely;

- a) Petitioner-Petitioner is guilty of laches;
- b) Petition does not disclose exceptional circumstances.

Let me now, deal with them separately.

a) Petitioner-Petitioner is guilty of laches;

The Petitioner-Petitioner (hereinafter called and referred to as ‘the Petitioner’) seeks in the instant application in revision preferred to this Court by him on **07.11.2025** to invoke the extra-ordinary revisionary jurisdiction vested in this Court by Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka (hereinafter called and referred to as ‘the Constitution’) to revise and set aside the order dated **26.09.2023** made by the High Court Judge of the Sabaragamuwa Province holden at Ratnapura (hereinafter called and referred to as ‘the HC order’).

Hence, it clearly, and unequivocally, appears without an iota of doubt that the Petitioner had thus, sought to invoke the extra-ordinary revisionary jurisdiction of this Court to revise and set aside the HC order after a lapse of 2 years, 1 month and 12 days since the pronouncement of the HC order.

In the circumstances, there had been a long and inordinate delay for invocation of the extra-ordinary revisionary jurisdiction of this Court by the Petitioner.

However, upon a careful perusal of the averments in the petition filed before this Court by the Petitioner in its totality, it becomes abundantly, clear that not an iota of reason had been adduced by the Petitioner therein, for such a long and inordinate delay for invocation of the extra-ordinary revisionary jurisdiction of this Court by the Petitioner.

However, upon a careful scrutiny of the averments contained in paragraphs 32, 33, 34, 35, 36, 37, 38 and 39 of the petition of the Petitioner taken in conjunction with prayer 'D' and 'E' of the petition in particular, it becomes abundantly, clear that the sole objective intended to be achieved by the Petitioner in the instant application in revision is only, to secure a stay order, staying the execution of the Arbitral Award granted in favour of the Respondents-Respondents (hereinafter called and referred to as 'the Respondents') against him by the Arbitrator.

Hence, it becomes abundantly, clear without any doubt that there has been an inordinate delay for invocation of the extra-ordinary revisionary jurisdiction of this Court by the Petitioner to revise and set aside the HC order.

However, it is to be observed that the Petitioner had not even made a single attempt to reasonably, explain the long and inordinate delay for invocation of the extra-ordinary revisionary jurisdiction of this Court to revise and set aside the HC order firstly, in the petition or secondly, in the oral submissions made before this Court opposing the preliminary legal objections so raised by the learned State Counsel.

It was held by this Court in **CA/CPA/0080/2019 Decided on 16.02.2024** that,

“Besides, the Petitioner has invoked the revisionary jurisdiction of this Court after 9 months from the date of the impugned Order of the High Court. The delay is not explained to the satisfaction of this Court.

It is settled law that the Petitioner should invoke the revisionary jurisdiction of this Court within a reasonable time from the date of the impugned Judgment. What constitutes a reasonable time is a question of fact to be determined on the facts and circumstances of each individual case. In essence, the party seeking revision shall come to Court without

undue delay. If there is a delay, it has to be explained in the Petition. In the instant Application, the delay is not explained.”

As observed by me elsewhere in this order that the Petitioner had invoked the extra-ordinary revisionary jurisdiction of this Court to revise and set aside the HC order after the lapse of 2 years, 1 month and 12 days since the pronouncement of the HC order. However, such a long and inordinate delay has not in any manner, been explained to the satisfaction of this Court by the Petitioner.

I would therefore, hold that the Petitioner is guilty of laches.

In the circumstances, I would hold that the preliminary objection **a)** enumerated above, is entitled to succeed both in fact and law. Therefore, it is upheld.

Hence, the instant application in revision ought to be dismissed on this Ground alone.

b) Petition does not disclose exceptional circumstances.

It may now, be examined.

Petitioner himself concedes that appeal had been preferred to this Court by him from the impugned order which clearly, and unequivocally, shows that he had availed himself of the effective, efficacious and expeditious alternative remedy against the order sought to be impugned by him in the instant application in revision.

It is in this context, let me now, examine the law governing the invocation of the extra-ordinary revisionary jurisdiction vested in this Court by Article 138 of the Constitution in instances where an effective, efficacious and expeditious alternative remedy against the order sought to be impugned will lie.

The extra-ordinary revisionary jurisdiction was exclusively, vested with the Court of Appeal before the enactment of the 13th Amendment to the Constitution of the

Democratic Socialist Republic of Sri Lanka. However, after the enactment of the 13th Amendment to the Constitution, the revisionary jurisdiction is now, vested with the High Court of the Province concurrently, with the Court of Appeal.

After an exhaustive analysis of all the authorities on this, it was held in **Rustom vs. Hapangama & Company (1978-79) 2 SLR 225**, that “the powers by way of revision conferred on the Appellate Court are wide and can be exercised whether an appeal has been taken against an order of the original Court or not. **However, such powers would be exercised only in exceptional circumstances where an appeal lay and as to what such exceptional circumstances are dependent on the facts of each case**”. [emphasis is mine]

Court in **Rustom vs. Hapangama & Co (Supra)** further observed in the following manner; “The trend of authority clearly, indicates that where the revisionary powers of the Court of Appeal are invoked, the practice has been that these powers will be exercised if there is an alternative remedy available, only if the existence of special circumstances are urged necessitating the indulgence of this Court to exercise its powers in revision.”

It was further observed by Court in the decision in **Rustom Vs. Hapangama & Company(Supra)** that, “This Court has the power to act in revision even though the appeal is available, in appropriate cases. The question which has now to be decided is whether the instant case is an appropriate case in which we should exercise our discretionary powers of revision. In his petition and affidavit the petitioner has not set out the reasons for his seeking this method of rectification of the order rather than the ordinary method of appeal. Nor has he set out any exceptional circumstances as to why we should grant him the indulgence of exercising our revisionary powers when he could have appealed against the order with leave”.

It was held by Court in **Dharmaratne and Another Vs. Palm Paradise Cabanas Ltd and Others 2003 (3) SLR 24** at page 30 that “Thus, the existence of exceptional circumstances is the process by which the Court selects the cases in

respect of which this extra-ordinary method of rectification should be adopted. If such a selection process is not there, revisionary jurisdiction of this Court will become a gateway for every litigant to make a second appeal in the grab of a revision application or to make an appeal in situations where the legislature has not given right of appeal. The practice of Court to insist on the existence of exceptional circumstances for the exercise of revisionary powers has taken deep root in our law and has got hardened into a rule which should not be lightly disturbed. The words used by the legislature do not indicate that it ever intended to interfere with this 'rule of practice'."

It was held in **Urban Development Authority vs. Ceylon Entertainments Ltd. and another reported in 2002 [B.L.R]** at page 66 that "the petitioner who invokes the revisionary jurisdiction of this Court should expressly set out the exceptional circumstances and an express pleading to that effect is a *sine quo non*, for this Court to consider the relief claimed by the petitioner. In the absence of an express plea, this Court would be precluded from considering the relief claimed in the application".

Let me now, quote a passage from the decision in **Perera v. Muthalib 45 NLR 412** "I would invite attention to the observations made by Wood-Renton J. in the King v. Nordeen. He said; I do not think that that power (i.e. , revisionary power) is at all limited to those cases in which either no appeal lies or for some reason or other an appeal has not been taken", but he went on to add that this power would be exercised only when a strong case is made out "amounting to a positive miscarriage of justice in regard to either the law, or the judge's appreciation of the facts. In the case I am dealing with I should have felt compelled to give relief solely on the ground that what may well be said to be a failure of justice has been brought to the notice of this Court, and technical rules must make way for the granting of redress in such a case. There has been a violation of the fundamental rule of judicial procedure that a person sought to be affected by an order shall first be heard. But, in this instance there is yet another ground upon

which this application for revision ought to be exercised and that is that the petitioner had no knowledge of the order made against him till the time for preferring an appeal had elapsed.”

In the case of **Attorney-General v. Podi Singho 51 NLR 385** it was held that “even though the revisionary powers should not be exercised in cases when there is an appeal and was not taken, the revisionary powers should be exercised only in exceptional circumstances such as (a) miscarriage of justice (b) where a strong case for interference by the Supreme Court is made out or (c) where the applicant was unaware of the order.” Court also observes that “the Supreme Court in exercising its powers of revision is not hampered by technical rules of pleading and procedure.”

In **Bank of Ceylon vs Kaleel and others 2004 [1] SLR 284**, at page 287 it was stated that, “In the circumstances this Court will not interfere by way of revision when the law has given the plaintiff an alternate remedy and when the plaintiff has not shown the existence of exceptional circumstances warranting the exercise of revisionary jurisdiction. In any event, for this Court to exercise revisionary jurisdiction the order challenged must have occasioned a failure of justice and be manifestly erroneous which go beyond an error or defect or irregularity that an ordinary person would instantly react to it. In other words the order complained of is of such a nature which would have shocked the conscience of Court.”

In **Thilagaratnam Vs. E.A.P. Edirisingha 1982 [1] SLR, P56**, it was observed that “though the Appellate Courts' powers to act in revision were wide and would be exercised whether an appeal has been taken against the order of the original court or not, such powers would be exercised only in exceptional circumstances. There were no exceptional circumstances in this case to justify the exercise of the Court's powers of revision.”

In **Cadaman Pulle Vs. Ceylon Paper Sacks Ltd 2001 [3] SLR, P112**, it was held that “no exceptional circumstances are disclosed why his application for

revisionary relief should be entertained after the lapse of nearly two years. The existence of exceptional circumstances is a pre-condition for the exercise of the powers of revision.”

The Supreme Court, in the case of **Rasheed Ali Vs. Mohamed Ali 1981 [1] SLR, P262**, held that, “the powers of revision vested in the Court of Appeal are very wide and the Court can in a fit case exercise that power whether or not an appeal lies. Where the law does not give a right of appeal and makes the order final, the Court of Appeal may nevertheless exercise its powers of revision, but it should do so only in exceptional circumstances. Ordinarily, the Court will not interfere by way of review, particularly when the law has expressly given an aggrieved party an alternate remedy such as the right to file a separate action except when non-interference will cause a denial of justice or irremediable harm..... The fact that a Judge's order is merely wrong is not a sufficient ground for exercising the powers of revision.”

The Supreme Court in **AG. Vs. Najimudeen-SC Appeal No. 62/2016-SC Minute of 13-03-2020** observed that, “the Defendant has had an alternative remedy available. In the instant case, what the Provincial High Court was called upon to exercise was its revisionary jurisdiction. The Defendant has not been successful in convincing Court that the grounds he had urged have any exceptional character which is sufficient to move Court to exercise its discretionary revisionary power. Thus, this Court has no reason to disagree with the conclusion of the Provincial High Court that there are no exceptional circumstances to invoke the revisionary jurisdiction of the Court. In these circumstances and for the foregoing reasons, the appeal is dismissed without costs.”

In **Geethani Nilushika Vs. Waruni Harshika-SC Appeal No. 93/2017-SC Minute of 18.06.2021** Court observed that; “**Revision is a discretionary remedy. A party cannot invoke this extraordinary jurisdiction of the Appellate Court as of right. When a right of appeal is available against a**

Judgment or an Order, a party seeking to come before Court by way of revision shall explain in the petition why he did not exercise his right of appeal. In the revision application filed before the High Court there was no such explanation at all.” [Emphasis is mine]

In the case of **Seylan bank Vs. Thangaveil 2004 [2] SLR, 101** wherein Court held that, “no revision lies. The petitioner has not resorted to his statutory right of appeal with leave of court. He has not set out in his petition for revision any exceptional circumstances.”

See also; **Hotel Galaxy (Pvt) Ltd Vs. Mercantile Hotels Management Ltd. 1978 (1) SLR 05, Janita Vs. Abeysekara (Sri skantha Law Report Vol iv Page 22)**, and **Thilagaratnam Vs. Edirisinghe 1982 (1) SLR 56.**

In the light of the principle laid down by Court in the aforesaid decisions, an Appellate Court can exercise its revisionary jurisdiction conferred on the Appellate Court **only and only, in exceptional circumstances, where an alternative remedy lay.** [emphasis is mine]

A careful perusal of the averments in the petition of the Petitioner in its totality, clearly, shows that no exceptional circumstances whatsoever, had been disclosed by the Petitioner to show why he had sought to adopt this extraordinary method of rectification in revision of the HC order.

Instead, upon a careful scrutiny of the averments contained in paragraphs 32, 33, 34, 35, 36, 37, 38 and 39 of the petition of the Petitioner taken in conjunction with prayer ‘D’ and ‘E’ of the petition in particular, it becomes abundantly, clear that the sole objective intended to be achieved by the Petitioner in the instant application in revision is only, to secure a stay order, staying the execution of the Arbitral Award granted in favour of the Respondents against him by the Arbitrator.

Hence, it becomes abundantly, clear without any doubt that the sole objective of the instant application in revision is only, to secure a stay order, staying the

execution of the Arbitral Award granted in favour of the Respondents against him by the Arbitrator which clearly, shows that the Petitioner had thereby, sought to abuse the extra-ordinary revisionary jurisdiction of this Court.

In the circumstances, I would hold that the preliminary objection **b)** enumerated above, too, is entitled to succeed both in fact and law. Therefore, it is upheld.

Hence, I would refuse to invoke the extra-ordinary revisionary jurisdiction vested in this Court to revise and set aside the HC order.

In the result, I would proceed to dismiss the instant application in revision with costs fixed at Rs. 10,000/- each payable by the Petitioner to the 1st and 2nd Respondents only.

JUDGE OF THE COURT OF APPEAL

D. THOTAWATTA, J.

I agree.

JUDGE OF THE COURT OF APPEAL