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

In the matter of an application made in revision **under the provisions of Section 753 of the Civil Procedure Code** read with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal Case No: CPA 69/2025

High Court of Puttalam Case No. : RV 11/2023

Magistrates Court of Puttalam Case No.: 90373/66

RANJITH AMARASIRI GUNATHILAKE,
No.59,
Galpoththa Road, Nawala.

Petitioner

Vs

HIMAL SANJEEWA WEERASURIYA
No. 187, Alakeshwara Road,
Ethul Kotte, Kotte.

Respondent

AND

RANJITH AMARASIRI GUNATHILAKE
No.59,
Galpoththa Road, Nawala.

Petitioner-Petitioner

Vs.

HIMAL SANJEEWA WEERASURIYA
No. 187, Alakeshwara Road,
Ethul Kotte, Kotte.

Respondent-Respondent

SINNAMUNI NISHSHANKALAAGE SARATH KUMARA DE SILVA,
Kurukkumaduwa,
Mahakumbukadawala.

Intenvened-Respondent-Respondent

AND NOW BETWEEN

HIMAL SANJEEWA WEERASURIYA
No.187, Alakeshwara Road,
Ethul Kotte, Kotte.

Respondent-Respondent-Petitioner

Vs.

RANJITH AMARASIRI GUNATHILAKE
No.59,
Galpoththa Road,
Nawala.

Petitioner-Petitioner-Respondent

SINNAMUNI NISHSHANKALAAGE SARATH KUMARA DE SILVA
Kurukkumaduwa,
Mahakumbukadawala.

Intervened Respondent-Respondent

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

Counsel : Kuwera de Zoysa PC with Kevin Dias for the Respondent-Respondent-Petitioner instructed by Sanjaya Fonseka.
Seevali Amithirigala PC with Pathum Wijepala for the Petitioner-Petitioner-Respondent.
Intervened-Respondent-Respondent is absent and unrepresented.

Written Submissions of the Respondent-Respondent-Petitioner : 06.02.2026

Written Submissions of the Petitioner- Petitioner Respondent tendered on : 17.12.2025

Written Submissions
of the Intervened
Respondent-Respondent
tendered on : Not tendered.

Decided on : 18.05.2026

K. M. S. DISSANAYAKE, J.

Instant application in revision has been preferred to this Court by the Respondent-Respondent-Petitioner (hereinafter called and referred to as 'the Petitioner") seeking *inter-alia*, to revise and set aside the order dated 04.07.2025, made by the learned High Court Judge of the North-Western Province holden at Puttalam in an application in revision bearing No. RV11/2023 in the exercise of the revisionary jurisdiction vested in it by Article 154P(3)(b) of the Constitution of the Democratic Socialist Republic of Sri Lanka (hereinafter called and referred to as 'the Constitution") to be read with Article 138 of the Constitution, a certified copy of which was annexed to the petition furnished to this Court by Petitioner marked as **X1** (hereinafter called and referred to as 'the HC order") wherein, the learned High Court Judge had acting in revision, revised and set aside the order dated 12.06.2023 made by the learned Additional Magistrate of Puttalam in case bearing No. 90373 under Part VII of the Primary Courts' Procedure Act No. 44 of 1979 (hereinafter called and referred to as "the Act"), a certified copy of which was annexed to the petition furnished to this Court by the Petitioner marked as **X4** (hereinafter called and referred to as 'the MC order").

When this matter came on for support for notice at the very outset, a pivotal issue with regard to the jurisdiction of this Court to hear and determine the instant application in revision, had arisen before us in the following manner, namely;

"**As to whether this Court has jurisdiction to hear and determine the instant application in revision as it is presently, constituted for; it has arisen from an order made by the learned High Court Judge in the exercise of the concurrent and/or mediate revisionary jurisdiction vested in it by Article 154P(3)(b) of the Constitution to be read with Article 138 thereof in revision of the MC order**".

Both the parties agreed that jurisdictional issue may be disposed of, by way of written submissions and the order on the jurisdictional issue will thus, be delivered on the strength of the written submissions filed of record, as agreed by the parties.

While vehemently, resisting the jurisdictional issue, it was contended by the learned President's Counsel for the Petitioner that there is no reasonable justification and/or explanation for barring a party from preferring an application in revision to the Court of Appeal from an order or judgement delivered by the Provincial High Court (Criminal) in the exercise of its revisionary jurisdiction in terms of Article 154P(3)(b) of the Constitution for; a direct appeal will clearly, lie to the Court of Appeal in terms of Article 154P(6) thereof, and therefore, **this Court has jurisdiction to hear and determine an application in revision emanating from an order made by a High Court of the Province established by Article 154P of the Constitution in the exercise of its revisionary jurisdiction vested in it by law** and hence, the case of this Court in **Kospalage Don Kapila Lankaratne vs Wanniachchige Kankanamage Siriyalatha-CA/CPA/0073/2025-CA Minutes of 31.10.2025**,had been wrongly, decided by this Court and hence, it was a judgement made *per incurium* and therefore, this Court is not bound to follow it and as such the jurisdictional issue should be dismissed *in limine*.

Relying heavily on the decision of this Court in the case in **Kospalage Don Kapila Lankaratne vs Wanniachchige Kankanamage Siriyalatha (Supra)**, it was on the other hand, contended by the Learned President's Counsel for the Petitioner-

Petitioner-Respondent (hereinafter called and referred to as 'the Respondent') that the instant application in revision ought to be dismissed *in-limine* for; **this Court does not have jurisdiction to hear and determine the instant application in revision as it emanates from a judgement given by the learned High Court Judge in the exercise of its concurrent revisionary jurisdiction**.

In view of the jurisdictional issue so arisen before us, the pivotal question that would now, arise before us for our consideration and determination, is **whether this Court can exercise its extra-ordinary revisionary jurisdiction vested in it by Article 138 of the Constitution in relation to an order made by a High Court of the Province established under Article 154P of the constitution enacted by the 13th Amendment in the exercise of its concurrent and/or mediate revisionary jurisdiction under and in terms of Article 154P(3)(b) of the Constitution to be read with Article 138 thereof**.

It may now, be examined.

Before the 13th Amendment, Article 138 of the Constitution read thus;

> "The Court of Appeal shall have and exercise subject to the provisions of the Constitution or of any law, an appellate jurisdiction for the correction of all errors in fact or in law **which shall be committed by any Court of First Instance, tribunal or other institution** and sole and exclusive cognizance, by way of appeal, revision and *restitutio in integrum*, of all causes, suits, actions, prosecutions, matters and things of which such Court of First Instance, tribunal or other institution may have taken cognizance:" [Emphasis is mine]
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In the light of the Article 138 of the Constitution **as it existed before the 13th Amendment being enacted**, **appellate and revisionary jurisdiction was solely, and exclusively, vested with the Court of Appeal** (Vide-**Weragama v.**

Eksath Lanka Wathu Kamkam Samithiya and Others 1994[1] SLR 329, at page 295). [Emphasis is mine]

After the 13th Amendment being enacted, Article 138 of the Constitution now, reads thus;

> "(1)The Court of Appeal shall have and exercise subject to the provisions of the Constitution or of any law, an appellate jurisdiction for the correction of all errors in fact or in law which shall be **[committed by the High Court, in the exercise of its appellate or original jurisdiction or by any Court of First Instance], tribunal or other institution** and sole and exclusive cognizance, by way of appeal, revision and *restitutio in integrum*, of all causes, suits, actions, prosecutions, matters and things [of which such High Court, Court of First Instance], tribunal or other institution may have taken cognizance:" [Emphasis is mine]
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Hence, Article 138 of the Constitution was amended by the Thirteenth Amendment to the Constitution by the substitution for the words "**committed by any Court of First Instance**" of the words "**committed by the High Court in the exercise of its appellate or original jurisdiction or by any Court of First Instance**."[Emphasis is mine]

The Thirteenth Amendment to the Constitution enacted Article 154P(1) to the Constitution and it reads thus;

> "There shall be a High Court for each Province with effect from the date on which this Chapter comes into force. Each such High Court shall be designated as the High Court of the relevant Province."

Article 154P(1) of the Constitution so enacted by the Thirteenth Amendment, made provisions for the establishment of the High Courts in the provinces.

Article 154P(3)(b) of the Constitution enacted by the Thirteenth Amendment to the Constitution, reads thus;

> "Every such High Court shall –
>
> (b) **notwithstanding anything in Article 138 and subject to any law**, exercise, appellate and revisionary jurisdiction in respect of convictions, sentences and orders entered or imposed by Magistrates Courts and Primary Courts within the Province;" [Emphasis is mine]

Hence, Article 154P(3)(b) conferred upon the High Court so established under Article 154P(1) **the appellate and revisionary jurisdiction in respect of convictions, sentences and orders entered or imposed by Magistrates Courts and Primary Courts within the Province notwithstanding anything in Article 138 and subject to any law**. [Emphasis is mine]

Article 154P(6) of the Constitution enacted by Thirteenth Amendment to the Constitution confers upon any person aggrieved by a final order, judgment or sentence of any such High Court so established under Article 154P(1) of the Constitution made in the exercise of its jurisdiction under paragraphs (3)(b) or (3)(c) or (4) a right of appeal to the Court of Appeal in accordance with Article 138 of the Constitution subject to the provisions of the Constitution and any law and it reads 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]

Nonetheless, no provision was made with regard to the procedure to be followed in such High Courts. With a view to providing for the lacuna in the law with regard to the procedure to be followed in the High Court of the Provinces, so established under Article 154P(1) of the Constitution which enacted by the

Thirteenth Amendment to the Constitution, the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990 (hereinafter called and referred to as 'the Act") was enacted making provision "regarding the procedure to be followed in, and the right to appeal to, and from, the High Court established under Article 154P of the Constitution".

The Act also made provision for the appeals to be brought in before the Court of Appeal as well as the Supreme Court from the High Court. While section 9 of the Act provides for the appeals to Supreme Court from High Court, section 11 thereof provides for appeals to Court of Appeal from the High Court established under Article 154P of the Constitution.

Section 9 of the Act reads thus;

> "9. Subject to the provisions of this Act or any other law, any person aggrieved by
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> (a) a final order, judgment, decree or sentence of a High Court established by Article 154P of the Constitution in the exercise of the appellate jurisdiction vested in it by paragraph (3) (b) of Article 154P of the Constitution or section 3 of this Act or any other law, in any matter or proceeding whether civil or criminal which involves a substantial question of law, may appeal therefrom to the Supreme Court if the High Court grants leave to appeal to the Supreme Court ex mero motu or at the instance of any aggrieved party to such matter or proceedings :
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> Provided that the Supreme Court may, in its discretion, grant special leave to appeal to the Supreme Court from any final or interlocutory order, judgment, decree or sentence made by such High Court, in the exercise of the appellate jurisdiction vested in it by paragraph (3) (b) of Article 154P of the Constitution or section 3 of this Act, or any other law where such High Court has refused to grant leave to appeal to the Supreme Court, or where in the opinion of the Supreme Court, the case or matter is fit for review by the Supreme Court:

Provided further that the Supreme Court shall grant leave to appeal in every matter or proceeding in which it is satisfied that the question to be decided is of public or general importance; and

(b) a final order, judgment or sentence of a High Court established by Article 154P of the Constitution in the exercise of its jurisdiction conferred on it by paragraph (3) (a), or (4) of Article 154P of the Constitution may appeal therefrom to the Court of Appeal."

Section 11 of the Act reads thus;

"(1) The Court of Appeal shall have and exercise, subject to the provisions of this Act or any other law, an appellate jurisdiction for the correction of all errors in fact or in law which shall be committed by any High Court established by Article 154P of the Constitution in the exercise of its jurisdiction under paragraph (3) (a), or (4) of Article 154P of the Constitution and sole and exclusive cognizance by way of appeal, revision and restitutio in integrum of all causes, suits, actions, prosecutions, matters and things of which such High Court may have taken cognizance:

Provided that, no judgment, decree or order of any such High Court, shall be reversed or varied on account of any error, defect, or irregularity which has not prejudiced the substantial rights of the parties or occasioned a failure of justice.

(2) The Court of Appeal may in the exercise of its jurisdiction, affirm, reverse, correct or modify any order, judgment, decree or sentence according to law or it may give directions to any High Court established by Article 154P of the Constitution or order a new trial or further hearing upon such terms as the Court of Appeal shall think fit.

(3) The Court of Appeal may further receive and admit new evidence additional to, or supplementary of, the evidence already taken in any High Court established by Article 154P of the Constitution touching the matters

at issue in any original case, suit, prosecution or action, as the justice of the case may require."

Section 10 of the Act deals with the powers of the Supreme Court on appeal and it reads thus;

"(1) The Supreme Court shall, subject to the Constitution be the final Court of appellate jurisdiction within Sri Lanka for the correction of all errors in fact or in law which shall he committed by a High Court established by Article 154P of the Constitution, in the exercise of the appellate jurisdiction vested in it by paragraph (3) (b) of Article 154P of the Constitution or section 3 of this Act, or any other law and the judgments and orders of the Supreme Court shall, in such cases, be final and conclusive in all such matters.

(2) The Supreme Court shall, in the exercise of its jurisdiction, have sole and exclusive cognizance by way of appeal from any order, judgment, decree or sentence made by a High Court established by Article 154P of the Constitution, in the exercise of the appellate jurisdiction vested in such High Court by paragraph (3) (b) of Article 154P of the Constitution or section 3 of this Act or any other law and it may affirm, reverse or vary any such order, judgment, decree or sentence of such High Court and may issue such directions to such High Court or Court of First Instance or order a new trial or further hearing in any proceedings as the may require and may also shall for and admit fresh or additional evidence if the interests of justice so demands and may in such event, direct that such evidence be recorded by such High Court, or any Court of First Instance."

Both sections 5 and 12 of the Act would in my opinion, be significantly, important for the proper resolution of the jurisdictional issue so arisen before us and therefore, it would for clarity and convenience, be useful to reproduce both of them *verbatim* the same as follows;

Section 5 of the Act makes provisions for the procedure for appealing to High Court so established under Article 154P(1) of the Constitution and it reads thus;

"The Provisions of written law applicable to appeals to the Court of Appeal, from convictions, sentences or orders entered or imposed by a Magistrate's Court, and to applications made to the Court of Appeal for revision of any such conviction, sentence or order shall, *mutatis mutandis*, apply to appeals to the High Court established by Article 154P of the Constitution for a Province, from convictions, sentences or orders entered or imposed by Magistrate's Courts, Primary Courts and Labour Tribunals within that Province and from orders made under section 5 or section 9 of the Agrarian Services Act, No. 58 of 1979, in respect of land situated within that Province and to applications made to such High Court, for revision of any such conviction, sentence or order."

Section 12 of the Act makes provisions **where appeal or application in respect of same matter is filed in Court of Appeal and in High Court** and it reads thus;

> "(a) Where any appeal or application is field in the Court of Appeal and an appeal or application in respect of the same matter has been filed in a High Court established by Article 154P of the Constitution invoking jurisdiction vested in that Court by paragraph (3) (b) or (4) of Article 154P of the Constitution, within the time allowed for the filing of such appeal or application, and the hearing of such appeal or application by such High Court has not commenced, the Court of Appeal may proceed to hear and determine such appeal or application or where it considers it expedient to do so, direct such High Court to hear and determine such appeal or application:
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> Provided, however, that where any appeal or application which is within the jurisdiction of a High Court established by Article 154P of the Constitution is filed in the Court of Appeal, the Court of Appeal may if it considers it expedient to do so, order that such appeal or application be

transferred to such High Court and such High Court shall hear and determine such appeal or application.

(b) Where the Court of Appeal decides to hear and determine any such appeal or application, as provided for in paragraph (a), the proceedings pending in the High Court shall stand removed to the Court of Appeal for its determination.

(c) No appeal shall lie from the decision of the Court of Appeal under this section to hear and determine such appeal or application or to transfer it to a High Court.

(d) Nothing in the preceding provisions of this section shall be read and construed as empowering the Court of Appeal to direct a High Court established by Article 154P of the Constitution to hear and determine any appeal preferred to the Court of Appeal from an order made by such High Court in the exercise of the jurisdiction conferred on it by paragraph (4) of Article 154P of the Constitution." [Emphasis is mine]

Upon a plain reading of Article 138 of the Constitution as amended, Article 154P(1), Article 154P(3)(b), and Article 154P(6) in conjunction with sections 5 and 12 of the Act, it makes it abundantly, clear that **both Courts namely; the Court of Appeal as well as the High Court established by Article 154P(1) of the Constitution which enacted by the Thirteenth Amendment to the Constitution**, **now**, **enjoy and exercise concurrent or parallel or coordinate appellate and revisionary jurisdiction on matters referred to in Article 154P(3)(b) of the Constitution as quoted above** which the Court of Appeal **otherwise**, had **solely, and exclusively**, exercised **before the Thirteenth Amendment to the Constitution**. [Emphasis is mine]

In the circumstances, I am of the view that the revisionary jurisdiction that was solely, and exclusively, vested with the Court of Appeal before the Thirteenth Amendment to the Constitution, would after Thirteenth Amendment to the

Constitution, now, be exercised by a High Court established by Article 154P(1) of the Constitution which enacted by the Thirteenth Amendment to the Constitution, concurrently or parallel or coordinately with the Court of Appeal.

The view taken by me as aforesaid is fortified and well supported by a plethora of authorities of the Supreme Court and the Court of Appeal and they may now, be examined.

Supreme Court in dealing with the Thirteenth Amendment to the Constitution and the Provincial Councils bill, had determined on page 323(In **RE Thirteenth Amendment to the Constitution and the Provincial Councils Bill-1987 [2] SLR 312**) as follows;

> "The Bills do not effect any change in the structure of the Courts or judicial power of the People. The Supreme Court and the Court of Appeal continue to exercise unimpaired the several jurisdictions vested in them by the Constitution. There is only one Supreme Court and one Court of Appeal for the whole Island, unlike in a Federal State. "The 13th Amendment Bill only seeks to give jurisdictions in respect of writs of Habeas Corpus in respect of persons illegally detained within the Province and Writs of Certiorari, Mandamus and Prohibition against any person exercising within the Province any power under any law or statute made by the Provincial Council in respect of any matter in the Provincial Council list **and appellate jurisdiction in respect of convictions 'and sentences by Magistrate's Courts and Primary Courts within the Province to the High Court of the Province, without prejudice to the executing jurisdiction of the Court of Appeal. Vesting of this additional jurisdiction in the High Court of each Province only brings justice nearer home to the citizen and reduces delay and cost of ligation**. The power of appointment of Judges of the High Court remains with the President and the power of nominating them to the several High Courts remains with the Chief Justice. The appointment, transfer, dismissal

continue to be vested in the Judicial Service Commission. Thus, the centre continues to be supreme in the judicial area and the Provincial Council has no control over the judiciary functioning in the Province." [Emphasis is mine]

The question before Court in **Abeywardene vs. Ajith de Silva 1998[1] SLR 134- a bench of five judges of the Supreme Court** was **whether a direct appeal lies to the Supreme Court from an order of the High Court in the exercise of its revisionary jurisdiction without first preferring an appeal to the Court of Appeal,** wherein, Supreme Court had on page 137, *inter-alia*, held that, "**After the 13th Amendment, section 5 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 read with Article 154P (3)(b) of the Constitution (enacted by the 13th Amendment) entitled him to file such application in the High Court of the province. The jurisdiction of the High Court in the matter is concurrent. In Re the 13th Amendment to the Constitution. In the result, he may file an application in the Court of Appeal or in the High Court**."[Emphasis is mine]

It was *inter-alia*, held by the Supreme Court in **Gunaratne v. Thambinayagam and Others 1993 [2] SLR 355** at pages 357 and 358, which was cited with approval by a bench of five judges of the Supreme Court in **Abeywardene vs. Ajith de Silva(Supra)**, that, "In each of these cases a dispute relating to land had been referred to a Magistrate (exercising the powers of the Primary Court) in terms of S. 66 (1) (b) of the Primary Courts Procedure Act No. 44 of 1979. After due inquiry, the Magistrate made his determination, the object of which is to maintain the status quo until final adjudication of the rights in a civil suit. S. 74 (2) of the Act provides that an appeal shall not lie against such determination. **Prior to the 13th Amendment to the Constitution, a party aggrieved with such a determination used to apply to the Court of Appeal to have it set aside by way of revision in the exercise of the power of that Court under Article 138 of the Constitution read with Article 154. S. 5 of the High Court**

of the Provinces (Special Provisions) Act, No. 19 of 1990 read with Article 154 P (3) (b) of the Constitution (enacted by the 13th Amendment) entitled him to file such application in the High Court of the Province. **The jurisdiction of the High Court in the matter is concurrent.** In Re the Thirteenth Amendment to the Constitution. **In the result, he may file his application in the Court of Appeal or in the High Court……S. 12 of Act No. 19 of 1990 makes provision for resolving some of the anomalies arising by reason of the provisions of Article 154P which vested new jurisdictions in the High Court, but concurrently with the existing jurisdiction of the Court of Appeal in the same sphere.**". [Emphasis is mine]

It was further held by Court in the decision in **Gunaratne v. Thambinayagam and Others** (Supra) at page 362 that, "(a) **that in the light of the concurrent jurisdiction of the Court of Appeal and the High Court which still exists, which fact is confirmed by S. 12 of Act No. 19/1990, the identical dispute may be decided by the Court of Appeal or by the High Court**. A decision in the High Court would permit two appeals whilst a decision in the Court of Appeal would permit one more appeal;" [Emphasis is mine]

It was *inter-alia,* held by Supreme Court in **Weragama v. Eksath Lanka Wathu Kamkam Samithiya and others** (Supra) at page 296 that, "These amendments affected the appellate, revisionary and writ jurisdiction of the Court of Appeal only in two respects. Firstly, Article 154P (3) (b) conferred appellate and revisionary jurisdiction (but not writ jurisdiction) in respect of Magistrate's Courts and Primary Courts (but not Labour Tribunals, or other courts and tribunals); this was "notwithstanding anything in Article 138" (and that Article was in any event "subject to the provisions of the Constitution"), **and so either the jurisdiction of the Court of Appeal was pro tanto transferred to the High Courts or the Court of Appeal and the High Courts had concurrent jurisdiction**." [Emphasis is mine]

It was further held at pages 299 and 300 that, "….However, the jurisdiction of the Court of Appeal under Article 138 is not an entrenched jurisdiction, because Article 138 provides that it is subject to the provisions "of any law"; hence it was always constitutionally permissible for that jurisdiction to be reduced or transferred by ordinary law (of course, to a body entitled to exercise judicial power). That is the reason why I held (in Swastika Textile Industries Ltd. v. Dayaratne, that section 3 of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990, conferred concurrent, appellate and revisionary jurisdiction on the High Courts in respect of Labour Tribunals, and that thereafter section 31D3 of the Industrial Disputes Act, as amended by Act No. 32 of 1990, made that jurisdiction exclusive, thereby taking away the jurisdiction of the Court of Appeal in that respect).

It was *inter-alia*, held by the Supreme Court in **SC/Appeal/65/2025-Decided on 10.10.2025** at page 32 that, "In this context, it would be legally impermissible and institutionally unsound for the Court of Appeal, in *pari materia*, to sit in appeal over judgments and orders pronounced by a Provincial High Court in the exercise of its appellate or revisionary jurisdiction. **A party cannot pursue successive appeals before two courts of coordinate jurisdiction in respect of the same matter**. This strikes at the very root of the issue. Such a practice is inimical to legislative intent, imposes unnecessary burdens on the judicial system, and undermines the principle of finality in litigation. **These considerations make clear that concurrent jurisdiction was intended to provide an alternative forum for appellate review, not to create an additional tier in the appellate hierarchy**.". [Emphasis is mine]

It was *inter-alia*, held by this Court in **Ramalingam Vs. Parameswary and Others 2000 [2] SLR 340** at pages 347 and 348 that, "It is to be noted that the power given under Article 138 of the Constitution to the Court of Appeal to hear and determine applications in revision against orders made by Primary Courts was not in any way taken away by either the Thirteenth Amendment or Act No.

19 of 1990. **In effect both Courts were conferred concurrent jurisdiction in respect of these matters**……Further, the alleged equation of a Superior Appellate Court to the High Court of a Province need not be considered demeaning or debasing. **The whole purpose of the Thirteenth Amendment establishing a High Court in every province was to confer jurisdiction in respect of certain matters in the High Court granting it concurrent jurisdiction with the Court of Appeal. When concurrent or parallel jurisdiction is given by Law to two Courts the question of a superior and inferior Court would not arise. As far as the jurisdiction granted to the two Courts in certain matters goes, they are equal**……"[Emphasis is mine]

In **Sharif and Others Vs. Wickramasuriya and Others 2010 [1] SLR 255**, it was *inter-alia*, held by this Court at pages 265, 268 and 269 that, "It is thus clear that **both Courts enjoy concurrent jurisdiction on matters referred to in Article 154P (3)(b). The jurisdiction enjoyed by the Court of Appeal had not been disturbed by Articles of the Constitution or by the Acts of Parliament.....Thus both Courts enjoy concurrent jurisdiction with regard to judgments and orders of the Magistrate/Primary Courts and District Courts. The powers enjoyed by the Court of Appeal had been given to the High Court of the Provinces to facilitate the litigants in the provinces and also to reduce the work load of the Court of Appeal**.". [Emphasis is mine]

In **Seylan Bank PLC v. Christobel Daniels (CA/PHC/APN/58/2014, CA Minutes of 14.12.2016)**, it was *inter-alia*, that "The structure of Article 138 would also prevent this Court exercising revisionary jurisdiction when the sole and exclusive jurisdiction has been vested in the Supreme Court. The revisionary jurisdiction is bestowed in the Court of Appeal thus in Article 138 of the Constitution. ".....**and sole and exclusive cognizance by way of appeal, revision and restitutio in integrum, of all causes, suits, actions, prosecutions, matters and things which such High Court, Court of First Instance, tribunal or other institution may have taken cognizance**". **It is**

crystal clear beyond any scintilla of doubt that the revisionary power of this Court lies only against orders made by such High Court, Court of First Instance, tribunal or other institution when they have taken cognizance of causes, suits, actions, prosecutions, matters and things. The words "such High Court, Court of First Instance, tribunal or other institution" must be read ejusdem generis and such collocation of words read together with the words causes, suits, actions, prosecutions, matters and things clearly indicates that these Courts exercise original jurisdiction. Only when the High Court of First Instance, tribunal or other institution has exercised original jurisdiction, revision lies to this court. In other words, only when the High Court has exercised original jurisdiction, the revisionary jurisdiction of this Court can be invoked. In my view Article 138 intentionally suggests such a deliberate intendment of Parliament and when the High Court has sat in its appellate jurisdiction as has happened in this case, no revision lies to this Court." [Emphasis is mine]

It was *inter-alia*, held by this Court in **CA/MC/RE Application No. 04/2017- Decided on 08.06.2018** at page 5 that, "The petitioner had filed revision applications in Gampaha High Court seeking revision of the said orders made by the learned magistrate and the said high court has dismissed the applications. (Vide paragraph 8 of the petition). **It must be noted that high courts now exercised the same revisionary jurisdiction once this court exercised over magistrate courts. As he has filed revision applications on the same orders previously in the High Court of Gampaha he has exhausted his remedy.** His position is that his lawyers have not brought to the notice of High Court the facts averred in this petition. **A party to an action cannot be given a chance to have a second bite of the same cherry**. If this court allows this application it may create a bad precedent to allow a party who fails to present his case properly file another application." [Emphasis is mine]

In the decision in **SC/Appeal/65/2025**(Supra), the Supreme Court cited with approval the following observations of this Court made by it in the case in **Malwatta v. Softlogic Finance PLC and Others (CA/CPA/152/2022, CA Minutes of 31.08.2023).** which *inter alia*, identified several practical difficulties that would arise if the Court of Appeal were permitted to review judgments and orders of the Provincial High Courts made in the exercise of their appellate jurisdiction. The said case concerned a party who, being dissatisfied with a judgment of the Provincial High Court of Civil Appeal delivered in the exercise of its revisionary jurisdiction, sought once again to invoke the revisionary jurisdiction of the Court of Appeal against the judgment of the Provincial High Court. In practical terms, this amounted to two successive applications in revision being pursued in respect of the same judgment of the District Court, although the second application was formally directed against the judgment of the Provincial High Court as observed by the Supreme Court in the said case in **SC/Appeal/65/2025**(Supra).

> "Moreover, if litigants are allowed to file a revision application in the Court of Appeal against a judgment or order given by the Provincial High Court exercising revisionary jurisdiction it would lead to unnecessary duplication of court proceedings. This could result in a revision application being filed in the Court of Appeal while an appeal is pending in the Supreme Court. It would also have the effect of the Court of Appeal being given an opportunity to overrule a judgment of the Supreme Court if the revision application is successful while the appeal to the Supreme Court is not, which is an unintended absurdity. is highly unlikely that Parliament or the legislative draftsmen intended to manifestly complicate the appeal process when the Provincial High Courts have been introduced to reduce and simplify the court process not to complicate it even further. According to the legal maxim 'Boni judicis est lites dirimere, ne lis ex lite oritur, et interest republicae ut sint fines litium', it is the duty of a good judge to prevent litigations, that suit may not grow out of suits, and it

concerns the welfare of the State that an end be put to litigation. It would be contrary to the practice of a good judge to interpret statutes in a manner that would give rise to unnecessary complications in the judicial process. I would also mention here that allowing an appeal or a revision application from a judgment or order from the Provincial High Court would also lead to, the Court of Appeal having revisionary jurisdiction over an instance where the Provincial High Court exercises its revisionary jurisdiction as is requested for in the instant case. In effect, the Court of Appeal would lie in revision of a revision application. Seeing as Revisionary jurisdiction is to be exercised in exceptional circumstances, allowing a revision application on a revision application would be conceptually contradictory to the spirit of a revision application. In the instant case, for example, this court is invited to lie in revision of a revision application filed in the Provincial High Court."

It is in this backdrop of the case, I would think it expedient at this juncture to examine the precise meaning assigned by law dictionaries to the phrase "concurrent jurisdiction".

According to **Black's Law Dictionary-Eleventh Edition at page 1017**, concurrent jurisdiction is defined to mean as follows;

"1. Jurisdiction that might be exercised simultaneously by more than one court over the same subject matter and within the same territory, a litigant having the right to choose the court in which to file the action. 2. Jurisdiction shared by two or more states, esp. over the physical boundaries (such as rivers or other bodies of water) between them. - Also termed coordinate jurisdiction; overlapping jurisdiction."

According to **Wharton's Law Lexicon-Fourteenth Edition at page 228**, concurrent jurisdiction is defined to mean as follows;

> "Concurrent jurisdictions, the jurisdiction of several different tribunals, both authorized to deal with the same subject-matter at the choice of the suitor. In equity, the jurisdiction was concurrent where no complete relief was obtainable at law. It was exercised in order to avoid circuity of action or multiplicity of suits"

In the light of the definition assigned to the phrase "concurrent jurisdiction" by law dictionaries as referred to above, "concurrent jurisdiction" means and refers to jurisdiction that might be exercised **simultaneously by more than one court over the same subject matter** and within the same territory, **a litigant having the right to choose the court in which to file the action.** [Emphasis is mine]

Let me then, examine the primary objective intended to be achieved by conferring concurrent jurisdiction upon more than one Court over the same subject matter with a litigant having the right to choose the court in which to file the action. **It is in my opinion, to avoid circuity of action or multiplicity of suits with a view to preventing a wasteful or unnecessary legal process where a party files multiple, separate lawsuits to resolve issues that could have been dealt with in a single action, so that it may avoid waste of judicial resources and unnecessary legal costs.** [Emphasis is mine]

In the light of the law set out above, I am of the view that **the cumulative effect of the provisions of Articles 138, 154P(3)(b), 154P(6) and sections 5 and 12 of the Act and of the authoritative and biding judicial precedent cited above taken in conjunction with the definition assigned to the phrase "concurrent jurisdiction", is that when the High Court established by Article 154P(1) of the Constitution (enacted by the Thirteenth Amendment to the Constitution) exercises revisionary jurisdiction, it exercises revisionary jurisdiction hitherto exclusively, vested in the Court of Appeal before the Thirteenth Amendment to the Constitution and therefore, it exercises concurrent or parallel jurisdiction with the Court of Appeal; and that, the High Court established by Article 154P(1) of the Constitution (enacted by**

the Thirteenth Amendment to the Constitution) when it exercises revisionary jurisdiction, is not subordinate to the Court of Appeal for; when concurrent or parallel jurisdiction is conferred by law upon two Courts, the question of a superior and inferior Court does not arise; and that, as far as the jurisdiction granted to the two Courts in certain matters goes, they are equal. [Emphasis is mine]

It is in this light, I would now, propose to deal with the submissions made by the learned President's Counsel for the Petitioner by way of written submissions in resisting the jurisdictional objection.

Upon a careful perusal of the written submissions of the learned President's Counsel for the Petitioner in its totality, it clearly, appears that the greater part of the written submissions, I would say, almost the entirety of it, had been devoted and dedicated to strenuously, challenge before this Court the legal proprietary of the decision pronounced by this Court in **Kospalage Don Kapila Lankaratne vs Wanniachchige Kankanamage Siriyalatha-(Supra)** in that it was contended by the learned President's Counsel for the Petitioner that the decision of this Court in **Kospalage Don Kapila Lankaratne vs Wanniachchige Kankanamage Siriyalatha-(Supra)**, is *per incuriam* for; there is no reasonable justification and/or explanation for barring a party from preferring an application in revision to the Court of Appeal from an order or judgement delivered by the Provincial High Court (Criminal) in the exercise of its revisionary jurisdiction in terms of Article 154P(3)(b) of the Constitution for; a direct appeal will clearly, lie to the Court of Appeal in terms of Article 154P(6) thereof, and therefore, **this Court has jurisdiction to hear and determine an application in revision emanating from an order made by a High Court of the Province established by Article 154P of the Constitution in the exercise of its revisionary jurisdiction vested in it by law** and as such this Court is not bound to follow the decision in **Kospalage Don Kapila Lankaratne vs Wanniachchige Kankanamage Siriyalatha(Supra)** and therefore, this Court

will have to re-visit the decision in **Kospalage Don Kapila Lankaratne vs Wanniachchige Kankanamage Siriyalatha(Supra)** and make a fresh determination in view of the submissions made in the written submission by the learned President's Counsel for the Petitioner.

However, in the light of the law set out above, it becomes manifestly, clear without an iota of doubt that the contention so advanced by the learned President's Counsel for the Petitioner in resisting the jurisdictional issue so arose before us, namely; the decision of this Court in **Kospalage Don Kapila Lankaratne vs Wanniachchige Kankanamage Siriyalatha-(Supra)**, is *per incuriam* for; there is no reasonable justification and/or explanation for barring a party from preferring an application in revision to the Court of Appeal from an order or judgement delivered by the Provincial High Court (Criminal) in the exercise of its revisionary jurisdiction in terms of Article 154P(3)(b) of the Constitution for; a direct appeal will clearly, lie to the Court of Appeal in terms of Article 154P(6) thereof, and therefore, this Court has jurisdiction to hear and determine an application in revision emanating from an order made by a High Court of the Province established by Article 154P of the Constitution in the exercise of its revisionary jurisdiction vested in it by law and as such this Court is not bound to follow the decision in **Kospalage Don Kapila Lankaratne vs Wanniachchige Kankanamage Siriyalatha(Supra)** and therefore, this Court will have to re-visit the decision in **Kospalage Don Kapila Lankaratne vs Wanniachchige Kankanamage Siriyalatha(Supra)** and make a fresh determination in view of the submissions made in the written submission by the learned President's Counsel for the Petitioner, cannot in any manner, be tenable and as such cannot sustain in law.

I would therefore, hold that such a contention as had been so advanced by the learned President's Counsel for the Petitioner as enumerated above, had been so raised by him in total misapprehension and or in total misconception of the law

governing the jurisdictional issue at hand before us and therefore, it should be rejected *in-limine*.

It was further contended by the learned President's Counsel for the Petitioner that the decision by this Court in **Kospalage Don Kapila Lankaratne vs Wanniachchige Kankanamage Siriyalatha(Supra)** is solely, based on the decision in **SC/Appeal/65/2025(Supra)** thereby, suggesting that the decision therein, has no bearing on the resolution of the jurisdictional issue at hand before us.

It is this context, I would think it pertinent at this juncture to re-produce *verbatim* the same the question of law that arose for decision by this Court in **Kospalage Don Kapila Lankaratne vs Wanniachchige Kankanamage Siriyalatha(Supra)** as follows;

> "whether this Court can exercise its revisionary jurisdiction in relation to an order made by the High Court of the Provinces established under Article 154P of the constitution enacted by the 13th Amendment thereto, in the exercise of its revisionary jurisdiction under and in terms of Article 154P(3)(b) of the Constitution to be read with Article 138 thereof." (Vide- Page 04 of the decision in **Kospalage Don Kapila Lankaratne vs Wanniachchige Kankanamage Siriyalatha(Supra)**)

The view held by this Court in relation to the question of law so arose for decision by it in **Kospalage Don Kapila Lankaratne vs Wanniachchige Kankanamage Siriyalatha(Supra)** as appeared on pages 22 and 23 of the judgement thereof, may be re-produced *verbatim* the same as follows;

> "I would hold that, the Petitioners cannot invoke the revisionary jurisdiction of this Court against the order dated 18.07.2025 made by the learned High Court Judge of the Southern Province holden in Hambantota (**P3**) in the exercise of concurrent or parallel revisionary jurisdiction vested in it by Article 154P(3)(b) to be read with Article 138 of the Constitution

and section 5 and 12 of the Act for; the Petitioners have already exhausted the remedy available by the law as enumerated above, and therefore, the Petitioners are now, debarred from invoking the concurrent or parallel revisionary jurisdiction of this Court against the said order of the learned High Court Judge of the Southern Province holden in Hambantota made in the exercise of concurrent or parallel jurisdiction, as rightly, contended by the Respondent."

It is to be observed that this view so held by the Court in the decision in **Kospalage Don Kapila Lankaratne vs Wanniachchige Kankanamage Siriyalatha(Supra)** had previously, been endorsed and laid down not only by the Supreme Court but also by the Court of Appeal in a plethora of authorities as cited above and the very reason why this Court opted to quote two citations in the decision in **Kospalage Don Kapila Lankaratne vs Wanniachchige Kankanamage Siriyalatha(Supra)** from the decision in **SC/APPEAL/65/2025(Supra)** as contained in pages 15, 18 and 19 thereof, is because of the fact that the very same principle as enunciated by the Supreme Court and the Court of Appeal in a plethora of decisions as referred to above, had been enunciated by the Supreme Court in the decision in **SC/APPEAL/65/2025(Supra)** too, and therefore, not because of the fact that this Court had opted to follow the decision in **SC/APPEAL/65/2025(Supra)** but, except for the principle so enunciated by it by reason of the fact that it immensely, assisted this Court in determining the question of law so arose before this Court for its decision in **Kospalage Don Kapila Lankaratne vs Wanniachchige Kankanamage Siriyalatha(Supra)**.

Besides, the question of law that arose for decision by the Supreme Court in **SC/APPEAL/65/2025(Supra)** was whether the Court of Appeal has jurisdiction, whether by way of final appeal, revision, or restitutio in integrum, to review the judgments or orders of the Provincial High Court, whether in the exercise of its appellate jurisdiction under Act No. 19 of 1990, as amended by Act No. 54 of

2006, or in the exercise of its original jurisdiction under Act No. 10 of 1996, which was answered in the negative and held that such jurisdiction is vested exclusively, in the Supreme Court whereas, the question of law that arose for decision in the decision in **Kospalage Don Kapila Lankaratne vs Wanniachchige Kankanamage Siriyalatha(Supra)** was whether this Court can exercise its revisionary jurisdiction in relation to an order made by the High Court of the Provinces established under Article 154P of the constitution enacted by the 13th Amendment thereto, in the exercise of its revisionary jurisdiction under and in terms of Article 154P(3)(b) of the Constitution to be read with Article 138 thereof which was answered in the negative by this Court. Hence, the question of law that arose for the decision in **SC/APPEAL/65/2025(Supra)** was entirely, different from the one which arose for decision in **Kospalage Don Kapila Lankaratne vs Wanniachchige Kankanamage Siriyalatha(Supra)**.

In the circumstances, this Court was mindful of the fact that the ultimate decision reached by the Supreme Court in the decision in **SC/APPEAL/65/2025(Supra)** was of no assistance to the determination of the question of law arose in the decision in **Kospalage Don Kapila Lankaratne vs Wanniachchige Kankanamage Siriyalatha(Supra)** and therefore, there had been no reason for this Court to distinguish the decision in **SC/APPEAL/65/2025(Supra)** from the decision in **Kospalage Don Kapila Lankaratne vs Wanniachchige Kankanamage Siriyalatha(Supra)**. Hence, had the Petitioner construed the decision in **Kospalage Don Kapila Lankaratne vs Wanniachchige Kankanamage Siriyalatha(Supra)** in its proper context, he would have clearly, understood that it was so. However, it is regretful to observe that such a contention had been raised by the Petitioner in his written submissions on a total misconception and/or total misapprehension of the decision in **Kospalage Don Kapila Lankaratne vs Wanniachchige Kankanamage Siriyalatha(Supra)**

Hence, it clearly, and unmistakably, appears that such a contention as raised by the learned President's Counsel for the Petitioner in the written submissions, namely; that the decision of this Court in **Kospalage Don Kapila Lankaratne vs Wanniachchige Kankanamage Siriyalatha(Supra)**, which is solely, based on the decision in **SC/APPEAL/65/2025(Supra)** is *per incuriam* for the reasons stated in the written submissions, had been so raised by the learned President's Counsel for the Petitioner in the written submissions as a result of the total failure to understand the decision therein, in its proper context and as such it is misconceived in law and therefore, it cannot in any manner, sustain in law and as such it should be rejected *in-limine* on this ground too.

Moreover, the learned President's Counsel for the Petitioner had directed the attention of this Court to the decision in **SC/APPEAL No. 111/2015-Decided On-27.05.2020** in support of the contention so advanced by the Petitioner to resist the jurisdictional issue so arose before us.

It may now, be examined.

The question of law that arose for determination by the Supreme Court in the decision in **SC/APPEAL No. 111/2015**(Supra) as manifest from paragraph 3 thereof, is as follows;

> "**Having failed to exercise the right to file an appeal in terms of Section 9 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended, could a person invoke the revisionary jurisdiction of the Court of Appeal referred to in Article 138 of the Constitution of the Republic of Sri Lanka in order to canvass a decision made by a Provincial High Court exercising its appellate powers?**" [Emphasis is mine]

On the other hand, the question of law that arose for determination by this Court in the instant action is as follows;

"**Does this Court have jurisdiction to hear and determine the instant application in revision as it emanates from a judgement given by the learned High Court Judge in the exercise of its concurrent revisionary jurisdiction.?**" [Emphasis is mine]

Hence, it clearly, appears to me upon a careful scrutiny of the question of law arose before the Supreme Court and this Court, the question of law that arose for determination by this Court in the instant action is totally, different from the question of law that arose for determination by the Supreme Court in the decision in **SC/APPEAL No. 111/2015**(Supra) for; the question of law that arose for our determination in this case is; **whether this Court does have jurisdiction to hear and determine the instant application in revision as it emanates from a judgement given by the learned High Court Judge in the exercise of its concurrent revisionary jurisdiction**, whereas, the question of law that arose for determination by the Supreme Court in the decision in **SC/APPEAL No. 111/2015**(Supra) is; **Having failed to exercise the right to file an appeal in terms of Section 9 of the Act, could a person invoke the revisionary jurisdiction of the Court of Appeal referred to in Article 138 of the Constitution of the Republic of Sri Lanka in order to canvass a decision made by a Provincial High Court exercising its appellate powers?.** [Emphasis is mine]

Hence, I would hold that the facts and circumstances of the case in **SC/APPEAL No. 111/2015**(Supra) can be clearly, distinguishable from the facts and circumstances of the instant application and therefore, the decision in **SC/APPEAL No. 111/2015**(Supra) has if I may say so with all due respect, no bearing on the question of law arose before us in the instant application for our determination.

There is another vital aspect of the jurisdictional issue which I think, I should deal with before I depart from this judgment and it may now, be examined.

It was emphatically, delineated by a bench of five judges of the Supreme Court in **Abeywardene vs. Ajith de Silva** (Supra) at page 139 that, "The cumulative effect of the provisions of Articles 154P (3)(b), 154P(6) and section 9 of Act No. 19 of 1990 is that, while there is a right of appeal to the Supreme Court from the orders, etc., of the High Court established by Article 154P of the Constitution in the exercise of the appellate jurisdiction vested in it by Article 154P (3) (b) or Section 3 of Act No. 19 of 1990 or any other law, there is no right of appeal to the Supreme Court from the orders in the exercise of the revisionary jurisdiction. An appeal from an order of the High Court in the exercise of its revisionary jurisdiction **should be** made to the Court of Appeal. An appeal to the Supreme Court from the decision of the Court of Appeal would lie, with leave;" [Emphasis is mine]

It was further held by the bench of five judges of the Supreme Court in **Abeywardene vs. Ajith de Silva** (Supra) at page 140 that, "……a direct appeal does not lie to the Supreme Court from the order of the High Court in the exercise of the revisonary jurisdiction. An appeal from the order of the High Court in the exercise of its revisionary jurisdiction **should be** made to the Court of Appeal. Where a party is dissatisfied with the order of the Court of Appeal, the party may, with leave of the Court of Appeal or when such leave is refused by the Court of Appeal, with leave of the Supreme Court, appeal to the Supreme Court" [Emphasis is mine]

In the light of the principle enunciated by the bench of five judges of the Supreme Court in **Abeywardene vs. Ajith de Silva** (Supra), an appeal from the order of the High Court in the exercise of its revisionary jurisdiction **should be** made to the Court of Appeal.[Emphasis is mine]

In view of the foregoing, I would find myself unable to agree with the contention so advanced by the learned President's Counsel for the Petitioner that, the case in **Kospalage Don Kapila Lankaratne vs Wanniachchige Kankanamage**

Siriyalatha (Supra) had been wrongly, decided by this Court and therefore, it was a decision made *per incuriam* and as such it should be rejected.

In view of the law set out above, I would hold that, the Petitioner cannot invoke the revisionary jurisdiction of this Court against the HC order dated 04.07.2025 made by the learned High Court Judge (**X1**) in the exercise of concurrent or parallel revisionary jurisdiction vested in it by Article 154P(3)(b) to be read with Article 138 of the Constitution and section 5 and 12 of the Act for; the Petitioner has already exhausted the remedy available by the law as enumerated above, and therefore, the Petitioner is now, debarred from invoking the concurrent or parallel revisionary jurisdiction of this Court against the said order of the learned High Court Judge made in the exercise of concurrent or parallel jurisdiction, as rightly, contended by the learned President's Counsel for the Respondent.

In the result, I would hold that the jurisdictional issue so arose before us as to the maintainability of the instant application in revision, is entitled to succeed in law.

In view of the law set out above, I would, hold that, this Court has no jurisdiction to hear and determine the instant application in revision.

Hence, I would dismiss the instant application in revision with costs.

JUDGE OF THE COURT OF APPEAL

D. THOTAWATTA, J.

I agree.

JUDGE OF THE COURT OF APPEAL