

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

MC Kandy Case No. 6007

**HC Kandy Case No. APP
55/2018**

**CA Nos:
CA/CPA/0102/25
(CA/CPA/0008/26)
(CA/CPA/0009/26)**

In the matter of an Application for Revision
from the order of the High Court of the
Central province holden at Kandy dated
13.02.2025

Assistant Commissioner of Cooperative
Development, Kandy District,
Department of Cooperative Development of
the Central Province, Ehelepola
Kumarihamy Mawatha, Bogambara,
Kandy.

Complainant

Vs

Vehicle Dealing Cooperative Society LTD of
the Central Province,
No 90/2,
Aniwaththa, Kandy

Accused

1. R.A.A.P. Jayasinghe,

Director,
Vehicle Dealing Cooperative Society LTD of
the Central Province.
Personal address - No 90/2, Aniwaththa,
kandy.

**Party Known as the 1st Accused after
service of Notices**

2. K. M. Weerasinghe,

No 32, Bahirawakanda, Kandy.

**Party Known as the 2nd Accused after
service of Notices**

3. Lal De Silva,

No 5/D, Waragaspela, Yakkahapitiya.

**Party Known as the 3rd Accused after
service of Notices**

4. H. M. S. Herath,

Dadanwala Land, Asgiriya, Kandy.

**Party Known as the 4th Accused after
service of Notices**

5. Ravi De Silva,

No 206/2, Polgahaanga, Kandy

**Party Known as the 5th Accused after
service of Notices**

1.R.A.A.P. Jayasinghe,

Director,

Vehicle Dealing Cooperative Society LTD of
the Central Province.

Personal address - No 90/2, Aniwaththa,
Kandy.

2. K.M. Weerasinghe,

No 32, Bahirawakanda, Kandy.

**Parties Known as the 1st and the 2nd
Accused after service of Notices -
Appellants**

Vs.

1. Assistant Commissioner of Cooperative

Development, Kandy District,
Department of Cooperative Development
Central Province, Ehelepola Kumarihamy
Mawatha, Bogambara, Kandy.

Complainant Respondent

2. Vehicle Dealing Cooperative Society LTD
Central Province, No 90/2, Aniwaththa,
Kandy.

Accused Respondent

3. K.M.Weerasinghe,
No 32, Nahirawakanda, Kandy.
4. Lal De Silva,
No 5/D, Waragaspela, Yakkahapitiya.
5. H.M.S.Herath,
Dadanwala Land, Asgiriya, Kandy.
6. Ravi De Silva,
No 206/2, Polgahaanga, Kandy

**Parties Known as the 3rd to 6th Accused
after service of Notices – Respondents**

7. H.D. Premawathi,
No 148, Dehigahahena, Pathiradha,
Harankata

Added Respondent

AND NOW BETWEEN

1. R.A.A.P.Jayasinghe,
Director,
Vehicle Dealing Cooperative Society LTD of
the Central Province, Kandy.
Personal address - No 90/2, Aniwaththa,
Kandy.

2. K.M.Weerasinghe,

No 32, Bahirawakanda, Kandy.

**Parties Known as the 1st and the 2nd
Accused after service of Notices -
Appellant - Petitioners**

Vs.

1. Assistant Commissioner of

Cooperative Development, Kandy District,
Department of Cooperative Development of
the Central Province, Ehelepola
Kumarihamy Mawatha, Bogambara,
Kandy.

Complainant - Respondent - Respondent

2. Vehicle Dealing Cooperative Society LTD
of the Central Province, No 196/B/1,
Pallemulla, Gohagoda, Haloluwa.

Accused - Respondent - Respondent

3. K.M.Weerasinghe,

No 32, Nahirawakanda, Kandy.

4. Lal De Silva,

No 5/D, Waragaspela, Yakkahapitiya.

5. H.M.S.Herath,

Dadanwala Land, Asgiriya, Kandy.

6. Ravi De Silva,

No 206/2, Polgahaanga, Kandy

**Parties Known as the 3rd to 5th accused
after service of Notices - Respondents -
Respondents**

7. H.D. Premawathi,

No 148, Dehigahahena, Pathiradha,
Harankahawa.

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

Counsel : Dhananjaya Bogahawatta instructed by Dilani Jayaneththi for the Parties known as the 1st and 2nd Accused after service of notices-Appellant-Petitioners.

The Complainant-Respondent-Respondent, Accused-Respondent-Respondent and The Parties known as the 3rd to 5th Accused after services of notices-Respondents-Respondents are absent and unrepresented.

Supported on : 05.02.2026

Written Submissions of the Parties known as the 1st and 2nd Accused after service of notices-Appellant-Petitioners

tendered on : 03.03.2026

Decided on : 22.05.2026

K. M. S. DISSANAYAKE, J.

When the instant application in revision came on before us for support for notice, the jurisdictional issue as to its maintainability arose in the following manner;

“Having failed to file an appeal to the Supreme Court as provided for by section 9 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended (hereinafter called and referred to as “the Act”), can the Parties known the 1st and 2nd Accused after service of notices-Appellant-Petitioner (hereinafter called and referred to as “the Petitioners”) invoke the revisionary jurisdiction of the Court of Appeal referred to in Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka (hereinafter called and referred to as “the Constitution”) in order to canvass the Judgement dated 13.02.2025 made by the Provincial High Court of the Central Province holden at Kandy in the exercise of the Appellate Jurisdiction vested in it by Article 154P(3)(b) of the Constitution, a certified copy of which was annexed to the petition marked as “I” (hereinafter called and referred to as “the HC Judgement”)?”

We having heard the learned Counsel for the Petitioners in support of the application for notice as well as on the jurisdictional issue, fixed this matter for order.

Since, the jurisdictional issue appears to me to go to the root of the instant application in revision, I would propose to deal with it in the first place.

The learned Counsel for the Petitioners sought to counter the jurisdictional issue apparently, on the premise that the Petitioners did not seek to by-pass the appellate structure in that he had first made an endeavour to invoke the appellate jurisdiction of the Supreme Court and it being unsuccessful, he had thereafter, approached this Court invoking its revisionary jurisdiction only after full disclosure of all material facts and therefore, he came to this Court with clean hands invoking not a technical device but the constitutional supervisory jurisdiction designed to prevent grave miscarriage of justice and therefore, denying him a hearing on jurisdictional grounds at this point would leave the Petitioners without any effective judicial recourse. The learned Counsel for the

Petitioners sought to mainly, rely on the decision in **SC/Appeal/111/2015-SC-Minutes of 27.05.2020** in resisting the jurisdictional issue so arose before us.

It is to be noted at this juncture, that learned Counsel for the Petitioners in the connected applications in revision bearing Nos.CA/CPA/0008/26 and CA/CPA/0009/26 informed Court that the Petitioners thereto, too, will abide by the decision of this Court in the present application in revision, namely; CA/CPA/0102/25. Hence, order in the instant application in revision will bind the Petitioners in the connected applications in revision bearing Nos. CA/CPA/0008/26 and CA/CPA/0009/26 too, as indicated to Court by learned Counsel.

The Petitioners in the instant application in revision seeks to revise and set aside the HC Judgement, made by the learned High Court Judge of the Central Province holden at Kandy (hereinafter called and referred to as “the learned High Court Judge of the Province”) in the exercise of the appellate jurisdiction vested in him by Article 154P(3)(b) of the Constitution, whereby, the learned High Court Judge of the Province had having upheld the preliminary legal objection raised by the Respondent as to the maintainability of the appeal preferred thereto by the Petitioners on the premise that right of appeal would not be available against the order appealed from, dismissed the appeal with costs.

It is an undisputed fact that the HC Judgement (I) sought to be revised and set aside in the instant application in revision, is a final judgement made by the learned High Court Judge of the Province in the exercise of the appellate jurisdiction vested in him by Article 154P(3)(b) of the Constitution to be read with Article 138 thereof; and that a direct appeal will lie to the Supreme Court therefrom as provided for by section 9 of the Act with leave to appeal from the High Court or the special leave to appeal from the Supreme Court first had and obtained as the case may be.

When the jurisdictional issue is viewed in the light of the law set out in sections 9 and 10 of the Act and Articles 127 and 128(4) of the Constitution to be read with Articles 154P(3)(b) and 138 thereof, the pertinent question that would now, arise for our consideration is **whether a judgement or a final order made by a High Court established by Article 154P of the Constitution in the exercise of the appellate jurisdiction vested in it by Article 154P(3)(b) of the Constitution to be read with 138 thereof, is amendable to an extra-ordinary revisionary jurisdiction of this Court when sections 9 and 10 of the Act and Articles 127 and 128(4) of the Constitution “expressly”, confers upon a party aggrieved by such an order a right of appeal to the Supreme Court with leave of the High Court or the Supreme Court first had and obtained as the case may be, thereby, by-passing and/or disregarding the clear statutory command and frustrating the very object of the Provincial High Court scheme and the appellate structure so provided thereby.** [Emphasis is mine]

It is in this context, let me now, examine the jurisdictional issue.

Article 138(1) of the Constitution enacts that,

“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...”

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It was *inter-alia*, held by the Supreme Court in **Weragama v. Eksath Lanka Wathu Kamkam Samithiya and others-1994[1] SLR 329**, 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 Act, 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."

Hence, it becomes manifest that the jurisdiction of the Court of Appeal under Article 138 is not entrenched and therefore, not absolute and as such it is inherently, conditional and it can thus, be altered by ordinary law as held by Supreme Court in **Weragama v. Eksath Lanka Wathu Kamkam Samithiya and**

others (Supra) and in Swasthika Textiles Industries Ltd Vs Dayaratne-1993 [2] SLR 348

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.”

Hence, 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]

However, 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 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

(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 :**

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.”[Emphasis is mine]

Section 10 of the Act which sets out the powers of the Supreme Court on appeal, enacts 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 be 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 justice may require and may also call 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.”

Section 3 of the Act enacts thus;

“A High Court established by Article 154P of the Constitution for a Province shall, **subject to any law**, exercise appellate and revisionary jurisdiction **in respect of orders made by Labour Tribunals within that Province** and orders made under section 5 or section 9 of the Agrarian Services Act, No. 58 of 1979, in respect of any land situated within that Province”.
[Emphasis is mine]

Article 127 of the Constitution which sets out the appellate jurisdiction of the Supreme Court, enacts thus;

“(1) The Supreme Court shall, subject to the Constitution, be the final Court of civil and criminal appellate jurisdiction for and within the Republic of Sri Lanka for the correction of all errors in fact or in law which shall be committed by the Court of Appeal or any Court of First Instance, tribunal or other institution **and the judgments and orders of the**

Supreme Court shall in all cases be final and conclusive in all such matters.” [Emphasis is mine]

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Article 128(4) of the Constitution enacts thus;

“An appeal shall lie directly to the Supreme Court **on any matter and in the manner specifically provided for by any other law passed by Parliament.**” [Emphasis is mine]

Upon a careful analysis of section 9(a) of the Act, it becomes manifestly, clear that, subject to the provisions of the Act or any other law, any person aggrieved by **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 the 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.**

Article 128(4) of the Constitution also makes similar provision which enacts thus;

“An appeal shall lie directly to the Supreme Court **on any matter and in the manner specifically provided for by any other law passed by Parliament.**” [Emphasis is mine]

The cumulative effect of the provisions enumerated above, is to expressly, and unambiguously, provide for a right of appeal **“only”** and **“directly”** to the Supreme Court from **a final judgement or a final order** made by a High Court established under Article 154P of the Constitution in the exercise of its appellate jurisdiction vested in it by Article 154P(3)(b) thereof. [Emphasis is mine]

The pertinent question that would then, arise for our consideration is; What was the specific objective that the legislature intended to achieve by expressly, unequivocally and unambiguously, providing for a right of appeal “**only**” and “**directly**” to the apex Court in the judicial hierarchy of this country-the Supreme Court, by the law as enumerated above, to an aggrieved party?.

In my view, the specific objective intended to be achieved by the legislature thereby, was to arrest delays in the administration of justice by conferring finality upon a matters under review for; **the judgments and orders of the Supreme Court shall in all cases be final and conclusive in all such matters.**” as enumerated by Article 127(1) of the Constitution which would in turn, result in the early and expeditious disposal of the disputes arising out of matters as such. [Emphasis is mine]

The question that would next arise for our consideration in view of the jurisdictional issue so arose before us, would be;

in the light of the law set out above, does the Court of Appeal have a revisionary jurisdiction in terms of Article 138 of the Constitution in respect of a final judgement or a final order of the Provincial High Court made in the exercise of the appellate jurisdiction vested in it by Article 154P(3)(b) of the Constitution? [Emphasis is mine]

It was observed by the Supreme Court in **Gunawardane And Others Vs. Muthukumarana and Others (Supra)** at page 314 that, “*At the outset, it must be borne in mind that the revisionary jurisdiction of the Court of Appeal is a Constitutional mandate. Its genesis lies in Article 138 of the Constitution. There is no question that the Constitution is the supreme law of the land (vide In Re Reference under Article 125(1) of the Constitution. In those circumstances, any ouster or restriction of a Court's jurisdiction which is founded on the Constitution, in so far as it is permitted under the Constitution, must be made in express language. In Re the Nineteenth Amendment to the Constitution, a bench of 7 judges*

unequivocally opined that "This manifests a cardinal rule that applies to the interpretation of a Constitution, that there can be no implied amendment of any provision of the Constitution" (at page 110). Therefore, it is only right and befitting that this Court insists that every provision which restricts or modifies a Court's Constitutional mandate is express and set out in no uncertain terms."

It is in this context, I would think it expedient at this juncture to direct my judicial mind to the observations explicitly, made by the Supreme Court in a later case in **W.T.S. Nilantha Fernando Vs. P.M.S. Nilanthi Perera (Supra)**, dealing with the observations so made by the Supreme Court in **Gunawardane v. Muthukumarana (Supra)**, and they may be reproduced *verbatim* the same as follows to the extent that would be necessary for the proper resolution of the jurisdictional issue so arose before us as enumerated above;

"The Court of Appeal relied heavily on the judgment of this court in Gunawardane v. Muthukumarana [2020] 3 Sri LR 306 in overruling the preliminary objection raised by the defendant on jurisdiction. In that case, at page 310, this court held as follows: Section 9 of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990, as amended, does not oust the revisionary jurisdiction of the Court of Appeal in respect of decisions made by a Provincial High Court exercising its appellate powers. Therefore, the revisionary jurisdiction of the Court of Appeal referred to in Article 138 of the Constitution of the Republic of Sri Lanka can be invoked in order to canvass a decision made by a Provincial High Court exercising its appellate powers.

With all due respect, I am unable to agree with that conclusion. That judgment is predominantly premised on the conceptual separation of revision from appeal, in the manner adopted by Sansoni C.J. in the oft quoted decision in Mariam Beebee v. Seyed Mohomed (1965) 68 NLR 36, where it was observed at page 38:

The power of revision is an extraordinary power which is quite independent of and distinct from the appellate jurisdiction of this Court. Its object is the due administration of justice and the correction of errors, sometimes committed by this Court itself, in order to avoid miscarriages of justice. It is exercised in some cases by a Judge of his own motion, when an aggrieved person who may not be a party to the action brings to his notice the fact that, unless the power is exercised, injustice will result. The Partition Act has not, I conceive, made any change in this respect, and the power can still be exercised in respect of any order or decree of a lower Court.

*When *Mariam Beebee v. Seyed Mohomed* was decided in 1965, Sri Lanka was governed by the Soulbury Constitution. Neither the Soulbury Constitution nor the First Republican Constitution of 1972 contained any provision equivalent to Article 138 of the present Constitution of 1978, which expressly enacts the appellate, revisionary, and restitutio in integrum jurisdiction of the Court of Appeal, to be exercised “subject to the provisions of the Constitution or of any law.”*

*Indeed, the Supreme Court in *Gunawardane*, at page 314, acknowledged: “At the outset, it must be borne in mind that the revisionary jurisdiction of the Court of Appeal is a Constitutional mandate. Its genesis lies in Article 138 of the Constitution.” However, both the Supreme Court in *Gunawardane* and the Court of Appeal in the instant case failed to properly appreciate that Article 138 is not an entrenched provision but an enabling one. Article 138(1) itself makes plain that the appellate jurisdiction of the Court of Appeal “by way of appeal, revision and restitutio in integrum” is “subject to the provisions of the Constitution or of any law”. Nevertheless, both courts proceeded on the footing that, in the absence of an express exclusion, the Court of Appeal continues to retain revisionary jurisdiction over judgments of the Provincial High Court.*

At page 316 of Gunawardane, it was further stated: “As I observed earlier, the revisionary jurisdiction of the Court of Appeal is a Constitutional mandate which, undoubtedly, is subject to the provisions of statutory law. Nevertheless, owing to its genesis in the Constitution, any restriction or modification which the Legislature seeks to introduce must be introduced by way of express wording.” In my view, this reasoning is untenable. Whilst conferring revisionary jurisdiction on the Court of Appeal, the Constitution itself expressly stipulates that such jurisdiction is “subject to the provisions of the Constitution or of any law.” When the Constitution at the outset makes clear that the revisionary jurisdiction is conditional and not absolute, there is no need for express words of exclusion. Parliament, by ordinary legislation, is empowered to regulate, modify, or reallocate such jurisdiction. To hold otherwise would elevate Article 138(1) to a status of entrenchment which the Constitution has not conferred.

This is consistent with the principle affirmed in Swasthika Textile Industries Ltd v. Dayaratne, where the Supreme Court held that appellate and revisionary jurisdiction under Article 138(1) is not entrenched and can be altered by ordinary law. In that case, the Supreme Court held that section 31DD, introduced into the Industrial Disputes Act by Act No. 32 of 1990, which provides that: “Any workman, trade union or employer who is aggrieved by any final order of a High Court established under Article 154P of the Constitution, in the exercise of the appellate jurisdiction vested in it by law or in the exercise of its revisionary jurisdiction vested in it by law, in relation to an order of a Labour Tribunal, may appeal therefrom to the Supreme Court with the leave of the High Court or the Supreme Court first had and obtained”, removed the appellate and revisionary jurisdiction of the Court of Appeal in respect of final orders of the High Court made in relation to orders of Labour Tribunals, and vested such jurisdiction exclusively in the Supreme Court. In that instance also, there was no express removal of the revisionary jurisdiction of the Court of Appeal. This position was

subsequently accepted as correct by a Bench of five Judges of this court in Abeywardene v. Ajith De Silva [1998] 1 Sri LR 134 at 140.

As I have emphasised repeatedly, Provincial High Courts were vested with special jurisdiction under Acts Nos. 19 of 1990, 10 of 1996, and 54 of 2006 with the specific objective of arresting delays in the administration of justice. Sansoni C.J. in Mariam Beebee v. Seyed Mohamed did not recognise the revisionary power as an absolute and unqualified principle of law; rather, His Lordship acknowledged that its exercise is subject to legislative intent. This is apparent from his explicit observation in the above excerpt that “The Partition Act has not, I conceive, made any change in this respect, and the power [of revision] can still be exercised in respect of any order or decree of a lower Court”, thus recognising that the legislature could, through statute, alter or limit the scope of revisionary powers.

Unlike the Partition Act considered in Mariam Beebee, Acts Nos. 19 of 1990, 10 of 1996, and 54 of 2006 expressly restructure appellate jurisdiction and, by their terms, exclude any intermediate recourse to the Court of Appeal from judgments and orders of Provincial High Courts exercising their appellate jurisdiction. The legislative design, read together with the enabling nature of Article 138, leaves no scope for the Court of Appeal to invoke its appellate, revisionary or restitutio in integrum jurisdiction in such instances, without disregarding the clear statutory command and frustrating the very object of the Provincial High Court scheme.”

Hence, the view taken by the Supreme Court in a bench of five judges in **Abeywardene v. Ajith De Silva 1998 [1] SLR 134 at Page 140** as well as the view taken by the Supreme Court in **Swasthika Textile Industries Ltd v. Dayaratne (Supra)** and the recent decision of the Supreme Court in **W.T.S. Nilantha Fernando Vs. P.M.S. Nilanthi Perera (Supra)**, is that while conferring revisionary jurisdiction on the Court of Appeal, the Constitution itself expressly enunciates that such jurisdiction is “subject to the provisions of the Constitution

or of any law” and therefore, its exercise is subject to legislative intent; and that when the Constitution at the outset makes clear that the revisionary jurisdiction is conditional and not absolute, there is no need for express words of exclusion for; in such an instance Parliament, by ordinary legislation, is empowered to regulate, modify, or re-allocate such jurisdiction; and that to hold otherwise would elevate Article 138(1) to a status of entrenchment which the Constitution has not conferred; and that appellate and revisionary jurisdiction vested in the Court of Appeal under Article 138(1) of the Constitution which is not entrenched, can thus, be altered by ordinary law.

In the result, in my opinion, the cumulative effect of sections 9 and 10 of the Act, taken in conjunction with Articles 127(1) and 128(4) of the Constitution, is to confer upon an aggrieved party a direct appeal to the Supreme Court with leave first had and obtained as enumerated therein, from an order made by the learned High Court Judge of the Province in the exercise of the appellate jurisdiction vested in him under Article 154P(3)(b) of the Constitution thus, clearly, **removing the revisionary jurisdiction of the Court of Appeal in respect of the final judgements and final orders of the High Court established under Article 154P of the Constitution** so made in the exercise of the appellate jurisdiction vested in it by Article 154P(3)(b) of the Constitution and thereby, **vesting such jurisdiction “exclusively” in the Supreme Court** in keeping with the clear statutory command and not frustrating the very object of the Provincial High Court scheme intended to be achieved by the Legislature by enacting those special provisions both to the Constitution as well as to the Act as enumerated above. The pivotal point to be stressed here is that in this instance too, there was no express removal of the revisionary jurisdiction of the Court of Appeal. [Emphasis is mine]

Similar question of law as arisen before us for our consideration in the instant application in revision as enumerated above, had arisen for its consideration in

the decision in **Gunawardane And Others Vs. Muthukumarana and Others (Supra)** and it was held at page 14 as follows;

“Particularly in relation to the revisionary jurisdiction, which exists to remedy miscarriage of justice, greater care must be exercised when employing the maxim. As I observed earlier, the revisionary jurisdiction of the Court of Appeal is a Constitutional mandate which, undoubtedly is subject to the provision of statutory law. Nevertheless, owing to its genesis in the Constitution, any restriction or modification which the Legislature seeks to introduce must be introduced by way of express wording. The omission to refer to ‘revisionary jurisdiction’ in Section 9 of Act No. 19 of 1990 cannot be taken as reducing the Court of Appeal’s plenitude of powers under Article 138. Nothing less than an express removal of these powers would be required to achieve such a result.”

It was further held at page 16 as follows;

“Therefore, I hold that Section 9 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended, does not oust the Revisionary Jurisdiction of the Court of Appeal in respect of decisions made by a Provincial High Court exercising its appellate powers.”

However, subsequent to the decision in **Gunawardane And Others Vs. Muthukumarana and Others (Supra)**, it was held by the Supreme Court in the recent decision in **W.T.S. Nilantha Fernando Vs. P.M.S. Nilanthi Perera (Supra)** at pages 44 to 47 as follows;

“The Court of Appeal relied heavily on the judgment of this court in Gunawardane v. Muthukumarana [2020] 3 Sri LR 306 in overruling the preliminary objection raised by the defendant on jurisdiction. In that case, at page 310, this court held as follows: Section 9 of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990, as amended, does not oust the revisionary jurisdiction of the Court of Appeal in respect of decisions

made by a Provincial High Court exercising its appellate powers. Therefore, the revisionary jurisdiction of the Court of Appeal referred to in Article 138 of the Constitution of the Republic of Sri Lanka can be invoked in order to canvass a decision made by a Provincial High Court exercising its appellate powers. With all due respect, I am unable to agree with that conclusion. That judgment is predominantly premised on the conceptual separation of revision from appeal, in the manner adopted by Sansoni C.J. in the oft quoted decision in Mariam Beebee v. Seyed Mohomed (1965) 68 NLR 36, where it was observed at page 38: The power of revision is an extraordinary power which is quite independent of and distinct from the appellate jurisdiction of this Court. Its object is the due administration of justice and the correction of errors, sometimes committed by this Court itself, in order to avoid miscarriages of justice. It is exercised in some cases by a Judge of his own motion, when an aggrieved person who may not be a party to the action brings to his notice the fact that, unless the power is exercised, injustice will result. The Partition Act has not, I conceive, made any change in this respect, and the power can still be exercised in respect of any order or decree of a lower Court.

When Mariam Beebee v. Seyed Mohomed was decided in 1965, Sri Lanka was governed by the Soulbury Constitution. Neither the Soulbury Constitution nor the First Republican Constitution of 1972 contained any provision equivalent to Article 138 of the present Constitution of 1978, which expressly enacts the appellate, revisionary, and restitutio in integrum jurisdiction of the Court of Appeal, to be exercised “subject to the provisions of the Constitution or of any law.” Indeed, the Supreme Court in Gunawardane, at page 314, acknowledged: “At the outset, it must be borne in mind that the revisionary jurisdiction of the Court of Appeal is a Constitutional mandate. Its genesis lies in Article 138 of the Constitution.” However, both the Supreme Court in Gunawardane and the Court of Appeal in the instant case failed to properly appreciate that Article 138 is not an

entrenched provision but an enabling one. Article 138(1) itself makes plain that the appellate jurisdiction of the Court of Appeal “by way of appeal, revision and restitutio in integrum” is “subject to the provisions of the Constitution or of any law”. Nevertheless, both courts proceeded on the footing that, in the absence of an express exclusion, the Court of Appeal continues to retain revisionary jurisdiction over judgments of the Provincial High Court. At page 316 of Gunawardane, it was further stated: “As I observed earlier, the revisionary jurisdiction of the Court of Appeal is a Constitutional mandate which, undoubtedly, is subject to the provisions of statutory law. Nevertheless, owing to its genesis in the Constitution, any restriction or modification which the Legislature seeks to introduce must be introduced by way of express wording.” In my view, this reasoning is untenable. Whilst conferring revisionary jurisdiction on the Court of Appeal, the Constitution itself expressly stipulates that such jurisdiction is “subject to the provisions of the Constitution or of any law.” When the Constitution at the outset makes clear that the revisionary jurisdiction is conditional and not absolute, there is no need for express words of exclusion. Parliament, by ordinary legislation, is empowered to regulate, modify, or reallocate such jurisdiction. To hold otherwise would elevate Article 138(1) to a status of entrenchment which the Constitution has not conferred.

This is consistent with the principle affirmed in Swasthika Textile Industries Ltd v. Dayaratne, where the Supreme Court held that appellate and revisionary jurisdiction under Article 138(1) is not entrenched and can be altered by ordinary law. In that case, the Supreme Court held that section 31DD, introduced into the Industrial Disputes Act by Act No. 32 of 1990, which provides that: “Any workman, trade union or employer who is aggrieved by any final order of a High Court established under Article 154P of the Constitution, in the exercise of the appellate jurisdiction vested in it by law or in the exercise of its revisionary jurisdiction vested in it by law, in relation to an order of a Labour Tribunal, may appeal therefrom to the

Supreme Court with the leave of the High Court or the Supreme Court first had and obtained”, removed the appellate and revisionary jurisdiction of the Court of Appeal in respect of final orders of the High Court made in relation to orders of Labour Tribunals, and vested such jurisdiction exclusively in the Supreme Court. In that instance also, there was no express removal of the revisionary jurisdiction of the Court of Appeal. This position was subsequently accepted as correct by a Bench of five Judges of this court in Abeywardene v. Ajith De Silva [1998] 1 Sri LR 134 at 140.

As I have emphasised repeatedly, Provincial High Courts were vested with special jurisdiction under Acts Nos. 19 of 1990, 10 of 1996, and 54 of 2006 with the specific objective of arresting delays in the administration of justice. Sansoni C.J. in Mariam Beebee v. Seyed Mohomed did not recognise the revisionary power as an absolute and unqualified principle of law; rather, His Lordship acknowledged that its exercise is subject to legislative intent. This is apparent from his explicit observation in the above excerpt that “The Partition Act has not, I conceive, made any change in this respect, and the power [of revision] can still be exercised in respect of any order or decree of a lower Court”, thus recognising that the legislature could, through statute, alter or limit the scope of revisionary powers.

Unlike the Partition Act considered in Mariam Beebee, Acts Nos. 19 of 1990, 10 of 1996, and 54 of 2006 expressly restructure appellate jurisdiction and, by their terms, exclude any intermediate recourse to the Court of Appeal from judgments and orders of Provincial High Courts exercising their appellate jurisdiction. The legislative design, read together with the enabling nature of Article 138, leaves no scope for the Court of Appeal to invoke its appellate, revisionary or restitutio in integrum jurisdiction in such instances, without disregarding the clear statutory command and frustrating the very object of the Provincial High Court scheme.” [Vide-pages 44 to 47]

It was further observed by the Supreme Court in the recent decision in **W.T.S. Nilantha Fernando Vs. P.M.S. Nilanthi Perera (Supra)** at pages 48 and 49 as follows;

“Gunawardane has not been followed in several subsequent decisions, including Abeydasa v. People’s Bank (CA/CPA/124/2021, CA Minutes of 05.06.2023) and Malwatta v. Softlogic Finance PLC and Others (CA/CPA/152/2022, CA Minutes of 31.08.2023).”

Having so observed, the Supreme Court in the recent decision in **W.T.S. Nilantha Fernando Vs. P.M.S. Nilanthi Perera (Supra)** at pages 49 and 50 had stated as follows;

“In my view, the reasoning in Gunawardane v. Muthukumarana [2020] 3 Sri LR 306 cannot be reconciled with the clear statutory scheme established by Acts Nos. 19 of 1990, 10 of 1996, and 54 of 2006, read in conjunction with Article 138 of the Constitution. The approach adopted by the Supreme Court in Merchant Bank of Sri Lanka Ltd v. Perera [2012] BLR 14 accords with both the constitutional framework and the legislative intent and, in my respectful view, ought to be preferred.”

In the light of the above, it is highly unlikely that Parliament or the legislative draftsmen ever intended to manifestly complicate the appeal process by disregarding the clear statutory command and frustrating the very object of the Provincial High Court scheme, 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 iudicis 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 as held by this Court in **Malwatta v. Softlogic Finance PLC and Others (Supra)**.

In view of the line of reasoning so adduced by the Supreme Court in the recent decision in **W.T.S. Nilantha Fernando Vs. P.M.S. Nilanthi Perera (Supra)** as enumerated above, I would, if I may say so, with all due respect to the Supreme Court in its decision in **Gunawardane And Others Vs. Muthukumarana and Others (Supra)**, prefer to follow the approach adopted by the Supreme Court in the recent decision in **W.T.S. Nilantha Fernando Vs. P.M.S. Nilanthi Perera (Supra)** as enumerated above, for; if I may say so, with all due respect to our Apex Court-the Supreme Court of this Country, the said approach adopted by the Supreme Court in **W.T.S. Nilantha Fernando Vs. P.M.S. Nilanthi Perera (Supra)** fully, accords with both the Constitutional framework and the legislative intent with regard to the clear statutory scheme established by the Act No.19 of 1990, sections 9 and 10 thereof, in particular, taken in conjunction with Articles 127, 128(4), 154P(3)(b) and 138 of the Constitution as enumerated above.

In the light of the above, I would hold that in terms of sections 9 and 10 of the Act taken in conjunction with Articles 127,128(4),138 and 154P(3)(b) of the Constitution, a direct appeal in respect of a decision made by a Provincial High Court established under Article 154P of the Constitution in the exercise of appellate jurisdiction vested in it by Article 154P(3)(b) of the Constitution, will lie to the Supreme Court with leave first had and obtained, and therefore, those provisions of law referred to above, clearly, oust the revisionary jurisdiction of the Court of Appeal in respect of a decision as such and therefore, a revision will not lie to the Court of Appeal from an order as such.

I would therefore, hold that the Petitioners to the instant application in revision, cannot in law, invoke the revisionary jurisdiction of this Court from the judgement **(I)** made by the learned High Court Judge of the Province in the exercise of the appellate jurisdiction vested in it by Article 154P(3)(b) of the Constitution in total disregard of the clear statutory command and in total

frustration of the Provincial High Court Scheme established by the 13th Amendment to the Constitution for; a direct appeal therefrom, will lie to the Supreme Court with leave first had and obtained as enumerated above.

In view of my findings as aforesaid, I would hold that the decisions referred to in their written submissions by the Petitioners are of no assistance or of little assistance for the resolution of the jurisdictional issue so arose before us.

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

In view of my findings as aforesaid, I would proceed to answer the jurisdictional issue so arose before us in the negative.

Hence, I would refuse to issue notices on the Respondents.

In the result, I would dismiss the instant application in revision *in-limine*.

However, taking into my consideration, all the facts and circumstances of the instant application in revision, I would make no order for costs.

Since, the Petitioners in the connected applications in revision bearing No. CA/CPA/0008/26 and CA/CPA/0009/26 undertook to abide by the order of this Court in the instant application in revision, I would order that the Petitioners in the connected application in revision bearing No. CA/CPA/0008/26 and No.CA/CPA/0009/26 are bound by the order of the instant application in revision.

In the circumstances, I would proceed to dismiss the connected applications in revision bearing Nos. CA/CPA/0008/26 and CA/CPA/0009/26 too, *in limine*.

However, taking into my consideration, all the facts and circumstances of the applications in revision bearing Nos. CA/CPA/0008/26 and CA/CPA/0009/26, I would make no order for costs.

Registrar is directed to file a copy of order of the instant application in revision, of record in the connected applications in revision bearing Nos. CA/CPA/0008/26 and CA/CPA/0009/26.

JUDGE OF THE COURT OF APPEAL

D. THOTAWATTA, J.

I agree.

JUDGE OF THE COURT OF APPEAL