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**KUMARA PERERA**

**Vs.**

**MERCHANT BANK OF SRI LANKA LTD**

COURT OF APPEAL  
SAMAYAWARDHENA, J.  
CA/RI/198/2007  
HC (CIVIL) 145/1998 (1)

**High Court of the Provinces (Special Provisions) Act, No. 10 of 1996, section 5— Article 138(1) of the Constitution—Application for *restitutio in integrum* against the judgment of the Commercial High Court—Lack of jurisdiction**

The petitioner filed this application for *restitutio in integrum* against the respondent under Article 138(1) of the Constitution seeking to set aside the judgment of the Commercial High Court and for a declaration that the auction sale conducted on that judgment was void.

**Held:**

1. The Commercial High Court was set up by the High Court of the Provinces (Special Provisions) Act, No. 10 of 1996. In terms of section 5, there is only one direct appeal to the Supreme Court against the judgments and orders of the Commercial High Court.
2. Article 138(1) of the Constitution does not confer unrestricted, unfettered and absolute power for revision and *restitutio in integrum* on the Court of Appeal against judgments and orders of the High Courts. The Court of Appeal shall exercise appellate, revisionary and *restitutio in integrum* jurisdiction “subject to the provisions of

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the Constitution or of any law”. “Any law” encompasses the laws introduced by Act No. 10 of 1996.

3. The Court of Appeal lacks jurisdiction to entertain an application for *restitutio in integrum* from the judgment of the Commercial High Court.

**Cases referred to:**

1. Merchant Bank of Sri Lanka Ltd v. Perera [2012] SLR 14
2. Australanka Exporters (Pvt) Ltd v. Indian Bank (2001] 2 Sri LR 156
3. Senanayake v. Koehn (2002] 3 Sri LR 381
4. Kosala Bandara Bakmeewewa v. The Finance PLC (CA/(PHC) APN/97/2007, CA Minutes of 13. 06. 2016)

APPLICATION for *restitutio in integrum* from the Judgment of the Commercial High Court.

Jagath Wickramanayake for the Defendant-Petitioner.

Romesh de Silva, P. C., for the Plaintiff-Respondent.

*cur. adv. vult.*

March 15, 2019

**SAMAYAWARDHENA, J.**

The petitioner filed this application for *restitutio in integrum* against the respondent under Article 138(1) of the Constitution seeking to set aside the Judgment of the Commercial High Court dated 01. 09. 2003 and a declaration that the auction sale held thereon is void.

The Commercial High Court was set up by the High Court of the Provinces (Special Provisions) Act, No. 10 of 1996.

In terms of section 5 of that Act, against the Judgments and Orders of the Commercial High Court, there is only one direct appeal to the Supreme Court. Section 5(1) and (2) of that Act reads as follows:

*5(1) Any person who is dissatisfied with any judgement pronounced by a High Court established by Article 154P of the Constitution, in the exercise of its jurisdiction under section 2, in any action, proceeding or matter to which such person is a party may prefer*

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an appeal to the Supreme Court against such Judgement for any error in fact or in law.

*(2) Any person who is dissatisfied with any order made by a High Court established by Article 154P of the Constitution, in the exercise of its jurisdiction under section 2 in the course of any action, proceeding or matter to which such person is, or seeks to be, a party, may prefer an appeal to the Supreme Court against such Order for the correction of any error in fact or in law, with the leave of the Supreme Court first had and obtained.*

This Court has no jurisdiction to set aside Judgments or Orders of the Commercial High Court by way of final appeal. revision or restitutio in interqrum. That is vested exclusively in the Supreme Court.

This has been emphasised in a series of cases including *Merchant Bank of Sri Lanka Limited v. Perera*,<sup>1</sup>*Australanka Exporters (Pvt) Limited v. Indian Bank*,<sup>2</sup>*Senanayake v. Koehn*,<sup>3</sup>*Kosala Bandara Bakmeewewa v. The Finance PLC*.<sup>4</sup>

It is significant to note that Article 138(1) of the Constitution does not confer unrestricted, unfettered, absolute power for revision and restitutio in integrum on the Court of Appeal against Judgments and Orders of the High Courts. It reads:

*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:*

“Any law” underlined above encompasses the law introduced by Act No. 10 of 1996.

The application of the petitioner is dismissed with costs.

**FERNANDO, J.** - *I agree.*

*Application dismissed.*

*Judgment by: Mahinda Samayawardhena, J.*

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