UDESHI AND OTHERS
v.
MATHER

SUPREME COURT
SHARVANANDA, C.J., ATUKORALE, J. AND L. H. DE ALWIS, J.
S.C. APPEAL Nos. 6/87 AND 7/87.
CA(L.A.) No. 71/86 WITH C.A. No. 622/86(R)
DC MOUNT LAVINIA No. 1707/RE
MAY 7, 8, 25 and 26, 1987.

Civil Procedure Code – Power of Attorney – Special and general powers of attorney – Recognized agents – Sections 5, 24, 25(b) and 27 of the Civil Procedure Code – Rectification – Ratification – Supreme Court Rules, 1978, Rule 50 – Stay orders by a single Judge – Inherent jurisdiction.

(1) Recognised agent is defined in s. 5 of the Code as including the persons designated under that name in s.25 and no others. No person other than those designated as recognised agents in subsections (*a*), (*b*) and (*c*) of s. 25 can be recognised agent of a party. Subsection (*b*) designates one class of recognised agents namely, those holding general powers of attorney, from parties not resident within the local limits of the jurisdiction of the court where the application is made or act done, authorising them to make such appearances and applications and do such acts on their behalf. A proctor duly appointed by a recognised agent of a party may, inter alia, make an application to court.

(2) Where an objection is raised relating to the validity of a power of attorney on the basis of the residence of the grantor for the first time in appeal, the appellants' request to adduce evidence to establish their non-residence in Sri Lanka on or about the material date should have been granted on the basis of established procedure and the rule of *audi alteram partem* which is ingrained in our legal system.

(3) The burden was on the respondent to establish that the appellants were resident in Sri Lanka on the material date. This burden the respondent cannot discharge by merely relying on the addresses given in the captions and proxies when the applications and proxies had been accepted by the court and thus bringing into operation the maxim *omnia praesumuntur rite et solemniter esse acta.*

(4) A defective proxy can be rectified and the acts done thereon ratified by the principal where the defects are curable. The question is whether the proctor had in fact the authority of his client to do what was done on his behalf although in pursuance of a defective appointment. If in fact he had his clients' authority to do so, then the defect is one which in the absence of any positive legal bar, could be cured. On the contrary if in fact he did not have such authority the acts done and the appearances made on his behalf by the attorney-at-law would be void and of no legal effect.

(5) Failure to file the powers of attorney of certified copies thereof in court in compliance with s. 25(*b*) of the Civil Procedure Code is only an irregularity which can be cured later by tendering them to Court.

(6) Any notary can certify a copy of a power of attorney as a true copy for the purposes of s. 25(*b*) of the Civil Procedure Code and not only the notary who attested it.

(7) Article 132(2) of the Constitution does not prevent a single Supreme Court Judge in the exercise of inherent jurisdiction from issuing a stay order, where an application for special leave is pending, operative until determination of the application. If leave is granted any further stay order must be by a Supreme Court bench of three judges.

(8) Where a power of attorney is given in respect of a business enterprise but mentions only one particular place of its business and not the other places of its business, still it is a general power of attorney and not a special power.

Cases referred to:

(1) *Wijesinghe v. The Incorporated Council of Legal Education (1963) 65 NLR 364.*
(2) *Tillekeratne v. Wijesinghe (1908) 11 NLR 270.*
(3) *Arumugam Chetty v. Silva (1923) 25 NLR 31.*
(4) *Kadiramadas v. Suppiah (1953) 56 NLR 172.*
(5) *Nelson de Silva v. Casinathan (1953) 55 NLR 121.*
(6) *Alia Markar v. Muttu and Isa Natchiya (1900) 2 Br. Rep. 64.*
(7) *Segu Mohamadu v. Govindan Kangany 2 Leader Rep. 61.*
(8) *William Silva. v. M. D. Sirisena (1965) 68 NLR 206.*
(9) *Aitken, Spence & Co. v. Fernando (1900) 4 NLR 35.*

APPEALS from order of the Court of Appeal.

H. L. de Silva, P.C. with *K. Nadarajah, K. Thevarajah, L. N. de Silva* and *Chamal de Silva* for the applicants.

Miss Maureen Seneviratne P. C. with *Faiz Mustapha* and *R. S. Jogendra* for the respondent.

Cur. adv. vult.

Septemebr 30, 1987

ATUKORALE, J.

There are two appeals before us, both arising out of the same order made by the Court of Appeal in respect of two applications before it—one being for leave to appeal from and the other in revision of the order of the District Judge allowing the respondent's application for the execution of the amended decree pending appeal. After trial judgment was entered by the District Judge in favour of the respondent for the ejectment of the appellants (the tenants) from the premises in suit and for the recovery of arrears of rent and damages in a sum of Rs. 820,000/-. The premises in respect of which the action was filed comprised the ground floor portion of the upstair building originally bearing assessment No. 247, Galle Road, Bambalapitiya. The appellants have lodged an appeal against this judgment and it is still pending in the Court of Appeal. After inquiring into the

respondent's application for execution of the amended decree pending appeal, the learned District Judge on 26.5.1986 ordered both writs, for ejectment as well as for the recovery of the sum decreed, to issue. On the same day the Fiscal ejected the appellants from the premises in suit and handed over possession of the same to the respondent's agent. On 3.6.1986 the appellants filed these two applications in the Court of Appeal praying that the order of the learned Judge be set aside, that both writs be recalled, that they be restored to possession and also, in the revision application, for an order staying the execution of writ for the recovery of the sum decreed pending the final determination of that application. The Court of Appeal granted a stay order and thereafter, having taken up both applications for hearing together, dismissed them upholding a preliminary objection raised on behalf of the respondent and revoked the stay order. It is from this order that the appellants have appealed to this court.

In the Court of Appeal the respondent in his written objections dated 24.7.1986 set out two preliminary objections to the maintainability of the applications. They are briefly as follows:

i. that the appellants were not properly before court and had no legal status or locus standi to make the applications to the Court of Appeal or to obtain the stay order inasmuch as the powers of attorney authorising the institution of proceedings had not been filed in court as required by s.25(*b*) of the Civil Procedure Code and

ii. that there had been no compliance with rules 46 and 50 of the Supreme Court Rules, 1978, in that only true and not certified copies of documents had been filed along with the applications and that the additional papers tendered to court subsequently had not been filed with the leave of court. This objection, however, does not appear to have been pursued at the hearing before the Court of Appeal.

[illegible] in the background of which the first objection [illegible] e set down. Admittedly the proxy filed on behalf [illegible] lications was signed by the [illegible])th, 10th and 11th appellants [illegible] ls) and by the other appellants [illegible] pe[illegible] . l ling of the applications nor at the

time of obtaining the stay order in the revision application had the powers of attorney or certified copies thereof been filed in court. This omission was remedied only on 22.8.1986 (i.e. after the respondent filed his written objections) on which date the appellants' attorney-at-law, by way of a motion, tendered certified copies of the respective powers of attorney and moved that they be accepted. A copy of this motion, without copies of the powers being annexed thereto, was served on the respondent's attorney-at-law. No leave was obtained from court prior to the filing of the motion.

At the hearing before the Court of Appeal learned counsel for the appellants in reply to the first objection maintained that even though the powers of attorney or certified copies thereof had not been filed in court along with the applications, none the less certified copies had subsequently been filed, that the failure to file them in the first instance was a mere defect which was curable and had been regularised and that the appellants were, therefore, properly before court. However at the hearing before the Court of Appeal learned counsel for the respondent advanced a further and new objection (not set out in the written objections) namely, that the grantors of the powers (the 8 appellants) were all persons resident within the island and that as such the grantees (the attorneys) were not their recognised agents within the meaning of s. 25(*b*) of the Code. They had therefore no authority to appoint a proctor on behalf of the 8 appellants. It was thus sought to be contended that the registered attorney of the appellants had no power to institute the applications and that the appellants were not properly before court. In reply to this objection learned counsel for the appellants submitted that the question whether a party was or was not resident within the island involved a question of fact and as this objection had not been pleaded in the written objections, the appellants should be afforded an opportunity of placing evidence before court to show that they were not on the material date, namely 3.6.1986, resident within Sri Lanka. He also contended that there was no material to establish that the 8 appellants were resident in Sri Lanka.

After hearing submissions the Court of Appeal dismissed both applications and revoked the stay order. It found as a fact that there was material to show that the 8 appellants were resident in Sri Lanka on or about the material date and as such upheld the objection that the attorneys were not the recognised agents of their principals and

were incompetent to sign the proxy on their behalf. There were thus no properly constituted applications before court. For this reason it ruled that the applications could not be sustained. In view of this finding it refrained from deciding the other questions that were argued before it.

The material upon which the Court of Appeal drew the inference that the 8 appellants were resident in Sri Lanka was the addresses given in the captions to the two applications and in the proxies which described them as being all of 150/3, Ward Place, Colombo 7. At the hearing before us learned counsel for the appellants submitted that the address given in the caption to a pleading in the Court of Appeal or in a proxy is ambiguous from which it is unsafe for a court to arrive at an inference upon a disputed question relating to a party's residence within or outside Sri Lanka, that this objection was not one set out in the written statement of objections of the respondent and that involving as it did a question of fact the appellants ought not to have been denied the opportunity they sought of adducing evidence to satisfy the court of their non-residence in Sri Lanka on or about the material time. He submitted further that, in any event, even if the proxies were for this reason defective, it was open to the appellants to rectify the defect and to ratify the acts done and the appearances made on their behalf by their registered attorney-at-law. He further contended that the burden of proving that the 8 appellants were resident in Sri Lanka on or about the material date was on the respondent who had failed to discharge the same.

'Recognised agent' is defined in s.5 of the Code as including the persons designated under that name in s.25 and no others. It is thus clear that no person other than those designated as recognised agents in subsections (*a*), (*b*) and (*c*) of s.25 can be a recognise agent of a party. Subsection (*b*), which is the one relevant for our purposes designates one class of recognised agents, namely, those holding general powers of attorney from parties not resident within the local limits of the jurisdiction of the court within which limits the appearance or application is made or act done authorising them to make such appearances and applications and do such acts on their behalf. S.24 stipulates, inter alia, that any application to any court required or authorised by law to be made by a party to an action or appeal in such court may, subject to certain exceptions, be made by the party in person, or his recognised agent or by a proctor duly appointed by the

party or such agent to act on behalf of such party. Hence a proctor duly appointed by a recognised agent of a party may, inter alia, make an application to court. The view taken by the Court of Appeal being that the attorneys were not the recognised agents of the 8 appellants as the latter were themselves resident, on or about the material date, within the island, the issues that arise for our determination are whether the Court of Appeal was right in having proceeded to decide the question of their residence without having given them an opportunity of adducing material to show that they were not so resident; whether on the material available to the Court of Appeal it was correct in concluding that they were resident in Sri Lanka and whether, in any event, it was open to the appellants to cure the defect in the appointment of their proctor and to ratify the acts already done by him on their behalf.

On the *first issue* I am of the opinion that the Court of Appeal should have, in the circumstances of this case, granted the appellants' request to adduce evidence to establish their non-residence in Sri Lanka on or about the material date, namely, the date of institution of the applications. As set out above, the respondent in his written objections made no challenge to the validity of the appointment of the appellants' attorney-at-law on the ground that the 8 appellants were resident in Sri Lanka at the time. True, no doubt, as pointed out by learned counsel for the respondent, the powers nor copies thereof had been filed in court at the time the written objections were filed. But the respondent could have without much difficulty secured their production in court for his perusal before tendering his objections. Or he could have, after they were tendered to court, moved to amend the same or to file additional objections in terms of rule 54 of the Supreme Court Rules, 1978. Preliminary objections of this nature involving as they do disputed questions of fact upon the basis of which a court is invited to reject an application in limine without proceeding to an adjudication on the merits should never be permitted to be sprung on the opposing party at the hearing without any prior notice as it would place the latter in a position of distinct disadvantage. Such a course, if permitted, will defeat the very purpose of the salutary rule requiring a respondent to file his written objections which ensures that the petitioner receives adequate notice of the nature and content of the objections eliminating thereby the element of surprise. The course adopted by the Court of Appeal in the instant case appears to me to be contrary not only to the prescribed procedure but also to the rule of

audi alteram partem which is so deeply ingrained in our legal system. It has effectively and completely denied the appellants of the opportunity, which they asked for, of placing before court the evidence upon which they proposed to rely for the purpose of refuting the preliminary objection. I also do not subscribe to the view that this preliminary objection could not have been formulated in the first instance without a perusal of the powers of attorney. The respondent became aware from the beginning that the 8 appellants were appearing through their attorneys. Their addresses as given in the captions to the applications and in the proxies, which were already filed of record and upon which the respondent placed so much reliance to establish their residence in Sri Lanka, would have made it manifest to the respondent long before the written objections were tendered that they had been described therein as being all of 150/3, Ward Place, Colombo 7. A little diligence on his part would have alerted him to this fact at the earliest stage of the proceedings. There would thus have been no real necessity to wait until the powers were filed in court to incorporate this preliminary objection in the written statement.

The *second issue* is whether the Court of Appeal was justified in inferring that the 8 appellants were resident within Sri Lanka. As stated earlier this inference was drawn solely upon the addresses given in the captions to the applications and in the proxies. Our attention has not been drawn to any legal provision requiring the place of residence of a party to be specified in the caption or the body of an application for revision or for leave to appeal or in the proxy filed in the Court of Appeal. On the material before us (which was also before the Court of Appeal) the first reference to the address 150/3, Ward Place, Colombo 7, appears in the affidavit dated 4.9.1985 tendered to the District Court by the 2nd, 3rd, 4th, 6th and the 10th appellants on their own behalf and on behalf of the other appellants who are stated to be out of the island. This affidavit is in response to the 219 notice – vide exhibit B, p.189. The caption in exhibit C indicates that the appellants' business of Siedles Cine Radio was being carried on at this address. Further in paragraph 34 of the respondent's written statement of objections of 24.7.1986, the appellants are stated to have 3 sales centres for the sale of their electrical goods and appliances, one being at the above address. A scrutiny of these documents coupled with the fact that it seems so unrealistic that all the appellants should be resident at one and the same place appears

to me to vitiate the conclusion arrived at by the Court of Appeal that the appellants were resident at the above address. As pointed out by learned counsel for the appellants, this seems to be a business address of the appellants, presumably for the purpose of receiving communications addressed to them. The burden of establishing the fact that the 8 appellants were resident in Sri Lanka lay on the respondent. The applications together with the accompanying proxies were accepted by court and registered. They were then listed for an order of court and the court after consideration ordered notice to issue on the respondent. Hence the proxies were accepted and acted upon by the Court of Appeal. If did so because apparently no defect appeared on the face of them. If thereafter the respondent desired the court to revoke the steps already taken by it, the burden was on him to show that such action was wrong. As pointed out by Sansoni J. in the course of his judgment in *Wijesinghe v. The Incorporated Council of Legal Educatoin* (1) this rule is based on the principle *'omnia praesumuntur rite et solemniter esse acta'*. The respondent has, in my view, failed to discharge the burden of establishing that the 8 appellants were resident in Sri Lanka on the material date.

The *next issue* which arises but which in view of my findings aforesaid would really not be necessary to decide is whether a proxy which is defective for the reason urged by the respondent could subsequently be rectified and the acts done and the steps taken thereon be ratified. In support of the proposition that such rectification and ratification are permissible in law learned counsel for the appellants relied on several decisions of the Supreme Court. Instances of such a course being approved and adopted by court are to be found in *Tillekeratne v. Wijesinghe* (2), *Arumugam Chetty v. Silva* (3) and *Kadirgamadas v. Suppiah* (4). The objections taken up in these cases were, respectively, that the proxy had not been signed, that the proxy which had been executed abroad was not properly stamped in accordance with the provisions of our Stamp Ordinance and that the proctor had no authority to sign the petition of appeal on behalf of some of the appellants from whom he held no proxy at the time. In all these cases the objections were overruled, the irregularity in the appointment was held, in the absence of a legal bar, to be curable and the acts already done capable of being ratified. The provisions of s.27 of the Code were construed to be directory and not mandatory. There was, in all these cases, no legal impediment to the defect in the proxy being rectified and the acts done thereon being ratified. There was

thus no room for the application of the rule that a principal cannot by subsequent ratification give validity to an act which was at its inception unlawful or void – vide *Nelson de Silva v. Casinathan* (5). Learned Counsel also draw our attention to other decisions which have more specifically considered the analogous position arising out of a proxy being granted by an agent holding a general power of attorney which was held to be defective for the reason that the party was himself resident within the local limits of the jurisdiction of the court. In *Alia Markar v. Pathu Muttu and Natchiya* (6) a preliminary objection was taken in appeal that the appellant, a Mohamedan woman, was not properly before court since the proxy signed by her two attorneys was bad for the reason that she and both her attorneys were resident within the local limits of the jurisdiction of the court and as such the attorneys were not the recognised agents of the appellant and had no authority to sign the proxy. The validity of this objection was upheld but since it was not taken in the court below the appellant was granted an opportunity of signing a fresh proxy and of ratifying the acts purported to be done in her name. In *Segu Mohamadu v. Govinden Kangany* (7) the power of attorney granted by the plaintiff to his attorney was, in terms, one subsisting only during his absence from the island. But at the time the attorney signed the proxy the plaintiff, admittedly, was resident in the island. The proxy was held to be bad but as the objection had not been taken in the lower court it was held to be no ground for reversing the decree since the defect did not affect the merits of the case or the jurisdiction of the court. The appeal was therefore dismissed. In *William Silva v. M. D. Sirisena* (8) a preliminary objection was taken in the lower court that the plaintiff was not properly before court. At the time the action was instituted by the proctor upon a proxy signed by the attorney, the plaintiff was resident within the limits of the jurisdiction of the court. Shortly after its institution the plaintiff died without taking part at the trial. The attorney then applied for probate of the last will of the deceased plaintiff and moved to have himself substituted as the legal representative of the deceased plaintiff which was allowed. In appeal the court upheld the finding of the learned District Judge that the plaintiff was not properly before court. In overruling the finding of the learned District Judge that the substituted plaintiff had ratified the steps taken since the institution of the action, the court held that as the original plaintiff had died without ratifying the action commenced on the proxy given by the attorney there was no valid action pending and as such there can be no substitution. The court seems to have taken the view that as the

original plaintiff did not bring the action and as he died without ratifying the action brought on his behalf there could not be a valid substitution or ratification. In short there was no valid action brought or pending in court. The action was therefore dismissed.

The principle underlying the decisions in the cases of *Alia Markar v. Pathu Muttu and Natchiya and Segu Mohamadu v. Govindian Kangany* (supra) appears to me to be that although a party is not properly before court for the reason that the appointment of the proctor on his behalf by the attorney is bad, yet the defect in the appointment is one that can be cured and the acts purported to be done thereon by the proctor are capable of being ratified by such party. Such a defect would not *ipso facto* render the appearance made or acts done by the proctor on behalf of the party nullity. If the legal consequence of such a defect is to vitiate *ab initio* the appearances and acts of the proctor there would, in law, have been no decree or order to be sustained in appeal in those cases. The court in refusing to disturb the decree or order of the lower court on this ground impliedly held that such defects did not *per se* vitiate the proceedings already had. The opportunity afforded by the Court of Appeal of regularising the defect and of ratifying the acts already done is a clear indication that the defect is only an irregularity and not an illegality. As pointed out by learned counsel for the appellants, in matters of this nature the question appears to be whether the proctor had in fact the authority of his client to do what was done on his behalf although in pursuance of a defective appointment. If in fact he had his client's authority to do so, then the defect is one which, in the absence of any positive legal bar, could be cured. On the contrary if in fact he did not have such authority of his client, the acts done and the appearances made on his behalf by the proctor would be void and of no legal effect. This commends itself to me as the better view. Accordingly I hold that in the circumstances of this case it was open to the 8 appellants to cure the defect, if there was any, in the proxies by tendering fresh proxies ratifying the steps already taken on their behalf by their attorney-at-law. I am therefore of the opinion that the Court of Appeal erred in upholding the preliminary objection urged on behalf of the respondent.

The next matter urged by learned counsel for the respondent is that there has been non-compliance with the provisions of s.25(*b*) of the Civil Procedure Code in that the powers of attorney or certified copies

thereof were not filed along with the applications and that there has been non-compliance with rule 50 of the Supreme Court Rules, 1978, in that when certified copies were tendered to court on 22.8.1986 no leave of court had been obtained and no copies of the powers were served on the respondent. It is now settled law that the failure to file the powers or certified copies thereof in court as stipulated in s.25(*b*) is only an irregularity which can be cured later by tendering them to court – *Aitken, Spence & Co. v. Fernando* (9). In the instant case this omission has been cured by certified copies being filed with the motion dated 22.8.1986. The motion asked that the court be pleased to accept the certified copies. A copy of this motion was sent to the respondent's attorney-at-law but he did not object to their acceptance by court. Nor is there anything to indicate their non-acceptance by court. There has thus been substantial compliance with rule 50 although it appears to me that this rule would not apply to this situation. Rule 50 read with rule 51 seems to refer to pleadings and documents material to the case, the tendering of which is required to be supported in court. It is desirable that copies of the powers of attorney should have been served on the respondent's attorney-at-law but this objection is a very technical one which can cause no prejudice to the respondent.

It was also submitted to us by learned counsel for the respondent that one power of attorney was a special and not a general one. She referred us to the power of attorney granted by the 6th appellant dated 11.6.1979 and stressed that although it was a general power in so far as the business of Siedles Cine Radio carried on at premises No. 9 and 10, Consistory Building, Front Street, Colombo I were concerned, it did not cover the business carried on at the Bambalapitiya premises. In this context she maintained that it was a special power. I cannot agree. The power of attorney contains two recitals, namely, that the 6th appellant is a partner of the business carried on in partnership in the name, style and firm of Siedles Cine Radio at Nos. 9 and 10, Consistory Building and that she is desirous of appointing a fit and proper person 'to manage and transact the said business and affairs in Sri Lanka' on her behalf. These latter words cannot, in my view, reasonably be construed as limiting the power of the agent to the business carried on at premises Nos. 9 and 10, Consistory Building. They must be taken to comprehend the entire business of Siedles Cine Radio in Sri Lanka, irrespective of the place or places in which it is carried on. The Consistory Building premises

seems to have been the principal place of this business until it was destroyed in July 1983, long after the execution of this power of attorney. The power creates a general agency in respect of the business of Siedles Cine Radio of which the 6th appellant is a partner. It is not restricted to any specific matter or specific purpose arising out of the business. Nor is it confined to the managing and transacting of the business at one particular place. It authorises her attorney to manage and transact the business of Siedles Cine Radio in any place in Sri Lanka on her behalf. The connotation of the word 'general' in this context is that the power must be general with regard to the subject matter and not with regard to the powers conferred in respect of the subject matter. I am therefore of the opinion that this power of attorney is a general one comprehending the business of Siedles Cine Radio carried on at the Bambalapitiya premises. Learned counsel for the respondent further contended that only the notary who attests the power and who therefore has the legal custody, thereof can certify a copy to be a true copy for the purposes of s.25(*b*). I am unable to subscribe to this view. The words used in the subsection are "certified by a proctor or notary". The construction sought to be placed by learned counsel on this words offends the plain meaning of the language contained in the subsection. Any proctor or notary (whether he attested the power or not) is competent to certify a copy as a true copy. The original power of attorney should normally be in the custody of the attorney himself as he requires the same for the purpose of transacting business with third persons. One way of achieving this objective is for the proctor before whom it is produced for purposes of litigation to certify a copy thereof as a true copy and to file the same in court. The original could then be retained with the attorney.

Finally it was submitted by learned counsel for the respondent that rules 44 and 45 of the Supreme Court Rules, 1978, which authorise a single Judge of the Supreme Court, on the application of an applicant or appellant, to order a stay of execution of a judgment in respect of which an application for special leave or an appeal has been lodged in the Supreme Court, are inconsistent with the provisions of Article 132(2) of the Constitution and are therefore ultra vires.

Articles 132(2) of the Constitution stipulates:

"The jurisdiction of the Supreme Court may be exercised in different matters at the same time by the several Judges of that Court sitting apart:

Provided that its jurisdiction shall, subject to the provisions of the Constitution, be ordinarily exercised at all times by not less than three Judges of the Court sitting together as the Supreme Court."

In view of this provision it was submitted that every application to the Supreme Court for the exercise of its powers (including the issue of a stay order of the nature contemplated in the above rules) must be dealt with by a Bench of three judges or more but not less. Article 118 of the Constitution enumerates the general jurisdiction of the Supreme Court, one being its final appellate jurisdiction. Article 127 spells out this final appellate jurisdiction. It extends, inter alia, to 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. In the exercise of this jurisdiction the Supreme Court may affirm, reverse or vary any order, judgment, decree or sentence of the Court of Appeal. The stay order envisaged in the rules does not fall within the ambit of the orders that may be made by the Supreme Court in the exercise of its appellate jurisdiction. A stay order contemplated under the rules is an order in the nature of an incidental or ancillary order which the Supreme Court, no doubt, may make in the exercise of its inherent jurisdiction so as to prevent the final order that it may ultimately make in the appeal from being rendered nugatory or futile, in the event of the appellant succeeding. Such an order being one which is purely incidental to the exercise of the substantive jurisdiction of the Supreme Court is one which, in my view, is not governed by the proviso of Article 132(2). I am therefore of the view that it is competent for a single Judge of this court to make a stay order. The two rules are, in my opinion, not inconsistent with Article 132(2). According to the rules, however, a single Judge can grant a stay order (where an application for special leave is pending) only till its determination. After such leave is granted by court, any further order to stay execution has to be made, not to a single judge, but to a Court comprising of not less than three Judges. Thus the stay order granted in this case by my Lord the Chief Justice pending the hearing of the application for special leave is valid and was effective till such time as special leave was granted and no further. On the day that special leave was granted by this court, learned counsel appearing for the parties agreed to an extension of the stay order until the final disposal of the appeals.

For the above reasons I make order allowing both appeals. I set aside the order of the Court of Appeal dated 24.10.1986 and direct it to hear and determine the two applications—for leave to appeal and in revision—on their merits. In the circumstances of this case I would also direct the stay order issued by the Court of Appeal in the first instance to continue to be operative until both applications are finally disposed of in that court. The respondent will pay the appellants the costs of the abortive hearing in the Court of Appeal and also of this court.

SHARVANANDA, C.J.—I agree.

L. H. de ALWIS, J.—I agree.

Appeal allowed.