

**AMEEN AND OTHERS
VS
MOHIDEEN AND OTHERS**

COURT OF APPEAL.
EKANAYAKE, J.
SRISKANDARAJAH, J.
CA 1370/2002 (REV.)
WT/124/2000.
W. B. 3205/98.
W. B. 3449/99.
NOVEMBER 30TH, 2005.

Wakfs Tribunal - Leave to appeal application rejected - Direct appeal lies - Does Revision lie ? - Exceptional circumstances - Delay - Restitutio in integrum - Is it available ? - Can new parties be brought in a revision application?.

HELD:

1. It was decided earlier by the Court of Appeal that the impugned order is a final order. No appeal has been lodged against that order.
2. It is only a party to a contract or to legal proceedings who can ask for the relief of restitution in integrum.
3. There is no provision of law enabling third parties who were not parties before the original Tribunal to be brought in a revision application.

4. Special circumstances do not exist to warrant the intervention by way of Revision. No satisfactory explanation has been submitted for the delay of 10 months.

APPLICATION in revision from an order of the Wakfs Tribunal.

Cases referred to :

1. *Rustom vs Hapangama* (1978-79-80) 1 Sri LR. 352 (SC)
2. *Menchinahamy vs. Munaweera* 52 NLR 409

Hemantha Situge for Respondent-appellant-petitioner-petitioners.

Riza Muzni for Petitioner-respondent-respondent.

Cur. adv. vult.

March 1, 2006.

CHANDRA EKANAYAKE, J.

By the amended petition dated 29.10.2003 1st to 6th Respondent-Appellant-Petitioner-Petitioners (hereinafter sometimes referred to as the Petitioners) had sought *inter alia* to act in revision and/or in restitutio in integrum and to set aside the orders marked as P 13 made in case No. WT/24/2000 dated 27.10.2001 and order marked as P10 dated 20.08.2000 made in WB/3449/99, for an order upholding the trust deed marked P1 to appoint trustees of the mosque in question namely : Abdeen Jumma Mosque at Cross Road, Borella, Colombo 8.

The basis of the amended petition is that one Abdul Cader Abdeen under and by virtue of the Trust Deed bearing No. 3475 dated 22.07.1947(P1) had founded and established the Abdeen Jumma Mosque at Cross Road, Borella, Colombo 8 and said Abdeen functioned as its sole trustee during his lifetime on the directions of the High Priest of the Messenger Street, Thakkiya of Colombo 12. After the death of said Abdeen

on 13.09.1958 and he being buried in the mosque premises and his grave yard being maintained by the members of his family it is contended that as per the said Trust Deed the mosque was dedicated to the High Priest of Thakkiya and as its spiritual head His Holiness always had nominated and appointed the trustee of the mosque and such nominations had always been on the basis of the selection from the male descendants/family members of said Abdeen as provided in the said Trust Deed P1. Owing to the absence of male descendants/male family members of Abdeen from Sri Lanka Mrs. Abdeen (widow of the deceased) with the approval and consent of the male descendants who were living abroad had managed and run the affairs of the mosque. In or about the year 1994 due to certain problems which had arisen with regard to the management and administration of the said mosque, application had been made to the Wakfs Board seeking relief under the provisions of the said Wakfs Act with regard to appointment of trustees. The two applications made to the Wakfs Board were assigned Nos. WB/3205/98 and WB/3449/99 respectively. After inquiring into the above applications Wakfs Board has pronounced its order dated 20.08.2000 (P10) and order of the Wakfs Tribunal dated 27.10.2001 (P13) is the order made by the Tribunal after hearing the appeal which had been preferred against the order marked P10.

After issuing notice on the aforesaid amended petition dated 29.10.2003 as per order of this Court dated 08.10.2004 the Petitioner-respondent-Respondents (hereinafter sometimes referred to as the respondents) have stated that they would abide by the statement of objections already filed, dated 30.01.2003. By the said objections the Respondents whilst contending that this revision application is misconceived in law had moved that same be dismissed for the following main reasons amongst others set out in paragraph 3 of the objections :-

1. the Petitioners have sought leave to appeal from this Court in CALA 416/2001 and same having being refused on the ground that the Petitioners should have challenged the orders of the Wakfs Board dated 20.08.2000 and Wakfs Tribunal dated 27.10.2001 by way of

direct appeal and not by way of leave to appeal and whereas the petitioners did not seek special leave to appeal to the Supreme Court ;

2. that no exceptional circumstances have been shown by the petitioners ;
3. as the impugned order of the Wakfs Tribunal is dated 27.10.2001 there is unreasonable delay in making the present revision application;
4. that the petitioners are not entitled to bring in new parties in this application who were not parties before the Wakfs Board or Wakfs Tribunal.

It appears that the relief sought by sub paragraph (a) of the prayer to the amended petition is against the order of the Wakfs Tribunal dated 27.10.2001 and the order to the Wakfs Board dated 20.08.2000. Order made by the Tribunal dated 27.10.2001 is an order made in the appeal taken up before the Tribunal from the order of the Wakfs Board. The order of the Tribunal dated 27.10.2001 has been considered by this Court in CALA 416/2001 and it has been so held that it is an order having the effect of a final judgement and directly appealable to this Court. Therefore the question that arises for consideration now is whether the petitioners have succeeded in establishing the existence of any exceptional circumstances that would warrant the invocation of the revisionary jurisdiction of this Court. On behalf of the petitioners it was strenuously urged that the trustee of the Abdeen Mosque should be nominated by His Holiness the High Priest of the Messenger Street Thakkiya, Colombo 12, from and amongst the descendants/family members of the founder of the mosque namely, Abdul Cader Abdeen who is now dead. However an examination of the said trust deed (P1) reveals that the mosque in question is not governed by the deed (P1) and what would necessarily flow from this is that the said mosque is

governed by the provisions of the Muslim Mosques and Charitable Trusts or Wakfs Act (as amended). In my view the petitioners' contention with regard to this has to fail.

Further it has to be noted that the Petitioners have filed this petition in this Court only on 06.08.2002 although the impugned order had been made by the said Tribunal on 27.10.2001 - after a period of about 10 months. No satisfactory explanation has been submitted by the present Petitioners for this long delay. On perusal of the applications made to the Wakfs Board and the Tribunal it is revealed that by the present amended petition dated 29.10.2003 some parties who were not made parties before the Board and/or Tribunal are already made petitioners in this application. It has to be stressed here there is no provision of law enabling third parties who were not parties before the original Tribunal to be brought in here.

Next matter which needs consideration is when this Court has already decided in CALA 416/2001 that the impugned order of the Wakfs Tribunal dated 27.10.2001 is an order directly appealable to this Court, no appeal has been preferred to this Court but present revision application has been lodged to revise the aforesaid order. In this context it would be pertinent to consider the decision in *Rustom vs Hapangama*⁽¹⁾ where it was held to the following effect :

“The trend of authority clearly indicates that where the revisionary powers of the Court of Appeal are invoked the practice has been that these powers will be exercised if there is an alternative remedy available, only if the existence of special circumstances are urged necessitating the indulgence of this Court to exercise its powers in revision”.

In the instant case too the petitioners have failed to establish that any special circumstances exist which would warrant this Court to

exercise its powers of revision, particularly since the Petitioners had not availed themselves of the right of appeal available to them.

The Petitioners have sought relief by way of *Restitutio in integrum* as well. This remedy being an extraordinary remedy it has to be given only under very exceptional circumstances. Further it is only a party to a contract or to any legal proceeding who can seek this relief. In the case of *Menchinahamy vs Muniweera*⁽²⁾ it was held that—

“The remedy by way of *restitutio in integrum* is an extraordinary remedy and is given only under very exceptional circumstances. It is only a party to a contract or to a legal proceeding who can ask for this relief. The remedy must be sought for with utmost promptitude. It is not available if the applicant has any other remedy open to him.”

In the instant case some of the present petitioners have not been parties to the proceedings before the Wakfs Board or the Tribunal. The present petitioners have not exercised utmost promptitude in invoking the reliefs asked for and further it has to be noted that the remedy of direct appeal had not been availed of though available. Therefore in my view no relief could be granted to the applicants even by way of *restitutio in integrum*.

For the foregoing reasons I conclude that this is not a fit instance to have exercised the powers of revision of this Court. Accordingly this application is hereby dismissed with costs fixed at Rs. 5,000.

SRISKANDARAJAH, J. – I agree.

Application dismissed.
