

KULATILAKE VS. ATTORNEY GENERAL

COURT OF APPEAL
RANJITH SILVA J.
CHITRASIRI J.
CA 500/2004
DC COLOMBO 21178/MR
JUNE 19, 2009
SEPTEMBER 17, 2009

Appeal against judgment – Revision application on same grounds – Does Revision lie? – Exceptional circumstances – Does delay in deciding the appeal amount to an exceptional ground?

The petitioner appealed against the judgment of the District Courts, in addition the petitioner also filed a revision application seeking similar reliefs that had been prayed for in the final appeal. It was contended that the delay in deciding the appeal would amount to an exceptional ground.

Held:

- (1) It is trite law that the revisionary jurisdiction would be exercised if and only if exceptional circumstances are in existence to file such application.
- (2) Court would exercise the revisionary jurisdiction, it being an extra ordinary power vested in Court especially to prevent miscarriage of justice being done to a person and or for the due administration of justice.
- (3) Delay in deciding the appeal would not amount to an exceptional ground. Delay in hearing appeals, would not be a ground to take up an appeal filed subsequently to the appeals that are being heard, unless proper papers are filed to accelerate the same.

APPLICATION in revision from the judgment of the District Court of Colombo.

Cases referred to:-

1. *Caderamanpulle vs. Ceylon Paper Sacks Ltd* 2001 3 Sri LR 112
2. *Dharmaratne and another vs. Palm Paradise Cabanas Ltd and others* 2003 3 Sri LR 25
3. *Revision 1695/2006 DC Kurunegala 8295/Spl*
4. *Karolis vs. Dharmaratne Thero and others* 2006 2 Sri LR 322
5. *Kumarasiri and another vs. Rajapakse* 2006 1 Sri LR 322
6. *Selliah Marimuttu vs. Siva Pakkiam* 1986 1 CALR 264
7. *Halwan and others vs. Kaleelul Rahuman* 2000 3 NLR 50
8. *Rustom vs. Hapangama – 1978 – 79 – 80* 1 Sri LR 352
9. *Hotel Galaxy (Pvt.) Ltd.* 1987 1 Sri LR 5
10. *Vanik Incorporation Ltd vs. Jayasekera* 1997 2 Sri LR 365
11. *A. G. vs. Podi Singho* 51 NLR 381
12. *Rasheed Ali vs. Mohamed Ali* 1981 1 Sri LR 262
13. *Thilagaratnam vs. Edirisinghe* 1982 1 Sri LR 56
14. *Iynool Careesa vs. Jayasinghe* 1986 2 CALR 147
15. *Janitha vs. Abeykone* Sri Skantha Law Reports Vol IV – 22
16. *Samadh vs. Moosage* 1988 2 CAR 147
17. *Gnanapandithan vs. Balanayagam* 1998 1 Sri LR 391
18. *Navaroch vs. Shri Kanthan* 1991 1 Sri LR 286

C. Goonetilake with R. R. S. Thangarajah for plaintiff-petitioner.
Milinda Gunetilaka SSC for defendant-respondent.

Cur.adv.vult.

May 05th 2010

CHITRASIRI, J.

The Plaintiff-Petitioner (hereinafter referred to as the Petitioner) sought to set aside the judgment dated 23rd January 2001 delivered by the learned Additional District Judge of Colombo by which, the plaint filed by the petitioner in the District Court was dismissed. Against the said judgment the petitioner filed an appeal exercising his statutory right referred to in the Civil Procedure Code. In

addition to the said appeal, the petitioner has filed this revision application as well seeking similar reliefs that had been prayed for in the final appeal. With that introduction. I will set out the facts briefly pertaining to the issue in this case.

The petitioner was appointed as a Primary Court Judge in June 1979. Subsequently, he was designated as a Labour Tribunal President in June 1981. Both these appointments were made by the Judicial Service Commission. By the letter dated 27th September 1993 (marked P5), the Judicial Service Commission terminated his services by sending him on compulsory retirement on the ground of inefficiency. Petitioner, challenging this decision of the Judicial Service Commission filed plaint (Case No. 21178/MR) in the District Court of Colombo, making the Hon. Attorney General as the defendant. The trial in this case was taken up by different judges and the judgment was delivered on the 23rd October 2001 by the Judge who presided over that Court then, answering the issues 9 to 23 as preliminary issues of Law. Those preliminary issues of law were answered by the learned Additional District Judge in favour of the defendant and then he dismissed the plaint filed by the petitioner with costs.

Consequently, as mentioned herein before, the petitioner exercising his statutory right, filed an appeal against the said judgment. The petitioner relying upon the same grounds filed this application also invoking the revisionary jurisdiction of this Court.

Since there are two applications filed by the petitioner in this same forum, it is necessary to examine the maintainability of a revision application under those circumstances. **It is trite Law that the revisionary jurisdiction of this Court would be exercised if and only if exceptional**

circumstances are in existence to file such an application. Moreover, it must be noted that the Courts would exercise the revisionary jurisdiction, it being an extra ordinary power vested in Court, especially to prevent miscarriage of justice being done to a person and/or for the due administration of justice. The following authorities would amply demonstrate this proposition in Law.

In the case of *Caderamanpulle vs. Ceylon Paper Sacks Ltd.*⁽¹⁾, it was held that –

“The existence of exceptional circumstances is a precondition for the exercise of the powers of revision”.

Per Nanayakkara, J. at 116.

“. . . . when the decided cases cited before us are carefully examined, it becomes evident in almost all the cases cited, that powers of revision had been exercised only in a limited category of situations. The existence of exceptional circumstances is a pre-condition for the exercise of the powers of revision and absence of exceptional circumstances in any given situation results in refusal of remedies”.

In the case of *Dharmaratne and another vs. Palm Paradise Cabanas Ltd and others*⁽²⁾. It was held by Amaratunga J. that –

“Thus the existence of exceptional circumstances is the process by which the Court selects the cases in respect of which this extra-ordinary method of rectification should be adopted.”

In one of my judgments delivered in a Revision Application⁽³⁾ I have referred to the following decision

in which the same legal position had been accepted. In that I have quoted the case of *Karolis vs. Dharamaratana Thero and others*⁽⁴⁾ where Justice Andrew Somawansa has stated thus:

“In the circumstances his remedy as laid down in Section 754(2) was to file a leave to appeal application against the impugned order of the Learned District Judge refusing his application. However, the Petitioner without having recourse to his statutory remedy available to him under Section 754(2) of the Civil Procedure Code has come by way of revision. In the circumstances the contention of Counsel for the Petitioner that this objection taken by the Respondent has no merit for revision as the mode of relief available as the Petitioner was never a party to the action in the lower Court cannot be sustained and has to be rejected”.

In the case of *Kumarasiri and another vs. Rajapakse*⁽⁵⁾ referring to *Selliah Marimuttur vs. Sivapakkiyam*⁽⁶⁾ and *Halwan and others vs. Kaleelul Rahuman*⁽⁷⁾, it was stated:

“In any event, the question of correctness of the Learned District Judge’s order in accepting the amended plaint is a matter that can be canvassed in the final appeal and no prejudice would be caused to the Defendants – Petitioners if this Court decides not to go into the merits of the application and I must say I do not intend to do so.”

In *Rustom vs. Hapangama & Company*⁽⁸⁾, it was held:

“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 only if the existence of special circumstances are urged necessitating the indulgence of this court to exercise its powers in revision”

In *Hotel Galaxy (Pvt) Ltd. Vs. Mercantile Hotels Ltd.*⁽⁹⁾, it was held that “It is settled law that the exercise of revisionary powers of the appellate court is confined to cases in which exceptional circumstances exist warranting its intervention.”

In *Vanik Incorporation Ltd. vs. Jayasekara*⁽¹⁰⁾, Justice Edissuriya had reiterated the necessity to have exceptional circumstances when filing revision applications quoting a passage from the judgment of Justice Dias, in *Attorney General vs. Podi Singho*⁽¹¹⁾. In that decision, Dias J. had held that even though the revisionary powers should not be exercised in cases when there is an appeal and was not taken, the revisionary powers should be exercised only in exceptional circumstances such as:

- (a) Miscarriage of justice;
- (b) Where a strong case for interference by the Supreme Court is made out;
- (c) Where the applicant was unaware of the order.

In the following decisions also, it had been held that the presence of exceptional circumstances is needed when invoking revisionary jurisdiction of the appellate courts. They are namely:

- *Rasheed Ali vs. Mahamed Ali*⁽¹²⁾
- *Thilagaratnam vs. Edirisinghe*⁽¹³⁾
- *Iynool Careesa vs. Jayasinghe*⁽¹⁴⁾
- *Jonitha vs. Abeysekare*⁽¹⁵⁾
- *Samadh vs. Moosajee*⁽¹⁶⁾
- *Gnanapandithan vs. Balanayagam*⁽¹⁷⁾
- *Navaroch vs. Shrikanthan*⁽¹⁸⁾

In the light of the aforementioned authorities, it is abundantly clear that the superior Courts in this country have always declined to entertain revision applications when exceptional circumstances have not been averred in those applications even though an aggrieved party had failed to file a final appeal. In this instance, the petitioner has filed a final appeal as well. Therefore, he is not without a remedy.

However, in the petition to this Court, the petitioner has stated (paragraph 27 of the petition) that the final appeal filed by the petitioner may not be taken up for hearing in the near future. Therefore, it is clear that the contention of the petitioner by filing this revision application is purely to expedite the applications made against the decisions of the learned District judge in the original court. Other than the delay in deciding the final appeal, no other reason had been adduced as exceptional circumstances in this petition, for this Court to consider. In fact no separate averment is found in the petition filed in this Court referring to any special reasons as to the filing of this application invoking revisionary jurisdiction.

The delay in deciding the appeal would not amount to an exceptional ground. The appeals filed in this Court are being heard according to a manner that had been decided upon after due consideration. Delay in hearing appeals, would not be a ground to take up an appeal filed subsequently to the appeals that are being heard, unless proper papers are filed to accelerate the same. Furthermore, such an attitude may lead to file revision applications by aggrieved parties without pursuing the appeal filed, causing difficulties to the due administration in the court house.

For the aforesaid reasons, I do not see any special reason to consider that there exist exceptional circumstances for this

Court to look into this revision application. However at the same time, it must be noted that this Court is aware of the fact that the filing of an appeal would not be a strict barrier to file a revision application. In such a situation, the person who files a revision application should be in a position to state adequate reasons or the circumstances that should necessitate looking at the merits of a revision application. As I have already mentioned herein before, no such circumstances have been averred in this instance.

For the aforesaid reasons this revision application is dismissed. Defendant-Respondent is entitled to the costs of this application as well.

RANJIT SILVA, J. – I agree

Application dismissed.