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

In the matter of an application under and in terms of Section 10 (1) (c) of the Contempt of Court, Tribunal or Institution Act No. 8 of 2024, reading together with Article 105 (3) of the Constitution of the Democratic Socialist Republic of Sri Lanka, and section 18 and Section 55 of the Judicature Act.

CA CASE NO: CA/COC/40/024

HC of Civil Appeal Case No:

NWP/HCCA/KUR/41/23/LA

DC of Marawila Case No: 2329/L

Gunasiri Rathnasekara

No. 77, Gimara Offset

Colombo Road

Mahawewa

Presently at 234, Adelaide Ave W.

Oshawa ONLY, 2R2, Canada

Upul Wasansananda Millewa

No. 28, Dewala road

Lathpandura, Baduraliya

Power of Attorney holder

Petitioner

Vs.

Warnakulasooriya Jennny Mervin Callistus Fernando

No. 92, Central Mahawewa

Mahawewa

Respondent

Before : **B. Sasi Mahendran, J.**
Amal Ranaraja, J.

Counsel: Dushantha Kularathne for the Petitioner
Lakshman Perera, PC with Thishya Weragoda for the Respondent

Supported On: 17.02.2025

Written

Submissions : 14.03.2025 (by the Petitioner)

On: 10.03.2025 (by the Respondent)

Order On: 27.03.2025

ORDER

B. Sasi Mahendran, J.

This is an application made in terms of Article 105 (3) of the Constitution.

The Petitioner instituted this application by petition dated 6th November 2024 seeking *inter alia* to issue an order punishing the Respondent for the offence of contempt of court.

According to the petition, the Petitioner instituted an action bearing No. 2329L before the District Court of Marawila against the Respondent seeking *inter alia*;

> (j) an interim injunction order preventing the Respondent from selling, transferring, gifting, leasing, or doing any act that devalue the property in question until the final determination of that action; and
>
> (l) an interim injunction order preventing the Respondent from being engaged in a business, occupying and entering the property in question until the final determination of that action.

The Petitioner states that the Learned District Judge by order dated 25.08.2023 granted the above-said prayers. An excerpt of the said order marked P3 is reproduced for the purpose of convenience.

> "ඒ අනුව, පැමිණිලිකරුගේ දෙනික ජීවිතයට සහ සාමාන්‍ය දිවි පැවැත්මට අවශ්‍ය දේපල ද පෞරාණික දේපල ද ඇතුලත් භාණ්ඩ සහිත නිවස විත්තිකරු විසින් බලහත්කාරයෙන් භුක්ති විඳින බවට පෙනී යයි. එවැනි භාණ්ඩ සමග රුපියල් ලක්ෂ හතළිහක් වැනි ණය මුදලක් ලබා ගැනීම වෙනුවෙන් මෙම දේපල විත්තිකරුට, පැමිණිලිකරු විසින් පැවරුණු ඇතැයි සිතිය නොහැකි පසුබිම තුල පැමිණිලිකරුට අදාල දෙපලට ඇතුල්වීමට නොහැකි තත්ත්වයක් පැවතීම අසාධාරණ තත්ත්වයක් බව පෙනේ. පමිනිලිකර්ට භුක්ති විඳීමට අයිතිවාසිකම් තිබිය යුතු බවට බැලු බැල්මට පෙනී යන දෙප්ලාක් විත්තිකරු භුක්ති විදිමින් සිටින අකාරයක් නිරීක්ශනය වේ. සැබෑ වටිනාකමට වඩා ඉතා අඩු මුදලකට අයුතු වාසි ලබමින් විත්තිකරු ඉහත

දේපලෙහි රැදී සිටීමින් කටයුතු කිරීම පැමිණිලිකරුට සිදු වන බලවත් අසාධාරණයකි. අංක 8256 දරන ඔප්පුවේ නොතාරිස් සහතිකයේ රුපියල් ලක්ෂ හැත්තෑ අටක මුදලක් (රු. 78,00000/-ක්) හුවමාරු වූ බවට නිශ්චිතව සඳහන් නොවේ. ඒ අනුව විත්තිකරු කියා සිටින සින්නක්කර විකිණීම සැක සහිත වේ. ඒ අනුව අදාල දේපලෙහි ව්‍යාපාරික කටයුතු සිදු කිරීමෙන් රැදී සිටීමෙන් සහ ඊට ඇතුළු වීම විත්තිකරුට තහනම් කිරීම මගින් එකී විත්තිකරුට අසාධාරණයක් සිදු වන්නේ නැත. දේපලෙහි ව්‍යාපාර කටයුතු සිදු කිරීම, එහි රැදී සිටීම සහ ඊට ඇතුලුවීම වළක්වාලමින් විත්තිකරුට එරෙහිව තහනම් නියෝගයක් නිකුත් නොකළහොත් පැමිණිලිකරුට අසාධාරණයක් සිදු වේ. පැමිණිලිකරුට අර්ථලාභී අයිතිය සහ භුක්තිය හිමිවිය යුතු බවට පෙනී යන දෙපලක එකී අර්ථලාභී අයිතිය සහ භුක්තිය පැමිණිලිකරුට ලබා දීම මගින් විත්තිකරුට අසාධාරණයක් සිදු නොවේ.

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ඉහත නඩු තීන්දුවේ සඳහන් කරනු සමග මෙම නඩුවේ මතු වී ඇති තත්ත්වයන් සලකා බැලීමේදී පෙනී යන්නේ බැලූබැල්මට ජයගත හැකි නඩු නිමිත්තක් පැවතීම ද සාධාරණත්වයේ සැලකිල්ල ද අප්‍රතිකාරී සහ නැවත පුනස්ථාපනය කල නොහැකි තරම් පාඩු සිදුවීම ට අදාල තත්ත්වය ද පැමිණිලිකරුගේ වාසියට පවතින බවයි. එසේ හෙයින් පැමිණිල්ලේ ආයාචනයේ 'ඒ' සහ 'ක' යටතේ ඉල්ලා අතු අතුරු තහනම් නියෝග නිකුත් කරමි.''

We are of the view that this order is illegal. Our Courts have held that if a person is in lawful possession, he could not be ejected until the conclusion of the trial.

In Pounds *et al. V.* Ganegama 40 NLR 73 at page 78, His Lordship Justice Koch held that;

> "It is a common occurrence in Ceylon for a person unlawfully to enter upon land and turn out the party in possession. Such acts have led to innumerable actions for declaration of title and ejectment by parties so dispossessed and though in such actions it is sometimes asked, and rightly too, that the defendant be restrained from committing wasteful acts on the land pending final

determination of title, no decision has been cited to us-and as far as I am aware there is no such decision-in which under such circumstances the plaintiff was able to be placed in possession pending trial by means of an interim injunction. The reason, no doubt, is that the law will not permit such a proceeding and, if this is so in such a flagrant type of case, could it be expected that the law will enable a party who was not in actual occupation to enter by injunction and take possession as against a person who, having been in occupation as a licensee, has repudiated that position and claims to be in possession in his own rights."

In Subramaniam V. Shabdeen (1984) 2 SLR 48 on page 56, His Lordship Justice Tambiah held that;

"There is this further principle that an injunction would issue to stop a wrong doer from obtaining benefits arising out of his wrongful conduct. If a person in unlawful possession could not be ejected pending trial, he could still be restrained from taking any benefits arising out of such wrongful possession, otherwise the Court would be a party to the preserving for such person a position of advantage brought about by his own unlawful or wrongful conduct (Victor Pereira, J. in *Seelawathie Mallawa v. Millie Keerthiratne*)."

The Respondent being aggrieved by the said order, preferred a leave to appeal application dated 09.09.2023 to the Provincial High Court of Civil Appeal of the North-Western Province holden in Kurunegala to set aside the said order of the Learned District Court Judge.

The Learned Judges of the High Court of Civil Appeal by order dated 15.02.2024 granted leave to appeal and issued a stay order against the relief granted by the Learned District Court Judge according to the prayer (ඣ) of the plaint until the final determination of the said application.

The Petitioner states that the Respondent is a merchant and has been having a jewelry shop on the property in question. Subsequent to the order of the High Court of Civil Appeal, the Respondent was allowed to engage in his business in the property and occupy and enter the property.

The Petitioner further states that during the Presidential Election in 2024, the Respondent established an election office of the National People's Power at the said property. The Petitioner having known this, informed the Respondent to remove the said election office immediately in compliance with the orders of the District Court and High Court of Civil Appeal. However, the Respondent continued to have the same even during the General Elections.

The Petitioner avers that he lodged a complaint at Thoduwawa Police Station bearing No. CiB/06/02 on 01.11.2024 regarding the said contemptuous actions of the Respondent and lodged another complaint at the Election Dispute Resolution Center of the Puttalam District.

The Petitioner contends that the conduct of the Respondent is a clear disregard of the authority of the Court and the arbitrary and intentional disregard of the Court order by the Respondent amounts to contempt of Court.

In this context, the Petitioner has preferred the instant application in this Court.

When the matter was supported before this Court, we observed that there was an order delivered by the High Court of Civil Appeal issuing a stay order against the relief granted by the Learned District Court according to the prayer (ක) of the plaint.

> "(ක) විෂයගත දේපලේ චිත්තිකරු ව්‍යාපාර කටයුතු කිරීම, රැඳී සිටීම, ඊට ඇතුළුවීම වළක්වාලමින් නඩු කටයුතු අවසන් වනතෙක් අතුරු ඉන්ජන්ෂන් තහනම් නියෝගයක් ප්‍රදානය කරන ලෙසත්,"

The question, therefore, is whether sufficient evidence was placed before the Court establishing that there is a prima facie case that the Respondent acted willfully by not obeying the orders of the Court which falls under the realm of contempt of court.

Pursuant to Article 105(3) of the Constitution, both the Supreme Court and the Court of Appeal of the Republic of Sri Lanka are designated as Superior Courts of record, vested with all corresponding powers. This authority encompasses the power to adjudicate cases of Contempt of Court, whether the act of Contempt is committed within the precincts of the Court or externally. Punishments for such Contempt can range from imprisonment to fines, or a combination thereof, as deemed appropriate by the Court.

In Oswald's, '*Contempt of Court*' (3rd edition on page 6) notes:

> "To speak generally, Contempt of Court may be said to be constituted by any conduct that tends to bring the authority and administration of the law into disrespect or disregard, or to interfere with or prejudice parties, litigant or their witnesses during the litigation."

Re BRAMBLEVALE, Ltd, Lord Denning, M.R. 1969 (3) All E.R Page 1062 at 1063;

> "A contempt of court is an offence of a criminal character. A man may be sent to prison for it. It must be satisfactorily proved. To use the time-honoured phrase, it must be proved beyond reasonable doubt. It is not proved by showing that, when the man was asked about it, he told lies. There must be some further evidence to incriminate him. Once some evidence is given, then his lies can be thrown into the scale against him."

According to His Lordship Justice Arjuna Obeyesekera in Kahapola Arachchige Prabhath, Anuradha Nilupul Fernando v. Urban Council Kesbewa and Others,

CA/Contempt 05/2018 decided on 06.09.2019,

> "A Charge of Contempt of Court is a very serious allegation to be made against a person, and once this Court issues summons, such person is treated as an 'Accused' and penal sanctions follow if this Court finds such person 'Guilty' of the charge.
>
> Hence, it is important that this Court exercises great caution prior to issuing summons on any person accused of being in Contempt of Court."

Our Courts have focused that the element of *mens rea* is required to establish the offence of contempt of court. In other words, whether the act is done willfully.
The question that needs to be answered thus is what does the word 'willful' mean.
Black Law Dictionary, Eighth Edition at page 1916

> ***"willful,***
>
> adj. Voluntary and intentional, but not necessarily malicious. - Sometimes spelled wilful. Cf. WAN- TON. - willfulness,
>
> "The word 'wilful' or 'wilfully' when used in the definition of a crime, it has been said time and again, means only intentionally or purposely as distinguished from accidentally or negligently and does not require any actual impropriety; while on the other hand it has been stated with equal repetition and insistence that the requirement added by such a word is not satisfied unless there is a bad purpose or evil intent." Rollin M. Perkins & Ronald N. Bovce, Criminal Law 875-76 (3d ed. 1982).
>
> "Almost all of the cases under [Bankruptcy Code § 523(a) (6)] deal with the definition of the two words 'willful* and 'malicious.' Initially one might think that willful and malicious mean the same thing. If they did, Congress should

have used one word and not both. Most courts feel compelled to find some different meaning for each of them." David G. Epstein et al., Bankruptcy § 7-30, at 531 (1993)."

The concept of willfulness is elaborated by Her Ladyship Justice Shiranee Tilkawardena in Croos and Another v. Dabrera, (Supra);

"It is also necessary to consider the mens rea pertaining to this charge. Under Rule 31 of the Old English Rules of the Supreme Court, an act of disobedience would become an act of contempt only if it was "Wilful". "Wilful" was taken to mean that while, where the terms of an injunction were broken it was not necessary to show that the person was intentionally contumacious or that he intended to interfere with the administration of justice, yet where the failure or refusal to obey the order of court was casual or accidental and unintentional, it will "not be met by the full rigours of the law".

His Lordship Justice Jameel in Dayawathie and Peiris v. Dr. S.D. M. Fernando and Others, 1988 2 SLR 314, has considered how the concept of willfulness is interpreted in other jurisdictions.

"Per Lord Russel of Killowen C.J. in R. vs. Senior.

" 'Wilfully' means that the act is done intentionally and deliberately and not by accident. or inadvertence, but so that the mind of the person who does the act goes with it."

In the instant application, the main allegation made by the Petitioner is that after the interim order was issued against the Respondent, he had put up an election office

at the said premises and by doing so, the Respondent has acted in contravention of the orders issued by the Courts. The question then arises as to whether putting up the election office comes within the prayer (j) or (ඒ) of the plaint which reads as follows.

> "(ඒ) විත්තිකරු විෂයගත දේපල විකිණීම, පැවරීම, තෑගි දීම, බදු දීම හෝ එහි අගය අඩුවන කිසියම් හෝ ක්‍රියාවක් කිරීම වළක්වාලමින් නඩු කටයුතු අවසන් වනතෙක් අතුරු ඉන්ජන්ෂන් තහනම් නියෝයක් ප්‍රධානය කරන ලෙසත්,"

According to the said prayer, the Respondent is prevented from selling, transferring, gifting, leasing, or doing any act that devalues the property in question until the final determination of that action.

We are of the opinion that by putting up the election office, the Respondent has not violated the Orders of the Court. Thus, we hold that there is no contemptuous act committed by the Respondent as alleged by the Petitioner.

Application dismissed with costs.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.
I AGREE

JUDGE OF THE COURT OF APPEAL