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

In the matter of an application for *Restitutio-In-Integrum* and Revision under and in terms of Article 138 (1) of the Constitution of the Democratic Socialist Republic of Sri Lanka

Court of Appeal
Case No: RII/0006/2024

DC Marawila
Case No: 7682/D/16

Adikari Arachchilage Priyantha Senevirathna
No. 153, Govisena Road,
Singakkuliya,
Yogiyana

Plaintiff

Vs.

Sriyalatha Sudhusinghe Kurudhuwaththa
"Thilina" Kottagaha Hena,
Mapalana,
Kabhurupitiya

Respondent

And

Sriyalatha Sudhusinghe Kurudhuwaththa
"Thilina" Kottagaha Hena,
Mapalana,
Kabhurupitiya

Respondent-Petitioner

Vs.

Adikari Arachchilage Priyantha Senevirathna
No. 153, Govisena Road,
Singakkuliya,
Yogiyana

Plaintiff-Respondent

AND NOW BETWEEN

Wijayamunige Arunasiri Wijayamuni
No. 79 Halaba,
Pitakubura,
Bibila (Power of Attorney Holder)

On behalf of

Adikari Arachchilage Priyantha Senevirathna
No. 153, Govisena Road,
Singakkuliya,
Yogiyana

Plaintiff-Respondent-Petitioner

Vs.

Sriyalatha Sudhusinghe Kurudhuwaththa
"Thilina" Kottagaha Hena,
Mapalana,
Kabhurupitiya

Respondent-Petitioner-Respondent

Before : R. Gurusinghe J
&
M.C.B.S. Morais J

Counsel : Lakshan Dias with Imasha Fernando
Instructed by Dayani Panditharatne
for the Petitioner

Nisala Seniya Fernando
For the Respondent

Supported on : 10-02-2025

Decided on : 18-03-2025

ORDER

R. Gurusinghe

The Plaintiff-Respondent-Petitioner (hereinafter referred to as the petitioner) filed an application before this court under Article 138 of the Constitution, seeking to set aside the Order of the Learned District Judge of Marawila dated 31-03-2022, in the divorce case bearing no. 7682/D/16. The petitioner alleged that the Learned District Judge of Marawila ordered the petitioner to pay an interim divorce allowance under section 614 of the Civil Procedure Code, and that amount ordered is excessive considering his monthly income.

The original petition of the petitioner was filed on 29-01-2024. The amended petition was tendered on 12-12-2024.

When this application was supported the Learned Counsel for the respondent took up a preliminary objection that the petitioner's application is in violation of Rule 3 (1) (b) of the Court of Appeal (Appellate Procedure) Rules 1990, since none of the documents tendered to court with that application are neither original documents nor duly certified copies.

None of the documents marked and produced with the petition and amended petition are originals of the documents material to the application or duly certified copies thereof. In the petition or in the amended petition, the petitioner has not stated the reasons for the non-production of the original documents or duly certified copies. Further, the petitioner did not seek leave of the court to furnish such documents later.

Rules 3 (1) (a) and (b) are as follows:

> 3. (1) (a) Every application made to the Court of Appeal for the exercise of the powers vested in the Court of Appeal by Articles 140 or 141 of the Constitution shall be by way of petition, together with an affidavit in support of the averments therein, and shall be accompanied by the originals of documents material to such application (or duly certified-copies thereof) in the form of exhibits. When a petitioner is unable to tender any such document, he shall state the reason for such inability and seek the leave of the Court to furnish such document later. Where a petitioner fails to comply with the provisions of this rule the Court may, *ex mero motu* or at the instance of any party, dismiss such application.

(b) Every application by way of revision or *Restitutio in Integrum* under Article 138 of the constitution shall be made in like manner together with copies of the relevant proceedings (including pleadings and documents produced), in the Court of First Instance, tribunal or other institution to which such application relates.

As mentioned earlier, this application was filed before this Court in January 2024 and the amended petition was filed in December 2024. The petitioner has not filed at least a certified copy of that impugned order. The petitioner had more than two years time to obtain a certified copy of the Order and the certified copies of other relevant documents. The Supreme Court as well as the Court of Appeal has held that the compliance of the Court of Appeal rules is imperative.

In the case of *Shanmugavadivu Vs Kulathilake* [2003] 1 Sri LR 215 stated the following:

> *"On numerous occasions the Supreme Court as well as the court of Appeal have held that the compliance of the Supreme Court Rules and the Court of Appeal Rules is imperative. In a situation where an application was made to the Court of Appeal without the relevant documents being annexed to the petition and the affidavit, but has stated the reason for such inability and sought the leave of the Court to furnish such documents on a later date, the Court could have exercised its discretion and allowed the petitioner to file the relevant documents on a later date. However on this occasion, as pointed out earlier, no such leave was sought by the appellant and in the circumstances, the Court of Appeal could not have exercised its discretion in terms of Rules 3(1) (a) and 3(1) (b) of the Court of Appeal (Appellate Procedure) Rules".*

A Divisional Bench of the Court of Appeal has decided that in the Case of *Jayantha Perera Bogodage vs. D S P Senaratne, Controller of Imports and Exports Case No. C A (Writ) 345/2012 dated 12-12-2018*, compliance with Rule 3(1) of the Court of Appeal (Appellate Procedure) Rules 1990 is mandatory.

In this case, none of the documents produced by the petitioner are original documents or certified copies thereof. The petitioner has not provided an explanation as to why the originals or certified copies of the documents were not produced. He did not seek leave of court to file such documents later. This application was filed in January 2024, and an amended petition was filed in December 2024. The application was supported on 10-02-2025.

Even by the date of support of the application, the petitioner failed to produce originals or certified copies of the document.

For the reasons stated above, preliminary objection raised by the respondent is upheld. Application of the petitioner is dismissed.

Judge of the Court of Appeal.

M.C.B.S. Morais J.
I agree.

Judge of the Court of Appeal.