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

(In the High Court of the Western Province (exercising civil jurisdiction) Holden in Colombo)

Court of Appeal
Case No: RII/0034/2024

High Court (Civil)
Case No: 11/2021/CO

Urban Development Authority,
Sethsiripaya,
Battaramulla.

Petitioner

Vs

1. ON'ALLY HOLDINGS PLC
   Unity Plaza Building,
   Galle Road,
   Colombo 04.

2. LANKA REALTY INVESTMENT PLC
   1st Floor, HQ Colombo,
   464A, T.B. Jayah Mawatha,
   Colombo 10.

3. RENUKA CAPITAL PLC
   Renuka House
   No. 69 Sri Jinarathana Road
   Colombo 02.

4. PW CORPORATE SECRETARIAL (PVT) LTD,
   3/17 Kynsey Road,
   Colombo 08.

5. THE SECURITIES EXCHANGE COMMISSION OF SRI LANKA,
   Level 28 and 29,
   East Tower, World Trade Centre,
   Echelon Square,
   Colombo 01.

Respondents

And NOW BETWEEN

(In the Court of Appeal)
Lanka Realty Investments PLC,
1st Floor, HQ Colombo,
464A. T.B. Jayah Mawatha
Colombo 10.

2nd Respondent-Petitioner

Vs.

Urban Development Authority,
Sethsiripaya, Battaramulla

Petitioner-Respondent

Vs.

1. ON'ALLY HOLDINGS PLC
   Unity Plaza Building,
   Galle Road,
   Colombo 04.

3. RENUKA CAPITAL PLC
   Renuka House
   No. 69 Sri Jinarathana Road
   Colombo 02.

4. PW CORPORATE SECRETARIAL (PVT) LTD,
   3/17 Kynsey Road,
   Colombo 08.

5. THE SECURITIES AND EXCHANGE
   COMMISSION OF SRI LANKA,
   Level 28 and 29,
   East Tower, World Trade Centre,
   Echelon Square,
   Colombo 01.

Respondents-Respondents

Before : R. Gurusinghe J
&
Dr. S.Premachandra J.

Counsel : Nishan Sydney Premathiratne with
Vikum Jayasinghe instructed by
Francis Julian Pratheep
for the 2nd Respondent-Petitioner

Shanaka Amarasinghe with
Harshana Dissanayake instructed by
Julius & Creasy
for the 1st Respondent

Kapila Liyanagamage with Maheesha Dushyanthi
Instructed by Hashan Gunaratne
for the 3rd Respondent-Respondent

T. Gajanayake, S.C.
for the 4th Respondent- Respondent

Supported on : 24-03-2025

Decided on : 19-06-2025

ORDER

R. Gurusinghe, J.

The 2nd Respondent-Petitioner filed this *Restitutio-in-Integrum* application, seeking, *inter alia*, an order setting out the impugned order of the Commercial High Court dated 15 February 2024, in the case bearing No. HC/Civil/11/2021/CO.

The respondents have taken up several preliminary objections to the petitioner's application and sought the dismissal of the petitioner's application *in limine.*

1. The petitioner has a statutory right of appeal, and he has already exercised that right by filing a notice of appeal. This application was filed while the appeal is pending. When the petitioner has an alternative adequate remedy, they cannot invoke *Restitutio-in-Integrum* jurisdiction.

2. While pending the appeal before the Supreme Court, filing this application before this court constitutes an abuse of process.

3. The petitioner has failed to plead exceptional circumstances that warrant invoking *Restitutio-in-Integrum* jurisdiction.

This application arises from a case before the High Court (hereinafter referred to as the Commercial High Court), which is established in terms of the provisions of the High Court of the Provinces (Special Provisions) Act No. 10 of 1996 (hereinafter referred to as the Act). The Commercial High Court exercises original Civil Jurisdiction under and in terms of Act No. 10 of 1996. Section 5 of the Act provides a right of appeal to any person who is dissatisfied with any judgment to the Supreme Court. Section 5 of the Act is as follows:

Section 5.

(1) Any person who is dissatisfied with any judgement pronounced by a High Court established by Article 154P of the Constitution, in the exercise of its jurisdiction under section 2, in any action, proceeding or matter to which such person is a party may prefer an appeal to the Supreme Court against such judgement, for any error in fact or in law.

(2) Any person who is dissatisfied with any order made by a High Court established by Article 154P of the Constitution, in the exercise of its jurisdiction under section 2 in the course of any action, proceeding or matter to which such person is, or seeks to be, a party, may prefer an appeal to the supreme Court against such Order for the correction of any error in fact or in law, with the leave of the Supreme Court first had and obtained.

(3) In this section, the expressions "judgment" and "order" shall have the same meanings respectively, as in section 754 (5) of the Civil Procedure Code (Chapter 101).

The respondents have pointed out that the petitioner has already invoked the jurisdiction of the Supreme Court against the impugned order of the Commercial High Court by filing a notice of appeal in the Commercial High Court. It is not disputed that the impugned order of the Commercial High Court is a final order, and it is a "judgment" within the meaning of section 754 (5) of the Civil Procedure Code. The parties have admitted that a right of appeal lies to the Supreme Court against the impugned order.

In the case of *Senanayake and Others vs. Koehn and Others [2002] 3 Sri LR 381*, Gamini Amaratunga, J. held, as follows:

"In my opinion, it is implicit in the provisions of section 753 of the Civil Procedure Code that this court's power to make orders, including interim orders, depends upon the necessity to examine the legality of the impugned order. In this case, there is no such direct necessity as the petitioner has not invited this court to make a finding on the legality of the judgment of the Commercial High Court. Then it is the function of this court to examine the legality of the judgment of the Commercial High Court to satisfy itself that the petitioner is entitled to the relief prayed for. If this court ventures into such an exercise, it is an indirect usurpation of the exclusive jurisdiction conferred on the Supreme Court by the legislature. It is therefore, my considered view that it is not proper for this court to examine the legality of the judgment of the Commercial High Court even for the limited purpose of satisfying itself that the petitioner is entitled to the relief prayed for". Accordingly, the Court of Appeal in that case refused to issue formal notice and the application was dismissed.

Restitution is granted only if no other remedy is available to the party aggrieved. In the case of *Menchinahamy vs Muniweera 52 NLR 409*, it was held, *"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 legal proceedings who can ask for this relief. The remedy must be sought with the utmost promptitude. It is not available if the applicant has any other remedy opened to him."*

In the case *of Sri Lanka Insurance Corporation Limited vs Shanmugam and another [1995] 1 Sri LR 55* Ranaraja, J. stated as follows: *"There is another reason why this application should be refused. Restitution is granted only if no other remedy is available to the party aggrieved. The petitioner has made two applications in revision and also filed a final appeal against the order complaint of …."*

It was further stated in this judgment as follows;

> *Relief by way of Restitutio-in-Integrum in respect of judgments of original courts may be sought:*
>
> *(a) where judgments have been obtained by fraud by the production of false evidence, non-disclosure of material facts or by force; or*
>
> *(b) where fresh evidence has cropped up since judgments, which was unknown earlier to the parties relying on it or which no diligence could have helped to disclose earlier, or*

(c) where judgments have been pronounced by mistake and decrees entered thereon provided, of course, it is an error which connotes a reasonable and "excusable error.

The remedy could, therefore, be availed of where an Attorney-at-Law has by mistake consented to judgment contrary to express instructions of his client, for in such cases, it could be said that there was, in reality, no consent but not where the Attorney-at-Law has been given a general authority to settle or compromise a case.

However, in the case at hand, there is no allegation whatsoever in the pleadings that there has been fraud, no discovery of fresh evidence, and no excusable mistake shown.

The petitioner has already invoked the jurisdiction of the Supreme Court through an appeal. That is a remedy given to the petitioner as of right and is an adequate remedy. The petitioner has filed this application while the appeal is pending before the Supreme Court. In the written submission of the petitioner, it was stated*, "...the alternative remedy of final appeal will take an indefinite time to be listed and to obtain any form of relief..."* This amounts to abuse of process.

Restitutio in Integrum is an extraordinary remedy granted to a party only in exceptional circumstances and who has no other remedy available. It is a discretionary remedy. In the present case, the petitioner has the statutory right of appeal to the Supreme Court, which he has already exercised. The petitioner has failed to demonstrate exceptional circumstances.

For the reasons stated above, we uphold the preliminary objections raised by the respondents. Therefore, the application of the petitioner is dismissed.

Judge of the Court of Appeal.

Dr. S. Premachandra J.
I agree.

Judge of the Court of Appeal.