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

In the matter of an application for revision under and in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA Case No: CA/MCR/04/2025

01. MC/4757/Mis/24
02. MC/4779/Mis/24
03. MC/4783/Mis/24
04. MC/4761/Mis/24
05. MC/4785/01/Mis/24
06. MC/4786/Mis/24
07. MC/4768/Mis/24
08. MC/4777/Mis/24
09. MC/4789/Mis/24
10. MC/4780/Mis/24
11. MC/4781/Mis/24
12. MC/4769/Mis/24
13. MC/4790/Mis/24
14. MC/4773/Mis/24
15. MC/4774/Mis/24
16. MC/4764/01/Mis/24
17. MC/4787/Mis/24
18. MC/4470/01/Mis/24
19. MC/4771/Mis/24
20. MC/5130/01/Mis/24
21. MC/4762/Mis/24
22. MC/4775/Mis/24
23. MC/4776/01/Mis/24
24. MC/4763/Mis/24
25. MC/4788/Mis/24
26. MC/176/Mis/25
27. MC/4782/Mis/24

Thushara Chaminda Kariyawasan Paranavithana

Chief Engineer (Civil)

Sri Lanka Ports Authority

Trincomalee

Applicant

V.

1. Kalaltheen Saththar
   No. 167, Muthu Nagar
   Trincomalee

2. S.Janoos
   Kakkamunai- 07, Kinniya

3. Abdullah Kaiyon
   No. 167, Kakkamunai- 07, Kinniya

4. Ansar Fathima Faseena
   No. 356/04, Kandy Road
   Paalayottru

Trincomalee

5. Mohomed M. Aswer
   Kakkamunai- 06, Kinniya

6. N. Najath
   No. 169,
   Muthunagar
   Trincomalee

7. S. Ubaithullah & A.I. Mohamed Ismail
   Kakkamunai, Kinniya

8. A.L.M. Kareem
   No. 682 Arfa Nagar
   Thambalagamuwa

9. N. Nijath No. 172,
   Muthunagar
   China Bay, Trincomalee

10. U.M. Assam
    Kakkamunai-o7, Kinniya

11. V.T. Deysin Sinhana
    Kakkamunai-o7, Kinniya

12. N.P.K.Uwaiz & Seilabdeen Irfan
    Kakkamunai-o7 China Bay

13. Abdul Hameed Mohomabdeen
    Kakkamunai-o6, Kinniya

14. M.R. Kanju Thambi
    Muthunagar, China Bay

15. Umar Lebbe
    No.11
    Naduththeevu-06
    Kinniya

16. A.M. Mohamed Nazar
    Vaan Ela, Kanthale

17. M.S. Najmudeen
    Kakkamunai-06, Kinniya

18. M.M. Vajeer
    Kakkamunai-07, Kinniya

19. A.M. Faroo
    No. 106, Kakkamunai-07, Kinniya

20. M.M. Safrullah
    No.679, Arfa Nagar
    Tambalagamuwa

21. Abdul Mohamed Mujahith
    No. 356/04, Kandy Road
    Paalayottru
    Trincomalee

22. N. Rahumudullah
    Kakkamunai-07, Kinniya

23. Rahumudullah Siyath
    Kakkamunai-07, Kinniya

24. A.M. Arafath
    Kakkamunai-07, Kinniya

25. Mohideen Bawa Sulthan
    Kakkamunai-06, Kinniya

26. S.T. Seilabdeen
    No. 152, Muthunagar, China Bay
    Trincomalee

27. Sakariya Jamila Umma
    Surankal, Kinniya- 04

Respondents

AND NOW BETWEEN

1. Kalaltheen Saththar
   No. 167, Muthu Nagar
   Trincomalee

2. S.Janoos
   Kakkamunai- 07, Kinniya

3. Abdullah Kaiyon
No. 167, Kakkamunai- 07,
Kinniya

4. Ansar Fathima Faseena
No. 356/04, Kandy Road
Paalayottru
Trincomalee

5. Mohomed M. Aswer
Kakkamunai- 06, Kinniya

6. N. Najath
No. 169,
Muthunagar
Trincomalee

7. S. Ubaithullah & A.I. Mohamed Ismail
Kakkamunai, Kinniya
8. A.L.M. Kareem
No. 682 Arfa Nagar
Thambalagamuwa

9. N. Nijath No. 172,
Muthunagar
China Bay, Trincomalee

10. U.M. Assam
Kakkamunai-o7, Kinniya

11. V.T. Deysin Sinhana
Kakkamunai-o7, Kinniya

12. N.P.K.Uwaiz & Seilabdeen Irfan
Kakkamunai-o7 China Bay

13. Abdul Hameed Mohomabdeen
Kakkamunai-o6, Kinniya

14. M.R. Kanju Thambi
Muthunagar, China Bay

15. Umar Lebbe
No.11
Naduththeevu-06
Kinniya

16. A.M. Mohamed Nazar
Vaan Ela, Kanthale

17. M.S. Najmudeen
Kakkamunai-06, Kinniya

18. M.M. Vajeer
Kakkamunai-07, Kinniya

19. A.M. Faroo
No. 106, Kakkamunai-07, Kinniya

20. M.M. Safrullah

No.679, Arfa Nagar
Tambalagamuwa

21. Abdul Mohamed Mujahith
No. 356/04, Kandy Road
Paalayottru
Trincomalee

22. N. Rahumudullah
Kakkamunai-07, Kinniya

23. Rahumudullah Siyath
Kakkamunai-07, Kinniya

24. A.M. Arafath
Kakkamunai-07, Kinniya

25. Mohideen Bawa Sulthan
Kakkamunai-06, Kinniya

26. S.T. Seilabdeen
No. 152, Muthunagar, China Bay
Trincomalee

27. Sakariya Jamila Umma
Surankal, Kinniya- 04

Respondents-Respondents

Vs.

1. Thushara Chaminda Kariyawasam

Paranavithana
Chief Engineer (Civil)
Sri Lanka Ports Authority
Trincomalee

Applicant-Respondent

2. Sri Lanka Ports Authority
Level 07
No. 464, LT.B. Jayah Mawatha
Colombo 10.

Respondent

AND NOW BETWEEN

In the matter of an application for intervention

Sun Scape (Pvt) Ltd.
6th Floor, Astoria Tower
No. 422/6/3, R.A> de Mel Mawatha
Colombo 03

Intervenient-Petitioner

Vs.

1. Kalaltheen Saththar
No. 167, Muthu Nagar
Trincomalee

2. S.Janoos
Kakkamunai- 07, Kinniya

3. Abdullah Kaiyon
No. 167, Kakkamunai- 07, Kinniya

4. Ansar Fathima Faseena
No. 356/04, Kandy Road
Paalayottru
Trincomalee

5. Mohomed M. Aswer
Kakkamunai- 06, Kinniya

6. N. Najath
No. 169,
Muthunagar
Trincomalee

7. S. Ubaithullah & A.I. Mohamed Ismail
Kakkamunai, Kinniya

8. A.L.M. Kareem
No. 682 Arfa Nagar
Thambalagamuwa

9. N. Nijath No. 172,
Muthunagar
China Bay, Trincomalee

10. U.M. Assam
Kakkamunai-o7, Kinniya

11. V.T. Deysin Sinhana
Kakkamunai-o7, Kinniya

12. N.P.K.Uwaiz & Seilabdeen Irfan
Kakkamunai-o7 China Bay

13. Abdul Hameed Mohomabdeen
Kakkamunai-o6, Kinniya

14. M.R. Kanju Thambi
Muthunagar, China Bay

15. Umar Lebbe
No.11
Naduththeevu-06
Kinniya

16. A.M. Mohamed Nazar
Vaan Ela, Kanthale

17. M.S. Najmudeen
Kakkamunai-06, Kinniya

18. M.M. Vajeer
Kakkamunai-07, Kinniya

19. A.M. Faroo
No. 106, Kakkamunai-07, Kinniya

20. M.M. Safrullah
No.679, Arfa Nagar
Tambalagamuwa

21. Abdul Mohamed Mujahith
No. 356/04, Kandy Road
Paalayottru
Trincomalee

22. N. Rahumudullah
Kakkamunai-07, Kinniya

23. Rahumudullah Siyath
Kakkamunai-07, Kinniya

24. A.M. Arafath
Kakkamunai-07, Kinniya

25. Mohideen Bawa Sulthan
Kakkamunai-06, Kinniya

26. S.T. Seilabdeen
No. 152, Muthunagar, China Bay
Trincomalee

27. Sakariya Jamila Umma
Surankal, Kinniya- 04

Respondents – Petitioner—
Respondents

1. Thushara Chaminda Kariyawasam
Paranavithana
Chief Engineer (Civil)
Sri Lanka Ports Authority
Trincomalee

Applicant-Respondent-Respondent

2. Sri Lanka Ports Authority
Level 07
No. 464, LT.B. Jayah Mawatha
Colombo 10.

Respondent-Respondent

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

Amal Ranaraja, J.

Counsels: Mahanama De Silva with Udari Ekanayake and Savadi Kamalathunga for the Petitioner
Vikum De Abrew, PC, ASG with Madusha Thanipuliarachchi, SC for the Respondents

Supported On: 02.06.2025

Order On: 30.06.2025

ORDER

B. Sasi Mahendran, J.

The Petitioners filed the Petition on 24.04.2025 seeking the following reliefs;

a. Exercise the revisionary powers of your Lordships' Court and grant reliefs to the petitioners,

b. declare that the said vesting order dated 15th March 1984, made by the then Minister of Trade and Shipping and published in Gazette No: 314/10 dated 12th September 1984 (P-24), has been made in excess of the jurisdiction of the then Minister of Trade and Shipping and is therefore void and is in no force or avail in law,

c. set aside the said orders made by the Magistrate Court Trincomalee, in each of the aforesaid cases specified in the caption,

d. stay further proceedings in each of the aforesaid cases in the Magistrate Court Trincomalee, specified in the caption, until the final determination of this application,

e. grant costs and

f. Grant such other and further reliefs as deem fit to Your Lordships' Court.

When the matter was taken up on 02.06.2025, the learned Additional Solicitor General, Vikum de Abrew, President's Counsel, appearing on behalf of the 1st and 2nd Respondents, raised a preliminary objection to the maintainability of the application. The objection was based on the premise that the Petitioners have failed to submit relevant documents with the petition, thereby contravening Rule 3(1)(b) of the Court of Appeal (Appellate Procedure) Rules, 1990

It is relevant to reproduce Rule 3(1)(b), which provides as follows:

> 3.(1) (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.

Upon a perusal of the Petition and the accompanying affidavit, it is observed that 27 individuals have been cited as Respondents-Petitioners. However, in the prayer, the petitioner has not identified the specific orders sought to be set aside, having merely referred to 'the said orders.' Furthermore, the petitioners have failed to furnish copies of the orders in question. No explanation has been provided within the petition for the omission of certified copies of the documents material to the application.

Furthermore, Rule 3 (13) has placed a duty upon the petitioner to take necessary steps to prosecute his application with due diligence. Rule 3 (1) (a) further provides that 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.

Our courts have consistently held that adherence to these rules is mandatory.

The primary purpose of the Rule was explained by ***Priyantha Jayawardemna, PC,J. in A.A.Gunawardana v. S.J. Sirisena and Others, SC SPL No; 133/2015, decided on 02.08..2017,*** **(Civil Law, Supreme Court and Appeal Court unreported judgments (2010-2020), Digest, Volume II, page 810,** held that;

"It is clear that the primary purpose of the Rules is to ensure the smooth functioning of the administration of justice. In this context, it is necessary to consider whether non-compliance with the Rules has adversely affected the functioning of justice and also whether any party to a case has been adversely affected by non-compliance with Rules.

P. Thavarajanie v. Kanaganayagam and Others, SC (FR) Application No. SC/Special/04/2014, Decided on 04.08.2017, (The Galle Law Reports 2017 Volume 04 part II, at page 657) B.P. Aluwihare, PC, J held that;

"In response to the preliminary objection raised by the Respondents, it was submitted on behalf of the Petitioner that the present application is not subject to the ordinary rules as the application originated through a complaint to this Court and should be considered as a special matter and differ from regular applications. The Petitioner had submitted further that Rule 44 (1) of S.C. Rules is not mandatory, but only directory and had referred to the decision in SC Appeal 172/2011 LeelawathieManike Vs. Dharmasinghe Bandara and another, where this court remarked that "Rules should not obstruct the path of justice.

I wish, however to rely on the pronouncement made by Justice Dr. Amarasinghe in the case of Fernando v Sybil Fernando 1997 (3) S.L.R page 1, wherein Justice Amarasinghe, signifying the importance of procedural law, stated:

"There is the substantive law and there is the procedural law. Procedural law is not secondary: The two branches are complementary. The maxim ubi ius, ibiremedium reflects the complementary character of civil procedure law. The two branches are also interdependent. Halsbury (ibid.) points out that the interplay between the two branches often conceals what is substantive and what is procedural. It is by procedure that the law is put into motion, and it is procedural law which puts life into substantive law, gives its remedy and effectiveness and brings it into being."

…….

I am of the view that, the compliance with the Rule referred to is mandatory and the Petition filed on behalf of the Petitioner dated 9th September, 2014 is defective for the reasons set out above. The Petitioner had failed to offer any explanation nor has the Petitioner averred any reasons for the default."

Nestle Lanka PLC V. Gamini Rajapakshe Bodiyawatte, SC Appeal No. SC/ HC/LA /54/18, Decided on 30.09.2020, (2020 BLR Volume XXV) Jayantha Jayasuriya, PC, CJ, held that;
"In **Attanayake v Commissioner General of Elections** [2011] 1 SLR 220, this Court upheld the preliminary objection of the Respondents on the basis that the Petitioner's failure to comply with Rule 8(3) should result in the dismissal of the application and accordingly dismissed the application. In this case the Petitioner took steps to dispatch notices on the

Respondents by registered post without tendering them to the Registrar of the Supreme Court along with the petition, affidavit and other annexures. The Court observed that,

"The Supreme Court Procedure laid down by way of Supreme Court Rules made under and in terms of the Constitution cannot be easily disregarded as they have been made for the purpose of ensuring the smooth functioning of the legal machinery of this Court. When there are mandatory Rules that should be followed and when there are preliminary obiections raised on non-compliance of such Rules, those objections cannot be taken as mere technical obiections" (at p 234).

Further, it was observed that

"If a party so decides to act recklessly it is needless to say that such a party would have to face the consequences which would follow in terms of the relevant provisions" (at p 234).

The Supreme Court in Peiris and another v Peiris SC/HC CA/LA137/12, SC minutes of 25 September 2014 (Vol XXI BALJ (2015) 101) upheld the preliminary objection of the respondent and dismissed the application due to non compliance with Rule 8(3) of the Supreme Court Rules, when the petitioner failed to tender notices along with the petition and affidavit but tendered after 24 days of filing them.

In view of the foregoing reasons and jurisprudence of this Court, as discussed hereinbefore, I am of the view that the Petitioner is unable to satisfy Court that he exercised due diligence and the failure to submit all the material necessary to support his application along with the petition and the affidavit and the delay of eight months to serve all the necessary material on the Respondent was due to circumstances beyond his control. Therefore, I uphold the preliminary objection of the learned counsel for the Respondent and dismiss the Petition for Leave to Appeal, for non- compliance with Rules 2 and 8 of the Supreme Court Rules, 1990."

The cited judgments demonstrate that the failure to submit all necessary material documents can be deemed fatal to a case, allowing the court to dismiss the action ex mere motu.

Hence, I am compelled to conclude that the Petitioners have violated the provisions of the said Rule 3(1)(b) of the Court of Appeal Rules by not submitting relevant documents.

Superior Courts have constantly held that the Supreme Court or Court of Appeal Rules are imperative."

Furthermore, we are mindful that the Petitioners have invoked the discretionary remedy of revision as conferred upon this Court in terms of Article 138 of the Constitution.

The power to exercise the Revisionary Jurisdiction is vested in The Court of Appeal, the Article 138 of the present Constitution as follows;

> *"(1) The Court of Appeal shall have and exercise subject to the provisions of the Constitution or of any law, an appellate jurisdiction for the correction of all errors in fact or in law which shall be 128[committed by the High Court, in the exercise of its appellate or original jurisdiction or by any Court of First Instance], tribunal or other institution and sole and exclusive cognizance, by way of appeal, revision and restitutio in integrum, of all causes, suits, actions, prosecutions, matters and things 129[of which such High Court, Court of First Instance], tribunal or other institution may have taken cognizance:*
>
> *Provided that no judgement, decree or order of any court shall be reversed or varied on account of any error, defect or irregularity, which has not prejudiced the substantial rights of the parties or occasioned a failure of justice.*
>
> *(2) The Court of Appeal shall also have and exercise all such powers and jurisdiction, appellate and original, as Parliament may by law vest or ordain*."

The object of revisionary jurisdiction is to ensure the due administration of justice and correction of errors regarding either the law or the facts, thereby avoiding miscarriage of justice.

In *Mariam Beebee, v Seyed Mohamed,* 68 NLR page 36 at page 38, His Lordship Sansoni, CJ. stated that:

> "The power of revision is an extraordinary power which is quite independent of and distinct from the appellate jurisdiction of this Court. Its object is the due administration of justice and the correction of errors, sometimes committed by this Court itself, in order to avoid miscarriages of justice. It is exercised in some cases by a Judge of his own motion, when an aggrieved person who may not be a party to the action brings to his notice the fact that, unless the power is exercised, injustice will result."

In *Wijesinghe v Tharmaratnam* CA 120/80, Decided on 14th October 1986, page 47 at page 49, Srikantha's Law Reports, Vol (IV) Jameel J. held that, *"Revision is a discretionary remedy and will not be available unless the application discloses circumstances which shocks the conscience of court."*

Bank of Ceylon v Kaleel and others [2004] 1 SLR 284, Wimalachandra J. held that, *"In any event to exercise revisionary jurisdiction the order challenged must have occasioned a failure of justice and be manifestly erroneous which go beyond an error or defect or irregularity that an ordinary person would instantly react to it; the order complained of is of such a nature which would have shocked the conscience of court."*

In the present case, we are unable to determine whether the order in question shocks the conscience of the Court, as the relevant orders for revision have not been submitted with the petition.

Accordingly, and for the reasons noted above, we are not inclined to issue notice to the Respondents.

Application dismissed. No order for costs.

The Registrar of the Court is directed to communicate this order to the Magistrate of Trincomalee for necessary compliance.

JUDGE OF THE COURT OF APPEAL

Amal Ranaraja, J.
I AGREE

JUDGE OF THE COURT OF APPEAL