RAJAKUMAR AND ANOTHER
v
HATTON NATIONAL BANK LTD.

COURT OF APPEAL
EKANAYAKE, J.
SISIRA DE ABREW, J.
CA 2012/2003
DC MT. LAVINIA 123/2001/DCM
DECEMBER 12, 2006

Debt Recovery (Special Provisions) Act No. 2 of 1990 as amended by Act No. 9 of 1994 – Constitution Articles 24(2), 24(3) – Articles 149, 141 – Plaintiffs right to initiate proceedings either in Sinhala or Tamil language – Defendants right to participate in Sinhala or Tamil language. Civil Procedure Code 49(1), Section 754(2) Alternate remedy – Judgment or order – Revision - exceptional circumstances – Non compliance with Rule – Court of Appeal (Appellate Procedure) Rule - 1990 – Laches.

The plaintiff-respondent instituted action in the District Court of Mt. Lavinia under and in terms of the Debt Recovery (Special Provisions) Act No.2 of 1990 as amended in order to recover a certain amount. The District Court granted leave to appear and show cause upon deposit of a sum of Rs. 2.5 million, the terms sought by the defendant-appellant were refused by Court – Judgment was thereafter entered and *decree nisi* was made absolute. The defendant moved in Revision.

It was contended by the appellant a Tamil National that the plaintiff bank failed to provide copies of the plaint and the affidavit in the Tamil language or at least in English language – contravening Article 24(2), Article 24(3). The respondent contended that, the Revision application is misconceived in law, there is delay and that, Rule 3(1) of the Court of Appeal Rules 1990 – has not been complied with.

Held:

(1) A plain reading of Article 24(2) suggests that the plaintiff bank has the right to initiate proceedings either in the Sinhala or Tamil language, and the defendant has the right to participate in the proceedings in Court either in Sinhala or Tamil language.

In this case the petitioners have chosen to participate in the proceedings in the Sinhala language, the motion is also in the Sinhala language – Article 24(2) has been complied with.

(2) There must be evidence before the District Court that the 1st defendant-petitioner is not conversant with the language used in the District Court. In the papers filed by the defendant-petitioners they have not stated that, the 1st defendant-petitioner is not conversant in the Sinhala language. – The position contended under Article 24(3) cannot therefore be accepted.

(3) As regards the position that, the plaintiff bank has not complied with Section 49 (1) of the Civil Procedure Code – there was no evidence before the District Court to suggest that the language of the 1st defendant-petitioner was not the language of the District Court of Mt. Lavinia.

Held further :

(4) The impugned order is not a final order and as such the defendant-petitioner could invoke the jurisdiction of the Court of Appeal under section 754(2); The defendant had an alternate remedy.

(5) The petitioners are not entitled to invoke the revisionary jurisdiction of the Court of Appeal, in that – the petitioners have not established exceptional circumstances warranting the intervention of the Court of Appeal.

(6) The petitioners have not produced a copy of the impugned order – they have not complied with Rule 3(1) of the Court of Appeal (Appellate Procedure) Rules 1990 – without examining the order, Court is unable to make a determination as to the correctness of same – this is a necessary document.

Held further :

(7) The present application has been filed eight months after the pronouncement of the 1st order and four months after the 2nd order – there is delay.

Per Sisira de Abrew, J.

"Revision being a discretionary remedy is not available to those who sleep over their rights, I further hold that it is not the function of the Court of Appeal, in the exercise of its revisionary jurisdiction to relieve parties of the consequences of their own folly, negligence and laches".

APPLICATION in revision from an order of the District Court of Mt. Lavinia.

Cases referred to:

(1) *In Re the insolvency of Hayman Thornhill* 2 NLR 105.

(2) *Ameen* v *Rasheek* 6 CLW 8.

(3) *Rustom* v *Hapangama* 1978-79-80 1 Sri LR 352 (SC)

(4) *Rasheed Ali* v *Mohamed Ali* 1981 2 Sri LR 29 (CA)
(5) *Rasheed Ali* v *Mohamed Ali* 1981 1 Sri LR 262 (SC)
(6) *Thilagaratnam* v *E.A.P. Edirisinghe* 1982 1Sri LR 56.
(7) *Hotel Galaxy Ltd.* v *Mercantile Hotel Management Ltd.* 1987 1Sri LR 5.
(8) *Caderaman Pulle* v *Ceylon Paper Sacks Ltd.* 2001 3 Sri LR 112.
(9) *Dharmaratne* v *Palm Paradise Cabanas Ltd.* 2003 3 Sri LR 24.
(10) *Lokutthuttripitiyage Nandawathie* v *Madapathage D. Gunawathie* CA 769/2000 DC Mt. Lavinia 33/92/P CAM 27.9.2001.
(11) *Mary Nona* v *Francina* 1988 2 Sri LR 250.
(12) *Navaratnasingham* v *Arumugam* 1980 2 Sri LR 01.
(13) *Samarasekera* v *Mudiyanse* 1990 1 Sri LR 137.
(14) *Shanmugadevi* v *Kulathilake* 20031 Sri LR 215.
(15) *Don Lewis* v *Dissanayake* 70 NLR 8.
(16) *H.A.M. Cassim* v *G.A. Batticaloa* 69 NLR 403.
(17) *Colombo Apothecaries Ltd.* v *Commissioner of Labour* 1998 3 Sri LR 320.
(18) *Wijesinghe* v *Tharmaratnam* 4 Sri Kantha 47.

Lakshman Jaya Kumar for defendant-petitioner-petitioner.
Palitha Kumarasinghe PC with *I. Idroos* for plaintiff-respondent-respondent.

Cur.adv.vult.

March 16, 2007

SISIRA DE ABREW, J.

Plaintiff-respondent-respondent (hereinafter referred to as the plaintiff bank) instituted action in the District Court of Mt. Lavinia under and in terms of Debt Recovery (Special Provisions) Act No. 2 of 1990 as amended by Act No. 9 of 1994 against the defendant-petitioners-petitioners (hereinafter referred to as the defendant-petitioners) in order to recover Rs. 7.5 million. The District Court issued a *decree nisi* against the defendant-petitioners. The defendant-petitioners made an application for leave to appear and show cause against the said *decree nisi.* The learned District Judge, by his order dated 20.3.2003, granted leave upon deposit of a sum of Rs. 2.5 million before 16.7.2003. The defendant petitioners, by motion dated 15.7.2003, sought permission of the District Court, *inter alia*, (a) to deposit three deeds pertaining to three lands belonging to the 2nd defendant-petitioner; (b) thereafter

to sell the lands; (c) and to deposit the proceeds of the sale of the three lands as security instead of the security ordered by the District Court. The learned District Judge, by his order dated 16.7.2003, refused the application in the motion. The learned District Judge made further order and entered judgment for the plaintiff bank as prayed for as the defendant-petitioners have failed to comply with the order dated 20.3.2003. The *decree nisi* was also made absolute on this date. The defendant-petitioners, by this revision application, seeks to revise the orders dated 20.3.2003 and 16.7.2003.

Learned Counsel for the defendant-petitioners contended before us that the plaintiff bank failed to provide copies of the plaint and the affidavit in the Tamil language or at least in English language to the 1st defendant-petitioner who is a Tamil national and as such the plaintiff bank had not complied with Articles 24(2) and 24(3) of the Constitution of the Democratic Socialist Republic of Sri Lanka (the Constitution). Article 24(2) of the Constitution reads as follows:

> *"Any party or applicant or any person legally entitled to represent such party or applicant may initiate proceedings, and submit to Court pleadings and other documents, and participate in the proceedings in Court, in either Sinhala or Tamil."*

A plain reading of the Article 24(2) of the Constitution suggests that the plaintiff bank has the right to initiate proceedings either in Sinhala or Tamil language and the defendant has the right to participate in the proceedings in Court either in Sinhala or Tamil language. In this case the petitioners have chosen to participate in the proceedings in the District Court of Mount Lavinia in the Sinhala language. This is evinced by the language used in the motion dated 15.07.2003 filed on behalf of the defendant-petitioners. The language used in the said motion is the Sinhala language. Thus the above contention of the learned Counsel for the defendant petitioners cannot be accepted. On being questioned on the propriety of his contention, Learned Counsel for the defendant-petitioners, in the course of the hearing of this application, moved to withdraw this contention.

Learned Counsel for the defendant-petitioners next based his contention on Article 24(3) of the Constitution. He made the same submission of not handing over a copy in Tamil language or English language and further submitted that since the 1st defendant-petitioner

is not conversant with the language used in the District Court of Mount Lavinia the plaintiff bank should have given a copy of the plaint and the affidavit in the Tamil language or the English language. I now turn to this question. Article 24(3) of the Constitution reads as follows:

> *"Any judge, juror, party or applicant or any person legally entitled to represent such party or applicant, who is not conversant with the language used in a Court, shall be entitled to interpretation and to translation into Sinhala or Tamil, provided by the State, to enable him to understand and participate in the proceedings before such Court, and shall also be entitled to obtain in such language, any such part of the record or a translation thereof, as the case may be, as he may be entitled to obtain according to law."*

If the contention of learned Counsel for the defendant-petitioners is correct, then there must be evidence before the District Court that the 1st defendant-petitioner is not conversant with the language used in the District Court of Mount Lavinia which, according to the proceedings, is the Sinhala language. In the petition and affidavit filed by the defendant-petitioners, they have not stated that the 1st defendant-petitioner is not conversant with the Sinhala language. Therefore the above contention of learned Counsel should fail.

Learned Counsel for the defendant-petitioners next contended that the plaintiff bank had not complied with section 49(1) of the Civil Procedure Code (CPC) and raised the same question that the 1st defendant-petitioner was not provided with the copy of the plaint and affidavit in the Tamil language or English language. Section 49(1) of the CPC reads as follows:

> *"The plaintiff shall endorse on the plaint, or annex thereto, a memorandum of the documents, if any, which he has produced along with it; and if the plaint is admitted, shall present as many copies on unstamped paper of the plaint as there are defendants, translated into the language of each defendant whose language is not the language of the Court; unless the court, by reason of the length of the plaint or the number of the defendants or for any other sufficient reason, permits him to present a like number of concise statements of the nature of the claim made, or of the relief or remedy required in the action, in which case he shall present such statements."*

The words "translated into the language of each defendant **whose language is not the language of Court**" must be emphasized. Was there evidence before the learned District Judge to suggest that the language of the 1st defendant-petitioner was not the language of the District Court of Mount Lavinia? The above question has to be answered in the negative because the defendant-petitioners have failed to aver this position viz; that his language is not the language of the District Court, in the petition and affidavit filed both in the District Court and this Court. For these reasons the above contention of learned Counsel for the defendant-petitioners should fail.

Learned President's Counsel for the plaintiff's bank on the other hand, contended that the defendant-petitioners cannot now seek to revise the order dated 20.3.2003 as they have, in the motion dated 15.7.2003 filed in the District Court of Mount Lavinia, sought to deposit proceeds of sale of lands belonging to the 2nd defendant-petitioner in compliance with the order dated 20.3.2003 wherein the learned District Judge granted leave to appear upon deposit of Rs. 2.5 million. I now advert to this contention. The defendant-petitioners, by the said motion dated 15.7.2003, among other things, sought permission of the Court, instead of the security ordered by the Court, to deposit deeds of certain lands belonging to the 2nd defendant-petitioner and to deposit proceeds of sale of these lands in the event of the Court granting permission to sell the lands. They have stated in the said motion that they were seeking to do so in compliance with the order dated 20.3.2003. On a consideration of the totality of the contents of the said motion, it seems to me that the defendant-petitioners have accepted the correctness of the order dated 20.3.2003. For these reasons, I hold the view that the petitioners are not entitled to challenge the correctness of the order dated 20.3.2003 by way of revision and that learned President's Counsel is entitled to succeed in his argument.

Learned President's Counsel next contended that the defendant-petitioners could not invoke the revisionary jurisdiction of this Court against the order dated 20.3.2003 as the defendant-petitioners could have appealed against the said order with leave of this Court first had and obtained. He drew our attention to

section 754(2) of the CPC which reads as follows:

"Any person who shall be dissatisfied with any order made by any original Court in the course of any civil action, proceeding, or matter to which he is or seeks to be a party, may prefer an appeal to the Court of Appeal against such order for the correction of any error in fact or in law, with the leave of the Court of Appeal first had and obtained."

It is common ground that the order made on 20.3.2003 is not a final order and as such the defendant-petitioners, in my view, could invoke the jurisdiction of this Court under section 754(2) of the CPC. I, therefore, conclude that defendant-petitioners had an alternative remedy against the said order dated 20.3.2003.

Learned President's Counsel next brought to our notice that the order dated 16.7.2003 is a final order and as such the defendant-petitioner could have preferred an appeal against the said order in terms of section 754(1) of the CPC which reads as follows:

"Any person who shall be dissatisfied with any judgment pronounced, by any original Court in any civil action, proceeding or matter to which he is a party may prefer an appeal to the Court of Appeal against such judgment for any error in fact or in law."

'Judgment' has been interpreted in section 754(5) of the CPC as follows: "Judgment" means any judgment or order having the effect of a final judgment made by any civil court.

The learned District Judge, by his order dated 16.7.2003, made the *decree nisi* absolute. Thus, it is crystal clear that this order is a final order.

Upon a consideration of section 754(1) of the CPC and the order dated 16.7.2003, I hold that the defendant-petitioners had a right of appeal against the said order. For the above reasons, I conclude that the defendant-petitioners had alternative remedies against the orders dated 20.3.2003 and 16.7.2003. Now the question that remains for consideration is whether the defendant-petitioners could invoke the revisionary jurisdiction of this Court when there is an alternative remedy. In this connection, I would like to consider certain judicial decisions .

In the case of *In Re the insolvency of Hayman Thornhill* [1], discussing the scope and object of the exercise of revisionary

powers by the Supreme Court Bonser C.J. stated as follows:

"The Supreme Court has the power of revising the proceedings of all inferior courts. This power .... The object at which the Supreme Court aims in exercising its powers of revision is the due administration of justice; and whether any particular person has complained against an order; proposed to be revised, or is prejudiced by it, is not to be taken into account in the exercise of such power."

In *Ameen* v *Rasheed*(2) Abrahams, CJ. observed: "It has been represented to us on the part of the petitioner that even if we find the order to be appealable, we still have discretion to act in revision. It has been said in this Court often enough that revision of an appealable order is an exceptional proceeding, and in the petition no reason is given why this method of rectification has been sought rather than the ordinary method of appeal. I can see no reason why the petitioner should expect us to exercise our revisional powers in his favour when he might have appealed, and I would allow the preliminary objection and dismiss the application with costs."

The above judgment of Abrahams, CJ. was cited with approval by His Lordship Justice Ismail in *Rustom* v *Hapangama*(3) and stated thus: "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 if there is an alternative remedy available only if the existence of special circumstances are urged necessitating the indulgence of this Court to exercise these powers in revision.If the existence of special circumstances does not exist then this Court will not exercise its powers in revision."

In *Rasheed Ali* v *Mohamed Ali*(4) Soza, J. remarked thus: "The powers of revision conferred on the Court of Appeal are very wide and the Court has the discretion to exercise them whether an appeal lies or not or whether an appeal had been taken or not. However, this discretionary remedy can be invoked only where there are 'exceptional circumstances' warranting the intervention of the Court." On appeal to the Supreme Court, His Lordship Justice Wanasundara affirming the view expressed by Soza, J. held as follows: "The powers of revision vested in the Court of Appeal are

very wide and the Court can in a fit case exercise that power whether or not an appeal lies. Where the law does not give a right of appeal and makes the order final, the Court of Appeal may nevertheless exercise its powers of revision, but it should do so only in exceptional circumstances. Ordinarily the Court will not interfere by way of review, particularly when the law has expressly given an aggrieved party an alternate remedy such as the right to file a separate action except when non-interference will cause a denial of justice or irremediable harm." Vide *Rasheed Ali* v *Mohamed Ali.*(5)

In *Thilagaratnam* v *E.A.P. Edirisinghe*(6) L.H. de Alwis, J. remarked thus: "Though the Appellate Courts' powers to act in revision were wide and would be exercised whether an appeal has been taken against the order of the original court or not such powers would be exercised only in exceptional circumstances." In *Hotel Galaxy Ltd.* v *Mercantile Hotel Management Ltd.*(7) Sharvananda, CJ. commenting on the requirement of exceptional circumstances in the exercise of revisionary powers held: "It is settled law that the exercise of the revisionary powers of the appellate court is confined to cases in which exceptional circumstances exist warranting its intervention."

Dr. Ranaraja, J. commenting on the requirement of exceptional circumstances in a revision application held as follows: "The power of revision vested in the court is discretionary. The power will be exercised when there is no other remedy available to a party. It is only in very rare instances where exceptional circumstances are present that courts would exercise powers of revision in cases where an alternative remedy has not been availed of by the applicant. Thus the general principal is that revision will not lie where an appeal or other statutory remedy is available. It is only if the aggrieved party can show exceptional circumstances, for seeking relief by way of revision, rather than by way of appeal, when such appeal is available to him as of right, that the court will exercise its revisionary jurisdiction in the interests of due administration of justice."

Nanayakkara, J. stressed the need for exceptional circumstances in the exercise of revisionary powers by the Court of Appeal in *Caderamanpulle* v *Ceylon Paper Sacks Ltd.*(8) and stated thus:

"The existence of exceptional circumstances is a pre-condition for the exercise of powers of revision." The scope and object of the exercise of revisionary powers by the Court of Appeal is succinctly stated by His Lordship Justice Amaratunga in *Dharmaratne* v *Palm Paradise Cabanas Ltd.*(9) "Existence of exceptional circumstances is the process by which the court selects the cases in respect of which the extraordinary method of rectification should be adopted, if such a selection process is not there revisionary jurisdiction of this court will become a gateway of every litigant to make a second appeal in the garb of a Revision Application or to make an appeal in situations where the legislature has not given a right of appeal."

In *Lokutthuttripitiyage Nandawathi* v *Madapathage D. Gunawathi*(10) His Lordship Justice Udalagama observed thus: "In an application for revision it is necessary to urge exceptional circumstances warranting the interference of this court by way of revision. Filing an application by way of revision to set aside an order made by a District Court 3 1/2 years before the institution of the revision application is considered as inordinate delay and the application is dismissed on the ground of laches."

Upon a consideration of the above judicial decisions, I hold that the revisionary powers of this Court cannot be exercised when an alternative remedy is available unless there are exceptional circumstances warranting the intervention of this Court.

The question that remains for consideration is whether the defendant-petitioners, in the present case, have established exceptional circumstances warranting the intervention of this Court. I have carefully gone through the petition of the defendant-petitioners and I have to conclude that they have not established exceptional circumstances warranting the intervention of this Court. I have earlier held that the petitioners had alternative remedies against the orders dated 20.3.2003 and 16.7.2003. For these reasons, I hold that the defendant-petitioners are not entitled to invoke the revisionary jurisdiction of this Court and the petition of the defendant petitioners should fail on this ground alone.

Learned President's Counsel next contended that the defendant-petitioners had not produced a copy of the order dated 16.7.2003 and as such they had not complied with rule 3(1) of the Court of Appeal (Appellate Procedure) rules 1990. I now turn to this

question. It is true that the defendant-petitioners have not produced a copy of the order dated 16.7.2003. In my view, without examining this order, this Court is unable to make a determination as to the correctness of this order. Therefore this is a necessary document in deciding whether the application to revise order dated 16.7.2003 should be allowed or not. In order to appreciate the contention of the learned President's Counsel it is necessary to consider rule 3(1)(a) and (b) of the above rules. I set out below Rule 3(1)(a) and (b).

Rule 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 and 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. Where 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."

Rule 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 the application relates."

In *Mary Nona* v *Francina*[11] Ramanathan, J. held: "Compliance with Rule 46 of the Supreme Court Rules 1978 in an application for revision is mandatory. A copy of the proceedings containing so much of the record as would be necessary to understand the order sought to be revised and to place it in its proper context must be filed. Merely filing copies of three journal entries with no bearing on the matters raised in the petition is not a compliance with Rule 46."

Rule 46 of the Court of Appeal Rules published prior to the publication of the present Rules is almost identical with Rule 3(1) of

the present Court of Appeal (Appellate Procedure) Rules.

In *Navarathnasingham* v *Arumugam*[12] Soza, J. observed thus: "As the petitioner in the instant case had come into Court only with a certified copy of the proceedings of 10th February, 1980, and the order delivered on 19th February, 1980, and the orders canvassed by him could not be reviewed in the absence of the earlier proceedings, the evidence and original complaint which were procured subsequently, the petition should have been rejected for non-compliance with Rule 46."

The above judgment of Soza, J. was cited with approval by Gunawardane, J. in *Samarasekare* v *Mudiyanse*[13] and he stated: "The rules of procedure have been devised to eliminate delay and facilitate due administration of justice. The instant case is a good example which illustrates that the revisionary powers of this Court cannot be exercised without the petitioner furnishing to this Court the relevant proceedings on which the order sought to be revised is based on. Rule 46 had been formulated to avert such situations. The observance of Rule 46 is mandatory."

Again in *Shanmugadevi* v *Kulathilake*[14] Bandaranayake, J. discussing the facts of that case where,

"The appellant ("the plaintiff") instituted action against the respondent ("the defendant") and another person for a declaration that the plaintiff is the tenant of the premises in suit and for an injunction against the 1st defendant from demolishing the said premises. The 1st defendant pleaded that the plaintiff was in illegal occupation of the premises as the same were burnt during the 1983 riots and were currently vested in the REPIA. The District Judge gave judgment for the 1st defendant. The plaintiff filed a revision application in the Court of Appeal on 12.12.2000; supported it on 15.12.2000 and obtained a stay order and notice on the 1st defendant for 15.01.2001. The plaintiff filed with his application 4 documents including the judgment of the District Judge but failed to file all the material documents or to explain the reason for the failure and seek leave of court to furnish the necessary documents later, as required by Rule 3(1)(b) read with Rule 3(1)(2) of the Court of Appeal (Appellate Procedure) Rules, 1990. Instead the plaintiff amended her petition without notice to the 1st defendant and without leave of court. She filed one additional document with the amended petition and the

balance documents with her counter objections."

Bandaranayake, J. remarked: "The requirements of Rules 3(1)(2) and 3 (1)(b) are imperative. In the circumstances of the case the Court of Appeal had no discretion to excuse the failure of the plaintiff to comply with the Rules."

I have earlier held that the order dated 16.7.2003 is a necessary document in order to examine the correctness of the same. Applying the principles of the above judicial decisions, I hold that the observance of Rule 3(1) of the Court of Appeal (Appellate Procedure) Rules is mandatory in applications for revision. Thus, the petition of the defendant-petitioners to revise the order dated 16.7.2003 should fail on this ground alone.

Learned President's Counsel next contended that the defendant-petitioners are guilty of delay and laches for the reason that the present application has been filed eight months after the pronouncement of the 1st order (dated 16.7.2003) and four months after 2nd order (dated 20.3.2003). I now advert to this contention. The present application has been filed on 21.11.2003. Therefore the delay complained of by learned President's Counsel is correct. The defendant-petitioners have not explained the delay in coming to this Court. This a case where the defendant-petitioners were granted leave to appear upon the condition that they should deposit Rs. 2.5 million before 16.7.2003 and the learned District Judge made the decree *nisi* absolute on 16.7.2003. Thus, the defendant-petitioners should be vigilant over these developments. The defendant- petitioners, in my view, have slept over their rights and as such they are guilty of delay and laches.

In *Don Lewis* v *Dissanayake*[15] His Lordship Justice Tennakoon, with whom Manicavasagar, J. agreed, discussing the delay in moving Court in a revision application, held: "that it was not the function of the Supreme Court, in the exercise of the jurisdiction now invoked, to relieve parties of the consequences of their own folly, negligence and laches. The *maxim vigilantibus, non dormientibus, jura subvention* provided a sufficient answer to the petitioner's application."

In *H.A.M. Cassim* v *G.A. Batticaloa*[16] Sansoni, CJ. held: "An application in revision must be made promptly if it is to be entertained by the Supreme Court."

In CA application No. 1184/88 (decided on 16.10.89), an application to revise an order of the District Judge was refused on the ground of delay. His Lordship Justice S.N. Silva (as he then was) observed as follows: "We have to note that order in respect of which the application is made was delivered by the learned District Judge on 7.10.1987. The petitioner filed this application on 13.3.1989, one year and five months after the impugned order. The petitioner has not explained the delay in filing this application. A person invoking the revisionary jurisdiction of this court has to show due diligence and institute proceedings without delay. The petitioner sought the intervention in the District Court and as such, was aware of the order that was made by the learned Additional District Judge. In the circumstances we are of the view that the petitioner has unduly delayed in filing this application and as such is precluded from securing relief by way of revision."

"Filing an application by way of revision to set aside an order made by a District Court 31/2 years before the institution of the revision application was considered as inordinate delay and the application was dismissed on the ground of laches". Vide Justice Udalagama in *Lokutthuttripitiyage Nandawathi* v *Madapathage D. Gunawathi (supra).*

The power of revision vested in the Court of Appeal is discretionary. Vide *Colombo Apothecaries Ltd.* v *Commissioner of Labour*[17], *Rasheed Ali* v *Mohamad Ali (supra)*, and *Wijesinghe* v *Tharmarathnam*[18]. On a consideration of the above judicial decisions, I hold that revision being a discretionary remedy is not available to those who sleep over their rights. I further hold that it is not the function of the Court of Appeal, in the exercise of its revisionary jurisdiction, to relieve parties of the consequences of their own folly, negligence and laches.

I have earlier held that the defendant-petitioners are guilty of delay and laches, I therefore hold that the defendant-petitioners are not entitled to invoke the revisionary jurisdiction of this Court and the petition of the defendant-petitioners should be dismissed on this ground alone.

For the reasons set out in my judgment, I dismiss the petition of the defendant-petitioners with costs fixed at Rs. 40,000/-.

EKANAYAKE, J. – I agree.

Application dismissed.