

**TIMES OF CEYLON LTD.  
V.  
SIRIMAVO R.D. BANDARANAIKE**

COURT OF APPEAL  
WIJETUNGA, J. AND WIJAYARATNE, J  
C.A. APPLICATION NO. 515/84  
D.C. COLOMBO CASE NO. 81692/M  
JANUARY 22 AND 30, 1990

*Delict - Defamation - Liability for defamatory statements in newspaper - Vesting of business of newspaper in Government - Ex parte judgment.*

By the vesting order dated 2.8.1977 and published in the Government Gazette No. 276/4 of 2.8.1977 the newspaper business of the petitioner was vested in the Government and it ceased to be the printer and publisher of the said newspaper.

The respondent sued the newspaper company for defamation and obtained *ex parte* judgment in her favour for Rs. 750,000/- which has been paid to her.

**Held:**

The alleged defamatory statements were a liability incurred by the Competent Authority. Further the defendant company had gone into liquidation in 1981 and liquidators also had been appointed.

The *ex parte* judgment had been canvassed in the Supreme Court which affirmed the judgment but that was on the question whether there had been a valid service of summons on the defendant-petitioner.

It would be a gross injustice to allow the *ex parte* judgment to stand as the vesting order had completely and effectually divested the defendant - petitioner of the business undertaking. This is a pure matter of law of which there can be no controversy or dispute. Hence the Court can act in revision and set aside the judgment.

**Cases referred to:**

1. *Rustom v. Hapangama* (1978 - 79) 2 Sri LR 225
2. *Rasheed Ali v. Mohamed Ali* (1981) 2 Sri LR 28
3. *Ranasinghe v. Henry* 1 NLR 303
4. *Amadoris v. Nanda* 7 NLR 333
5. *Dassanayake v. Eastern Produce and-Estate Co. Ltd.* (1986) 1 Sri LR 258

APPLICATION in revision of the *ex parte* judgment of the District Court of Colombo;

*Dr. H.W. Jayewardene, Q.C.* with *L.C. Seneviratne, P.C., Miss. T. Keenawinna* and *Harsha Amerasekera* for defendant - petitioner.

H.L. de Silva, P.C. with Kithsiri Gunaratne and M. Ghazali for plaintiff - respondent.  
Cur.adv.vult.

11 December 1990

**WIJEYARATNE, J**

This is an application for revision filed on 18.4.1984 to set aside the *ex parte* judgment dated 29.10.1979 for Rs. 750,000 in favour of the plaintiff-respondent entered by the learned District Judge of Colombo, arising out of alleged defamatory statements printed in the Sunday Times of 4.12.1977 on the basis that the said newspaper was printed, published and distributed by the defendant-petitioner.

The defendant-petitioner states that its business was vested in the Government in terms of section 2 of the Business Undertakings (Acquisition) Act, No. 35 of 1972. The vesting order dated 2.8.1977 was published in the Government Gazette No. 276/4 of 2.8.1977.

The case of the defendant-petitioner was that at the time of the publication of the alleged defamatory matter on 4.12.1977, this business had already vested in the Government; so much so that this publication produced marked "P 1" (i.e., Sunday Times of 4.12.1977) had the words "printed and published by the Competent Authority, Republic of Sri Lanka, successor to the Business Undertaking of the Times of Ceylon Ltd." thereon. Therefore the defendant-petitioner avers that it had ceased to be the printer, publisher and distributor of Sunday Times at the relevant time, namely 4.12.1977.

The defendant-petitioner further avers that the alleged defamatory statements were a liability incurred by the Competent Authority and the plaintiff-respondent, her legal advisers and the learned District Judge have grossly erred in assuming that the defendant-petitioner has published the impugned article and that no court of justice would allow such a judgment to stand and thereby perpetuate such a wrong and permit the plaintiff-respondent to take advantage of such a wrong. On these grounds the defendant-petitioner seeks to set aside the said judgment by way of revision.

The plaintiff-respondent by objections dated 28.6.1984 has opposed this application and pleaded -

(1) that the matter is now *res judicata*;

- (2) that the defendant-petitioner had an opportunity to contest the action and take up this defence relating to vesting in the government, but failed to do so;
- (3) that the defendant-petitioner has failed to set aside the *ex parte* judgment within the prescribed period and is now precluded from doing so indirectly;
- (4) that the defendant-petitioner has no status to invoke the revisionary powers of this court.

This case has had a long history but it is not necessary to go into every detail. I shall set out a few salient points in the history of this action.

The learned District Judge had, on papers being filed, set aside the *ex parte* decree (and refused the application for writ made by the plaintiff-respondent) and directed that summons be issued on the defendant-petitioner.

Thereupon the plaintiff-respondent appealed from this order to this court, which by its order dated 13.8.1982 (annexed marked "H") affirmed the judgment of the District Court and dismissed the appeal.

Then the plaintiff-respondent appealed to the Supreme Court, which by its judgment dated 8.3.1984 (annexed marked "I") reversed both judgments and held that summons had been duly served on the defendant-petitioner.

Now the defendant-petitioner has filed the present application in revision to set aside the said judgment and decree.

At the hearing it was admitted by both counsel that the plaintiff-respondent had recovered this sum of Rs. 750,000 from the defendant-petitioner on her giving a bank guarantee. It was also admitted that the defendant-petitioner had gone into liquidation in 1981 and that Liquidators had been appointed.

At the hearing Dr H.W. Jayawardena, Q.C., for the defendant-petitioner dwelt at length on the revisionary powers of this court and cited several decisions of this court and the Supreme Court and referred to Articles 138 and 139 of the Constitution.

It is not necessary for me to go into the entire case law relating to the revisionary powers of this court, but the recent decisions in *Rustom vs. Hapangama* (1) and *Rasheed Ali vs. Mohamed Ali* (2) show that these powers are very wide and can be exercised in appropriate cases even though an appeal has been taken.

The principles to be extracted from these cases are as follows:-

- (1) The powers of revision are very wide.
- (2) It is a discretionary remedy.
- (3) The powers of revision will be exercised in exceptional circumstances and it is not feasible to lay down a hard and fast rule relating to these exceptional circumstances.
- (4) These powers can be exercised even though no appeal has been taken.
- (5) There should not be a delay in applying for relief by way of revision.
- (6) When an order is palpably wrong the court will exercise its powers of revision - see the decision in *Ranasinghe vs Henry* (3)
- (7) When an order is based wholly on a misapprehension the powers of revision will be exercised to set aside such an order - see the decision of *Amadoris vs. Nanda* (4)

Mr. H.L. de Silva, P.C., for the plaintiff-respondent contended that the present application amounts to an attempt to set aside the *ex parte* judgment of the learned District Judge dated 27.1.1979, which judgment was affirmed by the Supreme Court by its judgment dated 8.3.84. He went on to submit that the defendant-petitioner has first to purge its default before it could be heard and further submitted that the defendant-petitioner had an opportunity to raise all these issues relating to the vesting order at the trial which he had failed to do and that this is an attempt to set aside the finding of facts implicit in the Supreme Court judgment.

He argued that one of the issues was whether the defendant - petitioner had printed, published and distributed matter and this matter has been decided and is now concluded.

He further submitted that the defendant-petitioner has only itself to blame and that it was responsible for its own default.

I have carefully considered the submissions made by counsel of both sides. The Supreme Court has decided only the question of law referred to it for decision, namely, whether there was a valid service of summons on defendant-petitioner. The defendant-petitioner is not seeking to canvass that matter now.

I am of the view that in this case there has been a failure of justice.

By the aforesaid vesting order dated 2.8.1977 and published in the Government Gazette No. 276/4 of 2.8.1977 this business was vested in the Government and the defendant-petitioner ceased to be the printer and publisher of the said newspaper. A perusal of the newspaper (P1) clearly shows that the following words were printed thereon :- "Printed and published by the Competent Authority, Republic of Sri Lanka, successor to the Business Undertaking of Times of Ceylon Ltd."

Thus it is seen that on the relevant date, namely 4.12.1977, the defendant-petitioner had nothing to do with the printing and publishing of the Times of Ceylon.

It has been held in the case of *Dassanayake vs. Eastern Produce and Estate Co. Ltd.* (5) that the effect of a vesting order in favour of the Government divesting the former owner of his rights was so final and conclusive that a matter relating to the liability of the former owner, being an issue of pure law, can be raised for the first time in appeal. Such a matter can be decided without any evidence.

It was the duty of counsel for the plaintiff-respondent to have examined these matters before seeking an *ex parte* judgment. It was the duty of the court too to have examined these matters.

In fact Dr H.W. Jayewardene, Q.C., submitted that there is no evidence led at the *ex parte* trial to show that the defendant-petitioner printed and published this article. I agree with the submission of Dr. H.W. Jayewardene that there had not been a fair *ex parte* trial.

It was the duty of counsel for the plaintiff-respondant to have placed the true facts before court and also for the court to have gone into these matters before entering judgment. It can be said that this judgment was based on a misapprehension of the liability of the defendant-petitioner.

In my view it would be a gross injustice to allow this judgment to stand as the aforesaid vesting order of 2.8.1977 completely and effectually divested the defendant-petitioner of this business undertaking. This is a pure matter of law of which there can be no controversy or dispute. Therefore, being a pure matter of law on which there can be no controversy or dispute, there is no difficulty for this court to act in revision and set aside the aforesaid judgment.

Therefore, acting in revision, I set aside the judgment of learned District Judge dated 29.1.1979. As this amount of Rs. 750,000 has been paid to the plaintiff-respondent by the defendant-petitioner, it is her duty to repay this sum to the defendant-petitioner.

Learned counsel for the defendant-petitioner stated that this amount of Rs. 750,000 was paid out to the plaintiff-respondent soon after 4.8.1984 and urged that legal interest be awarded from the date of payment to her till the date of repayment to the defendant-petitioner. No authority or precedent was cited to support this claim for legal interest.

It is certainly not the fault of the defendant-petitioner that led to this situation whereby judgment was entered against a party whose business had, prior to the date of liability, vested effectually in the Government.

I am of the opinion that legal interest on this amount cannot be granted.

I therefore set aside the judgment of the learned District Judge dated 29.1.1979 and dismiss the plaintiff-respondent's action.

The plaintiff-respondent will pay back the amount of Rs. 750,000 to the defendant-petitioner, which will also be entitled to the costs of this application.

**WIJETUNGA, J** - I agree.

*Application allowed.*