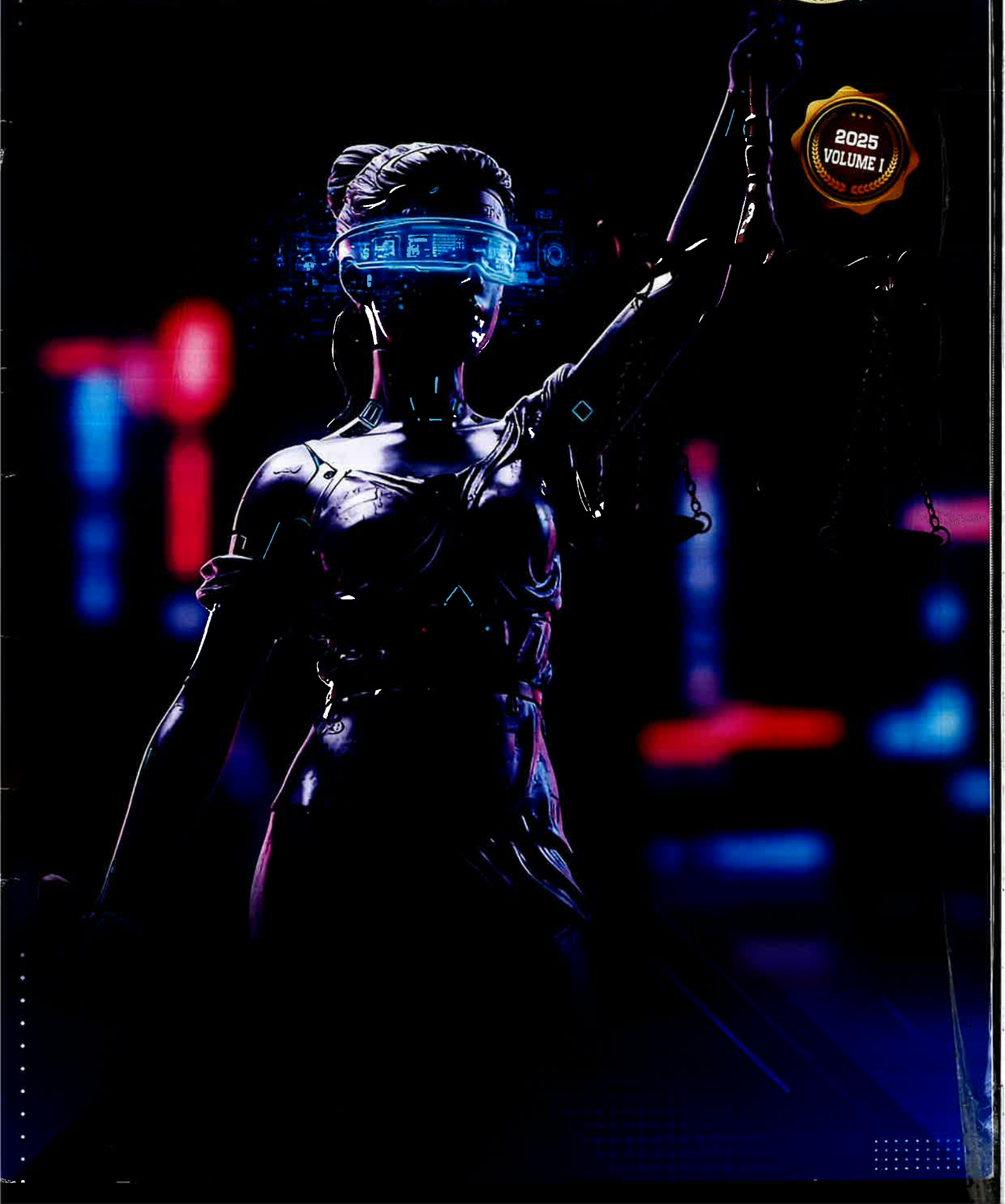
NEWS LETTER

The Judicial Service Association of Sri Lanka

JUDICIAL SERVICE ASSOCIATION

2025
VOLUME I



EXCO 2025
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Message from the President

Dear Members,

It is with great pleasure and honor that I pen this message for the inaugural issue of the Judicial Services Association (JSA) newsletter for 2025.

As the newly elected President of the JSA, I wish to begin by extending my heartfelt congratulations to all Office Bearers and Executive Committee Members. I also thank each one of you—our respected members across the country—for your unwavering commitment to justice and your trust in the leadership of this Association.

We enter this new year with a renewed sense of responsibility and direction. The JSA, while small in number, represents a powerful collective voice of judicial officers who uphold the rule of law and exercise the judicial power of the people in every corner of Sri Lanka. With no written constitution to bind our hands, we are given the unique opportunity—and duty—to shape this Association with utmost responsibility and care through innovation, inclusion, and integrity.

Our policy vision for 2025 is grounded in four key objectives:

1.Enhancing Professionalism, Welfare and Wellbeing of members
2.Safeguarding Judicial Independence
3.Fostering Collegiality and Support
4.Advancing Judicial Knowledge and Skills

Above are not ranked in order of importance, rather form a cohesive vision that must be pursued in parallel. These goals are not mere aspirations—they are calls to action. Whether it's organizing webinars and judicial conferences, ensuring fair opportunities for career advancement, or engaging constructively with the Judicial Service Commission (JSC) on matters such as salaries, school admissions, and High Court appointments, we are committed to making tangible progress that directly benefits our members.

Equally important is the spirit in which we serve. We are not divided by elections—we are united by purpose. Let us ensure that each member is treated with respect, dignity, and fairness, regardless of seniority or location.

This newsletter marks the beginning of a platform that will spotlight your voices, your ideas, and your contributions. I encourage all members—especially our younger colleagues—to take an active part. This Association is not only a representation of who we are but a reflection of who we aspire to become.

Let us work together, uplift each other, and strengthen the judiciary—through unity, through service, and through the JSA.

Finally, I wish to thank and congratulate the Editor and the Assistant Editor for their dedication and commitment in publishing this inaugural newsletter.

Thank you.

Anushka Senevirathna
President
Judicial Service Association

Message from the Secretary

It is with great pride and a deep sense of responsibility that I pen this message as the Secretary of the Judicial Service Association for the year 2025.

The Judicial Service Association of Sri Lanka carries a legacy of unwavering commitment to upholding the independence of the judiciary and advocating for the welfare of judges—not only for its members but for the entire judicial fraternity. This Association has long stood as a pillar of strength, integrity, and unity within the justice system, ensuring that the voice of the judiciary remains resolute and *uncompromised.*

We remain steadfast in our pledge to preserve the independence of the judiciary and continue to promote the professional growth and well-being of judicial officers across all levels. Our commitment extends to fostering a spirit of collegiality among members, enhancing professional knowledge and skills, and creating a forum for constructive dialogue and mutual support.

As we move forward in a rapidly changing and often challenging environment, we remain deeply aware that the judiciary is frequently subjected to direct and indirect pressures. An independent judiciary and resolute judges—dedicated to the rule of law—can appear as an obstacle to those who, whether by design or neglect, fall short of their constitutional responsibilities.

In recent times, we have witnessed a concerning rise in attacks against judicial officers, often in the form of anonymous and irresponsible campaigns on social media. These are not merely isolated incidents but reflect a broader attempt to erode public confidence in the judiciary and weaken its institutional authority.

The Judicial Service Association acknowledges these threats and has resolved to confront them through meaningful engagement with the Judicial Service Commission. We are actively exploring long-term, structural solutions to safeguard our members and preserve the dignity of our office.

While institutional efforts are essential, it is equally important to recognize that judges are not trained to yield to pressure, but rather to work independently with a strong, objective sense of justice. We are trained not merely to withstand external pressures, but to rise above them with clarity, fairness, and integrity.

In this context, I strongly urge all members of our Association to continue enhancing their judicial capacity by deepening their legal knowledge and fostering collegiality within the profession. This collective strength—built on unity, shared wisdom, and mutual respect—will empower us to stand resilient in the face of challenges and maintain the highest standards of judicial conduct.

As an Association, we are committed to working tirelessly toward establishing a secure and respectful environment for every judicial officer, and to countering, with resolve and clarity, any element that seeks to undermine our judicial independence. While we have elected office bearers and executive members, this Association belongs to every judicial officer. Its strength lies in our shared commitment to its values. Together, we must uphold its decorum, ethos, and standards by carrying out our judicial duties with integrity, excellence, and a spirit of service.

Let us move forward together with strength, dignity, and an unshakable commitment to justice.

I am pleased to share with you some of the key developments and ongoing efforts of the Judicial Service Association (JSA) for the year 2025.

- One of the JSA's notable achievements this year has been securing school admissions for all children of judges who applied for the 2025 academic year. This was made possible by relying on the authoritative judgments of the Supreme Court and the dedication of our predecessors—those who filed cases and the office bearers who worked tirelessly to uphold our rights. As a result, all admitted students were able to begin school on the first day of the academic calendar.

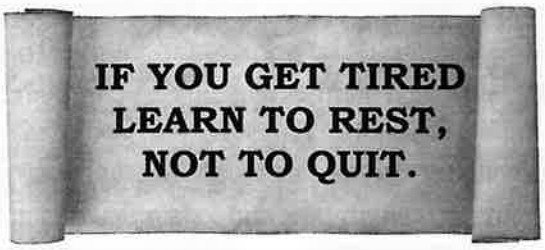
- In addition, the JSA has met with officials from the Ministry of Justice, including the Honourable Minister, and submitted a formal request for an increase in allowances. The Ministry has accepted our proposal and forwarded it to the Judicial Service Commission for concurrence. We are actively following up and remain optimistic about a favourable outcome.

- We have also successfully negotiated significant loan facilities from several banks and are engaging with other institutions to secure further exclusive benefits for judicial officers.

- The JSA had the opportunity to meet with the Honourable Members of the Judicial Service Commission and submitted our proposal regarding the security of judges and courthouses. We have been assured by the JSC that judges' security will not be compromised under any circumstances, and our proposal will be officially communicated to the relevant authorities.

- We have also taken proactive steps to enhance the professional and personal well-being of our members. Judicial well-being, an evolving international concept, refers to the physical, emotional, mental, and professional health of judges, ensuring they are equipped to serve with independence and clarity. In line with this, the JSA will host a special one-day event—"Judges' Day Out"—on the 31st of May 2025 to promote collegiality and foster a spirit of fraternity among members.

Amalavalan Anandarajah
Magistrate, Jaffna
Secretary – Judicial Service Association



It is with great pleasure and a deep sense of responsibility that I present to you the first issue of our newsletter for this year. As we step into a new judicial term, this publication marks not only a continuation of our collective commitment to the rule of law but also a renewed effort to enrich and empower the judiciary through knowledge and reflection.

The primary purpose of this newsletter is to serve as a reliable platform for sharing relevant information, updating judicial officers on recent legal proceedings, and disseminating the latest developments in both local and international legal jurisprudence. In a constantly evolving legal landscape, the need for continuous legal education cannot be overstated. The law is not static—it is dynamic and responsive to social changes. As such, staying informed is not a matter of convenience but a professional necessity for every member of the judiciary.

The JSA firmly believes that enhancing our legal knowledge and remaining attuned to the shifts in jurisprudence, both at home and globally, are foundational to a meaningful administration of justice. This newsletter has been curated with this understanding at its core. It seeks to support judicial officers in their intellectual engagement with the law and provide access to emerging trends, landmark rulings, legislative amendments, and scholarly discourse that inform our judicial functions.

More importantly, we must recognize that the most sacred duty of a judge lies within the courthouse. The strength of our judicial system is reflected in the quality, integrity, and diligence with which we perform our courtroom responsibilities. It is here, in the courtroom, that justice takes its living form, and for this, a judge must be both legally competent and intellectually prepared. The pursuit of justice demands a deep, ongoing engagement with the law in its most current and comprehensive form.

We are also mindful of the growing interconnection between domestic legal systems and international legal standards. As judicial officers, we must be prepared to interpret and apply the law in a way that reflects our commitment to both national principles and universal human rights norms.

In this spirit, I hope that this newsletter serves as a valuable companion in your professional journey. May it inspire deeper inquiry, meaningful dialogue, and a steadfast dedication to the ideals of justice.

Editor
R.S.M.Mahendrarajah
District Judge Chilaw

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Addl. Magistrate
Walasmulla

Mrs. Mathunchala Ketheeswaran
Addl. Magistrate
Batticaloa

POSITIONS are temporary
RANKS and TITLES, are limited.
But the way you treat people, will always be remembered

Beyond the Courtroom: How *'jsasl.lk'* Enhances Judicial Efficiency and Professional Growth

Keerthi Kumburuhena - *Webmaster*
Additional District Judge, Matara

In the modern era of governance and professional service, digital platforms are not merely tools of convenience; they are pillars of efficiency, accessibility and institutional strength. Recognising this, the official website of the Judicial Service Association of Sri Lanka (JSA) 'jsasl.lk' was established as a dynamic and secure online platform to serve the needs of its esteemed members; judicial officers presiding over Magistrates' Courts and District Courts across the country.

The website offers an array of distinct advantages to judicial officers. It provides timely and reliable access to authoritative legal content, creates a secure channel for communication and institutional coordination, supports ongoing professional development through access to academic and operational literature and importantly strengthens the unity and collective identity of Sri Lankan Judicial Service.

At the core of the platform lies the **Members Area,** an exclusive secure digital environment accessible only to registered judicial officers. This area is thoughtfully curated to provide resources and information essential for both judicial decision-making and court administration. The following is a brief overview of each of these sections.

Focused on the efficient and orderly functioning of the courts, the **Court Administration** section provides essential documents, including administrative templates and operational guidelines that are particularly valuable for officers in leadership or supervisory roles.

In the Members Area, the **JSC Circulars** section houses official circulars from the Judicial Service Commission, which provide authoritative directives and comprehensive guidelines on various matters relating to court administration and the effective execution of judicial functions.

Access to statutory instruments is provided in the **Legislation** section, ensuring that judicial officers are well-informed about relevant laws, such as Acts and Ordinances. This promotes consistency and precision in the application of the law.

Contained within the **Case Law** repository are judgments and legal precedents that support judicial officers in making well-reasoned decisions. Through referencing these precedents, officers can align their rulings with evolving jurisprudence and legal interpretation.

The **Regulations** segment includes procedural directives, administrative circulars, and operational guidelines issued by authorities, ensuring that judicial officers remain familiar with institutional protocols and best practices.

Scholarly writings and commentaries on relevant legal issues are featured in the **Articles** section, offering valuable insights from experts in the field. These contributions enrich the intellectual environment within the judiciary and promote continuous learning.

The **Annual Law Journal** serves as a flagship publication of the Association, providing in-depth legal analysis, reflections on critical issues, recent judgments, and emerging trends in both domestic and international law.

Published periodically, the **JSA Newsletter** keeps members informed about recent developments, internal updates, and initiatives undertaken by the Association. It is an essential tool for ensuring institutional transparency and fostering professional cohesion.

The **News and Events** section offers timely updates on upcoming conferences, meetings, training programmes, and other professional gatherings, helping judicial officers stay engaged in institutional activities and access opportunities for professional development.

Together, these components establish the Members Area as a comprehensive digital knowledge base and administrative support system. It is designed not only to enhance the individual capacity of judicial officers but also to foster uniformity, transparency and excellence across the judiciary.

In conclusion, 'jsasl.lk' is not merely a digital resource; it is a strategic asset for the esteemed members of the Judicial Service Association of Sri Lanka. Emphasizing accessibility and professional excellence, the website empowers judicial officers to perform their roles confidently, accurately, and efficiently. Judicial officers are encouraged to explore the platform and make full use of its features. In doing so, they not only advance their professional abilities but also contribute to the continued development of the Sri Lankan Judicial System

Register now— to gain exclusive access to a wealth of resources in the 'Members Area' of jsasl.lk

Visit: https://jsasl.lk/member-registration

Or Scan QR

Congratulations and best wishes to the Honourable Justices newly appointed to the Supreme Court and the Court of Appeal.

We convey our deepest felicitations to Hon. R.M.S. Rajakaruna, Hon. Menaka Wijesundara, Hon. Sampath B. Abeykoon, and Hon. M.S.K.B. Wijeratne on their elevation to the Supreme Court. These appointments are a testament to their unwavering dedication, exemplary conduct, and distinguished service to the judiciary. We are confident that their Lordships will continue to uphold the highest standards of judicial integrity, independence, and impartiality in discharging their solemn duties at the apex court.

We likewise extend our sincere congratulations to Hon. K.M.S. Dissanayake, Hon. R.P. Hettiarachchi, Hon. W.K.S.U. Premachandra, Hon. K. Priyantha Fernando, and Hon. A. Premashankar on their appointments to the Court of Appeal. Their Lordships' steadfast commitment to the principles of justice and their extensive experience within the judicial service eminently qualify them for this high office.

The Judicial Service Association takes immense pride in witnessing the elevation of these esteemed members of the judiciary and wishes them continued wisdom, strength, and discernment as they undertake the onerous responsibilities entrusted to them.

Judicial Service Association

Congratulations to the Newly Appointed Judicial Officers

We extend our heartfelt congratulations to the newly appointed judicial officers on their esteemed appointments.

This significant milestone is not only a testament to your legal acumen and dedication but also a pivotal step toward fortifying the integrity and efficiency of our judicial system. Your roles carry the solemn duty of upholding the principles of justice, equity, and the rule of law, the foundations upon which our society stands.

As you embark on this noble journey, we wish you discernment, resilience, and an enduring commitment to fairness and judicial excellence. May your service leave a lasting imprint on the cause of justice and inspire confidence in the people's hearts.

With highest regards,
The Judicial Service Association .

- Jailabdeen Rimsan
- Tharaka Chathuranga Liyanaarachchi
- Dulanjee Shashikala Meepagala
- Tikiriyadura Sewwandi De Zoysa
- Pussallage Thayaga Anuradhi Silva
- Thakshila Madhubhashini Jayasena
- Dissanayake Mudiyanselagedara Yasasthri Priyangika Dissanayake
- Thiagalingam Kanatheepan
- Nanayakkarawasam Carijjawaththage Udayani
- Minoli Piyumika Ratnayake
- Balasuriya Mudiyanselage Buddhika Gamunu Chandrasekera
- Senanayakage Shalini Proabodha Senanayaka
- Dasuni Hapuarachchi
- Hewa Cottage Sajuna Harshan Abeyratna
- Sampathawadu Manukulasuriyage Sarani Vindhya Gaweshani Jayawardena
- Indujah Sivalingam
- Sarasi Chalanayani Paranamanna
- Mohamed Jiffry Fathima Shabna
- Wahumpurage Sithara Sampath Wijewardena
- Goda Kumarage Sandya Kumari Samarathunga
- Ananthavathani Pushparaj
- Nawalge Hirandi Nilakshi Cooray

- Senevirathne Mudiyanselage Anuruddika Gayathrie Senevirathne
- Hettiarachchige Gayathri Jayashani Hettiarachchi
- Mohamed Musthafa Fathima Zihara
- Madushanka Ranathunge
- Ilandara Pedige Sajeevika Ruchirani Ilandara
- Mawella Kangkanamge Diluni Nimeshani
- Gallage Siwanthi Washika De Silva
- Seyath Gedara Duncan Maduranga Abeynayaka
- Palalle Hewawasam Galhenage Erandi Chathuranya Hewawasam
- Pasindu Parakrama Bandara Pathmakulasooriya
- Kahandavita Gamage Dona Shalani Mari Gunawardena
- Malsha Niranjina Kodithuwakku
- Abinaya Sooriyasiva
- Pilanapallege Oshadhi Lalachandra Premaratne
- Vidana Pathiranalage Hashintha Madumihirani Vidanapathiran
- Wickramasinghe Koralage Erandi Mihirani Wickramasinghe
- Aniffa Rajeeb
- Mohamed Iqbal Fathima Rismina
- Mohammed Nowfer Najmi Husain
- Mohamed Irshad Fathima Jiffriya
- Noordeen Muhamad Sarjoon
- Dehinga Sahani Mudara De Silva
- Ranpati Dewage Purnima Shyamali
- Kande Gamage Buddhika Harshani Dharmadasa

මහෙස්ත්‍රාත් අධිකරණය ඉදිරියෙහි නිරන්තරයෙන් සාකච්ඡාවන නෛතික ගැටලු.

ඒ යටතේ මෙම ලිපිය මගින් මහෙස්ත්‍රාත් අධිකරණයක් ඉදිරියෙහි චෝදනා පත්‍රයක් සංශෝධනය කරලීමට අදාළව මෙන්ම, ගොනු කරනු ලබන සාක්ෂි සහ ලේඛන ලැයිස්තුව සම්බන්ධයෙන් වන නෛතික කරුණු සාකච්ඡා කරලීමට අපේක්ෂා කරමි.

මහෙස්ත්‍රාත් අධිකරණයක් ඉදිරියෙහි චෝදනාවක් (චෝදනා පත්‍රයක්) සංශෝධනය කරලීමට අදාළව, චූදිතයෙකු හෝ චූදිතයෙකු වෙනුවෙන් විරුද්ධ විය හැකිවන්නේ ද?

මෙම ගැටලුව මහෙස්ත්‍රාත් අධිකරණයන් ඉදිරියෙහි බහුල ලෙස ඉදිරිපත් වන්නක් වන බැවින්, මේ සම්බන්ධයෙන් සාකච්ඡා කරලීමට අදහස් කළෙමි.

ඒ යටතේ ඊට ප්‍රවේශයක් ලෙස මහෙස්ත්‍රාත් අධිකරණයක් ඉදිරියෙහි චෝදනාවක් සකස් වීම සම්බන්ධයෙන් වන නෛතික තත්ත්වය පිළිබඳව පහත සඳහන් පරිදි පළමුව සලකා බලමි.

ඒ අනුව කරුණු සලකා බැලීමේදී, මහෙස්ත්‍රාත් අධිකරණයක් ඉදිරියෙහි වන නඩුකාර්ය පටිපාටිය සරල ලෙස පහත සඳහන් පරිදි වේ.

01. වැරදි සම්බන්ධයෙන් වන විමර්ශනය අපරාධ නඩු විධාන සංග්‍රහයේ ඔළුවන පරිච්ඡේදය ප්‍රකාරව යම් අපරාධයක් සම්බන්ධයෙන් ලද තොරතුරු මත (අ.න.වි.ස. 109 වන වගන්තිය ප්‍රකාරව) ආරම්භ වීම සිදු වේ.

02. ඉන් අනතුරුව එකී අපරාධය සම්බන්ධයෙන් සිදු කරනු ලබන විමර්ශනය ප්‍රකාරව අවශ්‍ය වන යම් සෝදිසි කිරීම් (අ.න.වි.ස. 112 වන වගන්තිය ප්‍රකාරව) සහ සාක්ෂිකරුවන් වෙතින් ප්‍රකාශ සටහන් කරවා ගනු ලැබීම යටතේ, සැකකරුවකු අත්අඩංගුවට ගැනීමක් සිදුවූ විටෙක, අ.න.වි.ස. 115 වන වගන්තිය යටතේ වන ප්‍රතිපාදන වලට යටත්ව අදාළ සැකකරු මහෙස්ත්‍රාත් අධිකරණය වෙත ඉදිරිපත් කරලීම සිදුවේ.

03. ඒ යටතේ ඉන් අනතුරුව, අනවශ්‍ය ප්‍රමාදයකින් තොරව විමර්ශන කටයුතු අවසන් කොට, අ.න.වි.ස. 120(3) වගන්තිය ප්‍රකාරව වන වාර්තාව පොලිස් ස්ථානය භාර නිලධරයා විසින්, (අ.න.වි.ස. 135 වගන්තිය යටතේ වන ප්‍රතිපාදන වලට යටත්ව) සැකකරු යම් වරදක් සිදුකර ඇති බවට හෝ යම් වරදක් සිදුකිරීමෙහිලා සැකකරු සම්බන්ධ වී ඇති බවට වන චෝදනාව ඇතුළත් කරමින් මහෙස්ත්‍රාත් අධිකරණය වෙත ඉදිරිපත් කළ යුතුය.

මෙලෙස අ.න.වි.ස. 120(3) වගන්තිය ප්‍රකාරව ඉදිරිපත් කරනු ලබන වාර්තාව, (අ.න.වි.ස. 136 (1) (ආ) වගන්තිය සමග එක්ව එක්වගෙන කියවිය යුතු S. Mutiah Vs. Queen (74 NLR 313) දරන නඩු තීන්දුව යටතේ ප්‍රකාශිත නෛතික කරුණු ප්‍රකාරව) මහේස්ත්‍රාත් අධිකරණයක් ඉදිරියෙහි ගොනු කරනු ලබන පැමිණිල්ල (Plaint) වශයෙන් සැලකේ.

04. ඒ අනුව එලෙස ඉදිරිපත් වන පැමිණිල්ල මත (පෙර සඳහන් කරන ලද පරිදි පැමිණිල්ල ගොනුකරනු ලබන අවස්ථාව වන විට චූදිතයා අත්අඩංගුවේ නොසිටින අවස්ථාවකදී, චූදිතයා අධිකරණය ඉදිරියට කැඳවා ගැනීම සම්බන්ධයෙන් අවස්ථානුකූලව අ.න.වි.ස. 139 වන වගන්තිය ප්‍රකාරව, සිතාසියක් හෝ වරෙන්තුවක් නිකුත් කළ හැක.) අ.න.වි.ස. 182(1) වගන්තිය ප්‍රකාරව, මහේස්ත්‍රාත්වරයා විසින් චූදිතයාට විරුද්ධව චෝදනාව සකස් කිරලීම සිදු කෙරේ. (මෙලෙස චෝදනාව සකස් කරලීම, අපරාධ නඩු විධාන සංග්‍රහයේ XVI පරිච්ඡේදය ප්‍රකාරව සිදුවේ.)

මේ අනුව, ප්‍රායෝගික තත්ත්වයන් මත පැමිණිල්ල සහ කෙටුම්පත් චෝදනා පත්‍රය පොලිසිය විසින් අධිකරණය වෙත ඉදිරිපත් කරලීම සිදු වුවද, මහෙස්ත්‍රාත්වරයෙකු විසින් එය සලකා බලා චෝදනා පත්‍රයට අත්සන් තැබීම මගින්, ඉහත කී නෛතික ප්‍රතිපාදන ප්‍රකාරව මහෙස්ත්‍රාත්වරයෙකු විසින් චෝදනාව (චෝදනා පත්‍රය) සකස්කරලීම සිදුවේ.

ඒ අනුව චෝදනාව සකස් කරලීම නෛතිකව අධිකරණයේ කාර්යයක් මිස පොලිසියේ කාර්යයක් නොවන බව වටහා ගත යුතුය.

ඒ යටතේ, එලෙස අධිකරණය විසින් සකස් කරනු ලබන චෝදනාවක්, (යම් දෝෂයක් මත සංශෝධනය

කළ යුතු වන්නේ වී නම්), අධිකරණය විසින් අපරාධ නඩු විධාන සංග්‍රහයේ 167(1) වගන්තිය ප්‍රකාරව, තීන්දුව ලබාදීමට පෙර ඕනෑම අවස්ථාවක අදාල චෝදනාව (චෝදනා පත්‍රය) සංශෝධනය කළ හැකි වන අතර, ඒ සම්බන්ධයෙන් විරෝධතාවයක් ඉදිරිපත් කරලීමට චූදිතයෙකු වෙත කිසිදු නෛතික අයිතිවාසිකමක් නොමැත.

ඒ අනුව එවැනි අවස්ථාවකදී,

(අ) සංශෝධිත චෝදනාව (චෝදනා පත්‍රය) චූදිතයා වෙත කියවා තේරුම් කරදිය යුතුය.

(ආ) අ.න.වි.ස. 168 වන වගන්තිය වගන්තිය ප්‍රකාරව, චෝදනාව වෙනස් කිරීමෙන් පසු නඩු විභාගය වහාම පවත්වාගෙන යාම නිසා විත්තිවාචකයේදී චූදිතයාට හෝ නඩුව පවත්වාගෙන යාමේදී චෝදකට (පැමිණිලි පාර්ශවයට) හෝ හානියක් සිදු නොවන බව අධිකරණයේ මතය වන අවස්ථාවකදී, අධිකරණය විසින් චෝදනාව එලෙස වෙනස් කරලීමෙන් අනතුරුව, වෙනස් කරන ලද චෝදනාව මුල් චෝදනාව වූවාක් මෙන් සලකා නඩු විභාගය ඉදිරියට පවත්වනු ලැබිය හැකිය.

(ඇ) එලෙස අධිකරණය විසින් සැහීමකට පත් නොවන අවස්ථාවකදී, අ. න. වි. ස. 169 වන වගන්තිය ප්‍රකාරව, අලුතින් නඩු විභාගය ආරම්භ කරලීම හෝ අ. න. වි. ස. 171 වන වගන්තිය ප්‍රකාරව ඒ වන විටත් සාක්ෂි ලබා දී ඇති සාක්ෂිකරුවන් එකී වෙනස් කරලීමට අදාළව නැවත කැඳවීමට, පැමිණිල්ල විසින් හෝ විත්තිය විසින් කරනු ලබන ඉල්ලීමකට අවසර ලබා දිය යුතුය.

(ඈ) සංශෝධිත චෝදනාවට අදාළව නීතිපතිවරයාගේ පූර්ව අනුමැතිය ලබා ගත යුතු නම්, ඒ අනුව ක්‍රියාකළ යුතුය.

මහෙස්ත්‍රාත් අධිකරණයක් ඉදිරියෙහි ලඝු ආකාරයෙන් විභාග වන නඩුකරයකට (Summary Trial) අදාළව වන සාක්ෂි සහ ලේඛන ලැයිස්තුව.

ඒ යටතේ, මහෙස්ත්‍රාත් අධිකරණයක් වෙත විභාග කොට දඬුවම් පැමිණවිය හැකි වැරදි (ලඝු ආකාරයෙන් විභාග වන නඩු) සම්බන්ධයෙන් වන විටෙක, ඇතැම් අවස්ථාවන්හීදී, "සාක්ෂි සහ ලේඛන ලැයිස්තුව" සම්බන්ධයෙන් හබයට පාත්‍ර වන අවස්ථා බහුල ලෙස දැකිය හැකි වන අතර, ඇතැම් අවස්ථාවන්හිදී ඒ සම්බන්ධයෙන් වන විරෝධතා ඉදිරිපත් කරලීමද බහුල ලෙස සිදුවන බැවින්, මෙම ලිපිය පළ කරලීමට අදහස් කළෙමි.

ඒ යටතේ කරුණු සලකා බැලීමේ දී අපරාධ නඩු විධාන සංග්‍රහයේ 162 වන වගන්තිය ප්‍රකාරව, මහාධිකරණයක් ඉදිරියෙහි පවත්වනු ලබන නඩු විභාගයකට අදාළව අධිචෝදනා පත්‍රයක් තුළ, චෝදක පක්ෂය කැඳවීමට බලාපොරොත්තු වන සාක්ෂිකරුවන්ගේ ලැයිස්තුවක්ද සහ නඩු විභාගයේදී ඉදිරිපත් කරනු ලැබීමට බලාපොරොත්තු වන්නා වූ ලේඛන සහ දේවල් දැක්වෙන වෙනත් ලැයිස්තුවක්ද ඇතුළත් විය යුතුය.

එසේම, මහාධිකරණය ඉදිරියෙහි පැවැත්වෙන නඩුකරයකට අදාලව, චූදිතයා වෙත දැන්වීම් ලබාදීමෙන් අනතුරුව, අධිචෝදනා පත්‍රයෙහි සඳහන් නොවන යම් සාක්ෂිකරුවකු කැඳවීමට මෙන්ම ලේඛනයක් හෝ දෙයක් ඉදිරිපත් කරලීමට චෝදක පක්ෂය වෙත අයිතිවාසිකම් පවතින බවද එහි පැහැදිලිව සඳහන්ව ඇත.

ඒ යටතේ කරුණු සලකා බැලීමේදී, සිවිල් නඩුකරයක් යටතේ සඳහන් සාක්ෂි සහ ලේඛන ලැයිස්තුව යටතේ වන සීමාකිරීම්, මහාධිකරණය ඉදිරියෙහි විභාග වන නඩුකරයකට අදාළවද නොපවතින බව, මනාව පැහැදිලි නෛතික තත්ත්වයකි.

ඒ අනුව, මහෙස්ත්‍රාත් අධිකරණයක් ඉදිරියෙහි විභාග වන නඩුකරයක් සම්බන්ධයෙන් කරුණු සලකා බැලීමේදී, සාක්ෂිකරුවන් ලැයිස්තුව සම්බන්ධයෙන් පමණක් අපරාධ නඩු විධාන සංග්‍රහයේ 44(3) වගන්තියෙහි කරුණු සඳහන්ව ඇති අතර, ඒ යටතේ ලේඛන සහ වෙනත් නඩු භාණ්ඩ සම්බන්ධයෙන් වන ලැයිස්තුවක් සම්බන්ධයෙන් වන කිසිදු ප්‍රතිපාදනයක් අපරාධ නඩුවිධාන සංග්‍රහය තුළ සඳහන්ව නොමැත.

ඒ යටතේ කරුණු සලකා බැලීමේදී, අපරාධ නඩු විධාන සංග්‍රහයේ XIV වන පරිච්ඡේදය ප්‍රකාරව නඩු කටයුතු ආරම්භ කිරීම පිණිස ගොනුකරනු ලබන පැමිණිල්ල සහ චෝදක පක්ෂය විසින් කැඳවීමට බලාපොරොත්තුවන සාක්ෂිකරුවන් කිසිවෙකු වෙතොත් ඔවුන්ගේ නම් හා ලිපිනයන් සඳහන් ලැයිස්තුවක් චූදිත වෙත සිතාසි සමග බාර දිය යුතු වන බව පමණක්, අපරාධ නඩු විධාන සංග්‍රහයේ 44(3) වගන්තියෙහි සඳහන් වන බව එකී වගන්තිය පරිශීලනය කර බැලීමේදී මැනවින් පැහැදිලි වේ.

ඒ අනුව කරුණු සලකා බැලීමේදී, කිසියම් චූදිතයෙකු සිතාසි මත අධිකරණය වෙත කැඳවනු නොලැබ

අත්අඩංගුවට ගෙන ඉදිරිපත් කරන ලද අවස්ථාවකදී, නඩු පැවරීමට අදාලව වන පැමිණිල්ල සහ සාක්ෂිකරුවන්ගේ ලැයිස්තුව (බොහෝ අවස්ථාවන්හිදී පැමිණිල්ල තුළම සාක්ෂිකරුවන් සම්බන්ධ විස්තර ඇතුළත් වන බැවින්, එක් ලේඛනයක් වශයෙන් පැමිණිල්ල සහ සාක්ෂිකරුවන්ගේ ලැයිස්තුව ඉදිරිපත්ව පවතී) අධිකරණය වෙතින් ලබා ගැනීමේ හැකියාව චූදිතයකු වෙත පවතින අතර, සිතාසිය සමග පැමිණිල්ල සහ සාක්ෂිකරුවන්ගේ ලැයිස්තුව චූදිත වෙත ලැබී නොමැති අවස්ථාවකදීද, අධිකරණය වෙතින් ඉල්ලීමක් කර එය ලබා ගැනීමේ අයිතිවාසිකම සෑම චූදිතයකු වෙතම පවතී.

ඒ යටතේ වන සියලු කරුණු සම්පින්ඩනය කර බැලීමේදී, මහෙස්ත්‍රාත් අධිකරණයක් ඉදිරියෙහි විභාග වන නඩුකරයකට අදාළව,

(අ) සාක්ෂි ලැයිස්තුවෙහි සඳහන්ව නොමැති සාක්ෂිකරුවකු, චූදිත වෙත දැනුම් දීමක් සහිතව සාක්ෂි ලැයිස්තුව සංශෝධනය කර කැඳවීමේ කිසිදු නෛතික බාධාවක් චෝදක පක්ෂය වෙත නොමැති අතර,

(ආ) ලේඛන සහ නඩු භාණ්ඩ සම්බන්ධයෙන් වන ලැයිස්තුවක් නොමැතිව වුවද, සාක්ෂි ආඥා පනත යටතේ වන ලේඛන හා නඩු භාණ්ඩ ඉදිරිපත් කරලීමේ නිසි ක්‍රමවේදය ප්‍රකාරව (එනම්, අනුකූලතාවය සහ සත්‍යවාදී භාවය සම්බන්ධයෙන් වන සීමා කිරීම් වලට යටත්ව) ලේඛන හා නඩු භාණ්ඩ ඉදිරිපත් කරලීම සම්බන්ධයෙන් වන කිසිදු නෛතික බාධාවක් චෝදක පක්ෂය වෙත නොමැති බවද, පැහැදිලි නෛතික තත්ත්වයකි.

කෙසේ නමුදු, නඩු භාණ්ඩ සහ ලේඛන සම්බන්ධයෙන් වන ලැයිස්තුවක් සාධාරණ නඩු විභාගයකට අදාළව චූදිත පාර්ශවය වෙත ලබාදීම සුදුසු වන බැවින්, අධිකරණය විසින් සිය සාමාන්‍ය අධිකරණමය පරිචය යටතේ, චූදිත පාර්ශවය වෙත "විමතිය මඟරවනු වස්" ලකුණු කිරීමට බලාපොරොත්තු වන ලේඛන සහ නඩු භාණ්ඩ සම්බන්ධයෙන් වන දැනුම් දීමක් (ලැයිස්තුවක් වශයෙන්) අධිකරණමය කාර්ය පටිපාටිය යටතේ සිදු කෙරේ.

ඒ අනුව, ලැයිස්තු ගත කර නොතිබූ පමණින්, මහෙස්ත්‍රාත් අධිකරණයක් ඉදිරියෙහි පවතින නඩු විභාගයක දී, සාක්ෂිකරුවන් කැඳවීම සහ ලේඛන හා නඩු භාණ්ඩ ලකුණු කරලීම සම්බන්ධයෙන් නෛතික නොවන විරෝධතා ඉදිරිපත් කරලීම නිවැරදි නොවන බව පැහැදිලි නෛතික කරුණකි.

මංජුල කරුණාරත්න,
මහෙස්ත්‍රාත්,
දිසා/මහෙස්ත්‍රාත් අධිකරණය, අත්තනගල්ල.

The woods are lovely,
dark and deep,
But I have promises
to keep,
And miles to go
before I sleep,
And miles to go
before I sleep.

- Robert Frost

Judgments Summaries

1. **Sirimewan Maha Mudalige Kalyani Sirimewan Vs Herath Mudiyanselage Gunarath Manike and Others – SC Appeal 48/2017 decided on 10.05.2024**

Facts in brief- The plaintiff filed this action on 05.06.2007 in the District Court of Kuliyapitiya primarily seeking the cancellation of Deed No. 13951 dated 31.03.2000 and Deed No. 14883 dated 23.10.2002 executed by the plaintiff's late father in favour of the 2nd defendant on the basis that those Deeds were executed under undue influence and duress exerted by the 1st defendant. The defendants filed answer seeking dismissal of the plaintiff's action inter alia on the basis that the plaintiff's cause of action is prescribed.

The learned District Judge answered two preliminary issues on prescription in the affirmative and dismissed the plaintiff's action in limine. On appeal, the High Court of Civil Appeal of Kurunagala affirmed the order of the District Court.

Questions of Law in Appeal-

1. Did the High Court of Civil Appeal err in law in holding that the prescription begins to run from the date of execution of the Deeds whereas it begins to run from the date on which the plaintiff became aware of the existence of the Deeds?

2. Did the High Court of Civil Appeal err in law in deciding that the 15th and 16th issues which consist of both fact and law can be decided without evidence being taken?

Held

1. An action for declaration that a notarially executed Deed is null and void is prescribed within 3 years of the date of execution of the Deed in terms of section 10 of the Prescription Ordinance. The three-year period should begin to run from the date the plaintiff becomes aware of the very existence of the impugned Deed or from the time the plaintiff might by due diligence have come to know of it.

2. A defendant who intends to take up the plea of prescription must do so in the answer and raise it as an issue. The defendant cannot take the plea of prescription for the first time on appeal.

3. If the objection on prescription is not raised by the opposite party in the pleadings, the opposite party is deemed to have waived it and acquiesced in the action being tried on the merits. The judge cannot take up the plea of prescription ex mero motu because a party can waive such objection.

The Supreme Court answered the questions of law in affirmative. Appeal allowed and judgments of the District Court and the High Court are set aside.

2. Chemisales Holding (Pvt) Ltd. Vs Peoples Bank- SC Appeal 148/2019 decided on 03.04.2025

Facts in brief- The plaintiff, People's Bank, instituted this action against the defendant company under Debt Recovery Act and decree nisi was issued to the defendant. The defendant, by way of petition and affidavit, sought either the dissolution of the decree nisi or, in the alternative, permission to file an answer. By order dated 13.10.2011, the District Judge decided to grant the defendant an opportunity to file an answer unconditionally. In the answer defendant made a claim in reconvention and after the replication was filed case was fixed for trial. At the trial plaintiffs action was dismissed preliminary objections of the defendant. Plaintiff filed a revision in civil appeal high court and the High Court set aside this order and directed the District Judge to recommence the proceedings from the beginning, requiring the plaintiff to support the application for the decree nisi afresh. The defendant filed this appeal with leave obtained against the order of the High Court.

Questions of Law in Appeal-

Did the High Court of Civil Appeal fail to observe that there is no instrument, agreement or document produced by the plaintiff to support its contention as required by section 4(1) of the Act and therefore the action of the plaintiff has been instituted in violation of the mandatory provisions of the Debt Recovery (Special Provisions) Act No. 2 of 1990 as amended?

Held

1. When an action is instituted in relation to a temporary overdraft, the "instrument, agreement or document sued upon or relied on" by the plaintiff is the issued cheques and the statement of account.

2. it is not correct to state that an action under the Debt Recovery (Special Provisions) Act No. 2 of 1990 cannot be filed in the absence of a written promise or agreement. If there exists an "instrument, written agreement or document sued upon or relied on by the institution" which provides "written evidence of the commitment on the part of the debtor", the Court can entertain an action under this Act, provided that the plaintiff satisfies the other prerequisites stipulated therein

3. The decree nisi shall only be made absolute at the stage of leave, if the defendant (a) having been served the decree nisi fails to appear and show cause; or (b) having appeared, his application to show cause is refused. The refusal under (b) above does not include refusal on the ground of nondisclosure of a prima facie sustainable defence

4. If the Court is satisfied that the defence is prima facie sustainable, it shall, under section 6(2)(c), grant the defendant leave to appear and show cause, depending on the facts and circumstances of the case, either on such terms as to security or unconditionally.

5. If there is a strong prima facie sustainable defence for the defendant, imposing terms and conditions on the defendant to appear and show cause would be irrational. The Court may, in such circumstances, allow the defendant to appear and defend unconditionally.

6. The procedure stipulated in this Act is a special procedure based on summary procedure as opposed to regular procedure. Once leave to appear and show cause against the decree nisi is granted, the Court shall fix the case for inquiry and the provisions of sections 384, 385, 386, 387, 390 and 391 of the Civil Procedure Code (Chapter 101) shall, mutatis mutandis, apply to such inquiry.

7. If the plaintiff annexes the instruments or documents sued upon or relied on with the plaint, this satisfies the requirement under section 4(1).

The question of law on which leave to appeal was granted, namely whether the High Court of Civil Appeal failed to observe that the plaintiff did not produce an instrument, agreement, or document as required by section 4(1) of the Act, is answered in the negative. The order of the District Court dated 08.08.2013 and the judgment of the High Court dated 27.07.2018 are set aside. The District Judge is directed to enter decree absolute forthwith.

3. Senaratne Mudiyanselage Subaneris Appuhamy alias Subaneris Senaratne and another Vs Danee Kadinappuli Piyasiri Manawasinghe and Others – SC Appeal 95/2021 decided on 14.03.2025

Facts in brief- The three plaintiffs filed this action in the District Court of Gampaha seeking a declaration of title to the land described in the schedule to the plaint, the ejectment of the 1st defendant therefrom, and damages. The 1(a) defendant filed answer seeking a dismissal of the action. fter trial, the District Court held in favour of the plaintiffs. On appeal, the Court of Appeal affirmed the judgment of the District Court

Questions of Law in Appeal-

Did the court of appeal erred in failed to appreciate evidence on prescription by 1(a) defendant in trial?

Sections 150, 151, 152 of the Evidence Ordinance and Sections 176, 177 of the Civil Procedure code were discussed in the appeal of the Supreme Court.

Held

1. Indecent and scandalous questions intended to insult or annoy witnesses are prohibited. It is the duty of the trial Judge to control the proceedings and ensure that the trial is conducted in accordance with the law, while maintaining the dignity and decorum of the court.

2. It is erroneous to assume that any question can be asked during cross examination. Questions cannot be put to injure the character of the witness without reasonable grounds.

3. Given the facts and circumstances, the 1st defendant's exclusive possession of the land—without paying rent or acknowledging the title of any other party—for over 40 years prior to the institution of the action entitles him to claim prescriptive title to the land.

The Supreme Court set aside the judgments of the District Court and the Court of Appeal and allows the appeal of the 1(a) defendant. The plaintiffs' action of the District Court shall stand dismissed.

4. Pallocci Donatella and another Vs Yamuna Kanthi Stein- SC Appeal 08/2017 decided on 03.04.2025

Facts in brief- Appellants instituted this action to recover a sum of Euro 16840 (Sri Lankan Rupees 21,50,299.60) being the balance from the lease rental paid after deducting the rental due for the period 15.11.2004 to 26.12.2004. The Respondent denied this claim. The learned District Judge held that although the property was not completely destroyed, it was destroyed to the extent that it could not be used for the intended business and entered judgment as prayed for in the plaint. The High Court held that upon a consideration of the entirety of evidence, it appears that the discontinuation of the business was due to financial viability rather than impossibility. It was further held that the learned District Judge has not considered the fact that the failure was due to cause other than frustration. The judgment of the learned District Judge was set aside. Aggrieved by the judgment of the High Court, the Plaintiffs appealed.

Questions of Law in Appeal-

Did the learned High Court Judges err in failing to consider the 'frustration of adventure' the Plaintiffs embarked upon by the Lease Agreement marked P1?

Concept of 'Frustration' in Law of contract in English Law and Roman Dutch law is discussed in the Supreme Court judgment.

Held

1. The doctrine of frustration in English Law evolved to mitigate the rigour of the common law position which insisted on literal performance of absolute promises. English law has used the doctrine of frustration in a restrictive sense.

2. The doctrine of impossibility of performance forms part of the Roman Law and the Roman-Dutch Law.

3. Weeramantry in The Law of Contracts [supra. 747] states that the doctrine that a contract was discharged by supervening impossibility was well recognised by Roman and Roman Dutch law. Where performance becomes impossible either physically or legally, the debtor is discharged from liability if the impossibility of performance is due vis major or causus fortuitus.

4. In English law, the rule is that court starts with the contract and remains with the contract throughout, looking exclusively at it to ascertain what the effect of any supervening conditions should be in law. On the contrary, in Roman-Dutch law, Court begins by implying a term into the contract exempting a party from liability when through no fault of his own the contract becomes impossible of performance.

5. In Roman-Dutch Law, the doctrine of supervening impossibility involves implying a term into the contract exempting a party from liability when through no fault of his own the contract becomes impossible of performance.

6. Appellants have established that there has been a frustration of the adventure that they embarked upon due to the tsunami and the Court answered the question of law in the affirmative.

The Supreme Court set aside the judgment of the High Court dated 25th May 2016 and affirm the judgment of the District Court dated 27th July 2012. The decision was based on the common law principle that a tenant is entitled to remission of rent either wholly or in part where he has been prevented either entirely or to a considerable extent from making use of the property for the purposes for which it was let, by some vis major or casus fortuitus, provided always that the loss of enjoyment of the property is the direct and immediate result of the vis major or casus fortuitus, and is not merely indirectly or remotely connected therewith.

5. Dilwella Vidana Kankanamlage Chamila Priyanga Vs AG- CA/HCC/0081/2021 decided on 27.03.2025

Facts in Brief- Accused appellant was indicted for the unauthorised possession of an automatic firearm, punishable under Section 22(3) of the Firearms Ordinance; and for the unauthorised possession of 125 Nos. of live ammunition (90 Nos. of 9 mm calibre live cartridges and 35 Nos. of 7.65 mm calibre live cartridges) punishable under Section 27(1) of the Explosives Act. He was found guilty and convicted of both counts as indicted and sentenced to life imprisonment and a fine of Rs. 25,000 respectively.

Questions of Law in the Appeal

Applicability of the Section 27 of the Evidence Ordinance, whether the production recovered was not produced in the same form and substance, whether the accused had exclusive possession of the weapon, Section 22(1) of firearms ordinance.

Held

1. For "possession" to suffice to entail criminal liability it must be actual and exclusive

2. The sum total of this exposition is that if a thing or property is found in a house as opposed to actual physical possession, there should be further and additional evidence to prove exclusive conscious control to prove possession that entails criminal liability.

3. If the prosecution is able to prove control and knowledge, it would suffice to prove possession as required by the Section 22 (1) of the Firearms Ordinance.

4. Any component part of a weapon (firearm) comes within the meaning of a gun as defined under Section 2 of the Firearms Ordinance. That being so, assembly of the components in the context of the Firearms Ordinance has not caused any prejudice or a change of form or substance that affects the liability under Firearms Ordinance.

5. The identity of the firearm is clearly and positively established with reference to and by the said distinctive serial number. In such circumstances, establishing the chain in that context may not be critical and significant in respect of this matter.

Further the provisions after the Civil Procedure Code (Amendment) Act, No. 29 of 2023 also discussed in this judgment. This judgment also discussed about provisions relating to proof of documents, marking documents in cross examination.

Held

1. The phrase "fifteen days before the date fixed for the trial" has been correctly interpreted in a number of cases to mean fifteen days before the date first fixed for the trial and not fifteen days before the date the case is actually taken up for the trial.

2. If the Court upholds the objection to the marking of a document on the ground that it was not properly listed, there is no need to reject the entire list on that basis.

3. Objections to each witness and each document must be considered separately.

4. Even in cases where witnesses and documents have not been listed at all, as opposed to filing the list belatedly, the Court retains the discretion to permit witnesses to be called and documents to be marked under section 175 of the Code. In exercising the discretion under provisos of Sec 175(1) and 175(2) the Court must exercise its discretion judicially, not arbitrarily, in accordance with sound principles of law and judicial precedent.

5. A document marked subject to proof, but not subsequently proved, may still constitute valid evidence if the party objecting fails to raise that matter when closing the case reading in evidence the marked documents, as such failure is deemed a waiver of the objection previously raised.

6. There can be no rigid or universally applicable rule governing the circumstances under which a trial Judge should permit unlisted witnesses to be called or unlisted documents to be marked. Each decision must be made based on the unique facts and circumstances of the case.

7. According to the proviso to section 175(2), unlisted documents can be marked during the cross-examination of witnesses. However, this should not be considered as a licence to mark any document through cross examination.

8. A document can be marked if the witness is the author, recipient or has knowledge of the document. If the witness is able to identify his handwriting or signature, or any handwriting or signature of another person on the document, or otherwise acknowledges the document, it can be marked.

9. As a general rule, where the witness denies the document, it cannot be marked through that witness. However, this is not an absolute rule. If it is evident that the denial is intended to conceal the truth and not bona fide, the Judge may allow the document to be marked "subject to proof".

6. Kukul Korala Gamage Gamini Premakumara and Another Vs AG- CA/HCC/0061-0062/2019 decided on 11.03.2025

Facts in Brief- Accused-appellants were indicted in the High Court of Ratnapura for the murder of Aparakke Keerthiwansha punishable under section 296 of the Penal Code and for causing hurt to Nalani De Silva PW-01 the wife of the Deceased punishable under Section 314 Penal Code both read with Section 32 of the Penal Code. Both the accused-appellants were convicted on count No. 1 for murder and sentenced to death but acquitted of count No. 2 that of hurt.

Questions of law in Appeal

Denial of fair trial, Failure to properly evaluate circumstantial evidence, identification parade, Sec 27 discovery.

Held

1. When the trier of fact is a judge with a trained judicial mind, the mere absence of express advertence or appraisal of such principles may be viewed differently. This is for the simple reason that trial judges are presumed to know the law.

2. Testimonial trustworthiness in this context, especially when it involves identification, encompasses both the credibility and the reliability. Obviously, a witness who is not credible, cannot give reliable evidence on that same point. The evidence of a credible or an honest witness, may, however, still be unreliable.

3. It is quite legitimate and lawful to separately convict the first accused individually under Section 296 for murder. Similarly, it is also lawfully possible to convict both the 1st and 2nd accused for committing grievous hurt punishable under Section 316 read with Section 32 of the Penal Code, as it is a lesser offence of murder.

The appeal of the 1st accused-appellant is accordingly dismissed and the conviction affirmed. The conviction and the sentence against the 2nd accused-appellant are varied and substituted and the appeal of the 2nd accused-appellant is partially allowed.

7. Niyakulage Dilruk Sanjeewa Fernando Vs Diyagama Vidanelage Somawathie Perera and others- SC Appeal 01/2025 decided on 10.02.2025

Facts in Breif- District Court of Panadura upheld the objection raised by the defendant's counsel to the marking of a document through the plaintiff and, further, rejected the entire list of witnesses and documents filed by the plaintiff including the said document, on the ground that the list had been filed out of time. On appeal, the High Court of Civil Appeal of Kalutara, by its judgment dated 28.04.2023, affirmed this finding.

Questions of Law in Appeal

This judgment primarily focuses on the legal position as it stood prior to the significant changes made by the Civil Procedure Code (Amendment) Act, No. 29 of 2023 on this subject under consideration.

8. Rev. Omalpe Somananda Thero Vs Rev. Ratmale Sri Somarathna Thero- SC Appeal 206/2012 decided on 14.03.2025

Facts in Brief- In this case, the Fiscal could not execute the writ on three separate occasions because certain individuals informed him that they were resisting its execution. On one occasion, an Attorney-at-Law informed the Fiscal of this, and on each occasion, the Fiscal returned the writ unexecuted. This is based on the popular view that when the Fiscal goes to execute the writ and if he encounters resistance, it is his duty to report the resistance to the Court with the writ unexecuted.

Questions of Law in the Appeal

Provisions relating to execution of decree are discussed in this judgment.

Held

1. Once the Court issues the writ of execution to the Fiscal, section 324(1) authorizes the Fiscal to deliver possession either to the judgment-creditor or his nominee "if need be by removing any person bound by the decree who refuses to vacate the property".

2. However, if there is "a tenant or other person entitled to occupy the same as against the judgment-debtor", the Fiscal can deliver constructive or symbolic possession.

3. Merely because a party to the action or a third party objects to the execution of the writ, the Fiscal should not abdicate his duty and return the writ unexecuted.

4. The execution of a decree is not a retrial, nor should it be an ordeal. It is the process of translating the decree into reality allowing the winner to reap the fruits of his victory.

5. According to section 341(1), when the judgment-debtor dies before the execution of the decree, the decree holder shall take steps to appoint a legal representative of the deceased judgment-debtor for the purpose of the execution of the decree.

6. However, in execution of the decree upon the death of the judgmentdebtor, the rigid application of the law is relaxed. In the result, even a stranger in possession of the property in suit who does not claim under the judgment-debtor may be appointed as the legal representative for the purpose of section 341(1) of the Civil Procedure Code depending on the facts and circumstances of the case. The appellant cannot challenge the validity of this substitution in appellate proceedings. If he thought that the substitution was improper, he should have first raised that matter in the District Court, rather than hastily going before the High Court to stay the execution of the writ.

9. The Institute of Chartered Accountants of Sri Lanka Vs Lionel Dissanayake and others- CA Case No: RTI/04/2022 decided on 06.03.2025

Facts in Brief- This is a matter of an application made under and in terms of section 34 of the Right to Information Act No. 12 of 2016 read together with Article 136 of the Constitution of Democratic

Socialist Republic of Sri Lanka. The Institute of Chartered Accountants of Sri Lanka seeks to set aside the decision made by the Right to Information (RTI) Commission of Sri Lanka

Questions in the Appeal-

Provisions in Sections 31, 32 and 39 of the Right to Information act were discussed.

Held

1. The provisions of laws in the absence of a compelling language are held to be directory. Further, section 32 of the RTI Act does not provide for a mandatory provision as the word "may" is used, however, these provisions can only be interpreted by considering the facts of the case as a whole.

2. The provisions of the Act should be interpreted, considering the objectives of the legislature. Therefore, by considering the purpose of the Act, it is noted that the time bar under section 32 is not mandatory but directory.

3. The Petitioner himself has not adhered to the time restrictions in the Act and therefore now cannot challenge the decision of the commission on the same ground as the Petitioner has not come to this court with "clean hands".

10. Colombo Municipal Council Vs Sarosha Mandika Wijeratne- SC Appeal 117/2016 decided on 21.02.2025

Facts in Brief-Plaintiff had collided with an island in the centre of that road newly constructed by the Colombo Municipal Council. In a twisted turn of fate, the Plaintiff was then rushed to the General Hospital for treatment, having suffered serious injuries, particularly to his spine. The injury to his spine was described as permanent—and such would naturally be a great hindrance to any surgeon in their profession. By Judgment dated 26th January 2009, the District Court of Colombo, having found in favour of the Plaintiff, has granted all relief prayed for by the Plaintiff. Aggrieved by this judgment, the Defendant Municipal Council had appealed to the High Court of Civil Appeal and the High Court upheld the aforementioned Judgment of the District Court of Colombo.

Questions of Law in Appeal

Lex Aquilia- applicability of the rule of Res Ipsa Loquitur- contributory negligence – Sec 3(1) of the Law Reform (Contributory Negligence and Joint Wrongdoers) Act No. 12 of 1968 (Act)

Held (majority judgment by Justice Janak De Silva)

1. Contributory negligence is a specific defence to an Aquilian action. It must be specifically pleaded and raised as an issue at the trial

2. Section 3(1) of the Law Reform (Contributory Negligence and Joint Wrongdoers) Act No. 12 of 1968 act does not empower the trial judge to apportion damages unless contributory negligence is specifically pleaded and raised as an issue.

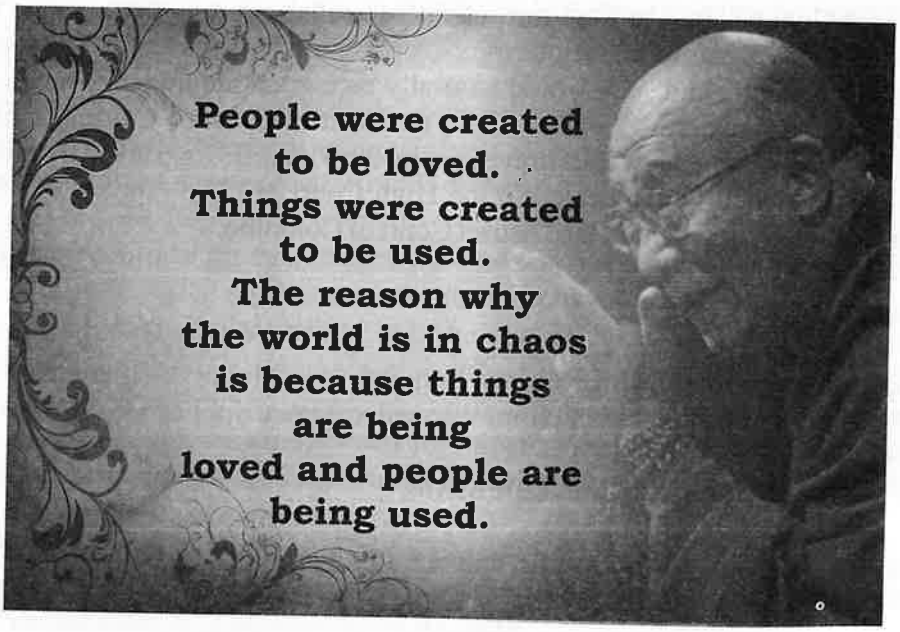
3. that the maxim Res Ipsa Loquitur does not relieve the plaintiff of the burden of proving negligence. Neither does it raise any legal presumption in his favour. It applies to the method by which a plaintiff can advance an argument for purposes of establishing a prima facie case to the effect that in the particular circumstances the mere fact that an accident has occurred raises a prima facie factual inference that the defendant was negligent.

4. It is of vital importance to appreciate the difference between an inference and conjecture or speculation in the application of this maxim.

5. The accident took place due to the negligence on the part of the Plaintiff for having driven his vehicle over the speed limit without a proper lookout.

6. Court must determine the case by applying the law according to the facts and circumstances of the case.

Appeal allowed. The judgments of the District Court of Colombo dated 26.01.2008 and the High Court of Civil Appeal dated 30.03.2016 are hereby set aside. The action is dismissed.



Quick Reference guide to Time periods changes after the Civil Procedure Amendment Act No. 29 of 2023

(Prepared by N.T.Heenatigala-Additional District Judge, Mount Lavinia)

Section in Civil Procedure Code	Time period before amendment	Time period after amendment
Sec 18(1)-Parties improperly joined may be struck out [amended by sec 3 of the amendment act]	On or before hearing	**before the day first fixed for the pre-trial conference**
Sec 22-Objections for non joinder or mis joinder [amended by sec 4 of the amendment act]	Earliest possible opportunity, and in all cases before the hearing	**Earliest possible opportunity, and in all cases before the day first fixed for the pre-trial conference**
Sec 79A- Date for Pre Trial Conference order [amended by sec 5 of the amendment act]	Not earlier than three weeks and not exceeding two months	**a date not less than three months and not exceeding five months from the date filing the answer or last date for replication**
Sec 79B(a)- proposed admissions and issues of fact and law in writing (amendment act sec 6)	Fourteen days prior to the date fixed for the pre trial hearing	**not less than thirty days before the date first fixed for the pre-trial conference**
Sec 79B(b)(i),(ii)- Lists of witnesses and Lists of documents (amendment act sec 6)	Not less than fifteen days before the date fixed for trial	**not less than thirty days before the date first fixed for the pre-trial conference**
Sec 79B(c)- copies of documents listed in the lists of documents which are the possession of or control of such parties (amendment act sec 6)		**not less than thirty days before the date first fixed for the pre-trial conference**
Sec 79C- list of documents in electronic form with copy or copies of such documents (amendment act sec 6) Sec 79(c)(3)- notice to access and inspect	Forty five days before the date fixed for trial (as act no 14 of 1995) as act no 14 of 1995	**not less than thirty days before the date first fixed for the pre-trial conference** **Within fifteen days of receipt the notice under sec 79(C)(2).**

Section in Civil Procedure Code	Time period before amendment	Time period after amendment
Sec 79(c)(4)- date to access and inspect	as act no 14 of 1995	**Within reasonable time but not later than fifteen days of receipt the notice under sec 79(C)(3)**
Sec 79(C)(8)- Objections to the admissibility of any document in electronic form		**either before the pre trial conference or at the pre trial conference**
Sec 93(1) and 93(2)- amendment of pleadings (amendment act sec 9)	93(1)- before the day first fixed for pre trial 93(2)- on or after the day first fixed for pre trial and before the judgment	**93(1)- before the day first fixed for pre trial conference** **93(2)- on or after the day first fixed for pre trial conference and before the judgment**
Sec 94- Interrogatories (amendment act sec 10)	At any time before hearing	**Fifteen days before the date first fixed for the pre-trial conference**
Sec 101- notice to admit genuineness of documents (amendment act sec 11)	Not less than ten days before the hearing	**Not less than Fifteen days before the date first fixed for the pre-trial conference**
Sec 102(1)- discovery of documents (amendment act sec 12)	At any time during the pendency of the action	**Fifteen days before the date first fixed for the pre-trial conference**
Sec 103- order for production of documents (amendment act sec 13) Marginal note of this section re named as "Orders for preservation, disclosure or production of documents or documents in electronic form." And introduced new 14 subsections.	At any time during the pendency of the action	**103(1)- At any time during the pendency of the action** **When document in electronic form** **103(2)- prior to the institution of action** **103(5)- not less than forty-five days before the date first fixed for the pre-trial conference**

Section in Civil Procedure Code	Time period before amendment	Time period after amendment
Sec 104(1)- Notice to produce documents for inspection (amendment act sec 14) By sec 15 of the amendment act new section 104A introduced to provides provisions for protective orders of documents or documents in electronic form.	At any time before or at the hearing	**Fifteen days before the date first fixed for the pre-trial conference**
Sec 142B(g)- Issue commissions under chapter XXIX of CPC (amendment act sec 19)		**Any application for the issue of a commission for local investigation as referred to in Chapter XXIX shall be made prior to the day first fixed for the pre-trial conference.** **Provided further, that the court may, in its discretion, issue a commission for such local investigation after the day first fixed for pre-trial conference if it is satisfied for reasons to be recorded and subject to terms as to costs or otherwise, that a commission is necessary for the determination of the matters in dispute or settlement of the dispute between the parties**

- Notwithstanding the repeal of Chapter XA (section 79A), Chapter XVIIA (sections 142A, 142B, 142C, 142D, 142E, 142F, 142G, 142H, and 142I) and section 80A of the principal enactment (in this section referred to as the "repealed provisions"), all actions and matters filed in the District court and pending on the day immediately preceding the date of commencement of this Act, in respect of which

  (a) a date for pre-trial hearing has already been fixed; or (b) any pre-trial step has already been taken under the repealed Chapter XVIIA, shall be dealt with under the repealed provisions.

Prayer of a Sportsman

Dear Lord, in the battle that goes on through life
I ask but a field that is fair,
A chance that is equal with all in the strife,
A courage to strive and to dare;

And if should win, let it be by the code
With my faith and my honor held high;
And if I should lose, let me stand by the road,
And cheer as the winners go by.

And Lord, may my shouts be ungrudging and clear,
A tribute that comes from the heart,
And let me not cherish a snarl or a sneer
Or play any sniveling part;

Let me say, "There they ride, on whom laurel's bestowe
Since they played the game better than I."
Let me stand with a smile by the side of the road,
And cheer as the winners go by.

So grant me to conquer, if conquer I can,
By proving my worth in the fray,
But teach me to lose like a regular man,
And not like a craven, I pray;

Let me take off my hat to the warriors who strode
To victory splendid and high,
Yea, teach me to stand by the side of the road
And cheer as the winners go by.

Berton Braley

It takes nothing to join the crowd.
It takes
everything
to stand alone.

- Hans F. Hansen -

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