

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

*In the matter of an application in terms
of Article 105 (3) of the Constitution of
the Democratic Socialist Republic of Sri
Lanka.*

C A (Contempt) Application

No. 384 / 2012

District Court Kurunegala

Case No. 6249 / L

Jayalathge Srimathie Mangalika
Jayasinghe,
Amunawatta,
Kurunegala.

DEFENDANT - JUDGMENT CREDITOR -
PETITIONER

Vs.

R P Wijeratne

No. 6 / 1,

Amunawatta,
Kurunegala.

SUBSTITUTED PLAINTIFF - JUDGMENT
DEBTOR - RESPONDENT

Before: P. Padman Surasena J (P / C A)
A L Shiran Gooneratne J

Counsel : Luxman Perera PC for the Defendant - Judgment Creditor.
K G Jinasena with Mihiri Colombage for the Substituted
Plaintiff - Judgment Debtor - Respondent.

Decided on: 2018-06-22

JUDGMENT

P Padman Surasena J

The Defendant - Judgement Creditor - Petitioner (hereinafter sometimes referred to as the Petitioner) has filed this application to charge the Substituted Plaintiff - Judgement Debtor - Respondent (hereinafter sometimes referred to as the Respondent) alleging that he had violated the order dated 2012-10-30 made by the learned District Judge of Kurunegala in District Court of Kurunegala case No. 6249/L.

The Respondent was summoned before this Court to answer the charge of contempt which states thus,

"... the Defendant - Judgment Creditor - Petitioner having been placed in possession of the premises morefully described in the 2nd schedule to the plaint on 19-11-2012 by virtue of the order for writ of possession dated 30-10-2012 by the fiscal of the District Court of Kurunegala you R P Wijeratne, the Plaintiff-Judgment debtor - Respondent in violation of the said order illegally and unlawfully on or about 21-11-2012 has entered the said premises and in violation of the order dated 30-10-2012 and illegally disposed the Defendant-Judgment Creditor - Petitioner. ... "

The summary of the charge is that the Respondent had violated the order dated 2012-10-30 made by the learned District Judge of Kurunegala in District Court of Kurunegala case No. 6249/L. This order has been produced marked **X 2** through the Registrar of District Court of Kurunegala.

It is the position of the Petitioner that the Fiscal of Kurunegala District Court executed the writ of possession on 20212-11-19 and placed the Petitioner in possession of the land described in the schedule to the Plaint of the said case.

The said execution of the writ of possession had been done by the then Fiscal of Kurunegala District Court M. D. Shelton. The said Fiscal's report dated 2012-11-20 has been marked as **X 3**. This Court, having perused the said report, observes at the outset, that the said report does not specifically state therein that the Petitioner was placed in possession of this property.

Be that as it may, in the meantime the Respondent had filed an application in the Provincial High Court seeking leave to appeal against the said District Court order dated 2012-10-30 (marked as **X 2**). The Respondent in the said leave to appeal application had also sought an interim order from the Provincial High Court to stay any further proceedings in District Court of Kurunegala case No 6249/L.

The Provincial High Court pursuant to the said application had issued a stay order on 2012-11-20 staying the further proceedings in District Court of Kurunegala case No 6249/L.

It is the position of the Petitioner that he was placed in possession of the relevant property by the Fiscal of the District Court of Kurunegala on 2012-11-19 and that the Respondent unlawfully broke in and entered the said premises on or about 2012-11-21.

Petitioner has made complaints with regard to the above at Kurunegala Police Station and also to the Grama Niladari, Kurunegala Town, South. These complaints have been marked as **Z** and **Z 1 A** with the Petition.

Upon a subsequent application filed before the District Court of Kurunegala by the Petitioner under section 325 of the Civil Procedure Code on 2012-12-13, the Additional District Judge of Kurunegala made order dated 2015-07-10 marked **X 5(a)** restoring the possession of the premises to the Petitioner.

The Respondent has taken up the position that the Fiscal of the District Court of Kurunegala, having come to the premises on 2012-11-19 to execute the writ, had returned back without executing the said writ as there was an alteration of the name in the writ of possession which had

not been authorized by the learned District Judge. It is also the position of the Respondent that the Provincial High Court had directed on 2012-11-20 by way of an interim order not to execute the writ. Thus, it is the position of the Respondent that the Fiscal did not in fact executed the writ of possession and placed the Petitioner in possession of the relevant premises on 2012-11-19.

In view of the above contradictory positions taken up by the two rival parties in this case, the task before this court is to decide first, whether the Petitioner has proved to the satisfaction of this Court, that the Fiscal of the District Court of Kurunegala had indeed placed the Petitioner in possession of this property on 2012-11-19 as alleged by him. Perusal of evidence adduced by the Petitioner before this Court does not satisfy this Court beyond reasonable doubt that it is the factual position.

The charge against the Respondent is that he had, on or about 2012-11-21 unlawfully entered the said premises in violation of the order of the District Court of Kurunegala made on 2012-10-30 and unlawfully dispossessed the Petitioner.

The interim order made by the Provincial High Court produced marked **Z** has been issued on 2012-11-20. Perusal of the said order shows clearly

- i. that the two rival positions referred to above had been placed before the Provincial High Court by the respective parties on 2012-11-20 itself.
- ii. that the Provincial High Court had clearly recorded these two rival positions and then proceeded to state thus "hence, there is no agreement between counsel whether the writ was executed or not."

The operative part of the said interim order is as follows. "As there is no agreement whether the writ has been already executed the Court issues a stay order staying further proceedings in case No 6249/L in District Court Kurunegala until the final determination of this application".

The Court also grants leave to appeal for this application. The time is 10.40 am. The registrar is directed to inform the Registrar of District Court, Kurunegala about the stay order, over the telephone...."

Closer look at the Fiscal's report shows that what the Fiscal has reported to Court is that he had directed the Respondent not to disturb the possession of the Petitioner as the Court has ruled the Petitioner to be the owner of this premises. The said report does not specifically state that the Respondent was forcibly ejected from the relevant premises on the orders of Court and placed the Petitioner in its possession.

In any case, as has been stated above, the Provincial High Court has directed that any further proceedings in the relevant District Court case be stayed until final determination of the relevant leave to appeal application. This was done on 2012-11-20 at 10.40 a.m.

The allegation against the Respondent is that he forcibly entered the relevant land and took possession of its premises forcibly on or about 2012-11-21. Act of contempt of Court which is alleged to have been committed by the Respondent is acting in breach of the execution of the writ by the Fiscal on 2012-11-21. It has to be noted however that the Provincial High Court had by that time (by 2012-11-20 at 10.40 a.m.) issued the stay order on the basis that the writ had not been executed.

In these circumstances, this Court at the least, entertains a reasonable doubt as to whether the Fiscal had indeed executed the writ on 2012-11-19 and placed the Petitioner in possession of the relevant premises.

In the light of the above facts, this Court is compelled to conclude that the Petitioner has failed to prove the charge leveled against the Respondent. For these reasons, this Court decides to acquit and discharge the Respondent from the charge framed against him.

This Court orders no costs.

PRESIDENT OF THE COURT OF APPEAL

A L Shiran Gooneratne J

I agree,

JUDGE OF THE COURT OF APPEAL