## INJUNCTION

Ref: 01/06/2002

*Mandatory injunction - Section 664 (1) of the Civil Procedure Code and Section 54(1) of the Judicature Act - Effect of interim injunction supplemented by a mandatory one, discussed - Meaning of the operational word "restrain", examined.*

**Jayatissa Peiris and another Vs. Kumudini Perera and three others**

**CA/LA/26/2001**
**DC Panadura No. 2794/SPL**

Decided by Udalagama J. and Nanayakkara J. on 27th August, 2001

The District Court issued a mandatory injunction to remove an obstruction of access to the plaintiff's premises and a further Order to demolish a wall constructed to prevent access of the Plaintiff to her premises.

The basis of the Petitioner's application to set aside the Orders of the District Court was that the learned Judge had no jurisdiction to issue a mandatory injunction.

Their Lordships noted that in no case has it been said that Courts cannot issue mandatory injunctions. Their Lordships examining the operational word "Restrain" in the provisions of the relevant statutes stated that in certain instances restrain envisages a positive act, for example, for removing of an obstruction to a road by a recently erected fence. A mandatory injunction demanding a positive act is so mandated only as a necessary ancilliary to an injunction aimed at the protection or prevention of the subject with the same condition it was when the cause of action arose. An interim injunction restrictive in nature can be supplemented by a mandatory one in order to make it effective.

## REVISION

Ref: 02/06/2002

*Revision and Restitutio in integram - Article 138 of the Constitution - Right to invoke revisionery jurisdiction of court available only if alternative remedy is not available.*

**Devi Property Development (Pvt) Ltd and another Vs. Lanka Medical (Pvt) Ltd.**

**CA/518/2001**
**DC Colombo No. 19058/L**

Decided by Udalagama J. and Nanayakkara J. on 20th June, 2001

The Defendant-Petitioner filed an unusual Application combining an Application for Revision with an Application for Restitutio in Integram in terms of Article 138 of the Constitution.

Their Lordships held that Revision is an extra ordinary jurisdiction vested in Court to be exercised under exceptional circumstances if no other remedies are available. Revision is not available until and unless other remedies available to the Petitioner are exhausted.

Before the amendment, by Act, No. 38 of 1998, the Court of Appeal had no jurisdiction to grant interim relief. If a party sought interim relief he would have had to file an Application for Revision. The present procedure prevents the Court being flooded with two applications, one for Revision and other for Leave to Appeal, which anomaly was rectified by the aforesaid amending Act. The Court of Appeal was conferred jurisdiction to grant interim relief by way of a right to appeal with Leave first having been obtained, so that Revision applications became redundant.

## COURT OF APPEAL RULES

Ref: 03/06/2002

*Rules of the Court of Appeal (Appellate Procedure) of 1990 - Mandatory nature of the Rules of Court, examined - Non compliance with mandatory rules, fatal to any application, observed.*

**Piyasena Vs. Sandarasegaran**

**CA/LA/ 191/2001**
**DC Colombo No. 17060/L**

Decided by Udalagama J. and Nanayakkara J. on 21st September, 2001

The Plaintiff Respondent instituted action in the District Court of Colombo in respect of the execution of a Deed of Transfer. On the learned District Judge disallowing an additional issue raised by the Defendant-Petitioner during the course of the trial, the Petitioner moved the Court of Appeal for Leave to Appeal.

A preliminary objection was raised by the Respondent that the Petitioner had not complied with the Rules of Court, in that, of the 09 documents filed along with the Petition only the Order of the learned District Judge had been certified and the rest are only true copies certified by an Attorney-at-Law.

Their Lordships, after careful examination of the several authorities observed that, except in a few cases of exceptional circumstances, our Courts have held that the compliance with the Rules is mandatory, and the failure to observe the Rules will amount to a fatal irregularity, which would result in the dismissal of the Petition.

## WRIT OF MANDAMUS

Ref: 04/06/2002

*Marriage Registration Ordinance – Prohibited age of marriage, examined – Right of Registrar to refuse registration of underage parties marrying with consent of parents, analysed.*

**Gunaratnam Vs. The Registrar-General**

**CA No. 1031/01**

Decided by Ms.Tilakawardane, J. and Amaratunga, J. on 30th August, 2001

The Petitioner filed an application for a Writ of Mandamus challenging the Order of the Registrar General refusing to register the marriage of a girl, 14 years of age, to an 18 year old man. The question before Court was whether the Order of Refusal was valid in law. It was common ground that the parents of both parties have consented to the marriage. But the issue was whether, in spite of the consent, there is a prohibition in law for the registration of their marriage. Their Lordships, taking into consideration the amendments made to the Marriage Registration Ordinance by Marriage Registration (amendment) Act, No: 12 of 1997, held that no Party under the age of 18 years could contract a valid marriage in Sri Lanka. Parental authority or consent to such marriage would not validate the marriage as this was an absolute prohibition to marriage.

Contributed by Lr. Palitha Fernando, DSG

*As the full text of the judgments cannot be published in these pages, the ExCo is in agreement that the Judgments referred to here be published in SRISKANTHA'S LAW REPORTS.*