as damages, together with continuing damages of Rs. 1 million per annum.

Order Nisi in terms of Section 377 of the CPC was issued on the Respondent-Petitioner, and on the Respondent-Petitioner failing to appear on the day appointed to show cause, the Order Nisi was made absolute. On the Respondent-Petitioner moving to purge his default, and he being absent on the day appointed to support his Application, the learned District Judge dismissed the said Application. The Respondent-Petitioner's Leave to Appeal application to set aside the said Order of the District Court being dismissed, the Petitioner moved to revise the said Order.

Justice Nanayakkara in his Judgement refusing Notice, stated as follows:-

> "The existence of exceptional circumstances is a pre condition for the exercise of the powers of Revision, and the absence of exceptional circumstances in any given situation results in refusal of remedy. It is evident that the revisionary powers being a discretionary remedy, the Court has exercised that right where there are exceptional circumstances warranting the intervention of Court."
>
> "Unlike in an ordinary regular action, Section 377 of the CPC casts a burden on the Defendant to show sufficient cause against the Order Nisi, and if he fails to do so he must face the consequences. Summary Procedure has been designed with a view to expeditious and quick disposal of actions. Therefore, a Defendant in a Summary Procedure action must act without delay if he is to obtain relief from Court."

SUPREME COURT RULES

Ref: 05/05/2002

Supreme Court Rules - Mandatory nature of SC Rules, discussed - Effect of failure to tender certified copies of relevant proceedings in a Leave to Appeal application, examined.

K D Chandrasiri Vs People's Bank

CA/LA No. 173/2001
D C Colombo Case No: 5637/Spl

Decided by Udulagama, J. and Nanayakkara, J. on 20th July, 2001

On a preliminary objection raised by the Counsel for the Defendant-Respondent their Lordships dismissed, in limine, on the Plaintiff-Petitioner failing to file necessary certified copies of documents along with his Petition and Affidavit, as required by the Supreme Court Rules.

Justice Udulagama in his Judgement, stated as follows:-

> "The weight of authorities favours the mandatory nature of the Supreme Court Rules, and this Court has, in the following recent decisions, taken a similar view. ....."
>
> " An impugned Order flows from proceedings had in the lower Court. Impliedly certified copies of the proceedings must be filed in compliance with the Supreme Court Rules."

BASL Convocation

BMICH - March 23, 2002

The 2002 BASL Convocation was a grand affair and, as usual, a well organised function with clock-work precision. The morning sessions commenced with over 400 Delegates attending the Bar Council meeting, chaired by the Hon.Attorney-General, Mr.K.C Kamalasabayson, P.C. The elections to the Ex-Co went smoothly, and questions raised on the chair were tackled deftly and diplomatically by the Hon Attorney General.

The evening convocation chaired by His Lordship the Chief Justice, Hon Sarath N Silva, P.C., was made quite colourful with the magnificent sarees of our smart ladies. The variety of cocktails and the sumptuous buffet laid out by a five star hotel ensured a memorable closure to the occasion.



Head Table at convocation with His Lordship the Chief Justice



Head Table at Bar Council with Hon Attorney General



President's convocation address

APPEAL

Ref: 04/05/2002

Notice of Appeal – Signature on Notice of Appeal - Person entitled to sign, examined.

P G Buddadasa Vs A G Sriyawathie

CA No. 80/2000
D C Homagama Case No: 533/1988/L

Decided by Jayasinghe, J. and Udulagama, J. on 24th May, 2001

A preliminary objection was taken by the Counsel for the Defendant-Respondent that the Notice of Appeal is bad in Law for the reason that the said Notice of Appeal has been signed by the Appellant himself while the proxy given to the Attorney-at-Law was still in force.

Citing various judgements and referring to the relevant Sections in the CPC, Justice Jayasinghe, in his Judgment, stated as follows:

> "Where the Notice of Appeal is signed by the Appellant himself when he had a registered Attorney on record, the lapse is fatal and is not curable in terms of Section 759(2) of the CPC."

Their Lordships noted that since the matter has already been decided by the Supreme Court, they were unable to come to any other finding other than to uphold the preliminary objection raised by the said Counsel.

DEBT RECOVERY

Ref: 01/05/2002

Audi alterem partem - Legality of variation of Order made by trial Judge without notice to another party to the proceedings, examined.

Mashreq Bank Vs Arunachalam

CA/LA / 285/2000
D C Colombo Case No: 579/DR

Decided by Udulagama, J. and Nanayakkara, J. on 26th July, 2001

The Mashreq Bank instituted action against the Defendant-Respondent under the DR Act. On the Defendant-Respondent moving for leave to appear and show cause against the Order *Nisi*, the Court, after inquiry, which was decided on written submissions, granted conditional leave to the Respondent and directed him to deposit a sum of money by way of security. The Leave to Appeal Application of the Respondent to vary the Order for security was refused by the Court of Appeal. Thereafter, the Respondent supported a motion *ex-parte* in the District Court to vary the sum of Rs.12 Million ordered as security and the District Court ordered the Respondent to deposit a sum of Rs. 200,000/- in cash and the balance by way of a Deed of Property. The Petitioner's motion to vacate the said *ex-parte* order was refused by the learned District Judge.

In considering the appropriateness and the validity of the said District Court Order, Justice Nanayakkara in his Judgement in the Leave to Appeal application filed by the petitioner stated as follows:-

"I am really perplexed why the learned District Judge,proceeded to make an *ex-parte* order without the knowledge of the petitioner in the Chambers on the same day the motion was filed by the Respondent praying for relief in the matter of security.

It is my considered view as far as possible and feasible in the interest of justice and fair play that a Judge should afford an opportunity to all the parties, of being heard before making an order or varying an existing order. If this is not done, a Judge can leave room for allegations of bias by an affected party. I am of the opinion, in view of the above mentioned reasons alone, the Order made by the learned District Judge should not be permitted to stand."

INJUNCTION

Ref: 02/05/2002

Injunction - Interim relief - Suppression of material facts - Discretionary nature of interim reliefs, discussed.

Nimal Weerasuriya and another Vs Guruge Property Sales (Pvt) Ltd

CA/LA / 284/99
D C Gampaha Case No: 43272/L

Decided by Jayasinghe J. and Udulagama, J. on 10th May, 2001

The Plaintiff - Respondent filed action in the District Court of Gampaha against the Defendants - Petitioners seeking enforcement of a Sale Agreement. The Plaintiff-Respondent also moved for interim reliefs restraining the Defendants-Petitioners from alienating in whatever form the land in issue, and from obstructing the Plaintiff-Respondent from entering the land. The Defendants-Petitioners moved the Court of Appeal to vacate the interim reliefs granted by the District Court.

Their Lordship noted that several actions had been filed by the Plaintiff-Respondent in different fora where the identical relief had been obtained. Justice Udulagama in his judgement stated as follows:-

> " The suppression of material facts by itself is sufficient to refuse an application for interim relief as the relief so sort is a discretionary relief to be granted by Court and the party seeking such relief is manifestly duty bound to apprise Court of all material facts"..... "The application for interim relief in the instant case could and ought to have been dismissed without even going into the merits if material facts were deliberately concealed. A person seeking injunctive relief is required to make an honest disclosure of all the relevant facts, the failure of which would amount to abuse of process of Court."

REVISION

Ref: 03/05/2002

Revision - Exceptional circumstances - Discretionary nature of remedy, discussed - summary procedure - purpose and effect of summary procedure, examined.

M L C Caderamanpulle Vs Ceylon Paper Sacks Ltd

CA(Rev)/ 759/2001
D C Colombo Case No: 5386/Special

Decided by Udulagama, J. and Nanayakkara J on 29th June, 2001

The Petitioner-Respondent instituted action in the District Court of Colombo by way of summary procedure, in terms of the provisions of the Registration of Documents Ordinance seeking cancellation of certain caveats filed by the Respondent-Petitioner, and also for the recovery of a sum of Rs. 100 million