

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

S.C. (HC) CA LA No. 99/2008
WP/HCCA/GPH No. 62/01(F)
D.C. Gampaha No. 33465/L

Jamburegoda Gamage Lakshman Jinadasa,
No. 15, Main Street,
Gampaha.

Plaintiff-Appellant (now deceased)

Priyanthi Chandrika Jinadasa,
No. 10, Church Road,
Gampaha.

Petitioner

Vs.

1. Pilitthu Wasam Gallage Pathma Hemamali,
No. 3, Rest House Road,
Gampaha.
2. Pilitthu Wasam Gallage Ranjith Siriwardana,
No. 3, Rest House Road,
Gampaha.

3. Pilitthu Wasam Gallage Swarna Kusum Siriwardana,
No. 3, Rest House Road,
Gampaha.
4. Pilitthu Wasam Gallage Deepa Priyadarshani Silva,
No. 3, Rest House Road,
Gampaha.
5. Nupe Vidane Arachchige Kusumawathi,
No. 3, Rest House Road,
Gampaha.

Defendants-Respondents-Respondents

BEFORE : Dr. Shirani A. Bandaranayake, J.
P.A. Ratnayake, P.C., J. &
Chandra Ekanayake, J.

COUNSEL : Hemasiri Withanachchi for Petitioner

Manohara de Silva, PC, with Pubudini Wickramaratne for Defendants-
Respondents-Respondents

ARGUED ON: 08.11.2010

WRITTEN SUBMISSIONS

TENDERED ON: Plaintiff-Appellant : 10.01.2011
Defendants-Respondents-Respondents : 10.01.2011

DECIDED ON: 07.07.2011

Dr. Shirani A. Bandaranayake, CJ.

This is an application for leave to appeal from the judgment of the High Court of the Western Province (Civil Appeals) holden at Gampaha dated 15.07.2008. By that judgment the learned Judges of the High Court had dismissed the appeal of the plaintiff-appellant, now deceased. Thereafter the widow of the said plaintiff-appellant (hereinafter referred to as the petitioner), preferred an application before this Court for leave to appeal.

When this application for leave to appeal was taken for support, learned President's Counsel for the defendants-respondents-respondents (hereinafter referred to as the respondents) raised a preliminary objection stating that the application for leave to appeal is out of time.

Since a preliminary objection was raised, both parties were heard on the said objection.

Learned President's Counsel for the respondents submitted that the judgment of the High Court was delivered on 15.07.2008 and in terms of the Supreme Court Rules, 1990, the time limit within which leave to appeal applications are to be filed is six (06) weeks from the impugned judgment and therefore the said application for leave to appeal should have been filed on or before 26.08.2008. Since the present application had been filed only on 01.09.2008, learned President's Counsel contended that it had been filed out of time.

Learned Counsel for the petitioner took up the position that since this is an application for leave to appeal from the judgment of the High Court, the Supreme Court Rules of 1990 would not be applicable to such an application. Accordingly, it was contended that since there are no Rules for this type of applications, the concept that applications must be filed within 'a reasonable time' should be applicable. It was also submitted that attention should be given to the circumstances of this application which warrants the indulgence of this Court.

Having stated the submissions made by the learned President's Counsel for the respondents and the learned Counsel for the petitioner, let me now turn to consider the said submissions

on the basis of the preliminary objection raised by the learned President's Counsel for the respondents.

The Supreme Court Rules of 1990, deal with many matters pertaining to appeals, applications, stay of proceedings and applications under Article 126 of the Constitution.

Part I of the said Rules, refers to three types of applications dealing with leave, which includes special leave to appeal, leave to appeal and other appeals. Rule 7 which is under the category of applications for special leave to appeal from the judgments of the Court of Appeal clearly states that such an application should be made within six weeks (6) of the impugned judgment. The said Rule is as follows:

“Every such application shall be made within six weeks of the order, judgment, decree or sentence of the Court of Appeal in respect of which special leave to appeal is sought.”

In terms of Rule 7, it is quite clear that any application for special leave to appeal should be made within six weeks from the order, judgment, decree or sentence of the Court of Appeal on which such leave is sought.

It is however to be borne in mind that the said Rule 7 deals only with applications for special leave to appeal from the judgments of the Court of Appeal and the present application for leave to appeal is from a judgment of the Civil Appellate High Court of the Western Province holden at Gampaha.

As stated earlier categories B and C of Part I of the Supreme Court Rules, 1990 deal with leave to appeal and other appeals, respectively. Whilst the category of leave to appeal deals with instances, where Court of Appeal had granted leave to appeal to the Supreme Court, other appeals refer to all other appeals to the Supreme Court from an order, judgment, decree or

sentence of the Court of Appeal or any other Court or tribunal. Thus, it is evident that the present application for leave to appeal from the judgment of the High Court of the Western Province (Civil Appeal) holden at Gampaha would come under the said category C. The said section 28(1), which refers to such appeals is as follows:

“28(1) Save as otherwise specifically provided by or under any law passed by Parliament, the provisions of this rule shall apply to all other appeals to the Supreme Court from an order, judgment, decree or sentence of the Court of Appeal or any other Court or tribunal” (emphasis is added).

It is therefore not correct to state that there are no rules made by the Supreme Court that would be applicable to applications for leave to appeal from the High Court of the Provinces to the Supreme Court.

Considering the preliminary objection raised by the learned President’s Counsel for the respondent, it is also necessary to be borne in mind the nature of this application. It is not disputed that in this case the petitioner had filed action in the District Court of Gampaha seeking, *inter alia*, a declaration that the petitioner is entitled to the land described in the schedule to the plaint and a decree evicting the respondents from the land in question and placing the petitioner in vacant possession.

Direct applications for leave to appeal from the High Court to the Supreme Court came into being only after the establishment of High Courts of the Provinces. Until such time, according to the procedure that prevailed, such applications were preferred from the order, judgment, decree or sentence of the Court of Appeal. In such circumstances, if the Court of Appeal had not granted leave to appeal, an application could be made to the Supreme Court for special leave to appeal. Rules 19 and 20 of the Supreme Court Rules refer to this position and Rule

20(3) in particular, deals with the time frame in such applications. The said Rule 20(3) is as follows:

“Where the Court of Appeal does not grant or refuse to grant leave to appeal, an application for special leave to appeal to the Supreme Court may be made in terms of Rule 7.”

Rule 7 clearly states that every such application shall be made within six weeks of the order, judgment, decree or sentence of the Court of Appeal in respect of which special leave to appeal is sought.

Accordingly it is quite clear that a litigant, who is dissatisfied with the decree of a criminal matter, which had come before the High Courts (Civil Appellate) of the Provinces would have to prefer an application before the Supreme Court within six (6) weeks of the order, judgment, decree or sentence in question.

This position was considered by the Supreme Court in the light of the situation regarding an application made on the basis of an Arbitral Award in **George Stuart and Co. Ltd. V Lankem Tea and Rubber Plantations (Pvt.) Ltd.** ([2004] 1 Sri L.R. 246), where it was stated that,

“When no provision is made in the relevant Act, specifying the time frame in which an application for leave to appeal be made to the Supreme Court and simultaneously when there are Rules providing for such situations, the appropriate procedure would be to follow the current Rules which govern the leave to appeal application to the Supreme Court. **Consequently such an application would have to be filed within 42 days from the date of the Award**” (emphasis added).

Accordingly, it is evident that an application for leave to appeal from the High Court (Civil Appeal) of the Provinces to the Supreme Court should be filed within 42 days from the date of the judgment.

It is not disputed that the judgment of the High Court was delivered on 15.07.2008. It is also not disputed that the petitioner had filed this leave to appeal application on 01.09.2008. It is therefore quite apparent that the petitioner had filed her application for leave to appeal well after 42 days and therefore the petitioner had not complied with the Supreme Court Rules 1990.

Learned Counsel for the petitioner contended that although there is a delay in filing the leave to appeal application, it was not intentional and was due to circumstances which prevailed at that time. His position was that the original plaintiff-appellant had passed away on 15.08.2008 and that considering the social and cultural background of our society it is common knowledge that during a period, where there had been a bereavement of a close relative, the matters connected therein would take precedence over litigation.

Learned Counsel for the petitioner contended that even though the Supreme Court Rules may specify a time limit in preferring an application to the Supreme Court for leave to appeal, there could be a waiver with regard to the said time frame based on the discretion of the Court. Learned Counsel for the petitioner relied on the decisions in **Nirmala de Mel v Seneviratne** ([1982] 2 Sri L.R. 569), and **Jafferjee v Perera** (C.L.W. Vol. 79 pg. 81).

In **Nirmala de Mel v Seneviratne** (supra), the preliminary objection raised by the respondent was on the basis that the petitioner in that case had no status to file the appeal before the order of Court to substitute her and that the appeal was out of time. The Court whilst holding that it was within time since it was filed on a Monday, which was the next working day and therefore had been within time had also held that the petitioner could file the petition of

appeal prior to being ordered to be substituted for the reason that there was a *lacuna* in the Supreme Court Rules and therefore the said steps taken could be regarded as regular.

It is to be noted that **Nirmala de Mel v Seneviratne** (supra) is a case decided well before the present Supreme Court Rules came into being. In the present application as clearly stated earlier, the facts are totally different to **Seneviratne's** (supra) case. As has been stated clearly, there is no *lacuna* in the Supreme Court Rules and the said Rules are quite clear on the time limit permitted for such applications.

In **Jafferjee and others** (supra) it was apparent that there had been compliance with the conditions on which conditional leave was obtained long before the time limit imposed by Court for such compliance was over.

The question that arises in the context of the aforementioned decisions is that, in terms of the provisions laid down in Rule 7 of the Supreme Court Rules, 1990 as to whether there is a discretion for the Court to ignore or vary the stipulated time period of 42 days.

As clearly stated in **L.A. Sudath Rohana v Mohamed Zeena and others** (S.C. H.C. C.A. L.A. No. 111/2010 – S.C. Minutes of 17.03.2011)) Rules of the Supreme Court are made in terms of Article 136 of the Constitution, for the purpose of regulating the practice and procedure of this Court. Similar to the Civil Procedure Code, which is the principal source of procedure, which guides the Courts of civil jurisdiction, the Supreme Court Rules regulates the practice and procedure of the Supreme Court.

The language used in Rule 7, clearly shows that the provisions laid down in the said Rule are mandatory and that an application for leave for this Court should be made within six weeks of the order, judgment, decree or sentence of the Court below of which leave is sought from the Supreme Court. In such circumstances it is apparent that it is imperative that the application should be filed within the specified period of six (6) weeks.

The position taken up by the petitioner was that the original plaintiff had obtained a copy of the judgment of the High Court with a view to lodge an application for leave to appeal in this Court, but had been seriously taken ill and died on 15.08.2008. The petitioner submitted that she had to attend to the funeral of the original plaintiff, being her husband and the religious ceremonies and due to that she could not prefer this application within the stipulated time period.

It is to be noted that the judgment of the High Court was delivered on 15.07.2008 and the original plaintiff had died one month later on 15.08.2008. The present petitioner, who is the widow of the original plaintiff, had stated in her petition that by the time she sought legal advice from her Attorney-at-Law, she was informed that the appealable period of time had lapsed.

It is therefore quite clear that the petitioner was fully aware that by the time she took steps to prefer an application for leave to appeal before this Court, that appealable period of time had lapsed. Further it is to be borne in mind that in any event the original plaintiff-appellant had not filed an application for leave to appeal from the judgment of the High Court before his demise.

Considering all the circumstances it is apparent that it is not possible to consider those as mitigating factors when the petitioner had failed to take all steps to ensure that the leave to appeal application is preferred within the stipulated time limit.

For the reasons aforesaid, I hold that the petitioner had not complied with the Supreme Court Rules of 1990. A long time of cases of this Court had decided that non compliance with Rule 8(3) as well as Rule 28(3) would result in the dismissal of an application for leave for this Court (**K. Reindran v K. Velusomasundram** (S.C. (Spl.) L.A. Application No. 298/99 – S.C. Minutes of 07.02.2000), **N.A. Premadasa v The People’s Bank** (S.C. (Spl.) L.A. Application No. 212/99 – S.C. Minutes of 24.02.2000), **Hameed v Majibdeen and others** (S.C. (Spl.) L.A.

Application No. 38/2001 – S.C. Minutes of 23.07.2001), **K.M. Samarasinghe v R.M.D. Ratnayake and others** (S.C. (Spl.) L.A. Application No. 51/2001 – S.C. Minutes of 27.07.2001), **Soong Che Foo v Harosha K. De Silva and others** (S.C. (Spl.) L.A. Application No. 184/2003 – S.C. Minutes of 25.11.2003), **C.A. Haroon v S.K. Muzoor and others** (S.C. (Spl.) L.A. Application No. 158/2006 – S.C. Minutes of 24.11.2006), **Samantha Niroshana v Senarath Abeyruwan** (S.C. (Spl.) L.A. Application No. 145/2006 – S.C. Minutes of 02.08.2007), **A.H.M. Fowzie and two others v Vehicles Lanka (Pvt.) Ltd.** ((2008) B.L.R. 127), **Woodman Exports (Pvt.) Ltd. V Commissioner-General of Labour** (S.C. (Spl.) L.A. Application No. 335/2008 – S.C. Minutes of 13.12.2010), **L.A. Sudath Rohana v Mohamed Zeena and others** (supra). It is also to be noted that in **George Stuart and Co. Ltd.** (supra), the application for leave to appeal was rejected since it was filed out of time.

In the circumstances, for the reasons aforesaid, I uphold the preliminary objection raised by the learned President’s Counsel for the respondents and dismiss the petitioner’s application for leave to appeal.

I make no order as to costs.

Chief Justice.

P.A. Ratnayake, P.C., J.

I agree.

Judge of the Supreme Court

Chandra Ekanayake, J.

I agree.

Judge of the Supreme Court