

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

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**S.C. Appeal No. 192/2011  
S.C. (HC) CA LA. No.450/2011  
SP/HCCA/KAG/336/2007(F)  
D.C. Mawanella No.538/L**

Arachchilage Gedara Anulawathi,  
Paththampitiya,  
Netiyapana.

**Defendant-Appellant-Appellant**

Vs.

Wadiyaralalage Weerasinghe Bandara,  
"Araliya Wilana",  
Paththampitiya,  
Netiyapana

**Plaintiff-Respondent-Respondent**

**BEFORE** : Dr. Shirani A. Bandaranayake, CJ.  
P.A. Ratnayake, PC., J. &  
Priyasath Dep, PC., J.

**COUNSEL** : Rohan Sahabandu with Hasitha Amarasinghe for  
Defendant-Appellant-Appellant

Saliya Peiris with Thanuka Nandasiri for Plaintiff-  
Respondent-Respondent

**ARGUED ON:** 24.09.2012

**DECIDED ON:** 15.11.2012

**Dr. Shirani A. Bandaranayake, CJ.**

This is an appeal from the judgment of the Civil Appellate High Court of the Sabaragamuwa Province holden in Kegalle dated 25.10.2011 (hereinafter referred to as the Civil Appellate High Court). By that judgment the Civil Appellate High Court had rejected the Notice of Appeal and the Petition of Appeal filed by the defendant-appellant-appellant (hereinafter referred to as the appellant).

The appellant preferred an application for leave to appeal before the Supreme Court against the said judgment of the Civil Appellate High Court on which leave to appeal was granted by this Court.

The facts of this appeal as submitted by the appellant, *albeit* brief, are as follows:

The plaintiff-respondent-respondent (hereinafter referred to as the respondent) instituted action in the District Court of Mawanella against the appellant and the judgment was delivered in favour of the respondent by the District Court.

Being aggrieved, the appellant filed Notice of Appeal and Petition of Appeal against the said judgment. When the matter was taken before the Civil Appellate High Court, the Court had informed that the Notice of Appeal and Petition of Appeal had been addressed to the Court of Appeal and in terms of Section 754 (3) of the Civil Procedure Code the said Notice should be addressed to the original Court. The Civil Appellate High Court after hearing both parties had rejected the said Notice of Appeal and the Petition of Appeal. Thereafter the appellant had instituted an application for leave to appeal before this Court.

When this matter came up for hearing, learned Counsel for the appellant as well as the learned Counsel for the respondent had informed Court that the questions that are to be considered in this appeal on which leave to appeal was granted were being considered by this Court in a similar matter and the said judgment was pending. In those circumstances, both learned Counsel had moved that this matter be mentioned on a date to consider the said judgment and thereafter be fixed for hearing.

Both learned Counsel informed Court that similar questions had been considered by this Court in **S.M. Samarakoon and S.M. Kularatne v M.S. Fajurdeen** (S.C. Appeal No.06/2012, S.C. Minutes of 15.06.2012).

In that matter the respondent, being aggrieved by the judgment of the District Court had preferred an appeal to the Civil Appellate High Court of Kegalle. After considering the appeal the Civil Appellate High Court had dismissed the appeal on the ground that the Notice of Appeal was not valid as it had not been addressed to the original Court. The Civil Appellate High Court of Kegalle had accordingly, rejected both the Notice of Appeal and the Petition of Appeal.

In the present appeal admittedly the Notice of Appeal and the Petition of Appeal had been addressed to the Court of Appeal and not to the original Court, which is the District Court of Mawanella. The position taken by the High Court had been that the Notice of Appeal and the Petition of Appeal should have been addressed to the original Court and therefore on that ground alone the appeal was dismissed.

The High Court in its judgment had referred to Sections 754 (3) and 754 (4) of the Civil Procedure Code in arriving at their decision that the Notice of Appeal should be in conformity with the provisions of the said Sections of the Civil Procedure Code and therefore should be addressed to the lower Court. In **S.M. Samarakoon and S.M. Kularatne v M.S. Fajurdeen** (Supra) this Court had considered the provisions contained in Section 754 of the Civil Procedure Code and special reference was made to Sections 754 (3) and 754 (4) of the said Code.

Having considered the said provisions, this Court in **S.M. Samarakoon and S.M. Kularatne v M.S. Fajurdeen** (Supra), was of the unanimous view that the Civil Appellate High Court should accept the Notice of Appeal and the Petition of Appeal filed of record in that Court.

At the time this appeal was taken for hearing learned Counsel for the appellant submitted that for a period of well over 100 years the practice had been to prepare the Notice of Appeal in the manner that had been carried out in the present application. Relying on the decision in **Boyagoda v Mendis** ((1929) 30 N.L.R.321), learned Counsel for the appellant contended that if there is a long

standing practice, which had continued for many years such practice should be given due recognition.

In **Boyagoda v Mendis** (Supra), a Five Judge Bench had considered the applicability of the time limit referred to in Section 754 of the Civil Procedure Code. In doing so, attention had been drawn to the practice of District Courts for many years and referring to the decision in **Babapulle v Domingo** ((1892) 2 C.L.R. 96), it was queried that,

“ . . . . whether where as here, an enactment concerning procedure has been acted upon for a long period of years, probably ever since the enactment came into force, in accordance with a construction, which has been accepted and recognized by judicial authority this Court should hold that a different construction ought now to be put upon the enactment.”

Having queried as aforesaid, the Court had decided that the practice that had continued for many years should be followed.

Taking into consideration the ratio of **Babapulle v Domingo** (Supra), it is to be noted that if there is a practice that has been in existence for a long period of time, which had been accepted and recognized by Court, such practice cannot be easily rejected or changed.

On a consideration of the above and the decision of this Court in **S.M. Samarakoon and S.M. Kularatne v M.S. Fajurdeen** (Supra) this appeal is allowed and the judgment of the Civil Appellate High Court dated 25.10.2011 is set aside.

The Civil Appellate High Court of Kegalle is directed to accept the Notice of Appeal and the Petition of Appeal filed of record and to proceed with the appeal.

There will be no costs.

Chief Justice

P.A. Ratnayaka, PC.,J.

I agree.

Judge of the Supreme Court

Priyasath Dep, PC., J.

I agree.

Judge of the Supreme Court