

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

*In the matter of an application for Leave to
Appeal under Section 31DD of the Industrial
Disputes Act No. 43 of 1950 (as amended)
from the final order dated 13th March 2020
of High Court of Colombo, in the application
bearing No. HC/ALT/06/2018*

SC/HC/LA/50/2020

High Court case No: HC/ALT/06/2018

Labour Tribunal case No: Add/1/34/2012

Kaluappu Hannadi Lalith Priyantha
58/5, Nellammahara Road,
Godagamuwa,
Maharagama.

APPLICANT

Vs.

Asia Broadcasting Corporation (Private) Limited
Level 35 and 37, East Tower,
World Trade Center,
Colombo 01.

RESPONDENT

AND BETWEEN

Asia Broadcasting Corporation (Private) Limited
Level 35 and 37, East Tower,
World Trade Center,
Colombo 01.

RESPONDENT-APPELLANT

Vs.

Kaluappu Hannadi Lalith Priyantha
58/5, Nellammahara Road,
Godagamuwa,
Maharagama.

APPLICANT-RESPONDENT

AND NOW BETWEEN

Asia Broadcasting Corporation (Private) Limited
Level 35 and 37, East Tower,
World Trade Center,
Colombo 01.

RESPONDENT-APPELLANT-PETITIONER

-Vs-

Kaluappu Hannadi Lalith Priyantha
58/5, Nellammahara Road,
Godagamuwa,
Maharagama.

APPLICANT-RESPONDENT-RESPONDENT

Before: P PADMAN SURASENA J

YASANTHA KODAGODA PC J

JANAK DE SILVA J

Counsel: Manoj Bandara with Thidas Herath and Ms. Thamali Wijekoon instructed by Sudath Perera Associates for the Respondent-Appellant-Petitioner.

Sanjeewa Ranaweera with Aruna de Silva instructed by Malaka Palliyaguruge for the Applicant-Respondent-Respondent

Argued on: 09 – 03 - 2021

Decided on: 07 - 07 - 2021

P Padman Surasena J

The Applicant-Respondent-Respondent, filed an application in the Labour Tribunal complaining that his service was unfairly terminated by the Respondent-Appellant-Petitioner. He accordingly sought reinstatement with back wages, promotions and other benefits or alternatively a reasonable compensation.

The learned President of the Labour Tribunal, after inquiry, delivered her order dated 03-01-2018, awarding compensation to the Applicant-Respondent-Respondent holding that the termination of the service of the Applicant-Respondent-Respondent was unjustifiable.

Aggrieved by the above decision, the Respondent-Appellant-Petitioner filed an appeal in the Provincial High Court of Western Province holden in Colombo.

The Provincial High Court, after argument of the said appeal, by its judgment dated 13-03-2020 affirmed the order of the learned President of the Labour Tribunal and dismissed the appeal subject to a cost of Rs. 10,000/= . The Provincial High Court held that it has no basis to interfere with the order of the Labour Tribunal.

Being aggrieved by the judgment of the Provincial High Court, the Respondent-Appellant-Petitioner, by his Petition dated 17-07-2020 seeks Leave to Appeal from this Court.

When this matter was taken up for support before this Court on 09-03-2021, the learned Counsel for the Applicant-Respondent-Respondent raised a preliminary objection against the maintainability of this application on the basis that the application of the Respondent-Appellant-Petitioner has been filed out of time provided by Rule 7 of the Supreme Court Rules. The said Rule reads as follows.

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

Thus, it was the submission of the learned Counsel for the Applicant-Respondent-Respondent that the instant application for leave to appeal was filed (on 17-07-2020), after the lapse of the stipulated period of six weeks from the date of the judgment against leave to appeal is sought. (i.e., as per Rule 7 of the Supreme Court Rules 1990).

The counter argument advanced by the learned counsel for the Respondent Appellant Petitioner is that Rule 7 of the Supreme Court Rules has no application to the instant application as it is an application for 'Leave to Appeal' from a judgment of the Provincial High Court. It is his position that Rule 7 only applies to applications for 'Special Leave to Appeal' from any judgment of the Court of Appeal.

Thus, the pivotal issue to be decided in this case at this point, is the question whether the period of six weeks prescribed in Rule 7 of the Supreme Court Rules 1990 applies to the instant application which is an application to seek leave to appeal to the Supreme Court, from a judgment of the Provincial High Court, filed under section 31 DD of the Industrial Disputes Act No. 43 of 1950 (as amended).

The rules of this Court presently in force is 'Supreme Court Rules 1990'. These Rules are set out in Gazette No. 665/32 dated 7th June 1991. In its wider scope, the Supreme Court Rules 1990 deals with procedures pertaining to several types of matters. These are categorized under four parts. Part I has three sections named A, B and C. Section

A in Part I deals with applications seeking Special Leave to Appeal to appeal from judgments of the Court of Appeal. Section B in Part I deals with instances where the Court of Appeal has granted Leave to Appeal.

Section C in Part I deals with all the other appeals. Rule 28 (1) which is found in this section (Section C in Part I) states thus;

*"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."*¹

As the instant application is an application filed under section 31 DD of the Industrial Disputes Act No. 43 of 1950 (as amended), to seek leave to appeal to Supreme Court from a judgment of the Provincial High Court, it is clear that it must fall under Section C in Part I which deals with the 'other appeals'. It cannot fall under section A in Part I as it is not an application seeking Special Leave to Appeal from a judgment of the Court of Appeal. It also cannot fall under section B in Part I as it is not an instance where the Court of Appeal has granted Leave to Appeal.

For the sake of completely producing the scheme of the Supreme Court Rules 1990, I would briefly set out the subjects dealt with, under the other parts as well, in the said rules. Part II of the Supreme Court Rules 1990 deals with the General Provisions Regarding Appeals and Applications. Part III of the said Rules deals with Stay of Proceedings. Newly added Part III A of the said Rules deals with Applications to which Public Officers are Respondents. Part IV of the said Rules deals with applications under Article 126 of the Constitution.

One must remember that at the time the Supreme Court promulgated the Supreme Court Rules 1990, Provincial High Court was not in existence. The Court of Appeal was the major channel through which the appeals came to the Supreme Court at that time. That was by way of Special Leave to Appeal Applications. That is the reason as to why the Supreme Court Rules 1990 was designed in that way.

¹ Emphasis added.

However, with the promulgation of the 13th Amendment to the Constitution which was certified on 14-11-1987, the Provincial High Courts with appellate powers were established in the country. It was thereafter, that the Parliament enacted High Court of Provinces (Special Provisions) Act No. 19 of 1990 and then Act No. 54 of 2006 which enabled the Provincial High Court to hear Appeals from the lower Courts. It was those two Acts which enabled any party aggrieved by a judgment pronounced by the Provincial High Court exercising its appellate jurisdiction, to appeal to the Supreme Court after obtaining leave. As the Supreme Court has not made any specific rules to regulate this category of appeals, these appeals would fall under the category of 'other appeals' in the existing Supreme Court Rules 1990.

However, one will not observe any specific time limit for preferring appeals under Section C in Part I which deals with this category, namely 'other appeals'. Despite the absence of any rule prescribing the period within which an aggrieved party may prefer such an appeal to the Supreme Court, this Court on several occasions, has adopted the six weeks period mentioned in Rule 7 of the Supreme Court Rules 1990 as the time limit for such appeals. I would henceforth advert to some of those occasions.

Tea Small Factories Ltd. Vs Weragoda and another.² is an appeal filed in the Supreme Court challenging the validity of the judgment pronounced by the Provincial High court in the exercise of its appellate powers in respect of an order pronounced by the Labour Tribunal. One of the grounds upon which the relevant appeal before the Supreme Court was resisted, was the fact that the relevant Petition of Appeal in that case had been filed out of time. Thus, that was an instance where this Court had to decide the time limit within which such appeal should have been filed.

The learned Counsel who appeared for the 1st respondent in that case, relied on Rule 7 of the Supreme Court Rules 1990 and submitted that the application for special leave to appeal in that case was filed on 24.09.92, after the lapse of the period prescribed by the said rule, namely six weeks of the judgment in respect of which special leave to appeal was sought.

² 1994 (3) SLR 353.

The learned Counsel who appeared for the appellant in that case sought to counter the above argument stating; that Rule 7 relied upon by the respondent in that case, applies only to the applications for special leave to appeal from a judgment of the Court of Appeal; that the judgment which is the subject of the said appeal is a judgment of the High Court; that such appeals to the Supreme Court (specially provided by s.31 DD of the Industrial Disputes Act as amended by Act No. 32 of 1990) are governed by Rule 28 of the Supreme Court Rules; and that neither the section 31 DD nor Rule 28 of the Supreme Court Rules provides for the period within which an aggrieved party may appeal to the Supreme Court.

Although, neither the section 31 DD nor Rule 28 of the Supreme Court Rules provides for the period within which an aggrieved party may appeal to the Supreme Court, this Court applied the provisions in Rule 7 and proceeded to calculate 6 weeks from the date, the Provincial High Court pronounced the judgment impugned in that appeal. Thus, despite the presence of the phrase "... within six weeks of the order, judgement, decree or sentence of the Court of Appeal³..." in Rule 7, this Court chose to apply the provisions in Rule 7 to the said appeal which is an appeal filed against the judgment pronounced by the Provincial High court.

In the case of Mahaweli Authority of Sri Lanka Vs United Agency Construction (Pvt) Ltd.⁴ the relevant arbitral award had been made in favour of the respondent in that case. The said respondent therefore applied to the High Court for enforcement of the said arbitral award. The High Court allowed the enforcement of the arbitral award. The Petitioner in that application then made the application seeking leave to appeal to appeal to the Supreme Court against the order of the High Court allowing the enforcement of the arbitral award.

The Respondent in that application raised a preliminary objection to the maintainability of that application on the basis that the said application had been filed out of time prescribed by law. To counter the said preliminary objection, the petitioner in that case contended that the Supreme Court has not made any rules under section 43 of the Arbitration Act and therefore, there is no rule prescribing the period within which

³ Emphasis added.

⁴ 2002 (1) SLR 8.

an application for leave to appeal should be filed in the Supreme Court. He therefore contended that any such application for leave to appeal could be filed in the Supreme Court within a reasonable period and the Supreme Court should entertain such application.

Learned counsel for the Petitioner in that case further submitted that Rule 7 which only referred to applications for special leave from judgments or orders of the Court of Appeal had no applicability to applications for leave to appeal under section 37 (2) of the Arbitration Act.

His Lordship Justice Edussuriya, upholding the preliminary objection of time bar raised by the said respondent, stated as follows.

"The rules provide for a party seeking leave to appeal from a judgment or order of the Court of Appeal to the Supreme Court to apply to the Court of Appeal for such leave on a substantial question of law within twenty-one (21) days since the Court of Appeal must make an order on such an application within twenty-one days or as set out in the proviso to Rule 23 (5) and that if no order is made within that period the application for leave is deemed to have been refused.

According to the rules a party may apply directly to the Supreme Court for special leave to appeal within a period of forty-two (42) days of the judgment or order of the Court of Appeal. So that it is seen that in providing for a period of forty-two days for presenting an application for special leave the Supreme Court has allowed a party who has been unsuccessful in his application for leave to appeal in the Court of Appeal a further period of twenty-one days within which an application for special leave can be made.

In my view, the clear inference is that the Supreme Court in making the rules did not consider it necessary to go beyond a maximum of forty-two days for making an application for special leave to the Supreme Court. In deciding on these periods within which such applications for leave to appeal should be made we must necessarily conclude that the Supreme Court fixed such periods as it was of the view that such periods were reasonable having regard to all relevant circumstances, and also that the Supreme Court acted reasonably in doing so. In this context, also relevant, would be the question as to whether, in a situation where the appealable period from the Court

of Appeal to the Supreme Court is forty-two days, it is conceivable that the appealable period from the High Court to the Supreme Court should be longer? If so, by how many days?

For the above-mentioned reasons I hold that the period of fifty-five days from the date of the order of the High Court taken by the petitioner to file his application for leave to appeal cannot be considered to be a reasonable period and therefore uphold the preliminary objection raised by the learned counsel for the respondent. I, accordingly, reject this application for leave to appeal."

In George Steuart & Company Limited Vs. Lankem Tea and Rubber Plantation Ltd,⁵ the arbitral tribunal had made an award against the petitioner in that application. The respondent in that application applied to the High Court for enforcement of the said arbitral award under section 31 (1) of the Arbitration Act. The High Court held that the said respondent is entitled to recover the sum of money as awarded by the arbitral tribunal. The Petitioner in that application then sought leave to appeal to appeal to the Supreme Court against the order of the High Court allowing the enforcement of the arbitral award.

The Respondent in that application raised a preliminary objection to the maintainability of that application on the basis that the said application had been filed out of time prescribed by law. The learned President's Counsel who appeared for the respondent in that case relied on the decision in the case of Mahaweli Authority of Sri Lanka.⁶ The learned President's Counsel who appeared for the Petitioner in that case sought to argue that the said decision⁷ is a decision made per incuriam.

Her Ladyship Justice Shirani Bandaranayake in rejecting the argument of the learned President's Counsel for the Petitioner in that case, stated as follows.

"It is to be remembered that direct applications for leave to appeal from the High Court to the Supreme Court came in to being only after the 13th amendment to the Constitution was enacted providing for the establishment of High Courts of Provinces.

⁵ 2004 (1) SLR at page 246.

⁶ Supra.

⁷ The decision in the case of Mahaweli Authority of Sri Lanka.

Prior to the enactment of the Arbitration Act and the establishment of the High Courts of the Provinces, leave to appeal applications from the Court of Appeal to the Supreme Court followed the procedure laid down in terms of the Rules of the Supreme Court. Accordingly when a leave to appeal application is made to the Supreme Court, Rule 19(3) provides that it may be made in terms of Rule 7 of the Supreme Court Rules 1990. Rule 7 is in the following terms.

*"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 (emphasis added)."*

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 applications to the Supreme Court. Consequently such an application would have to be filed within 42 days from the date of the award."

Samantha Kumara Vs Manohari,⁸ is an instance where the Respondent in that application had claimed maintenance from the Appellant in that case, for the child born out of wedlock. The Magistrate had ordered the said Respondent to pay a sum of Rs. 750 per month as maintenance for the child. Being aggrieved by that order the appellant in that case, had appealed to the High Court under Article 154 P of the Constitution read with section 14 of the Maintenance Act No. 37 of 1999. The High Court had dismissed the appeal. The Appellant thereafter sought from the High Court, leave to appeal to the Supreme Court in terms of section 14(2) of Act No. 37 of 1999 read with section 9 of Act No. 19 of 1990. The High Court granted leave on 06.06.2005. After leave to appeal to the Supreme Court has been granted by the High Court on 06.06.2005 the appellant, on 13.06.2005, has filed a petition of appeal addressed to the Supreme Court in the Registry of the High Court. One of the preliminary objections raised by the Respondent in that case, is that the Petitioner in that case, after the High Court had granted leave, had not filed the petition of appeal within the time as per the Rules.

⁸ 2006 (2) SLR 57.

This Court applied the provision in Rule 7 of the Supreme Court Rules 1990, in holding that the 42 days is the time frame for an appeal to be filed when the High Court grants leave to appeal, in respect of a decision made by such High Court in an appeal preferred to it under the Maintenance Act.

His Lordship Justice Raja Fernando in his judgment stated as follows.

"The present Appeal is neither with special leave from the Supreme Court nor with leave of the Court of Appeal but with leave from the High Court. Therefore the instant appeal clearly falls into the category of other appeals and hence rules in Part 1C dealing with other appeals would apply.

The position of the Appellant that there are no rules governing appeals from the Provincial High Court to the Supreme Court is therefore incorrect.

An appeal to the Supreme Court from an order of the Provincial High Court can be either with the leave of the Provincial High Court or with special leave obtained from the Supreme Court upon a refusal of leave by the High Court.

If the appeal is with leave of the High Court, then Supreme Court rules under Part 1C (other appeals) shall apply; if the appeal is with special leave of the Supreme Court then Supreme Court rules under Part 1A (special leave to appeal) shall apply mutatis mutandis since Rule 2 relates to every application for special leave to appeal....."

As regards the procedure in the instant case the rules applicable to other Appeals in Part 1C of the Supreme Court rules shall apply.

A question arises in fixing the time within which the Appeal is to be filed in the Supreme Court for the reason that the Rules are silent on the matter.

*In determining the time for an aggrieved party to lodge an application for special leave to the Supreme Court where no time is fixed either in the statute or the rules; this Court has in the case of *Tea Small Holders Limited vs. Weragoda*⁹ and in the case of *Mahaweli Authority of Sri Lanka vs. United Agency Construction (Pvt.) Ltd.*¹⁰ held that the Petitioner should make his application within a reasonable time, and relying on*

⁹ Supra.

¹⁰ Supra.

the time period prescribed in the rules for similar applications has held that 42 days is reasonable time.

Following the same reasoning I am of the view that the time frame for a petitioner to file an appeal should be 42 days from the date leave to appeal is granted by the High Court."

The case of Priyanthi Chandrika Jinadasa Vs Pathma Hemamali and four others,¹¹ is an application for leave to appeal filed in this Court, seeking leave to appeal against a judgment of the Provincial High Court exercising civil appellate jurisdiction. The respondents in that case raised a preliminary objection to the maintainability of the case on the basis that the said application had been filed 06 weeks after the date of the impugned judgment.

The petitioner took up the position that the time limit of six weeks would not be applicable to that application since that is an application for leave to appeal from the judgment of the High Court. The petitioner contended that since there are no Rules specifying a time limit for applications for leave to appeal from the judgment of the Provincial High Courts exercising civil appellate jurisdiction, the concept that applications must be filed within 'a reasonable time' (as opposed to six weeks' time) must be adopted.

Having considered the relevant arguments, Her Ladyship Dr. Shirani Bandaranayake CJ stated the following, when holding that the said application falls under section C in Part I of Supreme Court Rules.

"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.

¹¹ 2011 (1) SLR 337.

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.”

Her Ladyship Dr. Shirani Bandaranayake CJ then proceeded to consider whether such an application must be filed within six weeks from the impugned judgment, as per Rule 7 of the Supreme Court Rules 1990. The following excerpt from Her Ladyship’s judgment would be relevant.

“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 refuses 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.”

In Karunawathie Wickremasinghe Samaranayake v Ranjani Warnakulasuriya,¹² the only question arose was whether that application which sought leave to appeal from a judgment of the Provincial High Court exercising civil appellate jurisdiction, had been lodged out of permissible time. This was because the respondent in that case raised a preliminary objection in regard to the maintainability of that case on the basis that the said application had not been filed within "06 weeks" (42 days) specified in Rule 7 of the Supreme Court Rules 1990.

The petitioner took up the position that the time limit of six weeks, specified in Rule 7, which is in Section A in Part I of the Supreme Court Rules 1990, has no application to an application seeking leave to appeal made under section 5 C (1) of the High Court of the Provinces (Special Provisions) Act No. 54 of 2006, as the Supreme Court has not made any rule dealing expressly with the time limit for applications for leave to appeal from the High Court of the Province exercising civil appellate jurisdiction.

His Lordship Justice Saleem Marsoof PC having referred to the relevant previous decisions of this Court, stated as follows.

"Accordingly in the light of the reasoning adopted in the aforementioned decisions of this Court, I am inclined to hold that an application for leave to appeal filed in the Supreme Court from an order of a High Court of the Province exercising civil jurisdiction has to be filed within six weeks of the pronouncement of the order or judgement appealed from, irrespective of whether it is considered to fall within Part I-A or Part I-C of the Supreme Court Rules."

In the case of Board of Investment of Sri Lanka Vs. Million Garment (Pvt) Ltd,¹³ the Supreme Court was called upon to decide on the time limit for filing applications for leave to appeal under Section 37(2) of the Arbitration Act. The learned counsel who appeared for the respondent in that case, raised a preliminary objection stating that the application for leave to appeal was time-barred as the judgment of the High Court was pronounced on 14th May 2012, and the application for leave to appeal was lodged in the registry of this Court on 26th June 2012 (on the forty-third day after the pronouncement of the impugned judgment). He therefore argued that the petitioner

¹² SC HC/CA/LA No. 137/2010, decided on 04-10-2012.

¹³ SC/HC/LA/58/2012, decided on 24-10-2014.

in that case had filed the said application for leave to appeal outside the time limit prescribed by law, for filing of such applications. His Lordship Justice Saleem Marsoof PC, having considered; firstly, the fact that section 37(2) of the Arbitration Act which confers the right to invoke the appellate jurisdiction of this Court by way of an application for leave to appeal, does not specify any time limit for the lodging of the application seeking leave to appeal; and secondly, the fact that no rules have so far been made by this Court in terms of Section 43(a) of the Arbitration Act prescribing any period of time within which any application for leave to appeal against any order, judgment or decree of the High Court may be lodged; stated as follows.

"...The application filed by the Petitioner is of course for leave to appeal against a decision of the High Court, and It is in these circumstances that learned President's Counsel for the Respondent has submitted that despite the absence of any express provision in the Arbitration Act or any rule made under Section 43(a) of the said Act, it would be reasonable to regard the six weeks period that is prescribed in Rule 7 of the Supreme Court Rules, 1990 for the filing of an application seeking special leave to appeal against an order or judgment of the Court of Appeal as being applicable to any application seeking leave to appeal under Section 37(2) of the Arbitration Act. Learned President's Counsel has referred to the decisions of this Court in Tea Small Factories Ltd. v Weragoda (1994) 3 SLR 353, Mahaweli Authority of Sri Lanka v United Agency Construction (2002) 1 SLR 8, George Stuart & Co. Ltd. v Lankem Tea & Rubber Plantations Ltd. (2004) 1 SLR 246 Priyanthi Chandrika Jinadasa v Pathma Hemamali (2011) 1 SLR 337, and Karunawathie Wickremesinghe Samaranayake v Ranjanie Warnakulasuriya SC HC/CA/LA No. 137/2010 SC Minutes of 4.10.2012 (unreported) in support of his submission that the application of the Petitioner in the instance case is time-barred."

Thus, in the instant case, notwithstanding the fact that the instant application for leave to appeal from the judgment of the Provincial High Court would come under section C in Part I namely 'Other Appeals', the provisions in Rule 7 of the Supreme Court Rules 1990 would apply to decide the time frame within which such an application must be filed before this Court.

The judgment, of the Provincial High Court in respect of which leave to appeal is sought, was delivered on 13-03-2020. The instant application seeking leave to appeal

from the said judgment of the Provincial High Court, has been filed on 17-07-2020. However, as per the Supreme Court (Temporary Provisions) Rules 2020,¹⁴ the period beginning from 16-03-2020 and ending on 18-05- 2020 shall not be taken into account in computing the period of six weeks referred to in the afore-said rule 7. Accordingly, when the period from 16-03-2020 to 18-05-2020 is excluded, the Respondent-Appellant-Petitioner has filed the instant application on the 62nd day from the date of the judgment of the Provincial High Court in respect of which leave to appeal is sought. Thus, the submission of the learned Counsel for the Applicant-Respondent-Respondent that the instant application for leave to appeal has been filed after the lapse of the stipulated period of six weeks, from the date of the judgment is entitled to succeed.

Therefore, I uphold the Preliminary Objection raised by the learned Counsel for the Applicant-Respondent-Respondent. I refuse the application seeking leave to appeal. The application must stand dismissed.

JUDGE OF THE SUPREME COURT

YASANTHA KODAGODA PC J

I agree,

JUDGE OF THE SUPREME COURT

JANAK DE SILVA J

I agree,

JUDGE OF THE SUPREME COURT

¹⁴ Published in the Gazette Extraordinary No. 2174/4, dated 06-05-2020.