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

In the matter of an application for Appeal against the Judgment dated 30.05.2018 in the Court of Appeal Case No. 765/2000(F) in terms of Article 128 of the Constitution and Section 754(4) of the Civil Procedure Code.

**S.C. Appeal No. 74/2019**
SC/SPL/LA No.201/2018
C.A. No. 765/2000(F)
D.C. Pugoda 02 No. RE/31777L

Walimunidewage Indrasena,
No. 23, Radawana Road,
Kirindiwela.

**Plaintiff**

**Vs.**

1. Walimuni Dewage Wijewardena,
   Raddalana, Welpalla.

2. Ganegodage Wijeratne,
   No. 23, Radawana Road,
   Kirindiwela.

**Defendants**

**AND BETWEEN**

1. Walimuni Dewage Wijewardena (Deceased),
   Raddalana, Welpalla.

**1st Defendant-Appellant (Deceased)**

1a(1). Piyadasa Dissanayake (Deceased),
No. 739, Sudarshana Mawatha,
Kelaniya.

1a(1)1. Thalagala Thilaka,
No. 739, Sudarshana Mawatha,
Kelaniya.

1a(1)2. Thalagala Thilaka,
No. 739, Sudarshana Mawatha,
Kelaniya.

1a(1)3. Shamith Nirashan,
No. 739, Sudarshana Mawatha,
Kelaniya.

1a(1)4. Chandima Subashini Kanchana Dissanayake,
No. 739, Sudarshana Mawatha,
Kelaniya.

1a(2). Abeyratne Dissanayake,
No. 2/B, Hiswella, Kirindiwela.

**Substituted 1st Defendant-Appellant**

2. Ganegoda Wijeratne,
No. 23, Radawana Road,
Kirindiwela.

**2nd Defendant-Appellant**

**Vs.**

Walimunidewage Indrasena,
No. 23, Radawana Road,
Kirindiwela.

**Plaintiff-Respondent**

**AND NOW BETWEEN**

Walimunidewage Indrasena,
No. 23, Radawana Road,
Kirindiwela.

**Plaintiff-Respondent-Appellant**

**Vs.**

1. Walimuni Dewage Wijewardena (Deceased),
   Raddalana, Welpalla.

**1st Defendant-Appellant-Respondent (Deceased)**

1a(1). Piyadasa Dissanayake (Deceased),
No. 739, Sudarshana Mawatha,
Kelaniya.

1a(1)1. Thalagala Thilaka,
No. 739, Sudarshana Mawatha,
Kelaniya.

1a(1)2. Thalagala Thilaka,
No. 739, Sudarshana Mawatha,
Kelaniya.

1a(1)3. Shamith Nirashan,
No. 739, Sudarshana Mawatha,
Kelaniya.

1a(1)4. Chandima Subashini Kanchana Dissanayake,
No. 739, Sudarshana Mawatha,
Kelaniya.

1a(2). Abeyratne Dissanayake,
No. 2/B, Hiswella, Kirindiwela.

**Substituted 1st Defendant-Appellant-Respondents**

2. Ganegoda Wijeratne,
No. 23, Radawana Road,
Kirindiwela.

**2nd Defendant-Appellant-Respondent**

**Before: L.T.B. Dehideniya, J.**
**Janak De Silva, J.**
**Arjuna Obeyesekere, J.**

**Counsel:**

Chula Bandara with Anuradha Dias for the Plaintiff-Respondent-Appellant

Jayantha Bandaranayake for the 1a(1)1 to 1a(1)4 and 2nd Defendant-Appellant-Respondents

**Written Submissions tendered on:**

11.06.2019 by the Plaintiff-Respondent-Appellant

05.07.2021 by the Defendant-Appellant-Respondents

**Argued on:** 29.07.2021

**Decided on:** 23.02.2022

**Janak De Silva, J.**

The Plaintiff-Respondent-Appellant (hereinafter referred to as "Appellant") instituted the above styled action against the Defendant-Appellant-Respondents (hereinafter referred to as "Respondents") in the District Court of Pugoda praying inter-alia for the ejectment of the Respondents from the corpus. After trial, the learned District Judge entered judgment as prayed for by the Appellant.

Aggrieved by the said judgment, the Respondents appealed to the Court of Appeal. In the arguments, the Appellant raised a preliminary objection that the Respondents' notice of appeal was filed out of time and therefore the appeal should be dismissed *in limine*. The objection was based on the fact that the date stamp on the notice of appeal indicated that it was filed on 07.09.2000 which is after a lapse of 3 days from the stipulated time limit to file a notice of appeal under the Civil Procedure Code.

The Court of Appeal by Order dated 30.05.2018 overruled the preliminary objection and held that although the date stamp on the notice of appeal indicated that it was filed out of time, a minute contained in journal entry No. 82 dated 08.09.2000 stated that, "අභියාචනා දැන්වීම නියමිත කාලය තුල භාරදී ඇත".

At the Appellant's request, this Court gave special leave to appeal the following questions of law:

"19.

II. Has His Lordship in the Court of Appeal erred in Law by holding that the impugned minute which is to the effect that the Notice of Appeal had been tendered within the stipulated time, confirms the possibility that the date stamp was put on the notice later, when there was no evidence whatsoever to suggest the same?

III. Has his Lordship in the Court of Appeal erred in Law by failing to recognize that the minute contained in journal entry No. 82 is a consequence of the erroneous calculation of the person who entered the minute, i.e. the subject clerk?

IV. Has his Lordship in the Court of Appeal erred in Law by holding that the erroneous minute contained in journal entry No. 82 confirms that the Notice of Appeal had been tendered within the stipulated time of 14 days without giving due regard to the material facts appearing in the proceedings?"

The parties do not contest that the notice of appeal should have been filed no later than 04.09.2000. The question is on what date it was actually filed in the District Court Registry. Although the date stamp of the District Court found on the notice of appeal indicates that it was received in the registry on 07.09.2000 at 2.00 p.m., the Court of Appeal held that the minute in journal entry No. 82 "*confirms the possibility that the date stamp was put on the notice later*".

Much reliance had been placed on the decision in *Nachchiduwa v. Mansoor* [(1995) 2 Sri. L. R. 273] and the Court of Appeal stated that the placing of the date stamp on the notice of appeal later, is a common occurrence in the original Courts. Applying the presumption set out in section 114(d) of the Evidence Ordinance, the Court of Appeal ruled that the notice of appeal was filed in a timely manner. Hence, I will begin by examining the scope and application of this presumption.

**Section 114(d) of the Evidence Ordinance**

Section 114 of the Evidence Act reads:

> *"The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business in their relation to the facts of the particular case."*

This presumption may be invoked by the Court only where it thinks that the existence of any fact is likely after having regard to the common course of natural events, human conduct, and public and private business in their relation to the facts of the particular case. The Court is not bound to apply the presumption in all cases. Its application depends on the facts and circumstances of each case. It is a rebuttable presumption.

Several illustrations of the application of the presumption have been provided and, for the purposes of this appeal, illustration(d) is relevant. It establishes that the presumption applies to judicial and official acts. Where appropriate, the Court may assume that judicial and official acts have been performed regularly. It is expressed by the Latin maxim, "*omnia praesumuntur rite et solemniter esse acta donec probetur in contrarium*", which may be shortened to "*omnia praesumuntur rite et solemniter esse acta*" or "*omnia praesumuntur rite esse acta*".

The filing of a notice of appeal by the Respondents is not a judicial or official act. As such the presumption in illustration (d) of section 114 of the Evidence Ordinance has no application to the act of filing of the notice of appeal by the Respondents.

Nevertheless, the Court of Appeal invoked that presumption on the basis of the entry in the journal entry No. 82. Section 92 of the Civil Procedure Code requires the Court to commence a journal in which shall be minuted, as they occur, all the events in the course of the action and each minute shall be signed and dated by the Judge, and the journal so kept shall be the principal record of the action.

This is a mandatory procedural requirement. As E. R. S. R. Coomaraswamy has stated in *The Law of Evidence* [Vol. II (Book 1)] at 414]:

> *"The presumption applies only to mandatory forms of procedure, since "regularly done" means "done with due regard to form and procedure". In the case of mandatory provisions of procedural law, in the absence of any evidence to the contrary, the court would presume that all rules and legal forms were complied with. But this presumption cannot be raised where the provision of the procedural law is not mandatory, but only enabling."*

Therefore, any events in the course of the action reflected in the journal entry may attract the presumption in section 114(d) of the Evidence Ordinance. In *S. Seebert Silva v. F. Aronona Silva and 4 others (*60 N.L.R. 272) it was held that the Court is entitled to presume that the journal entries made in a case in compliance with the requirements of section 92 of the Civil Procedure Code set out the sequence of events correctly.

However, in order for the presumption to apply, the journal entry must be made of an event as it occurred. That is what section 92 of the Civil Procedure Code calls for. The presumption cannot be applied to journal entries that do not comply with the requirements of section 92 of the Civil Procedure Code. In the present case, journal entry No. 82 simply states that the notice of appeal had been filed within the stipulated time. There is no journal entry as to when it was actually filed. Therefore, I am of the view that the Court of Appeal made a fundamental error in invoking the presumption in Section 114(d) of the Evidence Ordinance, to journal entry No. 82 to conclude that the notice of appeal had been filed within the stipulated time.

The Court of Appeal committed another fundamental error in relying on the presumption in the facts of the present case. The court record contained other direct evidence of the actual date of the filing of the notice of appeal which was overlooked by the Court of Appeal. In my view, presumptions should be invoked only when the court is deprived of any direct evidence on an important issue. Presumptions should not be relied on where there is direct evidence.

In this case, the District Court stamp on the notice of appeal states that it was received at the Registry on 07.09.2000 at 2:00 pm. However, the Court of Appeal disregarded it on the basis of journal entry No. 82 and the decision in *Nachchiduwa v. Mansoor* (supra) and concluded that the seal has been placed later. However, *Nachchiduwa v. Mansoor* (supra) concerned a case where the date stamp on the petition of appeal was placed when the petition of appeal was filed but the minute in the journal entry of its filing was made later. It was held there that the act of the registered attorney in tendering the petition of appeal to the Registrar and the act of the Registrar in placing the date stamp and his initials on the petition of appeal is what constitute a presentation of the petition of appeal and thus the petition of appeal had in fact been filed within the time. Hence, even in *Nachchiduwa v. Mansoor* (supra) the Court was guided by the date on the petition of appeal rather than the journal entry.

I am mindful that in *Seebert Silva v. Aronona Silva* (supra. 275) K. D. De Silva, J. held that the date-stamp on the plaint is by no means conclusive. Nevertheless, it is cogent evidence of the date on which the notice of appeal was filed. In fact, several other items of evidence in the court record supports the conclusion that the notice of appeal was in fact filed on 07.09.2000.

The motion by which the notice of appeal was filed is also dated 07.09.2000. This date was entered on the motion filed with the notice of appeal by the Respondents themselves. It reads:

> "වර්ෂ **2000**ක් වූ සැප්තැම්බර් මස **07** වෙනි දින ඉහත සඳහන් අභියාචනා දැන්වීම් පිටපත් පැමිණිලිකරුගේ නීතීඥ තැන වෙතද, පැමිණිලිකරු වෙතද ලියාපදිංචි තැපෑලෙන් යවා කුවිතාන්සි මේ සමඟ යා කර ඇත."

Moreover, the registered postal articles indicating that the notice of appeal has been given to the Respondents also bear the date 07.09.2000.

Thus, the irresistible conclusion, this Court can draw is that the minute contained in journal entry No. 82 is a consequence of the erroneous calculation of the person who entered the minute.

For all the foregoing reasons, I hold that the notice of appeal had been filed only on 07.09.2000 and hence is out of time. I answer all three questions of law in the affirmative and set aside the order of the Court of Appeal dated 30.05.2018.

I uphold the preliminary objection raised by the Appellant that the notice of appeal has been filed out of time. The appeal filed by the Respondents in the Court of Appeal is dismissed *in limine*.

The Appellant shall be entitled to his costs in this Court as well as in the Court of Appeal.

The Registrar is directed to take further action accordingly.

Appeal allowed.

**JUDGE OF THE SUPREME COURT**

**L.T.B. Dehideniya, J.**

I agree.

**JUDGE OF THE SUPREME COURT**

**Arjuna Obeyesekere, J.**

I agree.

**JUDGE OF THE SUPREME COURT**