

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

S.C. (Spl.) L.A. No. 335/2008

Court of Appeal No. 260/2003 (Writ)

Woodman Exports (Pvt.) Ltd.,
No. 7, Station Road,
Colombo 03.

Petitioner-Petitioner

Vs.

1. Commissioner-General of Labour,
Labour Secretariat,
Colombo 05.
2. M.N.S. Fernando,
Deputy Commissioner-General of Labour
(Termination Unit),
Labour Secretariat,
Colombo 05.
3. All Ceylon Commercial and Industrial Workers
Union,
No. 257, Union Place,
Colombo 02.
4. G. Keerthiratne,
Usgodella Watte,
Pannipitiya.

5. G. Ajith Kumara,
Sarasi Lane,
Thalpitiya North,
Wadduwa.
6. Thanuja Nishantha Silva,
No. 150, Punyananda Mawatha,
Digbadda,
Panadura.
7. W.G. Kamalawathi,
8. F.H. Madura H. Silva,
9. S.M.D.M.A.K. Senaratne,
10. N.D.C.I. Senanayake,
11. R.C. Lakpriya Fernando,
12. Basil Milton Silva,
13. P.L. Kamal Perera,
14. H. Nimal Ranjith de Silva,
15. G.C. Rupasinghe,
16. M.S. Asoka Silva,
17. K.P.M.D. Roshan Perera,
18. A. Somawathie de Silva,
19. P.D.R. Priyanjalie,
20. B.A.D. Wathsala,
21. Aruna Deva Ranasinghe,
22. K.M.P.J. Saman Silva,
23. L.Sathis Piyasiri Silva,

24. Nuwan Kumara Abeysinghe,
25. Kaumadhi A. Kandamulla,
26. Indika Aruna Kumara,
27. K.L. Sumith Somawansa,
28. R. Mendis Perera,
29. L.E.L.D.C. Senanayake,
30. B.K. Nirendra Fernando,
31. I.D. Thusith,
32. G.Ajith Perera,
33. P.S.P. Rodrigo,
34. H.A.C.P. Hettiarachchi,
35. M.B. Wanigasekera,
36. L.R. Milton Silva,
37. B.H. Sujith Peiris,
38. M. Ajith Rohana Ferdinando,
39. A.W. Tranchel.

Respondents-Respondents

BEFORE : Dr. Shirani A. Bandaranayake, J.
N.G. Amaratunga, J. &
Chandra Ekanayake, J.

COUNSEL : Romesh de Silva, PC., with Sugath Caldera for
Petitioner-Petitioner

N. Wigneswaran, SC, for 1st and 2nd Respondents-
Respondents

S. Sinnathamby with Srinath Perera for 3rd Respondent-
Respondent

ARGUED ON: 13.05.2010

WRITTEN SUBMISSIONS

TENDERED ON: Petitioner-Appellant : 15.06.2010
1st & 2nd Respondents-Respondents: 15.06.2010
3rd Respondent-Respondent : 12.07.2010

DECIDED ON: 13.12.2010

Dr. Shirani A. Bandaranayake, J.

This is an application for Special Leave to Appeal filed by the petitioner-petitioner (hereinafter referred to as the petitioner) from the judgment of the Court of Appeal dated 21.11.2008. By that judgment the Court of Appeal had dismissed the petitioner's application for the issue of a mandate in the nature of a writ of certiorari and/or mandamus. The petitioner came before this Court by way of a Special Leave to Appeal application.

When this matter was taken for support for Special Leave to Appeal, learned State Counsel for the 1st and 2nd respondents-respondents (hereinafter referred to as the 1st and 2nd respondents) took up the following preliminary objections.

1. the petitioner had failed and/or neglected to tender with his application such numbers of copies as is required for service on the respondents?
2. that the petitioner has failed to name the necessary parties to this application

and therefore the petitioner had failed to comply with Rules 8(3) and 8(5) of the Supreme Court Rules 1990.

Learned Counsel for the 3rd respondent-respondent (hereinafter referred to as the 3rd respondent), whilst agreeing with the aforementioned preliminary objections raised by the learned State Counsel for the 1st and 2nd respondents, also took up the following preliminary objection.

“The petitioner had failed to file an amended petition with the amended caption.”

At the stage of hearing learned Counsel for the 3rd respondent submitted that he would be relying on the preliminary objections raised by the learned State Counsel for the 1st and 2nd respondents. Accordingly the objections were taken up on the basis that the petitioner had not complied with Rules 8(3) and 8(5) of the Supreme Court Rules of 1990.

The said Rules 8(3) and 8(5) are as follows:

“8(3) - The petitioner shall tender with his application such number of notices as is required for service on the respondents and himself together with such number of copies of the documents referred to in sub-rule (1) of this rule as is required for service on the respondents. The petitioner shall enter in such notices the names and addresses of the parties and the name, address for service and telephone number of his instructing Attorney-at-law, if any, and the name, address and telephone number, if any of the Attorney-at-law, if any, who has been retained to appear for him at the hearing

of the application, and shall tender the required number of stamped addressed envelopes for the service of notice on the respondents by registered post. The petitioner shall forthwith notify the Registrar of any change in such particulars.

8(5) - The petitioner shall, not less than two weeks and not more than three weeks after the application has been lodged, attend at the Registry in order to verify that such notice has not been returned undelivered. If such notice has been returned undelivered, the petitioner shall furnish the correct address for the service of notice on such respondent. The Registrar shall thereupon dispatch a fresh notice by registered post, and may in addition dispatch another notice, with or without copies of the annexures, by ordinary post.”

Both Rules 8(3) and 8(5) are contained in Part I of the Supreme Court Rules 1990, which deals with Special Leave to Appeal applications. Considering the contents of the said Rules 8(3) and 8(5), it is quite obvious that the preliminary objections are raised only on the basis of the 1st ground, viz., that the petitioner had failed and/or neglected to tender with his application such number of copies as is required for service on the respondents.

Learned State Counsel for the 1st and 2nd respondents contended that the petitioner had not taken steps to tender the notices to the Registry of the Supreme Court for 5 months from the date of filing of the petition. Learned State Counsel further submitted that even after the Court had directed the petitioner to issue notice, the said notices were tendered nearly 2 months after the said direction of the Court.

Learned President's Counsel for the petitioner contended that the petition was filed on 23.12.2008 and thereafter on 20.03.2009, as the notices were not served, the Court had directed that the matter be supported with notice to the respondents. Learned President's Counsel for the petitioner therefore contended that on 14.05.2009, notices with documents were sent to the 1st to 6th respondents. Learned President's Counsel for the petitioner relied on the decision in **Nanayakkara v Kyoko Kyuma and two others** (S.C. (Spl.) L.A. No. 115/2008 – S.C. Minutes of 01.10.2009), where it had been stated that,

“Supreme Court Rules too should be interpreted in a comparable manner, wherever it permits, in order to avoid the said Rules too becoming a juggernaut car on the fast tract, that would leave a litigant maimed and broken on the road which leads to justice.”

Having stated the submissions made by both learned Senior State Counsel for the 1st and 2nd respondents and the learned President's Counsel for the petitioner, let me now turn to consider whether the petitioner had complied with Rules 8(3) and 8(5) of the Supreme Court Rules, 1990.

The Journal Entries of the original Record of this Court clearly indicate that the petitioner had filed this application for Special Leave to Appeal in the Supreme Court on 23.12.2008. Thereafter the petitioner, by way of his motion dated 22.01.2009, had tendered the document marked Y₅ and had moved to list the application for support. On 03.02.2009, the Registrar had made an entry stating that the notices had not been tendered. Thereafter on 20.03.2009, this application had been listed for support. On that day the Court had made the following order:

“Notices have not been given to the respondents in this matter. Court directs the petitioner to support this application with notice to the parties.

To be supported on 20.05.2009.”

Thereafter on 14.05.2009, it is noted that notices (with documents) had been sent by registered post to the 1st to 6th respondents. When the matter came up on the next date there had been no appearance for the respondents and on 25.05.2009 it is mentioned that the notices sent to the 4th and 6th respondents had been returned undelivered with the endorsement that “no such name at Pannipitiya” and “no such person”. The Registrar of the Supreme Court had taken steps to inform the Attorney-at-Law for the petitioner of this position in order to take necessary action, which had been carried out on 29.05.2009. Thereafter the petitioner by way of a motion dated 05.06.2009 had informed that the correct address of the 4th respondent is the address that was given in the Writ application, which was before the Court of Appeal and had requested that the notices to be dispatched to the said address. Notices were thereafter sent to the respondents on 09.06.2009. When this matter was taken up for support on 15.07.2009, learned State Counsel appeared for the 1st and 2nd respondents and there was no appearance for the other respondents. Learned State Counsel on that day had taken up the preliminary objection stating that no notices were tendered in terms of Supreme Court Rules to the Registry to be severed on the respondents and the matter was fixed for support to consider the said preliminary objection.

It is not disputed that the Special Leave to Appeal application was filed on 23.12.2008. It is also not disputed that the petitioner had dispatched the notices only on 14.05.2009.

Rule 7 of the Supreme Court Rules, 1990 refers to the mandatory requirement of making an application for Special Leave to Appeal within six weeks of the order, judgment, decree or sentence of the Court of Appeal on which Special Leave to Appeal is sought. Rule 8(3) of

the said Rules, specifies that along with the application for Special Leave to Appeal the petitioner shall tender such number of notices as is required for service on the respondents. Therefore in terms of Rule 8(3) of the Supreme Court Rules 1990, it is a mandatory requirement that notices be tendered along with the petitioner's application for Special Leave to Appeal. In terms of that requirement it is clear that the petitioner should have tendered the requisite notices on 23.12.2008.

This requirement referred to in Rule 8(3) of the Supreme Court Rules have been laid down for a specific purpose and such purpose is clearly illustrated in Rule 8(4), where it has been stated that when the petitioner has lodged his application for Special Leave to Appeal, the Registrar should insert in the said notices,

- a) the Supreme Court number allotted to the said application; and
- b) the date for hearing of that application.

The requirements that should be fulfilled by the petitioner regarding his application for Special Leave to Appeal are not limited to the above. In terms of Rule 8(5), the petitioner, not less than two weeks and not more than three weeks after the application for Special Leave to Appeal has been lodged, should attend at the Registry in order to verify that such notice has not been returned undelivered. In the event if such notice has been returned undelivered, the petitioner should furnish the correct address for the Registrar to dispatch a further notice by registered post on the respondents. The said requirements under Rule 8(5) clearly indicate that the petitioner should tender the notices on the day he filed the petition, and in the event there had been a situation where the notices were returned, then the petitioner should furnish the correct address for the service of notice on such respondent, within three weeks from the date of the filing of the application.

As stated earlier, the petitioner had tendered the relevant notices 4½ months after the filing of the petition for Special Leave to Appeal.

In **Samantha Niroshana v A.M.S.S. Abeyruwan nee Gunasekera** (S.C. (Spl.) L.A. Application No. 145/2006 – S.C. Minutes of 02.08.2007), the petitioners had filed 3 sets of notices **18 weeks** after the filing of the application for Special Leave to Appeal. This Court, after considering all the circumstances of that application, held that this was clear non-compliance with Rules 8(3) and 8(5) of the Supreme Court Rules. In **Samantha Niroshana** (supra) consideration was also given to the applicability of Rule 40 of Supreme Court Rules, 1990.

Rule 40 of the Supreme Court Rules, refers to both Rules 8(3) and 8(5) and spells out the procedure that should be followed in the event there is a need for a variation on an extension of time. The said Rule 40 reads as follows:

“An application for a variation, or an extension of time, in respect of the following matters shall not be entertained by the Registrar, but shall be submitted by him to a single judge nominated by the Chief Justice, in Chambers:

a) tendering notices as required by Rules 8(3) and 25(2);

....

d) furnishing the address of a respondent as required by Rules 8(5) and 27(3);

....”

Rule 40 of the Supreme Court Rules therefore specifically refers to the need for a petitioner to carefully follow the procedure laid down in Rules 8(3) and 8(5). If the petitioner needs for a variation or an extension of time for the purpose of tendering notices for service as required in Rule 8(3) or to furnish the correct address in terms of Rule

8(5), then it would be necessary to follow the procedure laid down in Rule 40 of Supreme Court Rules, 1990.

As stated earlier, the application for Special Leave to Appeal was filed on 23.12.2008 and notices had been sent to 1st to 6th respondents only on 14.05.2009. It is not disputed that during the period 23.12.2008 to 14.05.2009, none of the steps referred to in Rules 8(3), 8(5) and 40 had been carried out by the petitioner.

Thus on a careful consideration of all the aforementioned circumstances, it is obvious that there is clear non-compliance by the petitioner, not only with Rules 8(3) and 8(5), but also with Rule 40 of the supreme Court Rules.

As has been stated in **Samantha Niroshana** (supra) and in **A.H.M. Fowzie and two others v Vehicles Lanka (Pvt.) Ltd.** (S.C. (Spl.) L.A. Application No. 286/2007 – S.C. Minutes of 27.02.2008), I am quite mindful of the fact that mere technicalities should not be thrown in the way of the administration of justice. Furthermore, I am also mindful of what I had stated in **Nanayakkara V Kyoko Kyuma and two others** (supra) that the Supreme Court Rules should be interpreted in a comparable manner. Moreover, I am in respectful agreement with the observations made by Bonser, C.J., in **Wikramatillake v Marikar** ((1895) 2 N.L.R. 9) referring to Jessel, M.R., in **Re Chenwell** (8 Ch.D. 506) that,

“It is not the duty of a Judge to throw technical difficulties in the way of the administration of Justice, but when he sees that he is prevented receiving material or available evidence merely by reason of a technical objection, he ought to remove the technical objection out of the way upon proper terms as to costs and otherwise.”

Having referred to the above it was also stated in **Samantha Niroshana** (supra) and in **A.H.M. Fowzie and two others** (supra) that it has also to be borne in mind that the purpose of the Supreme Court Rules is to ensure that all parties are properly notified in order to give a hearing to all parties.

Accordingly as I had stated in **Samantha Niroshana** (supra) and **A.H.M. Fowzie and two others** (supra), an objection raised on the basis of non-compliance with a mandatory Rule such as Rule 8 of the Supreme Court Rules, 1990 cannot be considered as a mere technical objection.

It is thus apparent that the non-compliance with a mandatory Rule by a party could lead to serious erosion of well established Court procedures maintained by our Courts throughout several decades and therefore the failure to comply with Rule 8(3) of the Supreme Court Rules would necessarily be fatal.

A long line of cases of this Court had decided that non-compliance with Rule 8(3) would result in the dismissal of the application (**K. Reindran v K. Velusomasunderam** (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 Majbdeen 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 Senerath 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.** (S.C. (Spl.) L.A. Application No. 286/2007 – S.C. Minutes of 27.02.2008).

For the reasons aforesaid, I uphold the preliminary objection raised by the learned State Counsel for the 1st and 2nd respondents and dismiss the petitioner's application for Special Leave to Appeal for non-compliance with the Supreme Court Rules, 1990.

I make no order as to costs.

Judge of the Supreme Court

N.G. Amaratunga, J.

I agree.

Judge of the Supreme Court

Chandra Ekanayake, J.

I agree.

Judge of the Supreme Court