

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

SC/SPL/LA/40/2022

High Court of the Western
Province Holden at Colombo

Appeal No. MCA/24/2019

MC Colombo Case No.

50190/8/16

In the matter of an application
seeking Special Leave to Appeal
in terms of the provisions of
Section 14(2) of the
Maintenance Act No.37 of 1999.

Mallikarachchige Terashma

Rashmi Perera,

No.6/4,

3rd Lane, Nawala,

Rajagiriya.

Applicant.

Vs.

Nawalage Asanka Indrajith
Cooray,

No. 6/26,

3rd Lane, Nawala,

Rajagiriya.

Respondent.

AND BETWEEN

Mallikarachchige Terashma

Rashmi Perera,

No.6/4,

3rd Lane, Nawala,

Rajagiriya.

Applicant-Appellant

Vs.

Nawalage Asanka Indrajith

Cooray,

No. 6/26,

3rd Lane, Nawala,

Rajagiriya.

Respondent-Respondent

AND THEREAFTER BETWEEN

Nawalage Asanka Indrajith

Cooray,

No. 6/26,

3rd Lane, Nawala,

Rajagiriya.

**Respondent-Respondent-
Petitioner**

Vs.

Mallikarachchige Terashma

Rashmi Perera,

No.6/4,

3rd Lane, Nawala,

Rajagiriya.

Applicant-Appellant-Respondent

AND NOW BETWEEN

Nawalage Asanka Indrajith

Cooray,

No. 6/26,

3rd Lane, Nawala,

Rajagiriya.

**Respondent-Respondent-
Petitioner-Petitioner**

Vs.

Mallikarachchige Terashma

Rashmi Perera,

No.6/4,

3rd Lane, Nawala,

Rajagiriya.

**Applicant-Appellant-
Respondent- Respondent**

Before: Buwaneka Aluwihare, PC, J.

E. A. G. R Amarasekara, J.

Mahinda Samayawardhena, J.

Counsels: Aravinda Athurupana with Ms. Anurangi Singh instructed by Ms. Nadee

Dayaratne for the Petitioner.

Chathura Amarathunga instructed by Legal Aid Commission for the

Applicant-Appellant-Respondent- Respondent.

Argued on: 01/12/2022

Decided on:13/11/2023

E.A.G.R Amarasekara, J

When this Special Leave to Appeal application was taken up for support for the granting of special leave on 01.12.2022, learned counsel for the Applicant-Appellant-Respondent-Respondent (hereinafter referred to as the Applicant-Respondent) raised a preliminary objection that this application has been filed out of time. The said preliminary objection was based on the 'deeming provisions' found in Rule 20(2) and proviso to Rule 22(5) of the Supreme Court Rules found in part 1B of the Supreme Court Rules of 1990.

Parties made their oral submissions and this Court directed them to file their written submissions within 3 weeks thereof. However, as per the brief, it appears that only the Respondent-Respondent-Petitioner-Petitioner (hereinafter referred to as Respondent-Petitioner) has filed his written submissions within the time given for that purpose, and Applicant-Respondent who raised the preliminary objection has not filed her written submissions.

Facts behind this application can be briefly stated as follows:

1. The learned Additional Magistrate of Colombo on 16.01.2019 delivered the order dated 23.12.2018 dismissing the maintenance application of the Applicant-Respondent.
2. Being aggrieved by the said order, an appeal was made to the Colombo High Court by the Applicant-Respondent and after hearing the parties, the learned High Court Judge delivered her Judgment dated 08.10.2020 setting aside the order made by the learned Magistrate and ordered the Respondent Petitioner to pay Rs.25000/= per month as maintenance.

3. In terms of Section 14(2) of the Maintenance Act No.37 of 1997, Respondent-Petitioner filed a leave to appeal application to appeal to the Supreme Court before the High Court.
4. The learned High Court Judge of Colombo High Court No.02 refused to grant leave to appeal to this Court by his order dated 09.12.2021.
5. Being aggrieved by the said decisions of the High Court, this special leave to appeal application dated 19.01.2022 has been filed on 20.01.2022 by the Respondent-Petitioner.

Many decisions of this Court have stated that the said Supreme Court Rules have categorized appeals to the Supreme Court into 3 groups as mentioned below;

- **Part 1A**-Appeals with special leave obtained from the Supreme Court.
- **Part 1B**-Appeals with leave to appeal from the Court of Appeal.
- **Part 1C**-Other appeals from Court of Appeal, other Courts and Tribunals.

[with regard to the above, see **Samantha Kumara v Manohari (2006) 2 SLR 57, Sudath Rohana and Another v Mohammed Zeena and Another (2011) 2SLR 134, Priyanthi Chandrika Jinadasa v Pathma Hemamali and Others (2011) 1SLR 337, Asia Broadcasting Corporation (pvt) Ltd v Kaluappu Hannadi Lalith Priyantha (SC/HC/LA/50/2020 SCM of 07/07/2021)**]

In the aforesaid case of **Sudath Rohana and Another V Mohamed Zeena**, it has been held as follows;

'Part 1 of the Supreme Court Rules 1990, refers to three types of appeals which are dealt with by the Supreme Court, viz, special leave to appeal, leave to appeal and other appeals. Whilst applications for special leave to appeal are from the judgments of the Court of Appeal, the leave to appeal applications referred to in the Supreme Court Rules are instances, where the Court of Appeal had granted leave to appeal to the Supreme Court from any final order, judgment, decree or sentence of the Court of Appeal, where the Court had decided that it involves a substantial question of law. The other appeals referred to in section C of part 1 of the Supreme Court Rules are described in Rule 28(1), which is as follows:

*"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 added).'*

Thus, as per the above quoted paragraph, what is relevant to the application for appeals from the High Court is Part 1C of the said rules which contains only Rule 28 and as per Rule 28 (7), provisions of Rule 27 shall apply *mutatis mutandis* to such appeal.

However, in the case of **Samantha Kumara V Manohari** mentioned above, which was an application of appeal against the High Court Order of Dismissal of the appeal from the Magistrate

Court in terms of section 14(2) of the Maintenance Act No. 37 of 1999 read with section 9 of Act no. 19 of 1990 but with leave granted by the High Court, it was held;

“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 per the afore quoted paragraph, when the High Court grants leave, rules in Part 1C apply and if the High Court refuses leave, rules in Part 1A apply. It must be noted that the ‘deeming provisions’ relied upon by the Applicant Respondent in raising the preliminary objection are found in Part 1B of the Supreme Court Rules which applies to the appeals where leave to appeal to the Supreme Court is first sought in the Court of Appeal, and that Part has no application to the present application which emanates from the High Court. However, the said decision does not find any issue with filing an application in terms of section 14(2) in combination with the provisions in section 9 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990. Anyway, as per the said decision, rules in Part 1A apply and, as per Rule 7, the time limit to file an application is 6 weeks (42 days).

As said before, Rule 20(2) and Rule 22(5) of the Supreme Court Rules that contain ‘deeming provisions’ occur in Part 1B which expressly and specifically deal with appeals from the Court of Appeal where leave to appeal is first sought in the Court of Appeal.

The learned counsel for the Respondent-Petitioner in his written submissions has brought this Court’s attention to the fact that even though Sections 5 and 7 of the Act No.19 of 1990 have made written laws including rules applicable to the appeals from Magistrates Court, Primary Courts and Labour Tribunals filed in the Provincial High Courts and to the writ applications filed in the Provincial High Court respectively, there are no such specific statutory provisions that make Supreme Court Rules relevant to the Appeals from Court of Appeal to the Supreme Court applicable to the Appeals from the Provincial High Court to the Supreme Court.

It is pertinent to refer the relevant section 14(2) of the Maintenance Act No.37 of 1999 which is mentioned below;

(2) "Any person dissatisfied with an Order made by a High Court in the exercise of its appellate jurisdiction under this section, may prefer an appeal there from to the Supreme Court, on a question of law with the leave of the High Court, and where such leave is refused, with the Special Leave of Supreme Court, first had an obtained."

As per the said section, to file a special leave to appeal application in this Court, there is a pre-condition. First the leave to appeal to Supreme Court has to be refused by the High Court. Till that, time cannot start to run. Thus, in my view, said deeming provisions cannot override said statutory provision, even if they are considered as applicable for the sake of argument.

In the case of **Antony Fernando v Deepthi Lakmali (2012) 2 Sri LR 81**, Suresh Chandra J, after considering Section 14(2) of the Maintenance Act along with Section 9 of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990 and provisions of the Industrial Dispute Act No.43 of 1950 amended by Act No. 11 of 2003 relating to appeal to the Supreme Court from the High Court held that;

No direct application can be made to the Supreme Court in respect of an application for maintenance against the judgment of the High Court. Such an application should first be made to the High Court itself seeking leave to appeal to the Supreme Court and in the event of refusal of such application by the High Court, the Petitioner could seek leave to appeal from the Supreme Court.

It was further held *"that the maxim 'Generalia Specialibus Non Derogant', when applied to the present instance would also show that the general provisions for appeals from High Court to the Supreme Court as provided by Section 9 of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990 have no application when a special provision is made in a specific statute such as a provision in Section 14(2) of the Maintenance Act No.37 of 1999 which was also enacted after the introduction of the general provision in Act No. 19 of 1990."*

Due to the reasons given above, this Court cannot hold that the said deeming provisions in Part 1B of Supreme Court Rules applies to the present application.

Since provisions in part 1C of the said Supreme Court Rules are silent with regard to the time limit within which an appeal is to be filed, a question arises as to how one decides whether the application is time barred if Supreme Court Rules in Part 1C apply.

In this regard, following passage found in **Samantha Kumara v Manohari (2006) 2 SLR 57** is relevant.

*“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 statutes or the rules; this Court has in the case of **Tea Small Holders Ltd v Weragoda**¹ and in the case of **Mahaweli Authority of Sri Lanka v United Agency Corporation (Pvt) Ltd**² held that the petitioner should make his application within a reasonable time, and relying on the time period prescribed in the rules for similar applications has held that 42 days is reasonable time.”*

Thus, in the matter at hand, irrespective of whether Part 1A or 1C apply, the application should have been filed within 42 days from the refusal by the High Court to grant leave to appeal which was done on 09.12.2021. This application has been filed on 20.01.2022, thus within 42 days.

Therefore, the preliminary objection raised by the Applicant-Respondent is overruled and the application is fixed for support for special leave to appeal.

Judge of the Supreme Court

Buwaneka Aluwihare PC, J.

I agree

Judge of the Supreme Court

Mahinda Samayawardhena, J

I agree

Judge of the Supreme Court

¹ (1994) 3 Sri LR 353.

² (2002) 1 Sri LR 8.