

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

In the matter of an Application for leave
to Appeal in terms of Article 127 of the
Constitution to be read with Section 5(C)
of the High Court of the Provinces
(Special Provisions) Act No 10 of 1996
as amended by High Court of the
Provinces (Special Provisions)
(Amendment) Act No 54 of 2006.

SC/ HCCA/LA/ 445/2014

WP/HCCA/GHP/123/2009/F

DC Attanagalla 328 / L

Kahatapitiya Pathirennahalage Edward

Jayasinghe ,

Ihalagama,

Wevaldeniya.

Plaintiff

Vs.

Liyanage Sumudu Niroshan Siri Kumara,

No. 51/01, Pahalagama,

Wevaldeniya.

Defendants

AND

Liyanage Sumudu Niroshan Siri Kumara,

No. 51/01, Pahalagama,

Wevaldeniya.

Defendant Appellant

Kahatapitiya Pathirennahalage Edward

Jayasinghe ,

Ihalagama,

Wevaldeniya.

Plaintiff Respondents

AND NOW BETWEEN

Liyanage Sumudu Niroshan Siri Kumara,

No. 51/01, Pahalagama,

Wevaldeniya.

Defendant Appellant Petitioner

Vs.

Kahatapitiya Pathirennahalage Edward

Jayasinghe ,

Ihalagama,

Wevaldeniya.

Plaintiff Respondent- Respondent

BEFORE

: CHANDRA EKANAYAKE A/CJ.

UPALY ABEYRATHNE, J.

ANIL GOONARATNE, J.

COUNSEL : Palitha Ranatunga instructed by Gayani
Kasthuriarachchi for the Defendant
Appellant Petitioner

Vidura Gunarattne for the Plaintiff
Respondent-Respondent

SUPPORTED ON : 11.09.2015

WRITTEN SUBMISSION ON: 01.10.2015 (Defendant Appellant Petitioner)
01.10.2015 (Plaintiff Respondent
Respondent)

DECIDED ON : 29.03.2016

UPALY ABEYRATHNE, J.

The Plaintiff Respondent-Respondent (hereinafter referred to as the Respondent) instituted an action against the Defendant Appellant Petitioner (hereinafter referred to as the Petitioner) in the District Court of Attanagalla seeking a declaration of title that the Plaintiff and the co-owners referred to in the plaint are the sole owners of the land described in the schedule to the plaint. After trial the learned District Judge has delivered a judgment in favour of the Respondent. Being aggrieved by the said judgment the Petitioner appealed to the High Court of Civil Appeal of the Western Province holden at Gampaha and after hearing of the said appeal the High Court of Civil Appeal, by its judgment, affirmed the said judgment of the learned District Judge dated 13.10.2009 and

dismissed the appeal of the Petitioner with costs. This Application for Leave to Appeal is from the said judgment of the High Court of Civil Appeal of the Western Province holden at Gampaha dated 23.07.2014.

When this Application was taken up for support the learned counsel for the Respondent took up a preliminary objection that this leave to appeal application is out of time as it has not been filed within the time frame prescribed by Rule 07 of the Supreme Court Rules.

Both Counsel have filed their written submissions. According to the minutes dated 11.09.2015, the Counsel for the Petitioner has been directed by this Court to furnish a copy of an affidavit of the registered Attorney of the Petitioner dated 04.09.2014. In his written submission the learned counsel for the petitioner has stated that he had furnished the said affidavit dated 04th September 2014 together with the motion filed with the application for leave to appeal.

I reproduce bellow the paragraphs 03 and 04 of the said affidavit of Kasthuriarachchilage Gayani Kasthuriarachchi, Attorney At Law.

- “03. I was sent the Petition, Affidavit and the annexure marked P1 together with, to be filed with my appointment as an instructing Attorney At Law on 03rd September 2014 in the Registry of Supreme Court.
04. I was handed over the said documents without the proxy by the Petitioner of the leave to Appeal Application at 2.50 p.m. on 03rd September 2014 at the entrance of Supreme Court premises. And I had to obtain the signature of the Petitioner in the proxy and I immediately went to the stamp counter at about 2.55 p.m. and I had been waiting in the queue and I submitted the documents by 3.00.p.m. at the said counter. But accepting the Application for Leave to Appeal

was refused by the Officer at the said counter stating that they are closing the counter sharp at 3.00 p.m.”

Although the facts contained in said two paragraphs are contradicting each other, paragraph 04 clearly demonstrates lapse on the part of the Petitioner and also the Petitioner's failure to show due diligence in filing the application for leave to appeal in the Supreme Court within the prescribed period. It further demonstrates that said Attorney At Law was struggling at the last minute of the stipulated period of time granted for the filing of an application for leave to appeal in the Supreme Court, obtaining signatures, buying stamps and rushing to the stamp counter in order to line up in the queue at which time the counter was due to closed after day's work. In his petition the petitioner has not averred any compelling reason which led him to last minute performance preventing him giving instructions to his Attorney At Law to lodge the application for leave to appeal in the Supreme Court within the stipulated period of time.

It must be placed on record that all most all the citizens living in this Country are aware that the revenue collecting counters in the Government sector have to be closed at a particular time in order to facilitate the officers who are discharging duties at the counters to finalize their work and to balance the collection of revenue for the day and to put it in safe custody. Hence no one can attribute responsibility to officers at such revenue collecting counters for closing them at the scheduled time as required by finance regulations.

The Petitioner has admitted that his Application for Leave to Appeal was not filed within time as required by Rule 07 of the Supreme Court Rules 1990. Said Rule 07 of the Supreme Court Rules stipulates 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”. As it appears no doubt that compliance with the provisions contained in said Rule 07 is mandatory.

This court in several instances has expressed its firm view that an application for leave to appeal filed in the Supreme Court from an order or judgment of a High Court of the Province exercising civil jurisdiction has to be filed within six weeks of the pronouncement of the order or judgment appealed from. In the case of *Jamburegoda Gamage Laksman Jinadasa Vs. Pilitthu Wasam Gallage Pathma Hemamali and Others SC/HC/CALA/99/2008* SC minutes dated 07.07.2011 Dr. Shirani A. Bandaranayake CJ observed that (P. A. Ratnayake, P.C.,J. and Chandra Ekanayake, J. agreed) “The language used in Rule 07, clearly shows that the provisions laid down in the said Rule are mandatory and that an Application for leave for this Court should be made within six weeks of the order, judgment, decree or sentence of the court below of which leave is sought from the Supreme Court. In such circumstances it is apparent that it is imperative that the Application should be filed within the specified period of six (6) weeks.”

Following the dicta of the said case *Saleem Marsoof, J. in Karunawathie Wickramasinghe Samaranayake Vs. Ranjani Warnakulasuriya SC/HC/CALA/137/10* SC minutes dated 04.10.2012, held that (N. G. Amaratunga, J. and C. Ekanayake, J. agreed) “ 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 (6) weeks of the pronouncement of the order or judgment from, irrespective of whether it is considered to fall within part 1A or part 1C of the Supreme Court Rules.”

In the light of the said premise I have no hesitation in reaching to the conclusion that the Petitioner has failed to file the present application for leave to appeal within the stipulated period of time under Rule 07 of the Supreme Court Rules 1990 which is mandatory. For the foregoing reason I am not inclined to grant leave. I uphold the said preliminary objection raised by the Counsel for the Respondent and refuse granting leave to appeal and dismiss the said application for leave to appeal with costs.

Application for leave to appeal dismissed.

Judge of the Supreme Court

CHANDRA EKANAYAKE, J.

I agree.

Judge of the Supreme Court

ANIL GOONARATNE, J.

I agree.

Judge of the Supreme Court