

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

The Attorney General
Attorney General's Department
Hulftsdorp, Colombo 12

Defendant-Appellant-Petitioner

**S.C.Case No.SC/HCCA/LA/
No.492/14
Civil Appeal High Court Case
No.WP/HCCA/COL/134/2006(F)
D.C.Colombo Case No.11619/MR**

Vs.

Ulviti Gamage Dhanapala
No.32, Galhena Road
Gangodawila, Nugegoda

Plaintiff-Respondent-Respondent

BEFORE : **SISIRA J.DE.ABREW, J.
ABEYRATNE, J.
K.T.CHITRASIRI, J.**

COUNSEL : Sobitha Rajakaruna, D.S.G.for the Defendant-Appellant-
Petitioner

Gamini Premathilake for the Plaintiff-Respondent-
Respondent

ARGUED ON : 22.06.2016

ORDER ON : 09.08.2016

CHITRASIRI, J.

When this matter was supported on 24.3.2016 for granting of leave in order to decide whether or not this application could be proceeded with, learned Counsel for the plaintiff-respondent-respondent brought to the notice of Court that he has raised three preliminary objections by way of a motion. Those objections are found in the document dated 05.06.2015 which is filed of record and those are as follows:

- 1) Petition of appeal was filed outside the time limit permitted by the Supreme Court Rules 1990.
- 2) The caption in the petition filed in this Court is worded incorrectly by having mentioned it as “**special leave to appeal**” whereas no such **special leave** is required in an appeal filed in terms of the High Court of the Provinces (Special Provisions) [Amendment] Act No.54 of 2006.
- 3) No affidavit been filed with the petition of appeal that was lodged by the defendant-appellant-petitioner.

Learned Deputy Solicitor General submitted that the impugned judgment had been delivered on 22.8.2014 and the petition of appeal was filed on 02.10.2014. Upon a careful consideration of those dates on which the impugned judgment was pronounced and the petition of appeal was filed, it was found that the petition of appeal had been filed within the time limit referred to in the relevant Supreme Court Rules.

The objection as to the wordings in the caption of the petition of appeal also was considered by this Court. Consequently, Court observed that no prejudice had been caused to the petitioner when the words “special leave” is mentioned in the caption to the petition, instead of the words “leave to appeal”. Accordingly, learned Counsel for the petitioner did not pursue the aforesaid first two preliminary objections that he has taken up at the commencement of the argument. Hence, the learned Counsel for the petitioner restricted his objection as to the non-filing of an affidavit along with the petition of appeal filed on 22.10.2014.

The procedure that should be adopted when filing appeals to the Supreme Court is stipulated in “The Supreme Court Rules 1990” which were published in the Government Gazette [Extraordinary No.665/32 dated 7.6.1971. The Rules relevant to the issue at hand are contained in four different Parts found therein. In Part (1) of those Rules, three types of appeals are being mentioned and once again those are categorized into three parts. Those 3 Parts come under the headings A, B and C. Rules under the heading “A” describes the manner in which “special leave to appeal” applications are to be filed. Rules under the heading “B” refer to “leave to appeal” applications. Matters under the heading “C” stipulates the procedure in relation to “other appeals” than the appeals referred to under the headings “A” and “B”.

Applicability of the aforesaid Rules found in part (1) of the Supreme Court Rules 1990, had been discussed in the case of **I.M.G.Illankoon vs. Anula Kumarihamy [S.C.H.C. C.A.L.A.277/11 S.C.Minutes dated 5.4.2013]** In that decision, Sripavan,J (as he then was) has held that an application for leave to appeal from a judgment of the Civil Appellate High Courts established under the Act No.54 of 2006 would fall within Section C of part 1 of the aforesaid Supreme Court Rules 1990. In coming to the said conclusion His Lordship has relied on the decision in L.A.Sudath Rohana and another Vs. Mohamed Cassim Mohemmed Zeena. [S.C.H.C. C.A.L.A No.111/2010 S.C. Minutes of 14.07.2010] In that case Dr.Shirani A. Bandaranayaka J. [as she was then] has held thus:

“Part I 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 I 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).

The High Court of the Provinces (Special Provisions) Act No.19 of 1990 and High Court of the Provinces (Special Provisions) Amendment Act No.54 of 2006 do not contain any provisions contrary to Rule 28(1) of the Supreme Court Rules, 1990 thus enabling the fact that Section C of Part I of the Supreme Court Rules, which deals with other appeals to the Supreme Court, should apply to the appeals from the High Courts of the Provinces.”

In the circumstances, it is abundantly clear that the Rules applicable when filling appeals under and in terms of the provisions contained in the High Court of the Provinces (Special Provisions) Amendment Act No.54 of 2006 are the Rules found under the heading “C” in Part (1) of the Supreme Court Rules 1990 published in the Gazette Extraordinary No.665/32 dated 07.06.1971.

Admittedly, this application is neither an application for “special leave to appeal” nor an application for “leave to appeal” referred to under the headings “A” and “B” in Part (1) of the Supreme Court Rules 1990. Therefore, as decided in the two decisions referred to hereinbefore, Rules applicable to this instant appeal are the Rules referred to under the heading “C” in part (1) of the Supreme Court Rules 1990. Hence the applicable Rules in this instance are the Rule 28(1) and Rule 28(3) of the aforesaid Supreme Court Rules 1990.

Rule 28(1) reads 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.”

Important Rule is the Rule 28(3) and it reads as follows:

“The Appellant shall tender with his petition of appeal a notice of appeal in the prescribed form, together with such number of copies of the petition of appeal and the notice of appeal as is required for service on the respondents and himself, and three additional copies, and shall also tender the required number of stamped addressed envelopes for the service of notice on the respondents by registered post.”

Aforesaid Rule 28(3) requires an appellant to file the petition of appeal and the notice of appeal in the prescribed form with sufficient number of copies to be served on the respondents. **The aforesaid Rule 28(3) does not mention of a requirement of filing an affidavit along with the petition of appeal.** In this instance, the petitioner by the motion dated 2.10.2014 has tendered the petition of appeal together with the notice of appeal and the duly made appointment of an Attorney-at-law to act on his behalf.

In the circumstances, it is clear that it is not necessary for an appellant to file an affidavit along with a petition of appeal when leave to appeal is filed against a judgment, decree or order pronounced or entered by a High Court established under Article 154P of the Constitution when exercising its jurisdiction granted in terms of the High Court of the Province [Special Provisions] (Amendment Act) No.54 of 2006.

For the aforesaid reasons preliminary objection raised by the learned Counsel for the respondent is rejected. This matter is to be supported on a future date to consider granting of leave and to take necessary action thereafter.

JUDGE OF THE SUPREME COURT

SISIRA J.DE.ABREW, J.

I agree

JUDGE OF THE SUPREME COURT

ABEYRATNE, J.

I agree

JUDGE OF THE SUPREME COURT