

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

In the matter of an application  
for Special Leave to Appeal  
under Article 128 of the  
Constitution

SC Appeal 99/2014  
SC Special L.A No. 199/2012  
CA No. 169/2006  
DC Mawanella No.635/L

Sinna Lebbe Saliya Umma of  
Mawana, Mawanella.

**PLAINTIFF**

**-Vs-**

Shahul Hameed Mohammed  
Yaseen of No. 129/2,  
Courts Road, Marawa,  
Mawanella.

**DEFENDANT**

**Between**

Sinna Lebbe Saliya Umma of  
Mawana, Mawanella.

**PLAINTIFF- PETITIONER**

**-Vs-**

1. Shahul Hameed Mohammed  
Yaseen of No. 129/2,  
Courts Road, Marawa,  
Mawanella.

**DEFENDANT- RESPONDENT**

2. Zainul Abdeen Mohammed  
Naufer of No. 40A,  
Kandy Road, Mawanella.
3. Mohammed Saly Mohammed  
Musthafa of No. 74,  
Hemmathagama Road,  
Mawanella.

**RESPONDENTS**

**And Between**

3. Mohammed Saly Mohammed  
Musthafa of No. 74,  
Hemmathagama Road,  
Mawanella.

**3<sup>rd</sup> RESPONDENT**  
**PETITIONER**

**-Vs-**

Sinna Lebbe Saliya Umma of  
Mawana, Mawanella.

**PLAINTIFF-PETITIONER-**  
**RESPONDENT**

1. Shahul Hameed Mohammed  
Yaseen of No. 129/2,  
Courts Road, Marawa,  
Mawanella.

**DEFENDANT-**  
**RESPONDENT-**  
**RESPONDENT**

2. Zainul Abdeen Mohammed  
Naufer of No. 40A,  
Kandy Road, Mawanella.

**2<sup>ND</sup> RESPONDENT-**  
**RESPONDENT**

**And Now Between**

Sinna Lebbe Saliya Umma of  
Mawana, Mawanella.

**PLAINTIFF-PETITIONER-**  
**RESPONDENT-**  
**APPELLANT**

**-Vs-**

1. Shahul Hameed Mohammed  
Yaseen of No. 129/2,  
Courts Road, Marawa,  
Mawanella.

**DEFENDANT- RESPONDENT-  
RESPONDENT-RESPONDENT**

2. Zainul Abdeen Mohammed  
Naufer of No. 40A,  
Kandy Road, Mawanella.

**2<sup>ND</sup> RESPONDENT-  
RESPONDENT-  
RESPONDENT**

3. Mohammed Saly Mohammed  
Musthafa of No. 74,  
Hemmathagama Road,  
Mawanella.  
(Deceased)

- 3.(a) Mohammed Musthafa  
Mohammed Manazeer,  
3. (b) Mohammed Musthafa Fathima  
Nusrath,  
3.(c) Mohammed Musthafa Farhan,  
3. (d) Mohammed Musthafa Rasman  
Ahmad,  
All of No. 74, Hemmathagama  
Road, Mawanella

**SUBSTITUTED 3A to 3D  
RESPONDENT-  
PETITIONER-  
RESPONDENT**

Before: Priyantha Jayawardena, PC, J  
K.T Chitrasiri, J  
Vijith K. Malalgoda, PC, J

Counsel: S. N Vijithsingh with R.S Serasinghe for the Plaintiff- Petitioner- Respondent-  
Appellant  
M. S. A Saheed with A. M Hussain for the 3<sup>rd</sup> Respondent- Petitioner-  
Respondent.

Argued on : 12<sup>th</sup> February, 2018

Decided on : 4<sup>th</sup> April, 2018

**Priyantha Jayawardena PC, J**

This is an appeal filed against the judgment of the Court of Appeal dated 7<sup>th</sup> August, 2012 setting aside the order of the learned Judge of the District Court of Mawanella dated 27<sup>th</sup> April, 2006.

The Plaintiff-Petitioner-Respondent-Appellant (hereinafter referred to as ‘the Plaintiff’) instituted an action in the District Court against the Defendant-Respondent-Respondent-Respondent (hereinafter referred to as ‘the Defendant’) to have a deed of transfer declared void and sought the ejectment of the Defendant from the premises. The said Court granted the reliefs as prayed for in the Plaint.

Thereafter, the Plaintiff made an application to the said court for the execution of the decree to eject the Defendant from the said premises and accordingly a writ was issued. When the Fiscal proceeded to the said premises to execute the said writ on 19<sup>th</sup> September, 2005, he was resisted by the 3<sup>rd</sup> Respondent- Petitioner-Respondent and the 2<sup>nd</sup> Respondent-Respondent-Respondent (hereinafter referred to collectively as ‘the Respondents’) claiming to be the owner and the tenant/lessee of the said premises, respectively.

Thereafter, on 20<sup>th</sup> October, 2005, the Plaintiff made an application to the District Court in terms of Section 325(1) of the Civil Procedure Code seeking, *inter alia*, an order to add the said Respondents as parties to the application, and to re-issue the writ and fix it for inquiry. The court ordered the issuance of notices on the said Respondents.

At the inquiry, the said Respondents raised a preliminary objection stating that the application of the said Plaintiff had been filed out of time, and thus, cannot be maintained. The learned District Court Judge, by Order dated 27<sup>th</sup> April, 2006 overruled the said preliminary objection of the said Respondents stating that the time frame stipulated by Section 325(1) of the Civil Procedure Code is not a mandatory requirement because of the word “may” used in the said section.

Being aggrieved by the said Order, the said 3<sup>rd</sup> Respondent preferred an appeal to the Court of Appeal and the said Court by its Judgment dated 7<sup>th</sup> August, 2012 allowed the said Appeal.

The Court of Appeal held that the learned Judge of the District Court had erred in law by not upholding the objection of the Respondents and that the Plaintiff's application which was filed on 20<sup>th</sup> October, 2005, under of Section 325(1) of the Civil Procedure Code, was out of time, as the stipulated time period in the instant application was to be computed from 19<sup>th</sup> September and expired on 19<sup>th</sup> October.

Being aggrieved by the said Judgment of the Court of Appeal, the Plaintiff sought leave to appeal from this court and the leave was granted on the following question of law:

*“Whether the Court of Appeal erred in law by not applying Section 14(a) of the Interpretation Ordinance to the facts of this case in as much as Section 325 of the Civil Procedure Code which specifically uses the word “from” to express the one month [time period] from the obstruction or resistance?”*

Notwithstanding the fact that the notices were sent to the Defendant and the 2<sup>nd</sup> Respondent, only the Plaintiff and the 3<sup>rd</sup> Respondent appeared in this Court. The 3<sup>rd</sup> Respondent died during the pendency of the instant application and his heirs were substituted in place and room (hereinafter referred to as the ‘substituted Respondents’).

#### Submissions by the Plaintiff

The Plaintiff submitted that in terms of Section 14(a) of the Interpretation Ordinance No. 21 of 1901 as amended (hereinafter referred to as ‘the Interpretation Ordinance’), the use of the word “from” by the Legislature means that the first day of a series of days has to be excluded; therefore, when calculating the one month period, the date of resistance must be excluded from the computation. Accordingly, the Plaintiff contended that when calculating the one month period in the instant appeal, the date of resistance i.e. 19<sup>th</sup> September, 2005 must be excluded and time runs from 20<sup>th</sup> September, 2005.

The Plaintiff further submitted that Section 2(o) of the Interpretation Ordinance defines a month as “a calendar month, unless words be added showing lunar months to be intended”. As such, after excluding the date of resistance, the calendar month in this application commences from 20<sup>th</sup> September, 2005. Therefore, the date on which the application was filed i.e. 20<sup>th</sup> October, 2005 falls within the prescribed time.

The Plaintiff further submitted that the word “within” used in Section 325(1) allows anyone to file an application on the numerically corresponding day of the next month.

The Plaintiff referred to the following judgments in support of her argument. In *Silva v Upasena* SC/FR Application No. 472/96 Supreme Court Minutes, it was observed that one month should be computed from 30<sup>th</sup> April to 30<sup>th</sup> May with regard to Article 126 of the Constitution which states that fundamental rights applications must be filed within one month of the date of violation. Further, in *Hewakuruppu v Tea Commissioner* SC/FR Application No. 118/84 Supreme Court Minutes, it was held that if the violation occurred on 13<sup>th</sup> July, 1984, the application ought to have made on or before 13<sup>th</sup> August, 1984.

#### Submissions by the substituted Respondents

The said Respondents submitted that when the word “within” is used, the relevant papers must be filed in court before the stipulated time period lapses and it is not possible to file an application on the last day.

The Respondents relied on the case of *Hare v Gocher* (1962) 2 QB 641 wherein it was held:

“From that same point of time there is to be calculated for the purpose of Section 14 of the [Caravan Sites and Control of Development Act of 1960], a period of two months beginning with August 29<sup>th</sup>, 1960 and it appears to me, and I would hold, that such a period expired at midnight on October 28, 1960. Accordingly, hard as it may be for the Defendant, he was 12 hours late when he delivered his application at noon on the following day, October 29<sup>th</sup>, 1960”.

The Respondents further submitted that according to the above authority and the definition given to the word “month” in Webster’s Collegiate Dictionary 10<sup>th</sup> Edition, a calendar month consists of 30 days. When the said definition is applied, the instant application which was filed on 20<sup>th</sup> October, 2005 is out of time by one day as the one month period expired at midnight on 19<sup>th</sup> October, 2005. Therefore, even if the contention of the Plaintiff is accepted by Court, her application is still out of time by one day.

Further, the word “from” used in Section 325(1) of the Civil Procedure Code does not exclude the day of resistance.

**Did the Plaintiff file her application within the prescribed period?**

The question of law that needs to be considered in this appeal is whether, in terms of Section 325(1) of the Civil Procedure Code, the Plaintiff had made an application to the District Court within the stipulated time.

Section 325(1) of the Civil Procedure Code states thus:

“ Where in the execution of a decree for the possession of movable or immovable property the Fiscal is resisted or obstructed by the Judgment-Debtor or any other person, or where after the officer has delivered possession, the judgement-creditor is hindered or ousted by the judgement-debtor or any other person in taking complete and effectual possession thereof, and in the case of immovable property, where the judgment-creditor has been so hindered or ousted within a period of one year and one day, the judgment- creditor may at any time within one month from the date of such resistance or obstruction or hindering or ousting complain thereof to the court by a Petition.....” [Emphasis added]

Hence, Section 325(1) requires a Petition to be filed within one month from the date of resistance or similar act.

In the instant case, the Fiscal was resisted from executing the writ on 19<sup>th</sup> September, 2005 and the application was filed on 20<sup>th</sup> October, 2005. Therefore, this court is called upon to decide whether the application filed on 20<sup>th</sup> October 2005, is out of time in terms of Section 325(1).

At the time of the hearing, the parties made submissions on the following words in the said section and invited the court to interpret the same:

- a. “within”;
- b. “one-month”; and,
- c. “from the date of resistance”.

Therefore, this court is now called upon to consider the words “within one month from the date of resistance” referred to in Section 325 of the Civil Procedure Code in order to ascertain whether the application was filed within the stipulated time.

## **Effect of the word “within”**

Maxwell on The Interpretation of Statutes, 12<sup>th</sup> Ed, page 309 states:

“Where the statute prescribes some period of days or weeks or months or years within which some act has to be done, although the computation of the period in every case depends on the intention of Parliament as gathered from the statute, generally the first day of the period will be excluded from the reckoning, and consequently the last day will be included.

A complaint under Section 14 of the Cruelty to Animals Act No.1849, U.K. had to be made ‘within one calendar month after the cause of the complaint shall arise.’ It was held that an information preferred on June 30, 1891 alleging ill-treatment of a certain sheep on the preceding May 30 was laid in time (*Radcliffe v Bartholomew* [1892] 1 QB 161).”

Venkataramaiya’s Law Lexicon with Legal Maxims. 2<sup>nd</sup> Ed, Vol 4 states as follows:

“The word ‘within’ whether legal or otherwise, can only mean at any time before the fixed date. The word ‘within’ means ‘on or before’.”

I am of the opinion that when interpreting a time frame given to an aggrieved party to apply to a court or lodge an appeal in respect of a matter that affects his or her rights, the courts should not interpret such legislation in a way that deprives a litigant from accessing justice. The right to access justice hails back to the Magna Carta of 1215 and I am of the opinion that the Legislature had not intended to curtail a litigant’s rightful recourse to justice. In light of this, such legislation should be given a liberal interpretation.

The same approach has been adopted in several cases. In *Silva v Sankaram* [2002] 2 SLR 209, it was held:

“The phrase ‘within 60 days from the date of judgment or decree’, encompasses a limited time span. In Black’s Law Dictionary the word within ‘when used in relation to time’, has been defined as meaning any time before, at or before, at the end of, before the expiration of, not beyond, not exceeding, not later than. The use of the word ‘within’ as a time or limit, or degree or space, embraces the last day or degree or entire distance covered by the time fixed”.

Further, in *Okolo v Secretary of State for the Environment* [1997] 2 All ER 911 at 916, it was held:

“I prefer the view, corresponding with both colloquial usage and legal principle, that six weeks beginning on a Tuesday end six Tuesdays later, and that an act done on the final Tuesday is therefore an act done “within” the six weeks.” [Emphasis added]

A contrary view was taken in *Hare v Gocher* (1962) 2 QB 641, wherein the Court held that where a period of two months began on 29<sup>th</sup> August 1960, the time period expired on 28<sup>th</sup> October, 1960.

It is evident that the preposition “within” used in Section 325(1) of the Civil Procedure Code should be interpreted to include the last day of the stipulated time frame when computing the time period within which an act is required to be carried out.

Thus, I am of the opinion that in view of the usage of the word “within”, an application can be filed on or before the last day of the stipulated time frame set out in Section 325(1) of the Civil Procedure Code.

### **Effect of the phrase “one month”**

Section 2(o) of the Interpretation Ordinance defines the term “month” as “a calendar month, unless words be added showing lunar months to be intended”.

As Section 325(1) does not make specific reference to a lunar month, in this context “one month” should be interpreted to mean one calendar month.

I am of the opinion that a calendar month should be calculated from a day in a specific month to the numerically corresponding day in the following month. Therefore, in this application, if time starts to run on 20<sup>th</sup> September 2005, the final date to file the application will be 20<sup>th</sup> October 2005.

Stroud’s Judicial Dictionary of Words and Phrases, 6<sup>th</sup> Ed, Vol 1, page 366 states:

“So, of a complaint, which has to be made ‘within one calendar month after’ its cause; and, therefore, where in such a case the alleged offence be on May 30, the complaint is in time on June 30...”

In *Burne v Munisamy* 21 NLR 193 held that where notice of intention to quit was given on June 11 and which date was excluded from the computation, the calendar month expired at midnight on July 11.

In *Ceylon Estates Staffs' Union v Superintendent, Pallekelle State Plantation* [1984] 1 SLR 66, it was held:

“Section 2(p) of the Interpretation Ordinance defines month to mean ‘a calendar month, unless words be added showing lunar month to be intended.’  
.... It is equally well established that when the relevant period is a month or a specified number of months after the giving of the notice the general rule is that the period ends on the corresponding date in the subsequent month, i.e. the day of that month that bears the same number as day of the earlier month on which the notice was given.”

### **Effect of the word “From”**

At the time of hearing, the parties conceded that although the present appeal is regarding an inquiry under Section 325 of the Civil Procedure Code, Section 14(a) of the Interpretation Ordinance applies to inquiries. Accordingly, I shall not consider the applicability of Section 14(a) to the instant application.

Section 14(a) of the Interpretation Ordinance defines the term “from” as follows:

“for the purpose of excluding the first in a series of days or any period of time, it shall be deemed to have been and to be sufficient to use the word ‘from’.”

I am of the opinion that whenever the Legislator used the word “from” the date of an occurrence of an event, such date should be excluded when computing time. The effect of the word “from” in calculating time frames when used in legislation was considered in *Burne v Munisamy* (*supra*) where it was held that;

“...in pursuance to the general rule with regard to the computation of time as well as the positive enactment of Section 9(1) of the Interpretation

Ordinance, 1901, the day ‘from’ which the time runs must be excluded, and the day for the act to be done must be included.” (Emphasis added)

In *Sivapadasundaram v Pathmaden* [2004] BASL Journal 89 at 90, the Court held that;

“Our courts in many instances have considered the provisions of both sections mentioned above, and interpreted the words “from the date of the judgment” contained in Section 755(3) of the Civil Procedure Code. When computing 60 days from the date of the judgment, the date of pronouncement of the judgment should be excluded”

I agree with the ratio decidendi of the aforementioned judgments and hold that when the Legislator used the word “from”, the date of the occurrence should be excluded when computing the time period.

### **Conclusion**

In the circumstances, I am of the opinion that:

- (a) the word “from” means that time begins to run on the day after the date of resistance;
- (b) the phrase “one month” denotes a calendar month which should be calculated from a specific day in a month to the numerically corresponding day in the following month; and,
- (c) the word “within” should be interpreted to include the last day of the stipulated time frame within which an act is required to be performed.

Therefore, I am of the view that the day the Fiscal was resisted must be excluded from the computation of the one month period specified under Section 325(1) of the Civil Procedure Code and accordingly, time starts to run from 20<sup>th</sup> September, 2005. Thus, the learned Judge of the Court of Appeal has erred in concluding that the one month period in the instant application commenced on 19<sup>th</sup> September, 2005.

Further, I am of the opinion that the one month period stipulated by Section 325(1) is a calendar month starting from 20<sup>th</sup> September, 2005 to 20<sup>th</sup> October, 2005. As such, I hold that the application made on 20<sup>th</sup> October, 2005 is valid in law as the one month period stipulated by the said section shall be calculated inclusive of the last day of the given time frame.

Thus, I am unable to agree with the submissions of the substituted Respondents. Further, I agree with the submissions of the Plaintiff. Accordingly, I allow the appeal and set aside the judgment of the Court of Appeal dated 7<sup>th</sup> August, 2012 and the Order of the District Court dated 27<sup>th</sup> April, 2006.

No costs.

**Judge of the Supreme Court**

**K.T Chitrasiri, J**

I agree

**Judge of the Supreme Court**

**Vijith K. Malalgoda, PC, J**

I agree

**Judge of the Supreme Court**