

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

In the matter of an application for Special Leave to Appeal in terms of Article 128(1) of the Constitution of the Democratic Socialist Republic of Sri Lanka read with paragraph 3(b) of Article 154(P) of the Constitution and Section 3 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990

SC Spl LA No: 38/2020

HC ALT (Colombo) Case No. 67/2017

LT Colombo Case Nos.

8/335/2010

8/338/2010 - 8/343/2010

8/345/2010 8/346/2010

8/348/2010 - 8/356/2010

1. K.R.A. Kusumsiri,
No. 54/4, Rukmale, Pannipitiya.
2. R.D.D. Sanath Priyantha,
No. 467/1, Korathota, Kaduwela.
3. P.M.A. Saminda Jayashantha Siriwardena,
No. 111/1, Kalapaluwawa, Kalagedihena.
4. K.K. Nimal Gunasiri,
No. 596/3, Jayanthi Road, Athurugiriya.
5. M.B.A. Gamini Ariyasinghe,
No. 49, Aranayaka Janapadaya, Aranayaka.
6. S.D.W.K.S. Gunasekera,
No. 131/10, Nidahas Uyana,
Madulawa North, Padukka.
7. M.S. Gunapala,
No. E/7/A, Hathgampola West, Aranayake.
8. W.A. Athula Indika Weerasuriya,
No. 21/148, 1/1, Dadagama East,
Veyangoda.

9. P.A.C. Sanath Kumara,
No. 1/50, Ellamulla. Pasyala.
10. L.G. Jeevendra Sanjeewa Danapala,
No. 201/2, Vihara Mawatha, Radawadunna.
11. H.P. Sirisena,
No. 80, Anandagama, Buruthagama,
Akaravita, Avissawella.
12. Vithanage Janaka Sampath Vithanage,
Panawattagama, Meegasthenna,
Yatinyanthota.
13. B.Lalantha Silva,
No. 19/D, Nurugala Mawatha,
Weliwathugoda, Balapitiya.
14. J. Nihal,
No. 418/G, Welivita), Kaduwela.
15. B.A. Amith Eranga Pandithasekera,
No. 418G, Welivita, Kaduwela.
16. P.K.D. Ayuwardana,
Anhettiwalawatta,
Goluwamulla, Ganegoda.
17. Rajapaksha Pathirage Ravindralal,
No. 616/1/1, Jayantha Road, Athurugiriya.
18. K.M. Wimal,
No. 112/1, Megoda Kolonnawa,
Wellamptiya.

Applicants

Vs.

Sunbee Ready-mix (Pvt.) Limited,
Suncity Mezzanine Floor,
No. 18, St. Anthony's Road, Colombo 3.

Respondent

And between

1. K.R.A. Kusumsiri,
No. 54/4, Rukmale, Pannipitiya.
2. R.D.D. Sanath Priyantha,
No. 467/1, Korathota, Kaduwela.
3. P.M.A. Saminda Jayashantha Siriwardena,
No. 111/1, Kalapaluwawa, Kalagedihena.
4. K.K. Nimal Gunasiri,
No. 596/3, Jayanthi Road, Athurugiriya.
5. M.B.A. Gamini Ariyasinghe,
No. 49, Aranayaka Janapadaya, Aranayaka.
6. S.D.W.K.S. Gunasekera,
No. 131/10, Nidahas Uyana,
Madulawa North, Padukka.
7. M.S. Gunapala,
No. E/7/A, Hathgampola West, Aranayake.
8. W.A. Athula Indika Weerasuriya,
No. 21/148, 1/1, Dadagama East,
Veyangoda.
9. P.A.C. Sanath Kumara,
No. 1/50, Ellamulla. Pasyala.
10. L.G. Jeevendra Sanjeewa Danapala,
No. 201/2, Vihara Mawatha, Radawadunna.
11. H.P. Sirisena,
No. 80, Anandagama, Buruthagama,
Akaravita, Avissawella.
12. Vithanage Janaka Sampath Vithanage,
Panawattagama, Meegasthenna,
Yatiyanthota.
13. B.Lalantha Silva,
No. 19/D, Nurugala Mawatha,

Weliwathugoda, Balapitiya.

14. J. Nihal,
No. 418/G, Welivita), Kaduwela.
15. B.A. Amith Eranga Pandithasekera,
No. 418G, Welivita, Kaduwela.
16. P.K.D. Ayuwardana,
Anhettiwalawatta,
Goluwamulla, Ganegoda.
17. Rajapaksha Pathirage Ravindralal,
No. 616/1/1, Jayantha Road, Athurugiriya.
18. K.M. Wimal,
No. 112/1, Megoda Kolonnawa,
Wellamptiya.

Applicants - Appellants

Vs.

Sunbee Ready-mix (Pvt.) Limited,
Suncity Mezzanine Floor,
No. 18, St. Anthony's Road, Colombo 3.

Respondent – Respondent

And now between

Sunbee Ready-mix (Pvt.) Limited,
Suncity Mezzanine Floor,
No. 18, St. Anthony's Road, Colombo 3.

Respondent – Respondent - Petitioner

1. K.R.A. Kusumsiri,
No. 54/4, Rukmale, Pannipitiya.
2. R.D.D. Sanath Priyantha,
No. 467/1, Korathota, Kaduwela.
3. P.M.A. Saminda Jayashantha Siriwardena,
No. 111/1, Kalapaluwawa, Kalagedihena.

4. K.K. Nimal Gunasiri,
No. 596/3, Jayanthi Road, Athurugiriya.
5. M.B.A. Gamini Ariyasinghe,
No. 49, Aranayaka Janapadaya, Aranayaka.
6. S.D.W.K.S. Gunasekera,
No. 131/10, Nidahas Uyana,
Madulawa North, Padukka.
7. M.S. Gunapala,
No. E/7/A, Hathgampola West, Aranayake.
8. W.A. Athula Indika Weerasuriya,
No. 21/148, 1/1, Dadagama East,
Veyangoda.
9. P.A.C. Sanath Kumara,
No. 1/50, Ellamulla. Pasyala.
10. L.G. Jeevendra Sanjeewa Danapala,
No. 201/2, Vihara Mawatha, Radawadunna.
11. H.P. Sirisena,
No. 80, Anandagama, Buruthagama,
Akaravita, Avissawella.
12. Vithanage Janaka Sampath Vithanage,
Panawattagama, Meegasthenna,
Yatinyanthota.
13. B.Lantha Silva,
No. 19/D, Nurugala Mawatha,
Weliwathugoda, Balapitiya.
14. J. Nihal,
No. 418/G, Welivita), Kaduwela.
15. B.A. Amith Eranga Pandithasekera,
No. 418G, Welivita, Kaduwela.
16. P.K.D. Aywardana,
Anhettiwalawatta,
Goluwamulla, Ganegoda.

17. Rajapaksha Pathirage Ravindralal,
No. 616/1/1, Jayantha Road, Athurugiriya.
18. K.M. Wimal,
No. 112/1, Megoda Kolonnawa, Wellamptiya.

Applicants – Appellants – Respondents

Before: Vijith K. Malalgoda, PC, J
E.A.G.R. Amarasekara, J
Arjuna Obeyesekere, J

Counsel: P K Prince Perera with Madushi Pitiyawatta and Ishani Herath for the
Respondent – Respondent – Petitioner

P A D Kumarawickrema for the 1st – 4th and 6th – 16th Applicants –
Appellants – Respondents

Supported on: 11th December 2023

Written Tendered by the 1st – 4th and 6th – 16th Applicants – Appellants –
Submissions: Respondents on 2nd January 2024

Tendered by the Respondent – Respondent – Petitioner on 8th February
2024

Decided on: 15th February 2024

Obeyesekere, J

The 1st – 4th and 6th – 16th Applicants – Appellants – Respondents [the Respondents] who were employees of the Respondent – Respondent – Petitioner [the Petitioner] invoked the jurisdiction of the Labour of Tribunal of Colombo in terms of Section 31B(1) of the Industrial Disputes Act as amended [the Act] claiming that their services have been unjustifiably terminated by the Petitioner on 3rd May 2010, and seeking compensation for loss of employment. With the agreement of the parties, all applications, sixteen in number, had been consolidated.

By its Order delivered on 24th August 2017, the Labour Tribunal had dismissed all sixteen applications. Aggrieved by the said Order, the Respondents had filed an appeal in the Provincial High Court of the Western Province holden in Colombo [the High Court], in terms of Section 31D(3) of the Act. The said appeal had been allowed by the High Court by its judgment delivered on 13th December 2019.

Section 31DD(1) of the Industrial Disputes Act, as amended stipulates that, “*Any workman, trade union or employer who is aggrieved by any final order of a High Court established under Article 154P of the Constitution, in the exercise of the appellate jurisdiction vested in it by law or in the exercise of its revisionary jurisdiction vested in it by law, in relation to an order of a labour tribunal, may appeal therefrom to the Supreme Court with the leave of the High Court or the Supreme Court first had and obtained.*”

Dissatisfied with the said judgment of the High Court, the Petitioner filed this application on 5th February 2020. When this matter was taken up for support on 11th December 2023, the learned Counsel for the Respondents raised a preliminary objection with regard to the maintainability of this application on the basis that the petition of appeal has been filed out of time. The learned Counsel for the Respondents, referring to Rule 7 of the Supreme Court Rules (1990) made under Article 136 of the Constitution [the Rules] submitted that (a) the time period allowed to file a petition of appeal against a judgment of the High Court arising from an order of the Labour Tribunal is six weeks; (b) the said time period of six weeks is mandatory; and (c) failure to file a petition of appeal within the said time period of six weeks would render this application liable to be dismissed *in limine*.

In **Priyanthi Chandrika Jinadasa v Pathma Hemamali and Others** [(2011) 1 Sri LR 337] Chief Justice Bandaranayake, having considered the provisions of Rule 7 of the Supreme Court Rules (1990), held as follows at page 346:

“As clearly stated in L.A. Sudath Rohana v Mohamed Zeena and Others [SC HC CA LA No. 111/2010 – SC Minutes of 17.3.2011] Rules of the Supreme Court are made in terms of Article 136 of the Constitution, for the purpose of regulating the practice

and procedure of this Court. Similar to the Civil Procedure Code, which is the principal source of procedure, which guides the Courts of civil jurisdiction, the Supreme Court Rules regulates the practice and procedure of the Supreme Court.

The language used in Rule 7, clearly shows that the provisions laid down in the said Rule are mandatory and that an application for leave of 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."

The position of the learned Counsel for the Petitioner was twofold. Whilst admitting that this application has been filed 54 days after the delivery of the judgment of the High Court, his first submission was that the delay was due to circumstances beyond the control of the Petitioner, namely (a) the judgment of the High Court was not available until 20th January 2020 and the Petitioner was able to obtain a copy of the said judgment '*with the greatest difficulty*', and (b) due to the appeal brief consisting of over 1200 pages. It must however be noted that the Petitioner has paid the money to obtain a certified copy of the brief only on 17th January 2020, which means that the request for a copy of the judgment was made only on that date and which thereby gives lie to the position of the Petitioner that it obtained a copy of the said judgment '*with the greatest difficulty*'. It must however be noted that even if it was so, neither the non-availability of the judgment nor the fact that the appeal brief consisted over 1200 pages would have served as an excuse for the delay, as the time periods allowed for the filing of appeals is mandatory and any breach would render the application to be dismissed *in limine*. Be that as it may, the Petitioner was not without a remedy for it could very well have pleaded its difficulty, if such a difficulty existed at all, and sought permission of Court to tender such documents on a later date, which the Petitioner failed to do.

The second submission of the learned Counsel for the Petitioner was that even though Rule 7 is mandatory, the said Rule has no application to this petition and that the Rules of this Court does not stipulate a mandatory time period to file an appeal against the judgment of a High Court arising from an order of a Labour Tribunal. It was therefore his

position that the preliminary objection that the petition of appeal should have been filed within six weeks is misconceived in law.

While provisions relating to applications for special leave to appeal to the Supreme Court from judgments of the Court of Appeal are contained in Part 1A of the Rules, provisions relating to leave to appeal applications from other Courts including the High Court are found in Part 1C thereof. Rule 7, which comes under Part 1A, provides 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.”* However, Part 1C of the aforementioned Rules, which applies to this application, does not specify a time period for the filing of leave to appeal applications.

An issue similar to what has arisen in this application arose in **Asia Broadcasting Corporation (Private) Limited vs Kaluappu Hannadi Lalith Priyantha** [SC/HC/LA No. 50/2020; SC Minutes of 7th July 2021], where an objection that the petition of appeal against the judgment of the High Court had been filed out of time was sought to be resisted on the basis that the impugned application was seeking leave to appeal from a judgment of the Provincial High Court and that as it was an application made under Part 1C, Rule 7 and the time period stipulated therein, had no application.

Surasena, J, having considered the long line of cases where this Court has held that the time period specified in Rule 7 would nonetheless apply in respect of a leave to appeal application filed in terms of Part 1C and Section 31DD(1) of the Industrial Disputes Act, held that, *“... notwithstanding the fact that the instant application for leave to appeal from the judgment of the Provincial High Court would come under section C in Part I namely ‘Other Appeals,’ the provisions in Rule 7 of the Supreme Court Rules 1990 would apply to decide the time frame within which such an application must be filed before this Court.”*

The above judgment has been cited with approval in **D.H. Waruna Priyanka v Commercial Bank of Ceylon PLC** [SC Spl L/A No. 86/2020; SC minutes of 12th December 2022].

It was therefore the position of the learned Counsel for the Respondents that any application seeking leave to appeal from an order of the Labour Tribunal must be filed within six weeks of the judgment of the High Court. He submitted further that with the judgment of the High Court having been delivered on 13th December 2019, this application ought to have been filed in the Registry of this Court on or before 24th January 2020. As I have noted earlier, this application had been filed only on 5th February 2020, which, *on the face of it*, is clearly outside the six-week time period stipulated in Rule 7 of the Supreme Court Rules.

In the above circumstances, I uphold the preliminary objection raised by the learned Counsel for the Respondents. Leave to appeal is accordingly refused and this application is dismissed. I make no order with regard to costs.

JUDGE OF THE SUPREME COURT

Vijith K Malalgoda, PC, J

I agree

JUDGE OF THE SUPREME COURT

E.A.G.R. Amarasekara, J

I agree

JUDGE OF THE SUPREME COURT