

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

In the matter of an Application for Leave to Appeal from the Judgement dated 22.07.2016 of the Central Province High Court of Civil Appeal holden in Kandy and in terms of Section 5(C) of the High Court of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006.

S.C. Appeal No. 18/2019
S.C./HCCA/LA No.436/2016
CP/HCCA/KANDY/60/2014(F)
D.C. Teldeniya Case No: DMR/189/13

Muthupantinge Jayantha Pushpalal,
No. 131, Digana, Rajawella.

PLAINTIFF

Vs.

Sri Lanka Insurance Corporation Ltd.,
Head Office at
No. 21, Vauxhall Street,
Colombo 02.

Branch Office at,
No. 42, Digana, Rajawella.

DEFENDANT

AND BETWEEN

Muthupantinge Jayantha Pushpalal,
No. 131, Digana, Rajawella.

PLAINTIFF – APPELLANT

Vs.

Sri Lanka Insurance Corporation Ltd.,
Head Office at
No. 21, Vauxhall Street,
Colombo 02.

Branch Office at,
No. 42, Digana, Rajawella.

DEFENDANT– RESPONDENT

AND NOW BETWEEN

Sri Lanka Insurance Corporation Ltd.,
Head Office at
No. 21, Vauxhall Street,
Colombo 02.

Branch Office at,
No. 42, Digana, Rajawella.

DEFENDANT– RESPONDENT-APPELLANT

Vs.

Muthupantinge Jayantha Pushpalal,
No. 131, Digana, Rajawella.

PLAINTIFF – APPELLANT-RESPONDANT

Before : **Hon. Janak De Silva, J.**
Hon. Mahinda Samayawardhena, J.
Hon. Dr Sobhitha Rajakaruna, J.

Counsel : Rajindra Jayasinghe with Sanjith Dias for the Defendant-Respondent-Appellant
David Weeraratne for the Plaintiff-Appellant Respondent

Written Submissions : 08.04.2019 by Defendant-Respondent-Appellant

Argued on : 11.06.2026

Decided on : 18.09.2026

Janak De Silva, J.

The Plaintiff-Appellant-Respondent (Respondent) instituted this action in the District Court of Teldeniya against the Defendant-Respondent-Appellant (Appellant), seeking, *inter alia*, a declaration that the Respondent is entitled to damages in a sum of Rupees Two Million, consequent upon the destruction, by fire on 05.09.2011, of his business premises, together with the goods and machinery belonging to the said business, and seeking such other and further relief as to which he may be entitled.

At the trial, admissions numbered 1 to 14 were recorded. The Respondent raised issues numbered 1 to 4, while the Appellant raised issues numbered 5 to 11. Thereafter, issue No. 12 was recorded as an issue arising from the issues raised by the Appellant.

The Appellant moved that issues Nos. 6 and 7 be taken up and determined as preliminary issues, on the basis that, having regard to the admissions recorded by the parties, no further evidence is necessary for the determination of the said issues.

Issues Nos. 6 and 7 read as follows:

6. (අ) පැමිණිලිකරුගේ ඉල්ලීම / හිමිකම පැමිණිල්ලක් සමඟ පැ.7 දරණ ලිපිය මගින් විත්තිකරු ප්‍රතික්ෂේප කිරීමෙන් මාස 3 ක් ඇතුළත මෙම නඩුව ගොනු කිරීමට පැමිණිලිකරු අපොහොසත් වී ඇත්ද?
- (ආ) කෙසේ වෙතත් පැමිණිලිකරු සිදුවූවා යැයි කියන ගින්න සිදු වූ දින සිට එක් වසරක් ඇතුළත මෙම නඩුව ගොනු කිරීමට අපොහොසත් වී ඇත්ද?
- (ඇ) මෙම නඩුවට අදාළ ඩී.1 දරණ රක්ෂණ ඔප්පුවේ කොන්දේසි ප්‍රකාරව කිසිම මුදල පැමිණිලිකරුට ලබා ගැනීමට අයිතියක් නොමැතිද?
7. ඉහත 6 වන විසඳිය යුතු ප්‍රශ්නය විත්තිකරුගේ වාසියට තීරණය වුවහොත් පැමිණිලිකරුගේ නඩුව නිශ්ප්‍රභා විය යුතුද ?

The English translation of the said issues is as follows:

Issue No. 6

- (a) Has the Respondent failed to institute this action within three months of the Appellant's rejection of the Respondent's claim by its letter marked "P7" annexed to the Plaintiff?
- (b) In any event, has the Respondent failed to institute this action within twelve months of the occurrence of the fire?
- (c) In terms of the conditions of the Insurance Policy marked "D1", is the Respondent not entitled to claim any sum of money?

Issue No. 7

If Issue No. 6 raised by the Appellant is answered in favour of the Appellant, should the Respondent's action be dismissed?

The Respondent, however, resisted the said application. It was submitted on behalf of the Respondent that, if the issues raised by the Appellant were to be treated as legal issues, such issues must necessarily be questions of law and, in particular, pure questions of law capable of determination without the necessity of leading evidence. It was further submitted that, since the said issues could only properly be adjudicated upon a consideration of the evidence led at the trial, they could not be determined as preliminary issues.

Thereafter, both parties were directed to tender written submissions on the said matter. Upon consideration of the submissions so tendered, the learned District Judge delivered an Order dated 27.05.2014. By the said Order, the learned District Judge answered issues Nos. 6 and 7 in favour of the Appellant and dismissed the Respondent's action.

Being aggrieved by the said Order, the Respondent preferred an appeal to the Central Province Civil Appellate High Court holden in Kandy, bearing case No. CP/HCCA/KAN/60/2014.

When the said matter came up for argument, the Appellant, raised a preliminary objection as to the maintainability of the said appeal. It was contended that, since the Order dated 27.05.2014 had arisen from the determination of preliminary issues, the proper procedure available to the Respondent was to invoke the jurisdiction of the High Court by way of an application for leave to appeal, and not by way of a final appeal. Accordingly, it was contended that the purported final appeal preferred by the Respondent was misconceived in law and was liable to be dismissed in *limine*.

Upon both parties agreeing that the matter be determined on the basis of their respective written submissions, the learned Judges of the Civil Appellate High Court of Kandy directed the parties to tender written submissions.

By Judgment dated 22.07.2016, the learned Judges of the Central Province Civil Appellate High Court of Kandy set aside the Order dated 27.05.2014 made by the learned District Judge of Theldeniya and directed that the issues be determined by the District at the end of the trial.

Aggrieved, the Appellant invoked the jurisdiction of this Court and Leave to Appeal has been granted on the following questions of law:

1. *Have their Lordships of the High Court of Civil Appeal erred in law by failing to consider that the proper procedure was for the Respondent to have filed a leave to appeal application and not a final appeal and as such the final appeal is totally misconceived in law?*
2. *Have their Lordships of the High Court of Civil Appeal erred in law by misinterpreting the terms and/or conditions and/or clauses in the said Fire Policy marked D1?*
3. *Have their Lordships of the High Court of Civil Appeal erred in law by holding that further evidence at the trial is necessary to answer Issue Nos. 6 and 7?*

Section 754

Section 754 of the Civil Procedure Code (CPC) sets out the right of appeal which reads as follows:

- (1) *Any person who shall be **dissatisfied with any judgment pronounced**, by any original court in any civil action, proceeding or matter to which he is a party may prefer **an appeal** to the Court of Appeal against such judgment for any error in fact or in law.*
- (2) *Any person who shall be **dissatisfied with any order made by any original court** in the course of any civil action, proceeding, or matter to which he is or seeks to be a party, may prefer **an appeal** to the Court of Appeal against such order for the*

*correction of any error in fact or in law, **with the leave of the Court of Appeal first had and obtained.***

(3) *Every appeal to the Court of Appeal from any judgment or decree of any original court, shall be lodged by giving notice of appeal to the original court within such time and in the form and manner hereinafter provided.*

(4) *The notice of appeal shall be presented to the court of first instance for this purpose, by the party appellant or his registered attorney within a period of fourteen days from the date when the decree or order appealed against was pronounced, exclusive of the day of that date itself and of the day when the petition is presented and of Sundays and public holidays, and the court to which the notice is so presented shall receive it and deal with it as hereinafter provided. If such conditions are not fulfilled, the court shall refuse to receive it.*

(5) *Notwithstanding anything to the contrary in this Ordinance, for the purposes of this Chapter*

"judgment" means any judgment or order having the effect of a final judgment made by any civil court; and

"order" means the final expression of any decision in any civil action, proceeding or matter which is not a judgment. (emphasis added)

Sections 754(1) and 754(2) of the CPC prescribe two distinct procedures governing the manner in which an appeal may be preferred against a decision of the original court.

These provisions must necessarily be read together with the definitions contained in Section 754(5), which draw a clear distinction between a “judgment” and an “order” for the purpose of determining the appropriate mode of appeal.

Where the impugned decision constitutes a “judgment” within the meaning of Section 754(5), the right of appeal is governed by Section 754(1), which permits an aggrieved party to invoke the appellate jurisdiction by way of a *Final Appeal*.

Conversely, where the impugned decision does not constitute a “judgment”, but falls within the category of an “order” contemplated by Section 754(5), the applicable procedure is prescribed by Section 754(2). In such circumstances, a party is not entitled to invoke the appellate jurisdiction directly by way of a *Final Appeal*. The party is first required to obtain *Leave to Appeal* and, only upon such leave being granted, may the appeal thereafter be pursued.

Accordingly, the determination as to whether the impugned decision constitutes a “judgment” or an “order” within the meaning of Section 754(5) is of fundamental importance, since it is determinative of the manner of appeal available to the aggrieved party.

Judgment or Order

In determining whether an order is final or interlocutory, the English courts have developed two tests, namely, the *order approach* test and the *application approach* test.

Under the *order approach* test, the Court considers only the nature and effect of the order made. If the order, considered in isolation, finally disposes of the rights of the parties in the litigation, without leaving the action alive, such order is regarded as final, and a direct appeal lies as of right.

By contrast, under the *application approach* test, the focus is upon the nature of the application made to Court, rather than upon the order made *per se*. Where an order made in one manner finally disposes of the matter in litigation, but an order made in the alternative would permit the action to continue, the order is regarded as interlocutory and not final. In terms of this approach, an order will be regarded as final only where,

whichever way the application is determined, the order finally determines the rights of the parties in the litigation.

I have considered these two tests in detail in ***Maheepala D. Alfred Fernando and Another v. Ranpatipura Dewage Sirisena and Others*** [S.C. Appeal 85/2013, S.C.M. 24.07.2025, at pages 10–15].

In ***Rank Xerox (Singapore) Pte Ltd. v. Ultra Marketing*** [(1991) 2 SLR (R) 912], it was held that the phrase “the rights of the parties”, contained in ***Bozson v. Altrincham Urban District Council*** [(1903) 1 KB 547 at 548], referred to the substantive rights in dispute in the particular action in which the application for summary judgment had been made.

A full bench in ***S. R. Chettiar and Others v. S. N. Chettiar*** [(2011) 2 Sri. L. R. 70], upon considering both approaches derived from English jurisprudence, unanimously adopted the *application approach* as the governing test for determining whether an appeal lies as of right or by leave against an order of the District Court.

A fuller bench in ***Dona Padma Priyanthi Senanayake v. H. G. Chamika Jayantha and two others*** [S.C. Appeal No. 41/2015, S.C.M. 04.08.2017] and ***Mohamed Woleed Mohamed Zawahir v. Amana Takaful Company Limited*** [S.C. CHC Appeal No. 37/2008, S.C.M. 04.08.2017], reviewed all the previous decisions about both tests and held that the *application approach* test must be applied to ascertain whether an order or judgment is interlocutory or final.

In ***Maheepala D. Alfred Fernando and Another (supra)***, I agreed that the *application approach* is the proper test, and held (at page 14) that:

“Upon an application of the application approach test, it is clear that in any action, there can be only one final judgment which is liable to a direct appeal. All other orders are ancillary to the final judgment and can be appealed only with leave first

obtained. This approach has the utility of ensuring that actions do not get delayed due to final appeals been lodged against ancillary orders.”

Applying the *application approach* test to the impugned Order of the learned District Judge of Teldeniya, I am of the view that the said Order is interlocutory in nature. The said Order did not finally determine or adjudicate upon the substantive rights of the parties in the main action, but was confined to the determination of a preliminary issue arising in the course of the proceedings. Had the preliminary objection been rejected, the action would have proceeded to trial.

For the foregoing reasons, I answer Question of Law No. 1 in the affirmative. In view of that determination, it is unnecessary to consider or answer Questions of Law Nos. 2 and 3.

Accordingly, I hold that the learned Judges of the Civil Appellate High Court of Kandy erred in law in entertaining and determining the appeal preferred by the Respondent, since the said appeal could properly have been instituted only upon the Respondent first obtaining Leave to Appeal.

I set aside the judgment of the Civil Appellate High Court of Kandy dated 22.07.2016 and affirm the order of the learned District Judge of Teldeniya dated 27.05.2014.

Appeal allowed. Parties shall bear their costs.

JUDGE OF THE SUPREME COURT

Mahinda Samayawardhena, J.

I agree.

JUDGE OF THE SUPREME COURT

Dr. Sobhitha Rajakaruna, J.

I agree.

JUDGE OF THE SUPREME COURT