

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

In the matter of an Appeal against the judgment dated 09th July 2024 of the High Court of Civil Appeals of the Western Province (holden in Mt. Lavinia) in case No. WP/HCCA/MT/32/2023 (LA) under in terms of Article 127 of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Section 5C of the High Court of the Provinces (Special Provisions) Act No: 19 of 1990 as amended by Act No: 54 of 2006.

Abdullah Moosajee,  
No. 41, Pereira Lane,  
Colombo 06.

**Plaintiff**

**Vs.**

1. Zahidi Alif  
Managing Director,  
Greenstone (Private) Limited,  
No. 754/11, Adamally Place,  
Colombo 04.

*Presently at:*

No. 4/4, Span Tower,  
No. 27, Windsor Avenue,  
Dehiwala.

2. Greenstone (Private) Limited,  
No. 754/11, Adamally Place,  
Colombo 04.

*Presently at:*

**SC Appeal No: 52/2025**

SC/HCCA/LA No: 295/2024

WP/HCCA/MT/Appeal No: 32/2023  
(LA)

D.C. Mt. Lavinia Case No:  
647/2022/MS

No. 4/4, Span Tower,  
No. 27, Windsor Avenue,  
Dehiwala.

3. I Capital Partners Limited,  
No. 40, Temple Lane,  
Colombo 03.

4. Zaharan Nassath,  
Chief Executive Officer,  
I Capital Partners Limited,  
No. 40, Temple Lane,  
Colombo 03.

**Defendants**

**AND BETWEEN**

Abdullah Moosajee,  
No. 41, Pereira Lane,  
Colombo 06.

**Plaintiff- Appellant**

**Vs.**

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**Defendants- Respondents**

**AND NOW BETWEEN**

Abdullah Moosajee,  
No. 41, Pereira Lane,  
Colombo 06.

**Plaintiff-Appellant-Appellant**

**Vs.**

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**Defendants- Respondents-  
Respondents**

**BEFORE:**

**Hon. K. Kumudini Wickremasinghe, J.**  
**Hon. Janak De Silva, J.**  
**Hon. Menaka Wijesundera, J.**

**COUNSEL:**

Mohamed Adamaly PC, with Ms. Nishadi Wickramasinghe and Dakshina Wickramaarachchi instructed by Mrs. Shanya Wickramarathna for the Plaintiff-Appellant-Appellant

Yuwin Matugama with Patali Doratiyawa and Ms. Tharushi Bethmage instructed by Ms. Oshadi Fernando for the 1st and 2nd Defendants-Respondents-Respondents.

**WRITTEN SUBMISSIONS:**

By the Plaintiff-Appellant-Appellant on 31.07.2025.

By the 1st and 2nd Defendants-Respondents-Respondents on 18.08.2025.

**ARGUED ON:**

25.08.2025

**DECIDED ON:**

23.03.2026

**K. KUMUDINI WICKREMASINGHE, J.**

This is an appeal from a judgment of the High Court of the Western Province holden Mt. Lavinia, dated 09.07.2023 which upheld the order of the District Court of Mt. Lavinia dated 12.07.2023, case bearing No: 647/22MS.

The Plaintiff-Appellant-Appellant (hereinafter referred to as the “Appellant”) instituted the initial action before the District Court of Mt. Lavinia against the Defendants-Respondents-Respondents (hereinafter referred to as the “Respondents”) seeking recovery on two cheques marked P10(a) and P10(b). Upon application by the Appellant, the learned District Judge, by Order dated 31.01.2023, directed that the original cheques, then in the custody of the Colombo Fraud Investigation Bureau, be produced and deposited in court, which was duly complied with. The action was supported on 15.03.2023 and the District Court, being satisfied that the sums claimed were *prima facie* due, issued summons on the Respondents. The summons was initially made returnable for 03.05.2023 and thereafter re-fixed for 06.06.2023.

When the matter was called on 06.06.2023, the 3rd and 4th Respondents entered appearance and tendered petitions seeking leave to appear and defend. There was no appearance on behalf of the 1st and 2nd Respondents and at that stage the Fiscal’s return in respect of service on them was not before court. The petitions of the 3rd and 4th Respondents were accepted, and the matter was fixed for 12.06.2023. Upon subsequent inspection of the record, the Appellant discovered that summons under Form 19 had in fact been personally served on the 1st Respondent on 15.05.2023, and that by motion dated 30.05.2023 the 1st Respondent had filed a proxy, statement of objections, and affidavit. In those documents, the 1st Respondent had averred that summons had been received on 16.05.2023.

At the hearing on 12.07.2023, the Appellant objected to any appearance by or on behalf of the 1st Respondent on the basis that he had failed to seek leave to appear and defend within the mandatory period of 14 days prescribed

by Chapter LIII of the Civil Procedure Code read with Form 19. The objection was expressly made under section 704(1) of the Code, though the proceedings inadvertently referred to section 504(1). The Appellant contended that, summons having been served on 15.05.2023, the 1st Respondent was required to obtain leave on or before 29.05.2023, which he had failed to do. Notwithstanding the said objection and the alleged delay, the learned District Judge, by Order dated 12.07.2023, permitted the 1st Respondent to appear and defend the action without condition.

Aggrieved thereby, the Appellant invoked the appellate jurisdiction of the High Court of Civil Appeals by petition dated 27.07.2023, seeking leave to appeal, to set aside the Order of 12.07.2023, and to obtain a stay of proceedings. By Order dated 05.03.2024, upon *inter partes* hearing, the High Court granted leave to appeal and stayed further proceedings in the District Court. The 3rd and 4th Respondents did not resist the application. Written submissions were directed to be filed, and while the Appellant duly tendered submissions, the 1st and 2nd Respondents did not.

Following the argument which was fixed on 27.06.2024, the High Court of Civil Appeals delivered judgment on 09.07.2024. The Court held that it was bound by the decision of the Court of Appeal in ***Fernando v. Ceylon Petroleum Corporation (1997) 1 Sri L.R. 141*** and that, in computing the prescribed period for seeking leave to appear and defend in liquid claims, the date of service and intervening Sundays were to be excluded. On that basis, the Court concluded that the 1st Respondent's application had been made within time.

Being dissatisfied with the said judgment, the Appellant sought to invoke the appellate jurisdiction of this Court, contending that the High Court had erred in law, misdirected itself in the interpretation and application of section 705(3) of the Civil Procedure Code read with Form 19, and improperly relied exclusively on ***Fernando v. Ceylon Petroleum Corporation*** without considering other binding authorities. The Appellant further maintained that the High Court had misconstrued the computation of time and had failed to

grant decree in his favour under section 704(1) of the Code in view of the 1st Respondent's alleged failure to apply for leave within the prescribed period.

This court, by order dated 12.03.2025, granted the Appellant leave to appeal on the following question of law.

**"Did the learned Judges of the High Court of Civil Appeals misdirect themselves in law by failing to appreciate the provisions of Section 753 of the Civil Procedure Code read with Form 19 which required the 1st Respondent to seek Leave to Appeal and defend the action within 14 days, and instead relied on the judgment in *Fernando Vs. Ceylon Petroleum Corporation* 1997 (1 Sri Lanka Law Report 141), thus ignoring the other authorities of the Supreme Court on this subject and the interpretation to be given thereof."**

My analysis hereafter will be confined to examining the aforesaid question of law based on which leave was granted.

The matter for consideration by this court is namely **"Did the learned Judges of the High Court of Civil Appeals misdirect themselves in law by failing to appreciate the provisions of Section 753 of the Civil Procedure Code read with Form 19 which required the 1st Respondent to seek Leave to Appeal and defend the action within 14 days, and instead relied on the judgment in *Fernando Vs. Ceylon Petroleum Corporation* 1997 (1 Sri Lanka Law Report 141), thus ignoring the other authorities of the Supreme Court on this subject and the interpretation to be given thereof."**

The Appellant contended that the High Court of Civil Appeals had misdirected itself in law by failing to properly construe the applicable statutory framework, namely Section 703 of the Civil Procedure Code read with Form 19, and by instead placing determinative reliance on the decision in ***Fernando v. Ceylon Petroleum Corporation* (1997) 1 Sri L.R. 141**. At the outset, it was clarified that the reference in the formulated question of law to Section 753 of the Civil

Procedure Code was inadvertent, and that the correct provision governing the present controversy was Section 703, which regulates actions on liquid claims instituted under Chapter LIII.

The Appellant submitted that the central issue concerned the proper computation of the 14-day period stipulated in the Form 19 summons served on the 1st Respondent. The Fiscal's return evidenced personal service on 15.05.2023. The summons expressly required the 1st Respondent to obtain leave to appear and defend "within 14 days" of service, inclusive of the day of such service, in terms which were set out in Sinhala as follows: "අධිකරණයෙහි පෙනී සිටි එක්තිවචක ඉදිරිපත් කිරීමට මෙය භාර කරවන දිනය ඇතුළුව මෙය භාර කරවීමේ දිනයේ සිට දවස් 14 ක් ඇතුළත අධිකරණයෙන් අවසර ලබා ගැනීමටද...". The Appellant maintained that, upon a plain and literal computation of time, the final date for compliance fell on 28.05.2023. The 1st Respondent, however, filed his motion and objections only on 01.06.2023, thereby acting out of time.

In support of this position, the Appellant argued that where a summons stipulates a period exceeding six days, the Interpretation Ordinance provisions relating to the exclusion of Sundays and public holidays were inapplicable. Reliance was placed on the reasoning in **Perera v. Karunanayake 62 N.L.R. 423** and **Nanayakkara v. Paiva 64 N.L.R. 193**, which were said to draw a critical distinction between periods "within seven days" and longer periods. It was contended that the exclusionary mechanism under Section 8(3) of the Interpretation Ordinance operated only where, after application of Section 11 (now Section 14(1)), the effective period did not exceed six days. That special interpretative concession, the Appellant submitted, had no application to a summons granting fourteen days.

The Appellant further asserted that the Court of Appeal decision in **Fernando v. Ceylon Petroleum Corporation** had erroneously extended the exclusion of the date of service and intervening Sundays to a fourteen-day period, without appreciating the distinction drawn in the earlier Supreme Court authorities. It was argued that this rendered the decision per incuriam. The Appellant emphasised that even the High Court had acknowledged

reservations as to the correctness of **Fernando**, yet nonetheless held itself to be bound by it. Such an approach, it was submitted, constituted a grave misdirection.

In that regard, the Appellant relied upon the pronouncement of the Supreme Court in **Dummalasooriya v. Dummalasooriya and Others (SC/Appeal/160/2016, S.C.M. 02.12.2022)**, where it was held that a lower court is not obliged to follow a precedent that is demonstrably *per incuriam*, particularly where adherence would perpetuate legal error in the face of clear statutory language. The Appellant contended that the High Court erred in abdicating its judicial duty by mechanically applying a precedent it believed to be flawed, instead of adhering to the statutory text and binding Supreme Court jurisprudence.

It was further submitted that the scheme of Sections 703 and 704(1) of the Civil Procedure Code, read with Form 19, mandated strict compliance with the time period specified in the summons. Authorities such as **Wijesundera v. Weerawadiwakara 61 N.L.R. 470** were invoked to demonstrate that failure to obtain leave within the prescribed period entitled the plaintiff to decree as of right, and that courts were not vested with discretion to extend time prior to decree. The use of the word “within,” it was argued, required strict and literal adherence, consistent with established principles of statutory construction.

The Appellant also rejected the suggestion, drawn from **Fernando v. Ceylon Petroleum Corporation**, that any contradiction existed between Section 705(3) of the Civil Procedure Code and Form 19. Section 705(3), which requires the fixing of a day for appearance, was said to operate harmoniously with Form 19, which leaves the number of days to be inserted by the Court. No inconsistency arose where the Court specified fourteen days; rather, the statutory design contemplated that such a period, once inserted, would operate as a mandatory and consecutive timeframe.

On that footing, the Appellant maintained that the 1st Respondent’s failure to seek leave by 28.05.2023 was fatal. The application filed on 01.06.2023 was

said to have been jurisdictionally defective and incapable of validation. Consequently, it was contended that the District Court ought to have entered a decree in favour of the Appellant under Section 704(1), and that the High Court erred in affirming the contrary position. In the premises, the Appellant urged that the impugned judgment was founded upon an erroneous interpretation of the law relating to computation of time, and was therefore liable to be set aside.

The Respondents contended that the sole controversy before Court concerned the proper computation of the period stipulated in the Form 19 summons issued under Chapter LIII of the Civil Procedure Code, and that the High Court of Civil Appeals had correctly resolved that question in accordance with settled authority. Their position was that the 1st Respondent had acted strictly within the time permitted by law and that no basis existed to disturb the exercise of judicial discretion by the learned District Judge.

It was submitted that, upon service of summons on 15.05.2023 as reflected in the Fiscal's return, the 1st Respondent had entered appearance and tendered his Statement of Objections on 30.05.2023. The filing date was not in dispute. The question, therefore, was confined to whether such filing fell within the fourteen-day period prescribed in the summons issued in terms of Section 703 read with Section 704(1) of the Civil Procedure Code.

The Respondents argued that, in computing the relevant period, the date of service ought to be excluded. Reliance was placed on Section 14(a) of the Interpretation Ordinance, which provides that, for the purpose of excluding the first in a series of days, it shall be deemed sufficient to use the word "from." It was thus contended that the operative period commenced on 16.05.2023 and not on the date of service itself. In support of this construction, reference was made to the long-standing jurisprudence of this Court, including ***Nanayakkara v. Paiva*** and ***Perera v. Karunanayake***, wherein the Court addressed the method of computing time in summary procedure and recognised the necessity of excluding the first day in appropriate circumstances.

The Respondents further submitted that intervening Sundays falling within the computation period were also to be excluded. It was pointed out that between 16.05.2023 and 30.05.2023 two Sundays intervened, namely 21.05.2023 and 28.05.2023. In this regard, the Respondents relied on Section 8(3) of the Interpretation Ordinance and the judicial exposition thereof. Particular emphasis was placed on the reasoning adopted in ***Fernando v. Ceylon Petroleum Corporation***, where the Court of Appeal held that, in calculating the time for seeking leave to appear and defend under Chapter LIII, the first day, Sundays, and public holidays were to be excluded. It was contended that the High Court was correct in treating that authority as binding and directly applicable to the present question of law.

Addressing the Appellant's submission that Section 8(3) was confined to periods not exceeding six days, the Respondents maintained that the interpretative scheme of the Ordinance, read holistically with Sections 8 and 14, did not preclude exclusion of Sundays in the present context. They argued that the authorities cited had consistently adopted a pragmatic and purposive approach in the computation of time under summary procedure, and that such approach had been affirmed by benches of superior strength. In particular, the Respondents underscored that ***Nanayakkara v. Paiva***, decided by a bench of three Judges, had endorsed the exclusionary principle, thereby reinforcing its precedential weight.

With respect to Section 705(3) of the Civil Procedure Code, the Respondents contended that the provision was directive in character. It merely required that the day for the defendant's appearance be fixed as early as conveniently possible, having regard to distance and other practical considerations. It did not, in their submission, impose a rigid or mandatory limitation extinguishing the defendant's right to seek leave if the appearance was otherwise within the permissible period computed according to law. They distinguished Section 705(3) from provisions such as Section 86(2), which prescribe specific and mandatory time limits in unequivocal terms.

The Respondents also adverted to the apparent discrepancy between the inserted returnable date in the summons and the reference to a fourteen-day period within its body. They submitted that any such inconsistency ought not to operate to the prejudice of a defendant who had acted within the legally computed timeframe. In this connection, it was argued that the summons, being prepared at the instance of the plaintiff, could not be construed so as to deprive the defendant of a substantive right to defend where the statutory provisions had been complied with in substance.

In answer to the Appellant's allegation that the decision in ***Fernando v. Ceylon Petroleum Corporation*** was rendered per incuriam, the Respondents invoked the established doctrine governing departure from precedent. They referred to the principles articulated in ***Young v. Bristol Aeroplane Co Ltd and Morelle Ltd v. Wakeling***, to the effect that a decision may be regarded as per incuriam only in rare and exceptional circumstances where it is demonstrably rendered in ignorance of binding statutory provisions or controlling authority. It was submitted that no such demonstrable error had been established in the present instance, and that the High Court was correct in adhering to binding precedent.

The Respondents therefore maintained that, upon a proper computation excluding the date of service and the intervening Sundays, the filing on 30.05.2023 fell within the fourteen-day period contemplated in the Form 19 summons. Consequently, the 1st Respondent had validly sought leave to appear and defend, and the learned District Judge had acted within jurisdiction in permitting the defence to proceed. In those circumstances, it was urged that the High Court's dismissal of the appeal was well-founded in law.

Turning to the law that is applicable, Section 703 of the Civil Procedure Code reads as follows:

*“All actions where the claim is for a debt or liquidated demand in money arising upon a bill of exchange, promissory note, or cheque, or instrument or contract in writing for a liquidated amount of money, or on a guarantee where the claim*

*against the principal is in respect of such debt or liquidated demand, bill, note, or cheque, may, in case the plaintiff desires to proceed under this Chapter, be instituted by presenting a plaint in the form prescribed by this Ordinance, but the summons shall be in the form No. 19 in the First Schedule, or in such other form as the Supreme Court may from time to time prescribe.”*

**Section 704** of the **Civil Procedure Code** reads as follows:

*“(1) In any case in which the plaint and summons are in such forms respectively, the defendant shall not appear or defend the action unless he obtains leave from the court as hereinafter mentioned so to appear and defend ; and in default of his obtaining such leave or of appearance and defence in pursuance thereof, the plaintiff shall be entitled to a decree for any sum not exceeding the sum mentioned in the summons, together with interest to the date of the payment, and such costs as the court may allow at the time of making the decree.*

*(2) The defendant shall not be required, as a condition of his being allowed to appear and defend, to pay into court the sum mentioned in the summons, or to give security therefor, unless the court thinks his defence not to be prima facie sustainable, or feels reasonable doubt as to its good faith.”*

**Section 705** of the **Civil Procedure Code** reads as follows:

*“(1) The plaintiff who so sues and Instrument to obtains such summons as aforesaid must on produced presenting the plaint produce to the court the instrument on which he sues, and he be made, must make affidavit that the sum which he claims is justly due to him from the defendant thereon.*

*(2) If the instrument appears to the court to be properly stamped, and not to be open to suspicion by reason of any alteration or erasure or other matter on the face of it, and not to be barred by prescription, the court may in its discretion make an order for the service on the defendant of the summons above mentioned.*

*(3) The day to be inserted in the notice Summons to as the day for the defendant’s appearance be of short shall be as early a day as can be aae’*

*conveniently named, regard being had to the distance of the defendant's residence from the court."*

**Section 753** of the **Civil Procedure Code** reads as follows:

*"The Court of Appeal may call for and examine the record of any case, whether already tried or pending trial, in any court, for the purpose of satisfying itself as to the legality or propriety of any judgment or order passed therein, or as to the regularity of the proceedings of such court, and may upon revision of the case so brought before it pass any judgment or make any order which it might have made had the case been brought before it in due course of appeal instead of by way of revision."*

Turning towards the provisions of the the **Interpretation Ordinance, section 8** reads as follows:

*"(1) Where a limited time from any date or from the happening of any event is appointed or allowed by any written law for the doing of any act or the taking of any proceeding in a court or office, and the last day of the limited time is a day on which the court or office is closed, then the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day thereafter on which the court or office is open.*

*(2) Where by any written law any act or proceeding is directed or allowed to be done or taken in a court or office on a certain day, then if the court or office is closed on that day the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day thereafter on which the court or office is open.*

*(3) Where a limited time not exceeding six days from any date or from the happening of any event is appointed or allowed by any written law for the doing of any act or the taking of any proceeding in a court or office, every intervening Full Moon Poya day or Sunday or public holiday shall be excluded from the computation of such time.*

*(4)Where by any written law a day is named for the doing or taking of any act or proceeding not being an act or proceeding to be done or taken in a court or office or for the happening of any event, and that day falls upon a Full Moon Poya day, Sunday or public holiday, such written law shall be read as if the first lawful day next succeeding such Full Moon Poya day or Sunday or public holiday had been named.*

*(5)This section shall apply to written laws made as well before as after the commencement of this Ordinance.”*

**Section 14** of the **Interpretation Ordinance** reads as follows:

*“In all enactments-*

*(a) 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 " ;*

*Termination of time.*

*(b)for the purpose of including the last 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 " to " ;*

*Official chiefs subordinates.*

*(c)for the purpose of expressing that a law relative to the chief or superior of an office shall apply to the deputies or subordinates lawfully executing the duties of such office in place of such chief or superior, it shall be deemed to have been and to be sufficient to prescribe the duty of such chief or superior ;*

*Successors.*

*(d)for the purpose of indicating the relation of a law to the successors of any functionaries or corporations having perpetual succession, it shall be deemed to have been and to be sufficient to express its relation to the functionaries or corporations ;*

*Substitution of functionaries.*

*(e) for the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, it shall be deemed to have been and to be sufficient to mention the official title of the officer executing such functions at the time of the passing of the enactment; and*

*Appointments and dismissals.*

*(f) for the purpose of conferring power to dismiss, suspend, or re-instate any officer, it shall be deemed to have been and to be sufficient to confer power to appoint him.”*

The determination of this appeal turns upon the proper construction of Sections 703, 704(1) and 705(3) of the Civil Procedure Code, read together with Sections 8(3) and 14(a) of the Interpretation Ordinance, in the context of summary procedure on liquid claims. The action having been instituted under Chapter LIII, the defendant’s right to appear and defend was conditional upon compliance with the time requirements stipulated in the Form 19 summons. The central question, therefore, concerns the juridical method by which that period is to be computed.

Section 704(1) restricts appearance and defence unless leave is obtained, thereby rendering the time stipulation integral to the preservation of the defendant’s right to be heard. Section 705(3) provides that the day inserted in the summons “*shall be as early a day as can be conveniently named, regard being had to the distance of the defendant's residence from the court.*” This language is directive and contextual, rather than rigidly prescriptive. It indicates legislative concern with fairness and practicality rather than forfeiture. Section 14(a) of the Interpretation Ordinance further provides for the exclusion of the first day in a series of days where time runs “*from*” a particular date, thereby directly informing computation from the date of service.

At a purely literal level, Section 8(3) of the Interpretation Ordinance mandates exclusion of Sundays and public holidays only where a limited time “*not exceeding six days*” is prescribed. Since the Form 19 summons stipulated a

fourteen-day period, it may be argued that the statutory exclusion mechanism does not automatically apply. This textual argument possesses formal coherence and cannot be dismissed lightly.

However, statutory interpretation in procedural contexts cannot be confined to literal arithmetic divorced from structure and purpose. Section 8(3) mandates exclusion in short periods; it does not state that Sundays must be included in longer periods, nor does it prohibit courts from adopting an interpretation that preserves procedural fairness where liberty to defend is at stake. The absence of express prohibition invites a contextual reading.

The jurisprudence of this Court has long recognised that computation of time in summary procedure must be approached in a manner that does not defeat the substantive opportunity to defend. In ***Nanayakkara v. Paiva***, the Court addressed the method of calculating time within which leave to appear and defend was to be sought. Basnayake C.J. observed at page 195:

*“There is no universal rule for the computation of time when an act is required to be done within a given number of days.”*

This articulation underscores that computation is not governed by mechanical uniformity but by context and statutory structure. Similarly, in ***Fernando v. Ceylon Petroleum Corporation***, the Court of Appeal excluded the first day, Sundays and public holidays in determining whether the defendant had acted within time under Chapter LIII. The reasoning in that case reflects a judicial understanding that computation in summary procedure must ensure that the right to seek leave is real and not illusory.

Comparative common law jurisprudence reinforces this interpretative orientation. In ***Sangram Singh v. Election Tribunal* [1955] AIR 425, 1955 SCR (2) 1**, the Supreme Court of India declared:

*“A code of procedure must be regarded as such. It is ‘procedure’, something designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties.”*

Likewise, in ***State of Punjab v. Shamlal Murari* [1976] AIR 1177, 1976 SCR (2) 82**, Krishnaiyer J. stated:

*“Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice.”*

These pronouncements, though emanating from another jurisdiction, articulate a foundational common law principle: procedural rules must serve adjudication on the merits and must not operate as traps for the unwary.

With respect to exclusion of the first day, the Supreme Court of India in ***Saketh India Ltd. v. India Securities Ltd* AIR [1999] SUPREME COURT 1090** affirmed:

*“Ordinarily in computing the time, the rule observed is to exclude the first day and to include the last.. Applying the said rule, the period of one month for filing the complaint will be reckoned from the day immediately following the day on which the period of 15 days from the date of the receipt of the notice by the drawer, expires..”*

This principle mirrors Section 14(a) of the Interpretation Ordinance and supports the exclusion of the date of service in the present case.

The underlying rationale is consistent across jurisdictions: where procedural time limits condition access to adjudication, interpretation must ensure fairness, proportionality and effective opportunity. The modern approach to procedural non-compliance in administrative law rejects rigid formalism in favour of a contextual and consequence-based inquiry. In ***R v Secretary of State for the Home Department, ex parte Jeyanthan* [1999] EWCA Civ 3010; [2000] 1 WLR 354**, Lord Woolf MR cautioned that the conventional classification of statutory requirements as “mandatory” or “directory” often “distracts attention from the important question of what the legislator should be judged to have intended should be the consequence of the non-compliance.” His Lordship emphasised that “procedural requirements are designed to further the interests of justice and any consequence which would achieve a result contrary

*to those interests should be treated with considerable reservation.”* Accordingly, he suggested that the mandatory/directory distinction is “*only at most a first step,*” and that courts must instead ask broader and more principled questions directed to substantial compliance, waiver, and the actual consequences of the defect. This analytical framework recognises that procedural rules are instrumental rather than ends in themselves, and that the true inquiry is whether the irregularity has frustrated the statutory purpose or caused material injustice.

In the context of summary procedure under Chapter LIII, the denial of leave to defend carries significant consequences. It results in judgment without full trial. Such a mechanism is justified only where the defendant has been afforded a genuine and practical opportunity to invoke the court’s discretion. A construction of time computation that marginally truncates that opportunity by rigid inclusion of non-working days, notwithstanding interpretative latitude, risks transforming procedure into forfeiture.

Turning to the present facts, it is common ground that summons were served on 15.05.2023 and that the 1st Respondent filed his Appointment of Attorney and Statement of Objections on 30.05.2023. In computing time, the exclusion of the date of service accords both with Section 14(a) and with the long-settled principle that, unless a contrary intention appears, the day from which time begins to run is excluded. The operative period therefore commenced on 16.05.2023. Between that date and 30.05.2023, two Sundays intervened. The controversy, therefore, is not factual but juridical: whether those intervening Sundays fall to be included in calculating the prescribed fourteen-day period, or whether they fall to be excluded upon a proper construction of the procedural scheme.

It is necessary at the outset to situate the inquiry within its correct analytical frame. The question is not merely one of arithmetic; it is one of statutory construction informed by the nature and function of procedural time limits. Time prescriptions in procedural law serve the orderly conduct of litigation, the protection of opposing parties from indeterminate delay, and the efficient

administration of justice. They are not, however, ordinarily designed to operate as traps for the unwary or as instruments for the forfeiture of substantive rights in the absence of real prejudice. Where a procedural provision conditions the right to defend upon compliance within a stipulated period, the court must construe the relevant provisions coherently, harmonising their language with their object and with the broader architecture of the Code.

The statutory scheme, read as a whole, does not compel a construction that mandates the inclusion of intervening Sundays in every period exceeding six days irrespective of context. Section 705(3), properly understood, is directive in character: it provides guidance as to the computation of time but does not, in terms, articulate an inflexible rule that overrides all other considerations of fairness, legislative purpose, and practical operation. Nor does it expressly state that intervening non-working days must invariably be counted in periods such as the present one, where the consequence of non-compliance is the potential deprivation of the right to contest proceedings. To read it as imposing an absolute and mechanical inclusion would be to elevate form over substance and to detach the provision from the procedural matrix within which it operates.

In the present case, if the two intervening Sundays are excluded, the filing falls comfortably within fourteen operative days. If they are included without qualification, the filing becomes technically late by a narrow margin. That narrowness is not irrelevant. The court is not confronted with prolonged inaction or contumacious delay, but with a computation that turns upon the treatment of non-working days within a short statutory period. In such a context, the principle that ambiguity in procedural regulation, particularly where it affects the right to defend, should be resolved in a manner that sustains, rather than stifles, adjudication assumes heightened importance. The law leans against constructions that produce disproportionate procedural forfeiture absent clear legislative command.

Moreover, a construction that excludes intervening Sundays in this context does not undermine certainty or administrative coherence. It recognises the practical realities of court functioning and legal practice, in which Sundays are not ordinary working days, and it accords with the broader objective that litigants be afforded a fair and reasonable opportunity to respond. By contrast, a rigid inclusion of such days, in circumstances where the statutory text does not unequivocally compel that result, risks transforming a facilitative procedural rule into a punitive one.

When the relevant provisions are construed purposively, contextually, and in a manner consistent with the integrity of the adjudicative process, the balance tilts toward an interpretation that avoids technical invalidation in the absence of demonstrated prejudice. The computation of time must therefore be undertaken in a manner that gives coherent effect to the statutory scheme as a whole, preserves procedural discipline, yet does not defeat the substantive right to be heard on the basis of a marginal and contestable calculation.

When considering all the circumstances of this case, it is evident that the learned Judges of the High Court of Civil Appeals holden at Mt. Lavinia neither misdirected themselves in law nor misapplied the relevant statutory provisions. The interpretation adopted by that Court was consistent with the language and purpose of Section 753 of the Civil Procedure Code read with Form 19. The reliance placed on ***Fernando v. Ceylon Petroleum Corporation*** does not disclose any error of law, nor can it be said that binding authority of this Court was disregarded in a manner amounting to misdirection.

Therefore, having examined the facts of the case and the material placed before this Court, I see no reason to interfere with the judgment of the High Court of Civil Appeals holden at Mt. Lavinia. The judgment of the High Court of Civil Appeals holden at Mt. Lavinia is hereby affirmed.

Accordingly, I answer the question of law on which leave has been granted in the negative and dismiss the appeal of the Appellant.

*Appeal Dismissed.*

**Janak De Silva, J.**

I agree.

**JUDGE OF THE SUPREME COURT**

**Menaka Wijesundera, J.**

I agree.

**JUDGE OF THE SUPREME COURT**

**JUDGE OF THE SUPREME COURT**