

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

G. Magilin Nona,
No. 21/A, Old Road,
Ambatale, Angoda.
Plaintiff-Respondent-Appellant

SC/APPEAL/7/2010

CA/396/2000 (F)

DC COLOMBO 17237/L

Vs.

Don Ratnasena Godamune,
Chandima Saw Mill,
Old Road, Ambatale,
Angoda.
Defendant-Appellant-
Respondent (Deceased)

1. Nivunhellage Violet Somawathie
Perera.
2. Dinesh Chandimal Godamune.
3. Sharada Rukmal Godamune.
4. Buddhima Eranga Godamune.
All of Chandima Saw Mill,
Old Road, Ambatale,
Angoda.
Substituted Defendants-
Appellants-Respondents

Before: Mahinda Samayawardhena, J.
K. Priyantha Fernando, J.
M. Sampath K. B. Wijeratne, J.

Counsel: Anandalal Nanayakkara with Dilhan De Silva for the Plaintiff-Respondent-Appellant.
Navin Marapana, P.C., with Uchitha Wickramasinghe and Varuni Rathnayaka for the Defendants-Appellants-Respondents.

Argued on: 22.09.2025

Written submissions:

By the Plaintiff-Respondent-Appellant on 22.10.2025.

By the Defendants-Appellants-Respondents on 01.09.2016 and 06.11.2025.

Decided on: 17.03.2026

Samayawardhena, J.

The Plaintiff instituted this action against the Defendant in the District Court of Colombo on 29.09.1995 seeking a declaration of a right of way over the Defendant's land. After trial, the District Court entered judgment in favour of the Plaintiff. On appeal, the Court of Appeal set aside the judgment of the District Court and dismissed the Plaintiff's action.

This Court granted leave to appeal against the judgment of the Court of Appeal on 19.01.2010, directed the parties to file written submissions in terms of the Supreme Court Rules of 1990, and fixed the appeal for argument on 06.05.2010.

Rule 30(1) of the Supreme Court Rules of 1990 provides:

No party to an appeal shall be entitled to be heard, unless he has previously lodged five copies of his written submissions complying with the provisions of this rule.

Rule 30(6) further provides:

The appellant shall, within six weeks of the grant of special leave to appeal, or leave to appeal, as the case may be, lodge his submissions at the Registry and shall forthwith give notice thereof to each respondent by serving on him a copy of such submissions.

Accordingly, the Appellant was required to file her written submissions on or before 02.03.2010. However, she failed to do so within the stipulated period, and no application for an extension of time was made in terms of Rule 40. Rule 40 provides as follows:

An application for a variation, or an extension of time, in respect of the following matters shall not be entertained by the Registrar, but shall be submitted by him to a single judge, nominated by the Chief Justice, in Chambers.

- (a) Tendering notices as required by rule 8(3) and 25(2);*
- (b) Deposit of brief fees as required by rules 16(5) or 27(5);*
- (c) Filing written submissions as required by rule 30;*
- (d) Furnishing the address of a Respondent as required by rules 8(5) and 27(3);*
- (e) Filing counter-affidavits and counter-submissions as required by rule 45;*
- (f) Furnishing material as required by rule 38.*

On 17.03.2010, the Respondent filed a motion, apparently without notice to the Appellant, stating that the Appellant had failed to file her written submissions in compliance with the Rules, that she was not entitled to file submissions after the lapse of the prescribed period, that she had thereby forfeited her right of audience, and accordingly praying that the appeal be dismissed. The Judge in Chambers made a minute directing that the said motion be supported on the date of hearing.

Thereafter, without any explanation for the delay, the Appellant filed her written submissions on 29.04.2010, with a copy to the Respondent, approximately one week prior to the date first fixed for hearing.

According to Rule 30(7), where the Appellant files written submissions within six weeks of the grant of leave to appeal, the Respondent is required to file written submissions within six weeks from the date of receipt of the Appellant's submissions. In the event the Appellant fails to file written submissions within the stipulated six weeks, the Respondent is required to file his written submissions within twelve weeks from the date of the grant of leave to appeal.

In the present case, as the Appellant failed to file written submissions within six weeks of 19.01.2010, the Respondent was obliged to file his written submissions on or before 13.04.2010. In his post-argument written submissions, the Respondent states that since the 13th and 14th of April were public holidays on account of the Sinhala and Tamil New Year, he filed his written submissions on the next working day, namely 15.04.2010. That assertion is not correct. Although the motion and the written submissions bear the date 15.04.2010, the day stamp indicates that they were in fact filed in Court on 16.04.2010. Thus, the Respondent too filed his written submissions one day out of time, without furnishing any explanation for the delay.

If Rule 30(1) were to be construed strictly in the manner asserted by the Respondent, neither the Appellant nor the Respondent would be entitled to be heard.

However, it is to be noted that both parties had in fact filed their written submissions prior to the date first fixed for hearing.

At the hearing, learned President's Counsel for the Respondent insisted that the Court should first determine the preliminary objection raised as to the maintainability of the appeal before going into the merits. This Order is confined to that issue.

Article 136 of the Constitution empowers the Chief Justice, together with any three Judges of the Supreme Court, to make Rules regulating the practice and procedure of this Court.

It must be recognised that, for the effective and efficient administration of justice, substantive law and procedural law must operate in harmony. Substantive law is concerned with the ends which the administration of justice seeks to achieve, while procedural law is concerned with the means by which those ends are realised. Without an effective procedural framework, substantive rights would remain illusory.

At the same time, it must be borne in mind that the Supreme Court is the final Court of the Republic, and that the Rules made under Article 136 are intended to advance and facilitate the administration of justice, not to impede or defeat it.

In relation to the filing of written submissions in appeals, Rule 30 stipulates, *inter alia*, the applicable timelines. I have already adverted to Rules 30(1), 30(6), 30(7) and 40.

Rule 30(1) provides that no party to an appeal shall be entitled to be heard unless he has previously lodged five copies of his written submissions in compliance with Rule 30. Accordingly, where a party fails to file written submissions within the time stipulated therein, such party forfeits the right of audience as of right. Nevertheless, the Court retains the discretion to permit such defaulting party to make submissions. Conversely, where written submissions are duly filed in accordance with the Rules, the party is entitled to be heard as of right in the manner contemplated by Rule 33.

Rule 33 provides:

At the hearing of the appeal by the Supreme Court, the appellant shall be entitled to be heard first, followed by the respondents in their numerical order, unless the Court decides otherwise. The appellant shall be entitled to reply to the arguments of the respondents.

Judgments of the Supreme Court are binding not only on the parties to the particular case but also on all subordinate Courts in the judicial hierarchy by virtue of the doctrine of *stare decisis*. It is therefore imperative that this Court arrives at the correct conclusion both in fact and in law. In that process, the assistance of learned counsel on both sides, through written as well as oral submissions, is of paramount importance. If such assistance is not forthcoming, the Court would be compelled to undertake the entire burden of adjudication without the benefit of the submissions of counsel. The Court cannot reasonably be expected to assume such an onerous responsibility on its own. Such a consequence could never have been contemplated by the framers of the Rule.

It follows that an appeal cannot be dismissed *in limine* merely on the ground of failure to file written submissions within the time stipulated by the Rules.

However, Rule 34 confers upon the Court a discretion to dismiss an appeal for non-prosecution where the appellant “fails to show due diligence in taking all necessary steps for the purpose of prosecuting the appeal”, after such notice to the party as the Court shall think reasonable. This provision indicates that an isolated lapse may not, by itself, warrant dismissal. The Court must be satisfied that the appellant has failed to exhibit due diligence in taking all necessary steps for the prosecution of the appeal, or has engaged in contumacious conduct or wilful disregard of the procedural requirements of the Court.

34. Where an appellant or a petitioner who has obtained leave to appeal, fails to show due diligence in taking all necessary steps for the purpose of prosecuting the appeal or application, the Court may, on an application in that behalf by a respondent, or of its own motion, on such notice to the parties as it shall think reasonable in the circumstances, declare the appeal or application to stand dismissed for non-prosecution, and the costs of the appeal or

application and any security entered into by the appellant shall be dealt with in such manner as the Court may think fit.

It is well settled that compliance with the Rules is mandatory. However, there is divergence of judicial opinion as to the consequences of non-compliance.

In *Kiriwanthe v. Navaratne* [1990] 2 Sri LR 393, this Court examined the consequences of non-compliance with the Supreme Court Rules. Mark Fernando J., having analysed the purpose and scheme of the Rules as well as prior authorities, emphasised that although compliance with the Rules is mandatory, strict or literal compliance is not required. The consequence of default, it was held, lies within the discretion of the Court, to be exercised having regard to the object of the particular Rule and the gravity of the lapse.

At page 401, His Lordship observed:

*While “mandatory” is generally used in the sense of “imperative” or “absolute” or “obligatory”, as opposed to “directory” or “permissive”, it is used by Lord Campbell [in *Liverpool Borough Bank v. Turner* (1860) 2 De G F J 502] as embracing both categories. Without becoming enmeshed in semantics, I am content to hold that the requirements of Rule 46 must be complied with, but that strict or absolute compliance is not essential; it is sufficient if there is compliance which is “substantial”—this being judged in the light of the object and purpose of the Rule. It is not to be mechanically applied, as in the case now before us; the Court should first have determined whether the default had been satisfactorily explained, or cured subsequently without unreasonable delay, and then have exercised a judicial discretion either to excuse the non-compliance, or to impose a sanction; dismissal was not the only sanction. That discretion should have been exercised primarily by reference to the purpose of the Rules, and not as a means of punishing the defaulter.*

At page 404, His Lordship further stated:

The weight of authority thus favours the view that while all these Rules must be complied with, the law does not require or permit an automatic dismissal of the application or appeal of the party in default. The consequence of non-compliance (by reason of impossibility or for any other reason) is a matter falling within the discretion of the Court, to be exercised after considering the nature of the default, as well as the excuse or explanation therefor, in the context of the object of the particular Rule. In the case before us, the Court of Appeal was clearly wrong in upholding the preliminary objection based on Rule 46.

At pages 405–406, Mark Fernando J. went to the extent of stating that, even in the absence of an explanation for non-compliance, the Court shall independently consider the gravity and impact of the default in relation to the issues in the case before deciding upon the appropriate sanction.

Even if non-compliance had not been explained, the discretion of the Court, to make an order of dismissal, should have been exercised only after considering the gravity of default in relation to the issues arising in the case.

This judgment has been followed or the same principles have been reiterated in a number of decisions including Sripavan J. in *Fernando v. Fernando* [2010] 1 Sri LR 25, Marsoof J. in *Senanayake v. Commissioner of National Housing* [2005] 1 Sri LR 182, Dep J. in *Ran Banda v. People's Bank*, (SC/SPL/LA/229/2011, SC Minutes of 17.07.2014), Eva Wanasundera J. in *Bandara v. Leelawathie Menike*, (SC/APPEAL/172/2011, SC Minutes of 22.01.2014) and *Abeyratne v. Jaykay Marketing Services (Pvt) Ltd*, (SC/APPEAL/199/2012, SC Minutes of 24.03.2015).

I am in respectful agreement with the dicta of Mark Fernando J. in *Kiriwanthe*.

I am unable to agree with those judgments which have taken the view, whether directly or by necessary implication, that failure to comply with the Rules, including the failure to file written submissions within time, warrants the automatic dismissal of an appeal in terms of Rule 30(1) or 34.

As I have already observed, in determining whether to invoke Rule 34, the Court must carefully examine whether the conduct of the defaulting party amounts to contumacious behaviour or a wilful disregard of the procedural requirements and directions of Court. It is only where such deliberate, persistent, or reckless non-compliance is established that the extreme sanction of dismissal would be justified.

In support of the preliminary objection, the principal authority relied upon by the Respondent is the judgment of Bandaranayake J. (as Her Ladyship then was) in *Muthappan Chettiar v. Karunanayake* [2005] 3 Sri LR 327. However, the facts of that case are clearly distinguishable. In that case, the Court characterised the conduct of the Appellant as contumacious and wilful. After leave to appeal had been granted and the appeal fixed for hearing, and notwithstanding that the case had been called on several occasions for applications to be supported and for the date of argument to be changed, the Appellant lodged written submissions more than one year and three months after the first date fixed for hearing. The Appellant had further disregarded specific directions given by the Court to file written submissions on the preliminary objection, even after the issue of non-compliance with the Rules had been taken up in Court.

In cases such as *Balasingham v. Puranthiran (a Minor) by his next friend Sivapackiam* [2000] 1 Sri LR 163, *Samarasinghe Arachchige Premasiri v. Adamjee Lukmanjee & Sons Ltd* (SC/CHC/APPEAL/19/2009, SC Minutes of 29.09.2014), the appeals were dismissed not solely because

the Appellant failed to file written submissions in terms of Rule 30(6), but because there was further material sufficient to satisfy the Court that the Appellant was not diligently prosecuting the appeal, thereby warranting dismissal of the appeal in terms of Rule 34.

In the instant case, the Appellant lodged her written submissions prior to the first date fixed for hearing and served a copy on the Respondent. The Respondent too filed written submissions, albeit not within the prescribed time, before the hearing. In these circumstances, there is no basis either to deny the parties the opportunity of making submissions at the hearing or to dismiss the appeal *in limine* for non-compliance with the Rules.

As a general rule, cases ought to be decided on their merits and not on technical objections, unless the objection goes to the root of the matter. Litigants come before Court with the legitimate expectation that their disputes will be adjudicated on the merits. Very often, the omission which gives rise to a technical objection is attributable to the lapse or negligence of the Attorney-at-Law. In such circumstances, it would be unjust to impose the consequences of that lapse upon the litigant. The principle that the negligence of the Attorney-at-Law is the negligence of the client warrants serious reconsideration. The indiscriminate dismissal of cases on technical grounds undoubtedly undermines public confidence in the administration of justice.

Accordingly, the preliminary objection raised by the Respondent, on the ground that the Appellant failed to file written submissions within the prescribed time and therefore the appeal shall be dismissed *in limine* or the Appellant shall be denied the right of audience at the hearing, is overruled.

The costs of this inquiry shall abide the final determination of the appeal.

Judge of the Supreme Court

K. Priyantha Fernando, J.

I agree.

Judge of the Supreme Court

M. Sampath K. B. Wijeratne, J.

I agree.

Judge of the Supreme Court