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

In the matter of an application for leave to appeal in terms of Section 5C of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended by Act No.54 of 2006.

Pattiyage Leelawathie Gomes,
No. 60/10 J, Templers Road,
Mt. Lavinia

Plaintiff

Vs.

1. Preethi Reeta Bastian,
2. Wajirapani Bastian,
3. Luwis Vidanalage Manel Bridget Bastian

All of No. 53/3, Sri Gunaratne Mawatha, Mt. Lavinia.

Defendants

AND

1. Preethi Reeta Bastian,
2. Wajirapani Bastian,
3. Luwis Vidanalage Manel Bridget Bastian

All of No. 53/3, Sri Gunaratne Mawatha, Mt. Lavinia.

Defendants-Appellants

Vs.

Pattiyage Leelawathie Gomes,
No. 60/10 J, Templers Road,
Mt. Lavinia (deceased)

Plaintiff-Respondent

SC/HCCA/LA/404/2013

WP/HCCA/MT/90/09/F

DC (Mt. Lavinia): 1638/02/L

AND NOW BETWEEN

1. Preethi Reeta Bastian,
2. Wajirapani Bastian,

All of No. 53/3, Sri Gunaratne Mawatha, Mt. Lavinia.

Defendants-Appellants-Petitioners

Vs.

1. Sriya Sepalika Suludagoda,
2. Lal Kumara Suludagoda,
3. Neetha Kamini Suludagoda,
4. Geetha Chandani Suludagoda,

All of No. 60/10 J, Templers Road, Mt. Lavania

SUBSTITUTED Plaintiffs-Respondents-Respondents

Before: Priyantha Jayawardena, PC, J.
Murdu N.B. Fernando, PC, J.
Yasantha Kodagoda, PC, J.

Counsel: Venura Cooray for the Defendants-Appellants-Petitioners
J.A.J Udawatta for the 1st, 3rd and 4th substituted Plaintiffs-Respondents-Respondents

Argued on: 20th July, 2020

Decided on: 24th September, 2020

Priyantha Jayawardena, PC, J

This is an application filed to have the judgment of the Provincial High Court of the Western Province exercising civil appellate jurisdiction (hereinafter referred to as the "Civil Appellate High Court") affirming the judgment of the District Court of Mount Lavinia (hereinafter referred to as the "District Court") set aside.

Facts of the case

The substituted Plaintiffs-Respondents-Respondents (hereinafter referred to as "the Plaintiffs") had instituted action in the District Court praying *inter alia* for a declaration of title and the ejectment of the Defendants-Appellants-Petitioners (hereinafter referred to as "the Defendants") from the land and premises referred to in the schedule to the plaint. At the conclusion of the trial, the learned judge of the District Court had delivered a judgment in favour of the Plaintiffs and granted the reliefs as prayed for in the plaint.

Being aggrieved by the aforesaid judgment, the Defendants had preferred an appeal to the Civil Appellate High Court. Upon hearing both parties, the Civil Appellate High Court had delivered its judgment on 28th August, 2013 dismissing the said appeal and affirmed the judgment of the District Court.

Being aggrieved by the aforesaid judgment of the Civil Appellate High Court, the Defendants had preferred an application for leave to appeal to this Court on 10th October, 2013.

Preliminary Objection of the Plaintiffs

When this application was taken up for support, a preliminary objection was raised by the learned Counsel for the Plaintiffs on the maintainability of the instant application on the basis that it had been filed outside the "six weeks" stipulated in Rule 7 of the Supreme Court Rules of 1990 (hereinafter referred to as "the Supreme Court Rules").

The time limit for applications seeking leave to appeal from the Civil Appellate High Court

It is common ground that the judgment of the Civil Appellate High Court had been delivered on 28th August, 2013 and the instant application was filed on 10th October, 2013. Thus, the issue in this application is to consider whether the appeal has been filed out of time.

Part I of the Supreme Court Rules refers to three types of appeals: 'Part 1A' stipulates the procedure applicable to applications seeking 'special leave to appeal' from the Court of Appeal, 'Part 1B' stipulates the procedure applicable to applications seeking 'leave to appeal', and 'Part 1C' stipulates the procedure applicable to all other types of appeals to the Supreme Court.

Rule 7 in 'Part 1A' of the Supreme Court Rules states:

> *"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."* [Emphasis Added]

Thus, an application seeking 'special leave to appeal' should be made within six weeks of the impugned order, judgment, decree or sentence of the Court of Appeal.

However, the instant application is an application seeking 'leave to appeal' from a judgment of the Civil Appellate High Court. Thus, it comes under 'Part 1C' of the Supreme Court Rules which stipulates the procedure for 'Other Appeals.'

The aforementioned position was held in *L. A. Sudath Rohana and another v. Mohamed Cassim Mohemmed Zeena,* SC/HCCA/LA/111/2010, SC Minutes dated 14.07.2010, wherein the court held:

> *"Part I of the Supreme Court Rules, 1990 refers to three types of appeals which are dealt with by the Supreme Court, viz., special leave to appeal, leave to appeal and other appeals. Whilst applications for special leave to appeal are from the judgments of the Court of Appeal, the leave to appeal applications referred to in the Supreme Court Rules are instances, where the Court of Appeal had granted leave to appeal to the Supreme Court from any final order, judgment, decree or sentence of the Court of Appeal, where the Court had decided that it involves a substantial question of law. The other appeals referred to in Section C of Part I of the Supreme Court Rules are described in Rule 28(1).*

The High Court of the Provinces (Special Provisions) Act No.19 of 1990 and High Court of the Provinces (Special Provisions) Amendment Act No.54 of 2006 do not contain any provisions contrary to Rule 28(1) of the Supreme Court Rules, 1990 thus enabling the fact that Section C of Part I of the Supreme Court Rules, which deals with other appeals to the Supreme Court, should apply to the appeals from the High Courts of the Provinces." [Emphasis added]

Rule 28(1) in Part 1C of the Supreme Court Rules states:

"Save as otherwise specifically provided by or under any law passed by Parliament, the provisions of this rule shall apply to all other appeals to the Supreme Court from an order, judgment, decree or sentence of the Court of Appeal or any other court or tribunal."

In view of the fact that Rule 28(1) does not stipulate a time limit, it is necessary to consider whether the six-week time limit stipulated in Rule 7 is applicable to the instant application falling under the category of 'Other Appeals.'

In this regard, in *George Stuart and Co. Ltd. v. Lankem Tea and Rubber Plantations (Pvt.) Ltd*. (2004) 1 SLR 246 at page 252, this court held:

"Where no provision is made in the relevant Act specifying the time frame in which an application for leave to appeal be made to the Supreme Court, and simultaneously when there are Rules providing for such situations, the appropriate procedure would be to follow the current Rules which govern the leave to appeal application to the Supreme Court. Consequently, such an application would have to be filed within 42 days from the date of the Award."

In *Priyanthi Chandrika Jinadasa v. Pathma Hemamali and 4 Others* (2011) 1 SLR 337 at page 344 cited the said case of *George Stuart and Co. Ltd. v. Lankem Tea and Rubber Plantations (Pvt.) Ltd*. (*supra*) with approval and held:

"Accordingly, it is evident that an application for leave to appeal from the High Court (Civil Appeal) of the Provinces to the Supreme Court should be filed within 42 days from the date of the judgment."

Further, in *Mahaweli Authority of Sri Lanka v. United Agency Construction (Pvt) Ltd* (2002) 1 SLR 8 at page 12, it was held:

> *"In my view, the clear inference is that the Supreme Court in making the rules did not consider it necessary to go beyond a maximum of forty-two days for making an application for special leave to the Supreme Court. In deciding on these periods within which such applications for leave to appeal should be made we must necessarily conclude that the Supreme Court fixed such periods as it was of the view that such periods were reasonable having regard to all relevant circumstances, and also that the Supreme Court acted reasonably in doing so."*

Accordingly, the time limit of six weeks stipulated in Rule 7 of the Supreme Court Rules is applicable not only to applications seeking 'special leave to appeal' from the Court of Appeal but also to applications seeking leave to appeal from the Civil Appellate High Court falling within Part 1C of the Supreme Court Rules.

Thus, an application for leave to appeal from the Civil Appellate High Court to the Supreme Court should be filed within six weeks from the date of the judgment.

Computation of the six-week time limit

A week is defined in Maxwell on '*The interpretation of Statutes'*, 12th Ed., at page 309, as follows:

> "A "week" may according to context, be a calendar week beginning on Sunday and ending on Saturday or <u>any period of seven days</u>." [Emphasis added]

Further, Stroud's *Judicial Dictionary* Vol. III, 6th Ed. at page 2890, states:

> "Though a "week" usually means <u>any consecutive seven days</u>, it will sometimes be interpreted to mean the ordinary notion of a week reckoning from Sunday to Sunday (*Bazalgette v. Lowe* 24 L.J. Ch. 368, 416). And, probably, <u>a "week" usually means seven clear days</u>…." [Emphasis Added]

As stated earlier, the language of Rule 7 stipulates that the application must be filed *"within six weeks of the order, judgment, decree or sentence*". The said phrase in Rule 7 has been examined in detail in the case of *Board of Investment v. Million Garments (Pvt) Ltd*, SC/HC/ LA/58/2012, SC Minutes 24.10.2014 which held:

> "*the term "**of**" as used in the Rule 7 is synonymous with "**from**", and "six weeks of the order, judgement" etc., means the same as "six weeks from the order, judgment" etc.*" [Emphasis Added]

In interpreting the aforesaid word "*from",* Maxwell (*supra)* at page 309 states:

> "Where a statutory period runs from a named date to another, or 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 must in every case depend 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" [Emphasis Added]

A similar view was expressed in *Sinna Lebbe Saliya Umma v. Shahul Hameed Mohammed Yaseen*, SC/Appeal/99/2014, SC Minutes 04.04.2018.

In view of the above, in computing the six-week time limit in Rule 7, the first date on which the judgment of the Civil Appellate High Court was delivered must be excluded from the calculation.

Has the instant application been filed within the six-week time limit stipulated in Rule 7?

As stated above, since the date on which the impugned judgment was delivered must be excluded in the computation of the six weeks, Wednesday, 28th August, 2013 shall be excluded.

Accordingly, the time has commenced to run from Thursday, 29th August, 2013. Thus, the sixth week has ended on Wednesday, 9th October, 2013.

In the circumstances, it is evident that the Defendants have failed to comply with the six-week time limit stipulated in Rule 7 as the application has been filed on Thursday, 10th October, 2013.

Is the non-compliance with the time limit fatal to the maintainability of the application?

The learned Counsel for the Defendants contended, citing the case of *Nirmala de Mel v Seneviratne* (1982) 2 SLR 569, that even though the Supreme Court Rules may specify a time

limit in filing an application seeking leave to appeal, the court may exercise its discretion and waive off such time limit.

However, the said case of *Nirmala de Mel v. Seneviratne* (supra) which was decided well before the present Supreme Court Rules of 1990 were promulgated has no application to the instant application.

Further, the procedural rules in respect of time limits ensure uniformity and efficiency in the legal system. Further, it goes to the root of the jurisdiction of the court.

A similar view was expressed by Mark Fernando, J. in *The Ceylon Brewery Ltd. v. Jax Fernando, Proprietor, Maradana Wine Stores*, (2001) 1 SLR 270 at page 271 where it was held:

> *"We are of the view that section 86(2) of the Civil Procedure Code is the provision which confers jurisdiction on the District Court to set aside a default decree. That jurisdiction depends on two conditions being satisfied. One condition is that the application should be made within 14 days of the service of the default decree on the defendant.*
>
> *It is settled law that provisions which go to the jurisdiction must be strictly complied with."* [Emphasis Added]

Similarly, in *L.A. Sudath Rohana v. Mohamed Zeena and others* (*supra*) it was held:

> *"Be that as it may, it is also of importance to bear in mind that the procedure laid down by way of Rules, made under and in terms of the provisions of the Constitution, cannot be easily disregarded. Such Rules have been made with purpose and that purpose is to ensure the smooth functioning of the legal machinery through the accepted procedural guidelines. In such circumstances, when there are mandatory Rules that should be followed and objections raised on non–compliance with such Rules such objections, cannot be taken as mere technical objections."* [Emphasis added]

Further, in *Edward v. De Silva* (1945) 46 NLR 342 at page 344, it was held:

> *"The legislature continued the jurisdiction, that is to say, the competency of the court as the court appointed to try and determine the case, beyond its ordinary limits, but it*

took care to see, as it almost invariably does, that its jurisdiction, in the sense of its power to act, and of its correct action are made dependent on the observance of rules and procedures. Some of those rules are so vital, being of the spirit of the law, of the very essence of judicial action, that a failure to comply with them would result in a failure of jurisdiction or power to act, and that would render anything done or any order made thereafter devoid of legal consequences. The failure to observe other rules, less fundamental, as pertaining to the letter of the law and to matters of form that would not prevent the acquisition of jurisdiction or power to act, but would involve the exercise of it in irregularity. Or it may happen that the court having acquired jurisdiction, thereafter acts irregularly or erroneously and thereby prejudice is caused to some party." [Emphasis added]

Thus, the time limits that have been stipulated by the Supreme Court Rules cannot be considered mere technicalities.

Further, the compliance with Rule 7 is mandatory and cannot be waived off. A similar position was held in *Priyanthi Chandrika Jinadasa v. Pathma Hemamali and 4 Others (supra)* at page 346:

"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 for 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".

In view of the above, it is imperative that an application seeking leave to appeal should be filed within a period of six weeks as specified in Rule 7 of the Supreme Court Rules.

Conclusion

For the aforementioned reasons, I hold that the Defendants had not complied with the mandatory Rule 7 of the Supreme Court Rules of 1990 and the instant application for leave to appeal has been filed out of time.

In the circumstances, I uphold the preliminary objection raised by the learned Counsel for the Plaintiffs and dismiss the Defendants application for leave to appeal.

I order no costs.

Judge of the Supreme Court

Murdu N. B. Fernando, PC, J

I agree **Judge of the Supreme Court**

Yasantha Kodagoda, PC, J

I agree **Judge of the Supreme Court**