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IN THE COURT OF APPEAL OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA.

C.A. 1010/96 F
D.C. Embilipitiya 3902/L

1. R.D.Selesthina
2. N.Karunawathie,
Udaha Hena Idama,
Kolonna
Defendant-
Appellants

Vs

Leelaratna llesingha,
Kolonna
Plaintiff-Respondent

BEFORE : A W A SALAM, J

COUNSEL : Athula Perera with Jeewanie Bandara for
defendant-appellant and Anurudhdha Dharmawardena for
plaintiff-respondent.

ARGUED ON : 30.01.2012.

DECIDED ON : 14.06.2012.

A W Abdus Saām, J

When this appeal was taken up for argument on 30th January 2012, a preliminary objection was raised by the plaintiff-respondent with regard to the maintainability of the appeal in that it was contended that the petition of appeal having filed filed out of time should be rejected *inlimine*. Consequently, the Registrar of the relevant court was summoned to clarify certain matters arising from the preliminary objection and she produced the documents relevant to the objection.

The judgement pertaining to this appeal has been admittedly delivered on 31 July 1996. According to the clarification made by the Registrar of the relevant court, the petition of appeal has been filed on 20.9.1996. The register further stated that there is a practice that prevails in the relevant district court to charge stamp duty on the petition of appeal. In respect of the present petition of appeal the appellant has paid stamp duty on 20.09.1996 and the receipt pertaining to the payment of the stamp duty is found at page 20 of case record. According to the report of the Registrar the petition of appeal has been filed on 20.9.1996. If this be correct, then the petition of appeal has been filed within the period stipulated by law. As far as the record is concerned on 20.9.1996 the Registrar has initialled the original record to the effect that the petition was tendered on that day. Even though, the "official day stamp" has not been affixed indicating the exact day on which the petition of appeal has been filed, the appellant cannot be penalized, if there be any lapse on the part of the Registrar in failing to affix the seal of the court.

Taking into consideration the material available, I am of the view that it is unsafe to assume that the petition of appeal has been filed out of time. In the circumstances, the preliminary objection raised by the plaintiff-respondent is ruled out

Judge of the Court of Appeal

CR/-