

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

Premasiri Dias Balasuriya,
No. 755, Romiel Mawatha,
Panagoda, Homagama.

Plaintiff

Vs.

C.A. No. 03 / 97 F
D.C. Homagama No. 126 / D

Padukkage Jayantha Samaratunge,
'Suwanda',
Palannaruwa, Gonapola.

Defendant

And Now Between

Premasiri Dias Balasuriya,
No. 755, Romiel Mawatha,
Panagoda, Homagama.

Plaintiff-Appellant

Vs

Padukkage Jayantha Samaratunge,
'Suwanda',
Palannaruwa, Gonapola.

Defendant -Respondent

BEFORE : UPALY ABEYRATHNE J.

COUNSEL : Upaly Senarathne with Thishya Weragoda
for the Plaintiff Appellant
Edward Ahangama for the Defendant
Respondent

ARGUED ON : 23.09.2011

DECIDED ON : 14.10.2011

UPALY ABEYRATHNE, J.

The Plaintiff Appellant (hereinafter referred to as the Appellant) instituted the said action against the Defendant Respondent (hereinafter referred to as the Respondent) seeking for divorce *a vinculo matrimonii*. The Respondent filed answer denying the averments in the plaint and prayed for a declaration of nullity of marriage on the grounds mentioned in the answer. The case proceeded to trial on 11 issues. During the pendency of trial, on 09.03.1993 both parties agreed to settle the case between them. The terms of settlement has been recorded as follows;

“පැමිණිලිකරු විත්තිකාරියට රුපියල් 50,000/- මුදලක් ගෙවීමට එකඟ වේ. එම මුදල විත්තිකාරියගේ සම්පූර්ණ සහ අවසාන ඉල්ලීම ලෙස සලකන ලෙසද පැමිණිල්ලේ නීතිඥ මහතා ඉල්ලා සිටී. ඒ අනුව විත්තිකාරියගේ වාසියට මෙම විවාහය ශුන්‍ය බල රහිත විවාහයක් බවට ප්‍රකාශ කරමි. එසේ නිදා කරනවාට පැමිණිලිකරු කැමත්ත පල කර සිටී. තවද මෙම මුදල 1994.03.31 දිනට පෙර ගෙවිය යුතුය. එම මුදල අවසාන වශයෙන් ගෙවන තෙක් විත්තිකාරියට හිමි අතුරු දික්කසාද දීමනාව වන රුපියල් 500/- මුදල සෑම මසකම අවසාන දිනට ප්‍රථම මෙම නඩුවට බැර කල යුතුය. පැමිණිලිකරු මෙම සමථය අනුව කටයුතු කිරීමට

අපොහොසත් හෝ නොසැලකිලිමත් වුවහොත් විත්තිකාරිය ඉල්ලා සිටින පරිදි නිදවක් කරනවාට පැමිණිලිකරු කැමත්ත ප්‍රකාශ කර සිටී. එවැනි අවස්ථාවකදී පැමිණිලිකරුට නොතීසියක් නොමැතිව ඇස්කිසි කිරීමට හෝ එයට අදාළ පියවර ගැනීමට පැමිණිලිකරු කැමත්ත ප්‍රකාශ කරයි. සමථය වටහා ගැනීමෙන් පසුව දෙපාර්ශ්වය විසිත්ම තවු පොතට අත්සන් තැබිය යුතුය. සමථය අනුව නිද ප්‍රකාශයක් ඇතුලත් කරන්න.”

The Appellant has tendered an undated petition to this court seeking to set aside and revise the order made by the learned District Judge of Homagama dated 24.10.1996. It appears from the case record that the impugned order is not an order but the decree entered under the said settlement of the case.

The learned Counsel for the Respondent contended that the said appeal violates Section 755 of the Civil Procedure Code and the appeal is out of time. I now deal with the said submission.

The Registrar of the Homagama District Court has made minutes on the said petition of appeal that he received the petition of appeal on 10.01.1997 at 2.30 p.m. The said decree has been entered on 24.10.1996. Hence it is clear from the said minutes that the petition of appeal has been filed long after the 60 days period of time violating the provisions contained in Section 755(3) of the Civil Procedure Code. The Provisions contained in Section 755 (3) is mandatory.

In the case of Wickremasighe Vs. de Silva (1978 / 79) 2 S.L.R. 65 it was held that “The provisions of section 755 (3) of the Civil Procedure Code which requires the petition of appeal to be filed within sixty, days from the date of judgment are mandatory. Accordingly where a petition had been filed after the period of sixty days had lapsed the learned District Judge was correct in rejecting

such a petition. The notice of appeal, too, lapses for want of compliance with the subsequent requirement and should be rejected.”

In the case of Keerthiratne Vs Udena Jayasekera (1990) 2 SLR 346 it was held that “The filing of a notice of appeal must be followed by presentation of the petition of appeal within 60 days. Both steps are imperative and mandatory. The responsibility is on the Attorney-at-Law on record and not on the petitioner.”

The Appellant has not mentioned a word in his petition of appeal with regard to the delay in presenting the appeal after the time limit stipulated in Section 755(3) of the Civil Procedure Code. In the said circumstances I dismiss the appeal of the Appellant with costs.

Appeal dismissed.

Judge of the Court of Appeal