

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

C.A. No. 897/98(F)

D.C. Kurunegala No. 769/P

Hiti Hamige Kaseepala
Udattawa,
Matikumbura.

Defendant- Appellant

Vs.

Pallemulla Ralalage Sadi Banda
Sappuwatta,
Polgahawela.

And Others

Complainant-Respondent

C.A. No. 897/98(F)

D.C. Kurunegala No. 769/P

BEFORE : K.T. CHITRASIRI, J.

COUNSEL : Chula Bandara for the 2nd defendant-appellant
Defendant-Respondents are absent and
unrepresented.

ARGUED AND

DECIDED ON : 08th March, 2013

K.T. CHITRASIRI, J.

This is an appeal seeking to set aside the order dated 31st March, 1998 of the learned District Judge of Kurunegala. The said relief is clearly mentioned in the notice of appeal filed on the 09th April 1998. In that notice of appeal, it is stated that the relief prayed for by this appeal is to set aside the order dated 31st March 1998, which was made pursuant to an application to correct an arithmetical error. Therefore it is clear that the decision that is being appealed against is an "order" made pursuant to an application made under section 189 of the Civil Procedure Code. Hence, this appeal is not to challenge the judgment dated 18th November 1996 even though the relief prayed for in the petition of appeal states so. Indeed the contents of the petition of

appeal state that the appeal is to set aside the order dated 31st March 1998.

Section 754(1) of the Civil Procedure Code permits to file an appeal to challenge a “judgment” whilst in terms of Section 754(2), a party who is dissatisfied with any “order” of a Court, should first obtain leave of the Court of Appeal to proceed with an appeal. The words **judgment** and an **order** are defined in sub section (5) of 754 of the Civil Procedure Code. Accordingly ‘judgment’ means any judgment or order having the effect of a final judgment and an “order” means all decisions other than judgments.

The impugned decision made on the 31st March 1998 being an order to correct an arithmetical error is clearly a decision which does not have the effect of a final judgment. Therefore, it is an “order” of the Court only. Accordingly, the appellant should have first obtained leave of this Court to proceed with this appeal in terms of Section 754(2) of the Civil Procedure Code.

The above position is conceded by the learned Counsel for the appellant as well. Accordingly, it is clear that the appellant had chosen the wrong procedure in filing this appeal. In such a situation this Court has no option than to dismiss this appeal. (**Chettiar vs. Chettiar 2011 Bar Association Law Reports page 25**)

For the aforesaid reasons this appeal is dismissed without costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

Kwk/=