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

C.A. Appeal No. 233-234/97 (F)
D.C. Ratnapura Case No. 9842/P

K. D. Gnanawathi
Pinnagolle, Hangamuwa,
Ratnapura.

Plaintiff-Appellant

Vs.

1. Pinnagollelage Dingirihathana

2. Pinnagollelage Kirihathana

both of

Pinnagolle, Hangamuwa,
Ratnapura.

3. Pinnagollelage Kirilamaya
Hapugahawela,
Hangamuwa.

4a. Pinnagollelage Yamanalage Ensa

4b. Pinnagollelage Jayantha Pathmini

4c. Pinnagollelage Dharmasena

And Others

Defendant-Respondents

C.A.APPEAL CASE NOs.233 - 234/97(F) D.C.RATNAPURA CASE NO.9842/P

BEFORE	:	**K.T.CHITRASIRI, J.**
COUNSEL	:	Shantha Karunadara for the two Appellants in both Appeals Seevali Delgoda with Gaya Jayalath for the 1st, 2nd, & 4th Defendant-Respondents in both appeals
ARGUED ON	:	04.04.2013
DECIDED ON	:	21.05.2013

K T.CHITRASIRI, J.

When this matter was taken up for argument on 23.10.2012, learned Counsel for the 1st,2nd and 4th defendant-respondents raising a preliminary objection submitted that the appellants cannot have and maintain these two appeals as they have chosen to file final appeals instead of filing applications for leave to appeal. His contention is that the impugned order namely to have a *trial de novo*, not being a "judgment" envisaged by law, the appellants should have first had obtained leave of this Court in order to proceed with the two appeals. Accordingly, he moved that these appeals be dismissed as the appellants have adopted an incorrect procedure in filing the appeals.

It is settled law that a party aggrieved by a "judgment" is entitled to file an appeal in terms of Section 754(1) of the Civil Procedure Code. However, a party aggrieved by a decision which does not amount to a "judgment" should have first obtained leave of the Court of Appeal as stipulated in Section 754(2) of the Civil Procedure Code before proceeding with the appeal. Accordingly, it is necessary for a party who is aggrieved by a decision of an Original Court Judge to find out whether or not such a decision falls within the category of a "judgment" or an "order" before invoking appellate jurisdiction under Section 754 of the Civil Procedure Code.

The manner in which a "judgment" or an "order" is defined had been discussed in many judicial pronouncements. In the case of **Siriwardena vs. Air Ceylon Ltd, [1984 (1) S.L.R. at page 286] Sharvananda, J.** (as he then was) had devolved guide lines that can be made use of to determine whether a particular decision is a "judgment" or an "order". This formula introduced by **Sharvananda, J.** is known as the **"Order Approach"**. Subsequently, **Dheeraratne, J** in **Ranjith vs. Kusumawathie and others [1998 (3) S.L.R. at 232]** basically relying upon common law decisions had held that the issue should be determined upon considering the type of the application that was made in delivering the impugned decision. This view is known as the **"Application Approach".**

Subsequently, a Five Judge Bench of the Supreme Court, in the case of **Rajendran Chettiar vs. Narayan Chettiar. [2011 Bar Association Law Report at page 25]** had looked into this matter carefully. In that decision, Dr.Shirani Bandaranayake, J (as she then was) preferred to apply the "Application Approach" in

determining whether a particular decision falls within the category of a "judgment" or an "order". All these decisions had been extensively dealt with by this Court as well, in cases bearing Nos.C.A.889/98 (F) and CA 1274/98 (F). [C A. Minutes dated 18.12.2012 and 04.04.2013 respectively]

Importance of the relevant statutory provisions had been highlighted in the aforesaid Supreme Court decisions. In terms of Section 754(5) of the Civil Procedure Code, "judgment" means any judgment or order having the effect of a final judgment and an "order" means the final expression of any decision in any civil proceeding which is not a judgment. Therefore, a person aggrieved of a particular decision having the effect of a final judgment is entitled as of a right to appeal against such a decision under Section 754(1) of the Civil Procedure Code (without leave of Court being obtained) and not otherwise.

In this instance, the decision that is being impugned is to have a *trial de novo*. On the face of the said decision of the learned District Judge, it does not contain the characteristics of a final judgment. The heading of the said decision dated 29.4.1997 of the learned District Judge is specifically named as an "order". It does not capable of finally disposing the rights of the parties either. The application that led for the delivery of the impugned decision was not to seek for a final judgment as defined in Section 754(5) of the Code.

In the circumstances, it is clear that the impugned decision does not fall within the category of a "judgment" even if one make uses of either the "Order Approach" or the

"Application Approach". Therefore, it is my considered view that the appellants are not entitled to file appeals under Section 754(1) of the Civil Procedure Code without leave of Court being obtained.

For the aforesaid reasons, these two appeals are dismissed. Having considered the circumstances, I make no order as to the costs of these appeals.

Appeals dismissed without costs.

JUDGE OF THE COURT OF APPEAL