

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

Mohamad Thajudeen Mohamed Nazim,  
No. 158/26 A, Dematagoda Road,  
Colombo 9.

Plaintiff

C.A. No. 34 / 2000 F

**Vs.**

D.C. Colombo No. 15941 / L

Abdul Samad Noor Huzaima,  
No. 44/29, De Soysa Street,  
Colombo 2.

Defendant

**AND**

Mohamad Thajudeen Mohamed Nazim,  
No. 158/26 A, Dematagoda Road,  
Colombo 9.

Plaintiff Appellant

**Vs**

Abdul Samad Noor Huzaima,  
No. 44/29, De Soysa Street,  
Colombo 2.

Defendant Respondent

**AND NOW BETWEEN**

Mohamad Thajudeen Mohamed Nazim,  
No. 158/26 A, Dematagoda Road,  
Colombo 9.

Plaintiff Appellant Petitioner

Vs.

Abdul Samad Noor Huzaima,  
No. 44/29, De Soysa Street,  
Colombo 2.

Defendant Respondent-Respondent

BEFORE : UPALY ABEYRATHNE, J.

COUNSEL : S.W. Premaratne for the Plaintiff Appellant  
Petitioner  
T.M.A. Mutaliph for the Defendant  
Respondent-Respondent

ARGUED ON : 06.02.2013

DECIDED ON : 12.06.2013

UPALY ABEYRATHNE, J.

This is an application to have the order of this Court delivered on 02<sup>nd</sup> August 2011 vacated and the appeal re-listed for argument. It seems that the appeal

of the Plaintiff Appellant Petitioner (hereinafter referred to as the Petitioner) has been rejected by order of this Court dated 02.08.2011.

According to the minutes of this Court dated 02.08.2011 the Appeal of the Petitioner has been rejected under Rule 13(b) of the Supreme Court (Court of Appeal – Appellate Procedure – Copies of Records) Rules 1978 since the Petitioner had failed to pay the brief fees on or before the stipulated date as directed by this Court.

The Petitioner in his petition has stated that the notice under Rule 13(b) has been dispatched to his previous address namely No 158/26A, Dematagoda Road, Colombo 9 where the Defendant Respondent-Respondent (hereinafter referred to as the Respondent) is now living. The petitioner has further stated that since the said notice has not been returned to the Registry of the Court of Appeal it appears that the notice has been delivered to the Respondent.

The Petitioner has further stated that he had informed Borella Post office and also the Registry of the Court of Appeal that he has changed his address. In proof of the said facts the Petitioner has produced a document marked X 2. X 2 is a notice dated 14.05.2011 under the heading of ‘notice of change of address – postal’ which has been sent to the Post Master, Borrella.

It seems from the minutes dated 04.07.2011 that the Registrar of this Court has been directed to issue notice under Rule 13(b) of the Supreme Court (Court of Appeal – Appellate Procedure – Copies of Records) Rules 1978 directing the Appellant (the Petitioner) to pay the brief fees on or before 01.08.2011.

Accordingly the Registrar has dispatched the said notice to the address given in the petition of appeal.

I have carefully considered the aforementioned circumstances and the facts stated in the statement of objection filed by the Respondent. I am of the view that in the interests of justice the Petitioner should be given an opportunity to prosecute the appeal.

In the said circumstances I vacate the order of this court dated 02.08.2011 and allow the application of the Petitioner to relist the appeal for hearing.

*Application allowed.*

Judge of the Court of Appeal