

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

In the matter of an Application against the  
Final Order of the Provincial High Court of  
Western Province read with Section 154 (p)  
3 (b) of the Constitution of Sri Lanka.

R.A. Ranasinghe  
No. 21B, Alfred Place,  
Colombo 03.

**Petitioner**

MC. Fort Case No.B/1039/2008  
HC (Rev) Case No.HCRA 180/2009  
CA /PHC 185/2011

**VS.**

01. The Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**1<sup>st</sup> Respondent**

02. Officer in Charge,  
Commercial Crimes Division,  
Division 3  
Criminal Investigation Dept.  
Colombo 01.

**Plaintiff-Respondent**

03. Aswallage Sujith Rupasinghe,  
No.30/6, Nadun Uyana,  
Mirigama.

**Defendant – Respondent**

04. Amerasion Private Limited,  
No.212, Dampe Road,  
Piliyandala

**Aggrieved Party –Respondent**

**AND NOW**

Amerasion Private Limited  
No.212, Dampe Road,  
Piliyandala.

**Aggrieved Party- Respondent  
Appellant**

**VS.**

R.A. Ranasinghe,  
No.21B, Alfred Place,  
Colombo 03.

**Petitioner-Respondent**

01. Hon Attorney General,  
Attorney General's Dept.  
Colombo 12.

**1<sup>st</sup> Respondent-Respondent**

02. Officer in Charge,  
Commercial Crimes Division,  
Division 3,  
Criminal Investigation Dept.,  
Colombo 1.

**Plaintiff-Respondent-  
Respondent**

03. Aswallage Sujith Rupasinghe,  
No.30/6, Nadun Uyana,  
Mirigama.

**Defendant-Respondent-Respondent**

**BEFORE : W.M.M. Malinie Gunaratne, J. &**

**P.R. Walgama, J.**

**COUNSEL : Saliya Peiris  
for the aggrieved Party – Respondent Appellant**

**Manohara de Silva P.C.  
for the Respondent – Respondent**

Argued : 25.02.2015

Decided on : 05/08/2015

**Malinie Gunaratne, J.**

This is an appeal preferred against the Order of the learned High Court Judge of Colombo dated 06.02.2011.

When the Appeal was taken up for hearing on 06.08.2014, the learned President's Counsel for the Respondent raised a preliminary objection as to the maintainability of this Appeal.

The learned President's Counsel submitted that as required by Rule 2 (1)(a) of the Court of Appeal Rules for Appeals from the High Court the Appeal filed in this case is not addressed to the Court of Appeal invoking the

jurisdiction of this Court. Instead it was addressed to the High Court of the Western Province. Further he submitted that it has not been addressed to the President of the Court of Appeal and to the Other Judges of the Court of Appeal.

In view of the above objection, the Counsel for the appellant made an application to amend the Petition of Appeal and the Court allowed to file a draft amended petition subject to the objections of the Respondent. The Appellant tendered a draft Petition of Appeal and the matter was fixed for inquiry. The Court decided without going into the matters raised in the Petition, to inquire into the question in view of the said issue whether the Appellant can proceed or not with this application.

When the matter was taken up for inquiry on 25.02.2015, it was agreed by both parties to file written submissions on the question of the preliminary objection that relates to the maintainability of this action.

The first question which arises for decision is that whether the Appellant has filed this Petition of Appeal in accordance with Rule 2(1)(a) of the Court of Appeal Rules. If the answer is not, would the Appellant then be entitled to proceed with this Appeal.

In the written submissions filed in this Court by the Respondent it was contended that the Rule 2(1)(a) of the Court of Appeal (Procedure for Appeals from High Courts established by Article 154 P of the Constitution) Rules of 1988 which, specifically states that an appeal against any judgment or final order or sentence of the Provincial High Court shall be addressed to the Court of Appeal.

The said Rule 2(1)(a) reads as follows:-

2(1) Any person who shall be dissatisfied with any judgment or final order or sentence pronounced by the High Court in the exercise of the Appellate or Revisionary jurisdiction vested in it by Article 154 P (3)(b) of the Constitution, may prefer an appeal to the Court of Appeal against such judgment for any error in law or fact.

(a) by lodging within fourteen days from the time of such judgment or order being passed or made with such High Court, a Petition of Appeal addressed to the Court of Appeal or .....

The learned President's Counsel submitted that the purported Petition of Appeal dated 19.12.2011 is not addressed to the Court of Appeal and is instead addressed to the Provincial High Court of the Western Province. He further submitted that the Petition of Appeal has not been addressed to the President of the Court of Appeal and to the Other Judges of the Court of Appeal, according to the Rule 14 (1) of the Court of Appeal Rules. Rule 14(1) reads as follows:

14(1). The Petition of Appeal shall be distinctly written upon good and suitable paper, and shall contain the following particulars:-

- (a) the name of the court in which the application is pending;
- (b) the names of the parties to the application;
- (c) the names of the appellant and of the respondent;
- (d) the address to the court of appeal;

- (e) a plain and concise statement of the grounds of objection to the order appealed against such statement to be set forth in duly numbered paragraphs;
- (f) a demand of the form of relief claimed.

It is relevant to note that the Appellant has not complied with Rule 14 (1) (a) and (d) of the Court of Appeal Rules.

Accordingly the President's Counsel's contention was that since the Appellant has not properly invoked the jurisdiction of this Court the Appellant cannot proceed with this Appeal.

The learned Counsel for the Appellant in reply, contended that although the original Petition of Appeal was wrongly addressed to the High Court, the body of the Petition clearly shows that it is an Appeal from an Order of the High Court and that the Petition being addressed to the High Court rather than the Court of Appeal was a mistake and the intention of the Appellant was to appeal to the Court of Appeal. It is relevant to note that the Counsel has not mentioned anything in regard to Rule 14(1) (d), namely omission to the address to the Court of Appeal. It was his contention that in the interests of justice an appeal should not be rejected on technical grounds as no material prejudice was caused to the Respondent.

*Maxwell* - Interpretation of Statutes 12<sup>th</sup> Edition Page 320 states, "Enactments regulating the procedure in courts are usually construed as imperative". (R. vs. Justices of Oxfordshire (1813) 1 M and S 446; Fox vs. Wallis (1877) 2 C.P.D 45.

In the case of Public Prosecutor vs. Koi (1968) A.C. 829, at p. 852, The Judicial Committee, citing *Maxwell*, has held, that this “direction not to proceed with the trial” ..... is mandatory, that is to say imperative in character. It seems that enactments regulating the procedure to be followed in Courts are usually imperative and not merely directive. (*Maxwell – Interpretation of Statutes* 12<sup>th</sup> Edition Page 321.

It has been held over and over again by this Court as well as the Supreme Court, non-compliance with the Court of Appeal (Appellate Procedure) Rules is fatal to the application. The importance and the mandatory nature of the observance of the Rules of the Court of Appeal in presenting an application has been repeatedly emphasized, and discussed in a long line of decided authorities by the Court of Appeal and the Supreme Court.

In the case of *Coomasaru vs. M/s Leechman and Co. Ltd., and Three Others*, Tennekoon, C.J. stated as follows:

“Rules of Procedure must not always be regarded as mere technicalities which parties can ignore at their whim and pleasure”. In that case, the preliminary objection raised on behalf of the Respondent that relates to the non compliance of Rules upheld and dismissed the case.

It was held in *Nicholas vs. Macan Marker Ltd;* (1981) 2 SLR 1, non-compliance with the Rule which is in imperative terms would render such application liable to be rejected.

Justice Soza stated in *Navarathnasingham vs. Arumugam and Another* (1980) 2 SLR 1 “ This Petition therefore should have been rejected

for non-compliance with Rules. Further he stated that the Supreme Court Rules are imperative and should be complied with.

Same decision was followed in the case of Rasheed Ali vs. Mohamed Ali (1981) 2 SLR 29.

In the case of Koralage vs. Marikkar Mohamed and others (1988) 2 SLR 299, it was held, compliance of the Rules is a mandatory requirement and non-compliance is a material defect in the application and cannot maintain the application.

Same decision was followed in cases Brown and Company Ltd. Vs. Rathnayake (1990) 1 SLR 92, The Attorney General vs. Wilson Silva (1992) 1 SLR 44 and Balasingham and Another vs. Puvanthiram (2000) 1 SLR 163. It was stated by Perera J. in Balasingham case, failure to comply with Rules is indeed a failure to show due diligence. The appeal was accordingly dismissed. In the cases of Facy vs. Sanoon and Others (2003) 2 SLR, and Jeganathan vs. Sajyath (2003) 2 SLR 372 same decision has been followed.

It was held in Shanmugadivu vs. Kulatilake (2003) 1 SLR 215, the requirements of Rules are imperative and the Court of Appeal had no discretion to excuse the failure to comply with the Rules.

Hence, the weight of authorities mentioned above, thus favours the view, that non-compliance with the Rules is fatal to the application. Parties who invoke the jurisdiction of the Court cannot ignore the Rules and then ask to be heard.

It is to the best interest of the administration of Justice that Judges shall not ignore or deviate from the procedural law and decide matters on

equity and justice as Dr. Amarasinghe J. pointed out in the case of Fernando vs. Sybil Fernando and Others (1997) 3 SLR 12. In that case Dr. Amarasinghe J. has made reference to the observation of Lord Justice Scrutton in his lecture "The Work of the Commercial Courts" (1921 – 23) 1 Cambridge Law Journal 6 at P 8 – 9 "..... The Oath which every judge takes is: I will do right to all manner of people without fear or favour or prejudices according to the law and customs of the realm. And it is the laws and customs of this realm that the judges have to administer. If once you allow the laws and customs which you have to administer to be diverted by the particular view you take of the particular case, another judge may think otherwise on the same facts, and there ceases to be any certainty in the law. If the laws and customs you have to administer are wrong it is for Parliament to put them right - not for the judges. It is important that the Judges should interpret the settled laws without altering them according to their views of right or wrong in the particular cases."

Dr. Amarasinghe J. pointed out in the case of Fernando vs. Sybil Fernando "there is the substantive law and the procedural law. Procedural law is not secondary. The two branches are complementary. Halsbury points out it is by procedure that the law which puts life into substantive law, gives it remedy and effectiveness and brings it into being".

Hence, in the interests of the administration of justice, there must be order, and therefore there must be compliance with the Rules of the Court of Appeal. As I have observed the defect was not of a purely formal or technical nature. Invoking the jurisdiction of the court is a crucial step in the proceedings.

The Petition of Appeal filed by the appellant in this case has not been directed to the proper forum under the proper provision of law in as much as no proper legally tenable appeal is pending. Therefore it is my considered view that the Appellant has not invoked the jurisdiction of this Court in a proper manner complying with the Rule 2 (1)(a) and the Rule 14(1) of the Court of Appeal Rules.

For the reasons stated above I reject the contention of the learned Counsel for the Appellant and uphold the preliminary objection raised by the learned President's Counsel. This appeal is dismissed accordingly.

When the President's Counsel for the Respondent raised the above preliminary objection the Counsel for the Appellant sought the permission of the Court to amend the Petition of Appeal and the Court allowed to file a draft amended petition subject to objections of the Respondent. The Appellant has tendered a draft Petition of Appeal and the Respondent objected to it.

Since this Court has dismissed the Appeal for the above stated reasons, this Court is of the view that it is not necessary to go into the said matter.

**JUDGE OF THE COURT OF APPEAL**

P.R.Walgama, J.

I agree

**JUDGE OF THE COURT OF APPEAL**

Appeal is dismissed.