IN THE COURT OF APPEAS OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA.

Hewayalage Piyasena,
Manikkadawra,
Thunthcta.

Petitioner - Appellant

Vs.

1. Agrarian Service Commissioner,
   Agrarian Service Department,
   Colombo.

CA – (PHC) 183/04

2. Agrarian Service Assistance
   Commissioner,
   Agrarian Service Commissioner
   Office,
   Kegalla.

3. P.R. Awlin Nona,
   Imbalowita,
   Thunthota.

4. Y.K. Podi Nona,
   Manikkadwra,
   Thunthota.

5. U.M. Darmasiri,
Udagama,
Handugahapitiya
Atala.

6. P. Gunapala,
Manikkadawra,
Thunthota.

7. M.K. Ldsly Weerasighe,
Manikkadawra,
Thunthota.

-Respondents-

Before : **W.M.M.Malinie Gunarathne, J**

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

Counsel : **S.A.D.S. Suraweera for the Appellant.**

: **Chaya Sri Nammuni SC for the 1st & 2nd Respondents.**

: **Rakitha Abeysinghe for the 3rd, 4th, 6th & 7th Respondent.**

Argued on : 14.05.2015

Decided on: 01.09.2015

CASE-NO- CA-(PHC)-183/2004- ORDER- 01.09.2015

P.R.Walgama, J

The instant order concerns an application made by the 6th and the 7th Respondents to have the speculative appeal dismissed in liming on the basis, of the Appellant's failure to comply with the Supreme Court Rules.

The Appellant filed a writ application in the Provincial High Court of Kegalle, against the determination of the 2nd Respondent, who was the Assistant Commissioner of Agrarian Development, for deciding that the Appellant is not the tenant cultivator of the land in issue. Being aggrieved by the said decision the Appellant, invoked the jurisdiction, of the Provincial High Court by way of Writ of Certiorari to have the said decision quashed and set aside.

At the conclusion of the inquiry the Learned High Court Judge has dismissed the Application of the Petitioner- Appellant by the order dated 30.08.2004 and up held the decision of the 2nd Respondent accordingly.

Being aggrieved by the said order of the Learned High Court Judge, the Appellant appealed to this Court to have the said order of the Learned High Court Judge and the decision of the 2nd Respondent to be quashed.

I will not embark on material facts relevant to the instant appeal, but only deal with the preliminary objection raised by the Respondents as to the maintainability of this appeal.

The relevant section that deals with the matter to be resolved is Section 14(1) (d) of the Rules of the Court of Appeal in respect of the Writ applications in terms of Article 154(p)(4) of the Constitution, which states thus;

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. .....
f. .....

Section 15(1)

" if the petition of appeal is not drawn up in the manner in the last preceding rule prescribed, it may be rejected or returned to the appellant, for the purpose of being amended, within a time to be fixed by the Court, or be amended then

and there. When the Court rejects under this rule any petition of appeal, it shall record the reasons of such rejection. And when any petition of appeal is amended under this rule the Judge, or such officer as he shall appoint in that behalf, shall attest the amendment by his signature."

It is salient to note that, in the line of authorities which has dealt with the non compliance of the Supreme Court Rules was based on the ground, that the said mistake on the part of the appellant has not materially prejudiced the Respondent.

In the instant matter the Appellant has failed to address the Judges of the Court of Appeal, in the petition tendered to this Court, which is tantamount to a failure to invoke the jurisdiction of this Court. Therefore without invoking the jurisdiction of this Court, the question will arise whether this Court can exercise its jurisdiction under Article 154 P(4) of the Constitution, and as per Article stated in the rules of Supreme Court.

It is observed from the judicial decisions that, the identical issues were resolved by interpreting the rules giving effect to the strict compliance of the same, and failure to do so was fatal to the maintainability of the appeal.

In the case of Coomasaru .vs. M/s Leechman and Co. ltd, Tennekoon CJ has observed thus;

"Rules of Procedure must not always be regarded as mere technicalities which parties can ignore at their whim and pleasure."

In the above mentioned case, the preliminary objection raised on behalf of the Respondents was that the failure on the part of the Appellant to comply with the rules, and as such appeal was dismissed accordingly.

The above view was endorsed in the following cases too.

In the case of NICHOLAS .VS. MACAN MARKER LTD; (1981) 2 SLR 1, it was held that non-compliance with the Rule which is imperative terms would render such application liable to be rejected.

In the case of NAVARATNESINGHAM .VS. ARUMUGAM (1980) 2 SLR 1 has opined thus;

"this Petition therefore should have been rejected, for non - compliance with Rules.

It was held in the case of SHANMUGADIVU .VS. KULATILLEKE (2003) 1 SLR 215, that the requirements of Rules are imperative and the Court of Appeal had no discretion to excuse the failure to comply with the Rules.

For the above compelling reasons, I up hold the preliminary objection and dismiss the Appeal accordingly.

Appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

W.M.M.Malinie Gunarathne, J

I agree,

JUDGE OF THE COURT OF APPEAL