

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

**Court of Appeal case No.
CA (PHC) 104/2007**

**High Court of Rathnapura case No.
165/06**

**Magistrate Court of Rathnapura
case No. 17271**

Anada Sarath Liyanage,
16A, Aponsu Mawatha,
Lakshapathiya, Moratuwa.

**Respondent – Petitioner -
Appellant - Petitioner**

Vs.

Director General of Forest
Conservation,
Department of Forest Conservation,
Rajamalwattha Para, Battaramulla.

**Complainant – Respondent
- Respondent - Respondent**

Before : P.R. Wlgama J.

: L.T.B. Dehideniya J.

Counsel : Saliya Peiris with Susil Wanigapura for the Appellant
Petitioner

M.D. Wickramanayake instructed by A. Shanmuganadan
SCA for the Respondent - Respondent

Argued on : 02.06.2016

Decided on : 01.07.2016

L.T.B. Dehideniya J.

This is an application for relisting an appeal which, has been rejected due to nonpayment of brief fees. The Respondent Petitioner Appellant Petitioner (hereinafter called and referred to as the Petitioner) states that he appealed against the order of the Learned High Court Judge in a revision application and was awaiting for communication from this Court to pay the brief fees; but instead of such notice, he states that he received a notice from the Magistrate Court to appear before it to pronounce the order of this Court. Thereafter caused to search the case record and found that the appeal had been rejected for nonpayment of brief fees.

The Petitioner further submits that his address in the caption of the petition has been inadvertently entered insufficiently and the notices issued to that address has been returned without serving. He apologizes for his inadvertences and move this Court to relist the appeal for hearing and he be given the opportunity to pay the brief fees.

The learned State Counsel did not file objections to this application and at the argument also submitted that State has no objection to this application.

This Court has issued notice to the Petitioner informing him to pay the brief fees. The notices were sent to the address given by the Appellant in the caption of the petition of appeal. The Appellant has submitted documentary proof such as the electricity bill (X 6 a) the water bill (X 6 b) the Certificate on Residences issued by the Grama Niladhari (X 5) to establish that his address is "*16/A, Aponsu Mawatha, Lakshapathiya, Moratuwa*". The Petitioner, inadvertently entered the address as "*Lakshapathiya, Moratuwa*" without mentioning the house number and

the street name. The notice not served due to the insufficiency of the address. It is the Petitioner himself who made the mistake of providing an insufficient address, but the fact remains that the notice to pay the brief fees was not served on him.

On 15.07.2003, as per order of this Court marked as X2, the Court, with the knowledge that the notice not served, has rejected the appeal for nonpayment of brief fees because the endorsement was that the Petitioner was not found in the given address. The Petitioner has established the fact that the address given in the caption is insufficient. As such, the Petitioner had not received the notice to pay the brief fees and he was unaware that he had been asked to pay it. He apologizes for his mistake and pleads to relist the case for hearing. The State Counsel has no objection in restoring the appeal for hearing.

In the case of *Jinadasa and another v. Sam Silva and others* [1994] 1 Sri L R 232 it has been held that;

The burden of alleging and proving the existence of facts, on the basis of which a court may decide that there is good cause for absence, rests on the absent party who seeks reinstatement. This burden is not displaced by any presumption in his favour. A court will hold that there was sufficient cause if the facts and circumstances established as forming the grounds for absence are not absurd, ridiculous, trifling or irrational but sensible, sane, and without expecting too much, agreeable to reason. It cannot hold that, in its judgment, there is sufficient cause to reinstate the matter unless the grounds for coming to that conclusion were reasonable. No distinction can be drawn between "sufficient cause" and "valid reason".

In the case before us, the notice to pay the brief fees was not served on the Petitioner. It has been mentioned in the journal entry dated 24.06.2013 that the notice was not served. Until the notice served from the Magistrate Court to appear before it to pronounce the order of this Court, he was unaware of the fact that he had been asked to pay the brief fees.

Under these circumstances, I allow the application. I order to reinstate the appeal. I direct the Registrar to call the record from the High Court/Magistrate Court and to take appropriate steps to fix the case for hearing in the due course.

Judge of the Court of Appeal

P.R.Walgama J.

I agree.

Judge of the Court of Appeal