

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

R.D. Handy,  
Pahala Dangamuwa,  
Ambagasdowa.

**C.A. (PHC) Application No: 15/2004**

Badulla HC Writ Application 18/2000

**Petitioner**

***Vs.***

1. Deputy Commissioner of Agrarian  
Services,  
(Uva Province)
2. Inspection Officer Agrarian  
Services Centre Haliela
3. R.M. Sudubanda,  
Siri Medura, Girabe, Nugaralawa.
4. R.D. Karolis,  
Pahaladangamuwa, Uva  
Paranagama.
5. R.D. David,  
Pahaladangamuwa, Uva  
Paranagama Member – The Rent  
Board, Ratnapura.

**Respondents**

***And now between***

R.D. Handy,  
Pahala Dangamuwa,  
Ambagasdowa.

**Petitioner Appellant**

**Vs.**

1. Deputy Commissioner of Agrarian Services,  
(Uva Province)
2. Inspection Officer Agrarian Services  
Centre Haliela
3. R.M. Sudubanda,  
Siri Medura, Girabe, Nugaralawa.
- 3A. R.M. Senevirathna,  
Heladangamuwa Road,  
Ambagasdowa.
4. R.D. Karolis,  
Pahaladangamuwa, Uva  
Paranagama.
5. R.D. David,  
Pahaladangamuwa, Uva  
Paranagama Member – The Rent  
Board,  
Ratnapura.

**Respondent – Respondent**

**Before : P.R.Walgama, J**  
**: L.T.B. Dehideniya, J**

**Counsel : G. Attanayaka for the Appellant – Petitioner.**  
**: Nayomi Kahavita SC for the 1<sup>st</sup> & 2<sup>nd</sup> Respondents.**  
**: Erusha Kalidasa for the 3A Substituted**  
**Respondent – Respondent.**

**Argued on : 24.03.2016**

**Decided on: 05.07.2016**

CASE NO- CA (PHC)- 15/ 2004- JUDGMENT- 05.07.2016

**P.R.Walgama, J**

The Plaintiff- 3<sup>rd</sup> Respondent made application in terms of Section 18(1) of the Agrarian Services Act No. 58 of 1979, amended by Act No. 04 of 1991, and the complaint has been made against the tenant Cultivator for failure to pay the rent for two seasons.

After the inquiry in to the said application the Commissioner of Agrarian has come to a finding that the tenant cultivator is in arrears of rent and ordered to pay rent in a sum of Rs 3000/. As the tenant cultivator has failed to pay the rent as ordered by the Commissioner, the Commissioner sent a quit notice of ejectment under Section 18(1) of the Agrarian Services Act, and a notice in terms of Section 18(2)(3) ordering him to vacate the paddy field.

Being aggrieved by the said orders dated 20.07.1999 and 09.08.1999 the Respondent - Petitioner moved the High Court for a mandate in the nature of Writ of

Certiorari to quash the decisions of 1<sup>st</sup> and 2<sup>nd</sup> Respondents accordingly.

In the said application to the High Court the Petitioner-Appellant has unfolded the following;

That the 4<sup>th</sup> and 5<sup>th</sup> Respondents are joint tenant cultivators and their names are registered in the paddy land register as the joint tenant cultivators and as per documents marked P8(1) to P 8(10) the Petitioner and 4<sup>th</sup> and the 5<sup>th</sup> Respondents had paid the acreage fee to the land in issue.

It is alleged by the Petitioner-Appellant that he has paid the rent to the 3<sup>rd</sup> Respondent who is the land lord of the said paddy field, but nevertheless the 3<sup>rd</sup> Respondent had refused to accept the same.

The 4<sup>th</sup> and the 5<sup>th</sup> Respondents had tendered their objections and pleaded that they should be heard and as such to make order to the 1<sup>st</sup> Respondent to hold a fresh inquiry in respect of the alleged failure to pay the rent to the 3<sup>rd</sup> Respondent.(owner of the paddy land).

It is to be noted that the Learned High Court Judge has dealt with the preliminary objection raised by the 3<sup>rd</sup> Respondent as to the maintainability of the application to the High Court. In that it is stated that the Petitioner has failed to comply with the Appellate

Court Rules 3(3) by not tendering the certified copies of the documents tendered with the petition.

Rule 3-1(a) of the Court of Appeal rules 1990 reads thus;

“ 3(1)(a) – every application made to the Court of Appeal for the exercise of the powers vested in the Court of Appeal by Articles 140 or 141 of the Constitution shall be by way of petition, together with an affidavit in support of the averments therein, and shall be accompanied by the originals of documents material to such application(or duly certified copies thereof) in the form of exhibits. Where a petitioner is unable to tender any such document, he shall state the reason for such inability and seek the leave of court to furnish such document later. Where a Petitioner fails to comply with the provisions of this rule the court may, ex mero motu or at the instant of any party, dismiss such application.”

Therefore it is abundantly clear that the said rule is mandatory and the failure to follow the said rule is fatal, and will result in the dismissal of the application of the Petitioner.

Further the strict compliance of this rule was appreciated in the case of SHANMUGADIVU .VS. KULATILLEKE

(2003) 1-SLR- 215. WHICH HELD THUS;

“The requirements of rule 3(1)(a) and 3(1)(b) bare imperative. In the circumstances of the case the Court of Appeal had no discretion to excuse the failure of the Plaintiff to comply with the rules”.

Therefore the Learned High Court Judge taking in to consideration the above mandatory requirement which has followed by the judicial interpretation was persuaded to follow the principle laid down in the case of PIYASENA .VS. SANDARASAGARAN- CA-LA-191/2001

Their Lordships, after careful examination of the several authorities observed that, that except in few cases of exceptional circumstances, our Courts have held that the compliance with the Rules is mandatory, and the failure to observe the Rules will amount to a fatal irregularity, which would result in the dismissal of the petition.

Further it was observed by the Learned High Court Judge that the dossier tendered by the Petitioner-Appellant were not certified copies but only endorsed as true copies by an Attorney -at -law. Therefore the Learned High Court Judge was of the view that on that account alone that the Petitioner- Appellant’s application should be dismissed.

It was also observed by the Learned High Court Judge that, although the Petitioner- Appellant has stated that there were another two tenant cultivators, but has not

disclosed the said fact at the inquiry. Therefore the Learned High Court Judge was of the view that the Petitioner-Appellant is estopped from stating the above. Further the Learned High Court Judge has also considered the fact on the admission of the Petitioner-Appellant, of the delay of paying the rental, and had held that as the prerogative writs are being issued on the discretion of the court, and held that reasons adduced above he is not incline to issue a writ to quash the decision of the Respondent.

In the above exposition of the factual and legal matrix this court of the view that there is no reason to set aside the order of the Learned High Court Judge.

Hence we dismiss the Appeal subject to a cost of Rs. 5000/.

Appeal is dismissed accordingly.

**JUDGE OF THE COURT OF APPEAL**

L.T.B. Dehideniya, J

I agree,

**JUDGE OF THE COURT OF APPEAL**