IN THE COURT OF APPEAL OF THE

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an Appeal against

judgment of Provincial High Court

exercising its revisionary jurisdiction.

C A (PHC) / 162 / 2002

Provincial High Court of the Eastern

Province holden at Trincomallee

Case No. HCEP/APN/REV 357 / 01/ T

Magistrate's Court Kantale

Case No. 10915/99

Thennakoon Mudiyanselage

Gunathillake,

Near Paddy Marketing Board,

PotanKatuwa,

Kantale.

RESPONDENT - PETITIONER - APPELLANT

-Vs-

Aluthge Wijedasa,

Divisional Secretary,

Divisional Secretariat,

Kantale.

COMPLAINANT - RESPONDENT - RESPONDENT

Before: K K Wickremasinghe J

P. Padman Surasena J

Counsel; Titus Padmasiri with J R Duglas for the Respondent – Petitioner - Appellant.

Sobitha Rajakaruna DSG for the Complainant Respondent Respondent.

Argued on: 2017-06-23.

Decided on : 2017 - 09 - 25

JUDGMENT

P Padman Surasena J

The Divisional Secretary, of Kantale, who has been named in this petition as the Complainant - Respondent - Respondent (hereinafter sometimes called and referred to as the Respondent) had made an application in the Magistrate's Court of Kantale seeking an order to evict the Respondent - Petitioner - Appellant (hereinafter sometimes called and referred to as the Appellant) from the relevant land in terms of section 5 of the State Lands (Recovery of Possession) Act (hereinafter sometimes referred to as the Act).

Learned Magistrate after an inquiry had pronounced the order dated 2001-08-23 evicting the Appellant and his dependants if any forthwith from the land.

Being aggrieved by the said order made by the learned Magistrate, the Appellant had made a revision application to the Provincial High Court of the Eastern Province holden in Trincomallee.

The Provincial High Court after hearing parties, by its judgment dated 2002-05-20 had proceeded to dismiss the said revision application affirming the learned Magistrate's order.

It is against that judgment that the Appellant has filed this appeal in this Court.

Learned Deputy Solicitor General who appeared for the Respondent at the commencement of the argument took up a preliminary objection to the maintainability of this appeal. It was his submission that this appeal has not been filed within the time limit set by law for such filing.

Rule 2 of the Court of Appeal (Procedure for Appeals from High Courts) Rules 1988[1] states as follows;

Rule 2

[1] published in the Gazette Extraordinary of the Democratic Socialist Republic of Sri Lanka No. 549/6 dated 1989-03-13.

" .....

2. (1) Any person who shall be dissatisfied with any judgment or final order or sentence pronounced by a 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 in 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

(b) .....

....."

It is to be noted that Article 154 P (3) (b) of the Constitution is the Article which empowers the Provincial High Court to exercise subject to any law, appellate and revisionary jurisdiction in respect of orders of the Magistrates Courts and Primary Courts within its province.

Thus, the time limit set by law for the instant appeal, which is an Appeal against judgment of the Provincial High Court exercising its revisionary

jurisdiction, is 14 days from the time of such judgment or order being passed or made by such High Court.

Rule 3 (1) of the said Rules has provided to include, the day on which the judgment or order complained of was pronounced, and to exclude all Saturdays, Sundays and Public holidays, when computing the time within which such appeal shall be preferred.

It is to be observed that it is on 2002-05-20 that the learned Provincial High Court Judge has delivered the impugned Judgment. The Appellant has filed this petition of appeal on 2002-07-15 according to the petition of appeal and the date stamp placed by the High Court on it.

Thus, it is clear that this appeal has not been filed within 14 days, which is the time period provided by law for filing of such appeals.

This Court has to observe with regret that it was on 2017-06-23 that this Court was able to take up the argument in this case only to be told that the appeal filed against the judgment of the Provincial High Court pronounced on 2002-05-20, was out of time. It appears that this case had been pending before this Court since the pronouncement of the said judgment by the Provincial High Court because the Provincial High Court despite this

appeal being filed after the lapse of appealable period had proceeded to accept the said appeal. It is clear that no useful purpose would be served by such acceptance. Further such acceptance would only result in obstruction of due administration of justice, denying the entitlement of the party, the lawful enjoyment of the rights, even after their vindication through lengthy Court proceedings.

When the law has provided for a right of appeal along with a time period within which that right is required to be exercised, that clearly means that such right of appeal is subject to a condition. The said condition is that any party desirous of exercising such right of appeal is required to exercise it within the given time period. This means that no such right of appeal exists after the lapse of the specified period. When such right of appeal does not exist due to the lapse of the provided appealable period, a party is not permitted to lodge an appeal in Court. Therefore, the Court to which a party wrongfully attempts to tender any such appeal, after the appealable period granted by law has lapsed, is duty bound to reject it without accepting.

A common fallacy exists amongst some, that it should be the appellate forum, which should rule on the question whether the appeal is out of

time, because it is to that forum that the petition of appeal has been addressed.

If that argument is correct then such lower Court cannot reject an appeal filed even in a situation where the relevant law has specifically taken away such right of appeal. This is because of the same reason that the petition of appeal has been addressed to a higher forum.

It must be stressed here that if such a proposition is to be upheld it would only open a rear gate through which illegal appeals could be filed. Therefore, it is clear that there is absolutely no merit in such an argument.

The judges presiding in the High Courts and below must be mindful that allowing such illegal practices to continue would only permit abuse of Court process causing severe injustices to parties. In addition, it would also erode the confidence the public has reposed in the judicial system of the country as such practices would inevitably foster laws delays. This Court is of the view that it is now time to jettison such fallacies, which are against the spirit and rule of law.

For the foregoing reasons, this Court decides to uphold the preliminary objection raised by the learned Deputy Solicitor General and proceed to dismiss this appeal. The Appellant is directed to pay a state cost of Rs. 50,000/= .

Application is dismissed with a state cost of Rs. 50,000/=.

JUDGE OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL