

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

Arangalage Arnolis Perera,
No. 145, Rajahena Road,
Athurugiriya.

PLAINTIFF

C.A. Case No. 498/1996 (F)

-Vs-

D.C. Homagama Case. 1490/L

Kahandawa Arachchige Priyanthi,
Paankade, Sikurada Pola,
Athurugiriya.

DEFENDANT

AND NOW BETWEEN

Arangalage Arnolis Perera,
No. 145, Rajahena Road,
Athurugiriya.

PLAINTIFF-APPELLANT

-Vs-

Kahandawa Arachchige Priyanthi,
Paankade, Sikurada Pola,
Athurugiriya.

DEFENDANT-RESPONDENT

BEFORE : A.H.M.D. Nawaz, J.

COUNSEL : Manohara de Silva, P.C. with Pubudini Wickramaratne for the Plaintiff-Appellant
Ranjan Suwandaratna with Ranjith D. Perera, Anil Rajakaruna and Sunari Tennakoon for the Defendant-Respondent

Decided on : 11.08.2017

A.H.M.D. Nawaz, J.

The Plaintiff-Appellant (hereinafter sometimes referred to as “the Plaintiff”) instituted action in the District Court of Homagama against the Defendant-Respondent (hereinafter sometimes referred to as “the Defendant”) seeking *inter alia*, a declaration that the Plaintiff is the owner of the land described in the schedule to the plaint and an order seeking the eviction of the Defendant and his agents from the said land.

The District Court held against the Plaintiff and dismissed the action. Being aggrieved by the said judgment, the Plaintiff preferred this appeal to this Court.

At the hearing of this appeal, the Defendant has taken a preliminary objection that the appeal was filed out of time.

As is often the case, Section 755(3) of the Civil Procedure Code which requires the petition of appeal to be filed within sixty days from the date of the judgment has been engaged in this appeal.

Section 755(3) of the Civil Procedure Code reads as follows:-

“Every Appellant shall within sixty days from the date of the judgment or decree appealed against, present to the original court, a petition of appeal setting out the circumstances out of which the appeal arises and the grounds of objection to the judgment or decree appealed against, and containing the particulars required by section 758, which shall be signed by the appellant or

his registered attorney. Such petition of appeal shall be exempt from stamp duty: Provided that, if such petition is not presented to the original court within sixty days from the date of the judgment or decree appealed against, the court shall refuse to receive the appeal.”

This Court had occasion to consider Section 755(3) of the Civil Procedure Code (CPC) in *Nevanka Gunawardane Liyanapathiranage v. Lester Clarence Gunawardane and Aswini Gunawardane* (CA Appeal No.216/2000 decided on 01.08.2017) and observed that the time limit for filing a petition of appeal has been held to be mandatory. After a survey of a number of judgments, I held in the case that in the computation of sixty days from the date of the judgment the date on which the judgment was pronounced must be excluded. I had occasion to point out that this exclusion comes through Section 14(a) of the Interpretation Ordinance, because Section 755(3) of the Civil Procedure Code contains a period of sixty days which is an unbroken series without any intervening exclusion. In terms of Section 14(a) of the Interpretation Ordinance, the use of the word “from” in Section 755(3) of the CPC will necessitate the exclusion of the date on which the judgment was pronounced-see for similar pronouncements *Perera v. Perera* [1981] 2 Sri.LR 41 and *Peter Singho v. Costa* [1992] 1 Sri.LR 49-cases which have decided that in computing the sixty days “*Only the date on which the judgment was pronounced can be excluded*”.

In addition it has been held that in the computation of the sixty days under Section 755(3) of the Civil Procedure Code, Sundays and public holidays are not excluded and should be included-see *Municipal Council of Colombo v. Piyasena* [1980] 2 Sri.LR 39.

In the instant case the judgment of the District Court was delivered on 20.02.1996. If one harks back to 1996, the fact that 1996 was a leap year becomes apparent. Accordingly, there were 29 days in the month of February. The 60th day from the date of judgment was 20.04.1996. However, 20.04.1994 happened to be a Saturday and the petition of appeal of the Appellant dated 18.04.1996 was filed on the following Monday i.e. 22.04.1996 as is evidenced by the stamp of the District Court thereon. Section 8(1) of the Interpretation Ordinance comes into play in this type of situation.

In fact Justice Priyasath Dep PC/CJ had occasion to draw attention to Section 8(1) of the Interpretation Ordinance in *Flexiport (Pvt) Ltd., and three others v. Commercial Bank of Ceylon* (SC Appeal No. 3 of 2012; SCM of 15.12.2014) and stated in the context of Section 86(2) of the Civil Procedure Code that Section 8(1) of the Interpretation Ordinance provides that where there is a limitation of time for the performance of an act and the last day of such limited time falls on a day on which the office of the Court is closed, such act shall be considered to have been performed on time if it is done on the next day on which the office of the Court is open.

Section 8(1) of the Interpretation Ordinance reads as follows:-

“Where a limited time from any date or from the happening of any event is appointed or allowed by any written law for the doing of any act or the taking of any proceeding in a court or office, and the last day of the limited time is a day on which the court or office is closed, then the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day thereafter on which the court or office is open.”

In the instant case too, the filing of a petition of appeal is limited to sixty days by Section 755(3) of the Civil Procedure Code and the last date on which the petition of appeal had to be filed was the 20.04.1996 which was a Saturday. In the circumstances in terms of Section 8(1) of the Interpretation Ordinance, the petition of appeal which was filed on the following Monday must be considered to have been filed on time.

Section 8(1) of the Interpretation Ordinance has been considered in the following cases:

a) *Chandrakumar v. Kirubakaran and Others* (1989) 2 Sri.LR 35 at page 39

In interpreting Section 8(1) of the Interpretation Ordinance Asoka De Z. Gunawardena, J. made the following observations:

“It is seen from the provision in section 8(1) of the Interpretation Ordinance that where a person is allowed to do any act or take any proceedings in Court or office, and the last day of the limited time is a day on which the Court or office is closed, then the act or proceedings can be done or taken on the next day such Court or office is open. The word “closed” had been used in the said

section as opposed to the word "open", because it is stated there that an act or proceedings taken on the next date on which court or office is open is considered to have been done or taken in due, time."

b) *Nirmala de Mel v. Seneviratne and Others*, (1982) 2 Sri.LR 569 at page 572

In this case the Court declared that the petition of appeal filed on Monday the next working day after the last day was within time. Sharvananda, J. (as he then was) observed that:

".....according to Rule 35, the petition of appeal should have been filed latest on 14th February 1981, which fell on a Saturday, a day on which the office was closed. In this connection section 8(1) of the Interpretation Ordinance embodies a relevant rule of interpretation."

c) *Jinadasa v. Hemamali and 4 others* 2006 (BLR) 76; (2006) 2 Sri.LR 300.

In *Jinadasa v. Hemamali and 4 others*, there were two questions to be considered by a three-judge bench of the Court of Appeal.

- Whether the date of delivery of the judgment is included (or excluded) in computing the sixty days; and
- Whether an appeal that was lodged on Monday, when Saturday was the 60th day, complied with section 755(3) of the Civil Procedure Code.

On the first question, the Court held that in terms of Section 755(3) of the Civil Procedure Code the day of pronouncing the judgment, from which the appeal is taken, should be excluded from the computation of time stipulated for filing of petition of appeal and cited with approval the case of *Sivapadasundaram v. Pathmanathan and others* (2004) (Bar Association Law Reports) 89 at 90. The Court of Appeal in *Jinadasa v. Hemamali and 4 others* (*supra*) also relied on Bindra on 'Interpretation of Statutes' 8th Edition page 982 which states that the expression "From a named date" means, on and after that date. In fact Bindra cites the case of *Srinivasa Silk Mills v.*

State of Mysore, AIR 1963 Mys 117, 123 for this proposition. The Court also drew attention to Section 14(a) of the Interpretation Ordinance which reads as follows:

For the purposes of excluding the first in a series of days or any period of time, it shall be deemed to have been and to be sufficient to use the word 'from'.

Maxwell on 'Interpretation of Statutes' 12th Edition at page 309 was also quoted for the purpose of resolving the first question.

On the second question, the Court held that Section 8(1) of the Interpretation Ordinance applies. The Court opined that the most preferred view is that a petition of appeal filed on the next working day of the court when the last day (60th day) happened to be a non working day is within time as provided by Section 755(3) of the Civil Procedure Code and that this view is consistent with the Interpretation Ordinance as well as the rules of Interpretation.

The Court considered the case of *Silva v. Sankaram* [2002] 2 Sri.LR 209 where the Court had said that Section 8(1) of the Interpretation Ordinance would not apply in this context. But the Court opted not to follow the same and adopted a different view. The case of *Silva v. Sankaram* (*supra*) needs expatiation.

In that case two Judges of the Court of Appeal held that the words 'sixty days' in Section 755(3) of the Civil Procedure Code restrict the right of the Appellant to file the petition of appeal beyond the time frame of sixty days given and that Section 8(1) of the Interpretation Ordinance does not apply. In light of the judgments in *Chandrakumar v. Kirubakaran* (*supra*) and *Nirmala de Mel v. Seneviratne and Others* (*supra*), Wimalachandra J. (with Jagath Balapatabandi J. and C. Ekanayake J. agreeing) held in *Jinadasa v. Hemamali* that it "cannot agree with Dissanayake J. when he said in the case of *Silva v. Sankaram* that Section 8(1) of the Interpretation Ordinance has no application in the interpretation of Section 755(3) of the Civil Procedure Code".

The Court cited with approval the Supreme Court decision of *Selanchina v. Mohamed Marikkar and Others* [2000] 3 Sri.LR 100, where the notice of appeal ought to have

been filed on 18th October which was a Saturday on which the office of court was closed.

The Supreme Court (per Sarath N. Silva CJ) held at page 102 that the next day, the 19th October which was a Sunday too should be excluded and that the notice of appeal filed on the following Monday the 20th October was within a period of 14 days as provided for in Section 754(4) of the Civil Procedure Code.

Their Lordships in *Jinadasa v. Hemamali* further held that:

“the law cannot expect the performance of what is impossible and when the law has given a party a limited period of time to perform a certain act, he should be given the full benefit of that period as in this case where it was not possible for the party having a period of sixty days to file the petition of appeal on the 60th day as the 60th and 61st day happened to be Saturday and Sunday. Accordingly, the petition of appeal filed on the next working day was within the period as provided for in Section 755(3)”.

This Court would endorse the view adopted in the cases of *Chandrakumar, Nirmala de Mel and Jinadasa* as their reasoning accords with reason and ought to be followed. As if on cue is the pertinent statement in *Wickremaratne v. Wickremaratne* (1995) (2) Sri.LR 212 where Sarath N. Silva J. (as he then was) observed:

“In statutory interpretation there is a presumption that the legislature did not intend what is inconvenient or unreasonable. The rule is that the construction must be agreeable to justice and reasons should be given.”

In fact the divisional bench in *Jinadasa (supra)* drew in aid Maxwell's 'Interpretation of Statutes' 12th Edition page 203 which states as follows:

“Not only are unreasonable or artificial or anomalous constructions to be avoided. It appears to be an assumption (often outspoken) of the Courts that where two possible constructions present themselves, the more reasonable one is to be chosen”.

I have already adverted to the facts and circumstances surrounding the time lines in this case. If I may recapitulate them, the judgment of the District Court was delivered on 20.02.1996. The year 1996 was a leap year. Accordingly there were 29 days in the month of February. The 60th day from the date of judgment was 20.04.1996. However, 20.04.1994 was a Saturday and the petition of appeal of the Appellant dated 18.04.1996 was filed on the following Monday i.e. 22.04.1996 as is evidenced by the stamp of the District Court thereon.

On the strength of the authorities and the law I take the view that the Petition of Appeal has been filed on time and I proceed to overrule the preliminary objection.

JUDGE OF THE COURT OF APPEAL