

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

Duminda Lakunusara Bandara Udugama,
Medagammedda, Kanda Road,
Karalliyadda,
Teldeniya.

Petitioner-Appellant-Petitioner

C.A. Case No: **CA/PHC/200/2014**

MC Kandy Case No: **Writ 51/12**

-Vs-

1. W.M.P.K. Weerasekara,
Commissioner of Co-operative
Development and Registrar of Co-
operative Societies,
Central Provincial Council,
P.O. Box 02,
Ehelepola Kumarihami Mawatha,
Bogambara, Kandy.
2. Theldeniya Multipurpose Co-operative
Society,
Theldeniya.
3. Gayan Bandara Wijesundera,
Sudarshana Mawatha,
Mawathagama.

Respondents-

Respondents-Respondents

Before : **A.L. Shiran Gooneratne J.**

&

Mahinda Samayawardhena J.

Counsel : S.G. Liyanage, N. Rajapaksha for the Petitioner

Madubashini Sri Metta, SC for the Respondent

Written Submissions: By the Petitioner-Appellant on 20/08/2018

By the 1st and 3rd Respondents on 20/08/2018

By the 1st Respondent on 15/10/2018

Argued on : 28/05/2019

Judgment on : **27/06/2019**

A.L. Shiran Gooneratne J.

The Appellant has preferred this Appeal against the order of the learned High Court Judge of the Central Province holden in Kandy dated 10/12/2014, *inter alia*, seeking mandates in the nature of writs of *certiorari* and *mandamus* respectively, to quash the decision of the 1st Respondent (Commissioner of Cooperative Development of the Central Province), dated 30/04/2012, marked P6, and to direct the said Respondent to inquire into the said Appeal.

The Appellant preferred the said Appeal against the award of the 3rd Respondent, (Arbitrator) who inquired into a dispute between the Appellant and the 2nd Respondent (Teldeniya Multipurpose Cooperative Society Limited) to recover a shortfall of Rs. 861,267.75/- from a fuel station, in which the Appellant was the manager. According to the award dated 29/02/2012, the Appellant was served with a letter of demand to recover Rs. 621,162.00/-.

The 1st Respondent rejected the said Appeal under Rule 49(xii)(b) of the Cooperative Societies Rules -1973, published in the Extraordinary Government Gazette No. 93/5, dated 10/01/1974, made under Section 61 of the Cooperative Societies Law No. 5 of 1972.

Rule 49(xii)(a) and (b) reads as follows;

“(a) Every appeal to the Registrar from an award of an arbitrator or a panel of arbitrators shall be made within 30 days from the date of the award by a written statement setting out the grounds of appeal. Every such appeal shall be forwarded to the Registrar with an appeal deposit of Rs. 50 or 10% of the sum awarded where the appeal is made by the party against whom the award has been made and by Rs. 50 or 10% of the sum claimed in the dispute where the appeal is made by the party claiming any sum of money, whichever sum is the higher sum in either case.

(b) An appeal not made in conformity with the above shall be rejected by the Registrar."

In terms of the said Rule, a person appealing against an award of an Arbitrator is mandated to deposit an amount of Rs.50 or 10% of the Arbitrator's award, whichever is higher. However, the Appellant when submitting the Appeal to the 1st Respondent has failed to deposit the required amount as stipulated by the said rule.

Therefore, the 1st Respondent by letter marked P6, rejected the Appellants appeal on the basis that the Appellant has failed to deposit 10% of the value of the award of the Arbitrator under Rule 49(xii)(b) of the co-operative rules, made under Section 72(2) of the Co-operative Statutes of the Central Provincial Council No. 10 of 1990, as amended by statute No. 04 of 1993.

The Appellant preferred an Appeal to the High Court of the Central Province holden in Kandy challenging the said decision of the 1st Respondent dated 30/04/2012, marked P6, rejecting the Appellants appeal dated 28/03/2012. The same relief has been prayed for in the Petition filed in this Court.

It is important to note that in the prayer to this application, the Appellant is not challenging the legal requirement prescribing the amount to be deposited to be ultra vires or the rule making power conferred on the Minister in terms of Rule 49(xii)(a).

The counsel for the Appellant in his submissions to Court, challenged the rejection of the appeal on the following grounds, that,

- (a) the amount to be deposited in terms of the said Rule is unreasonable, in the alternative,
- (b) the 1st Respondent should have informed the Appellant regarding the amount to be deposited.

In making the determination, the learned High Court Judge was of the view that Rule 49(xii)(b) is a valid rule and the act of the 1st Respondent rejecting the appeal of the Appellant acting on a valid rule becomes a ministerial act, and with the inclusion of the word “shall” in the rule, it does not confer any discretion on the 1st Respondent to consider any other option other than rejecting the appeal.

In *Wednesbury Corporation case (1948 – 1KB 223)*, it was held that;

“for instance, a person entrusted with a discretion must direct himself properly in law. He must call his attention to matters which he is bound to consider. He must exclude from consideration matters which are irrelevant to what he has to consider. If he does not obey these rules, he may truly be said to be acting unreasonably”.

In arriving at the said judicial pronouncement the term “unreasonable” was used to mean illegal or is tantamount to a contravention of the law.

In the instant case, it is observed that the Appellant did not pay the 10% of the award but choose to deposit Rs. 2000/- as the deposit fee which is contrary to the said rule. The Appellant does not state the basis of calculation to deposit the said amount. It is also observed that by letter dated 28/03/2012, marked P5, (at page 295 of the brief), the Appellant was aware of the amount sought to be recovered and the amount to be deposited as required by the relevant rule.

In *M.K.R. Nimal Jayasuriya vs. Seemahasahitha Mitipola Sakasuruwam Saha Naya Ganudenu Pilibanda Sampapakara Samithiya and 02 others C.A. Application No. 889/2000 decided on 12/02/2004*, the Court held that;

“in terms of Rule 49(xii)(a) a deposit of Rs. 50/- or 10% whichever is higher is a mandatory requirement to entertain an appeal by the 2nd Respondent. The Petitioner having refused to deposit this sum; the rejection of the appeal by the 2nd Respondent is in keeping with the Provisions of the Statute.

The Appellant supports his contention relying on the judgment in *Sebastian Fernando v. Katana Multipurpose Co-operative Society Ltd., and others (1990) 1 SLR 342*. However, in the said case the Supreme Court made reference in obiter to the vires of Rule 49(xii)(a) and the requirement of an appeal deposit, which can be clearly distinguished from the issues raised by the Appellant in the instant case.

In all the above circumstances, I am of the view that, complying with the requirement of depositing the amount required as stipulated, in terms of Rule 49(xii)(a), is a mandatory requirement to pursue an appeal. Therefore, the Appellants default to deposit as required, warrants a rejection of the Appeal.

Accordingly, the Petition is dismissed without costs.

JUDGE OF THE COURT OF APPEAL

Mahinda Samayawardhena, J.

I agree.

JUDGE OF THE COURT OF APPEAL