

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

On behalf of the Trustees of Jennathl Masjeed
Mosque, Teldeniya

Case No. C.A. (P.H.C.) 174/16

P.H.C. Kandy 118/13 Revision

1. M.S.U. Fazal and 9 others.

Petitioner-Respondent-Appellants

Vs.

1. P.H.T. Silva

2. Namal Karunathilake

Respondent-Petitioner-Respondents

Before: **PRESANTHA DE SILVA, J. &**
K.K.A.V. SWARNADHIPATHI, J.

Counsel: Yoosuf Nasar with A. Divya
(For the Petitioner Respondent-Appellant)

Lal Wijenayake
(For Respondent Petitioner Respondents)

Argument: By way of written submissions

Decided on: 21.02.2022

K.K.A.V. SWARNADHIPATHI, J.

ORDER

Director of the Department of Muslim Religious and Cultural Affairs field case No: 18006 under Section 15A of the Muslim Mosques and Charitable Trust or Wakfs (Amendment) Act to recover possession from the Respondent-Appellants.

Aggrieved by the magistrate court's order, Respondent-Appellant filed a revision application to the High Court. On 9th December 2016, the order of the High Court was pronounced. Aggrieved by that order, Petitioner-Respondent-Appellants have sought the jurisdiction of the Court of Appeal. When the parties appeared before this Court on behalf of the Respondent Petitioner, Respondents raised a preliminary objection stating that the Appeal was out of time. Both parties agreed to dispose of the preliminary issue through written submissions hereinafter the Petitioner Respondent Appellants will be named the Appellant and the Respondent Petitioner Respondents as the Respondents.

The Respondents argue that according to Article 154P (3) (b) of the constitution, read with the rules of the Supreme Court provision is provided to file an appeal from an order/judgement of the High Court within 14 days. In this instance, the order was pronounced on the 9th December 2016, and the Petition of Appeal was filed on the 3rd January 2017, which is twenty-five days after the High Court's judgment/order.

The Appellant had admitted that he was out of time in his Petition of Appeal, giving reasons for the delay. In the 7th prayer of the Petition of Appeal, the Appellants had pleaded to consider this application as a Revision Application if the Court is of the view that the Appeal is out of time. They have made this prayer as the order of the High Court judge is shocking the conscience of the Court, and that warrants extraordinary revisionary jurisdiction of the Court of Appeal.

The Appellants argue that the High Court judge had made a severe misdirection and have violated Section 22 of the Interpretation Ordinance. Therefore, if this Court rejects the Appeal considering only the time bar questions of law raised in paragraphs 20-26 of the Petition will remain unanswered. Thereby causing irreparable and irremediable loss and damage to the Appellant.

By the seventh paragraph of the Petition of Appeal, the Appellant had stated that 9th December was a Friday. On 10th, 11th, 12th and 13th of December 2016 were holidays. On 14th December, an application was made with a wring case number for a certified copy. It was on 20th December that the Appellant realized the mistake. Then on 20th December, the money

was paid for a copy of the correct case. As the Courts were on vacation, the Appellant failed to obtain legal advice.

The fourteen days to lodge an appeal count without the days the order or judgment was pronounced and without counting Saturday, Sunday, and public holidays. Therefore, the order being pronounced on a Friday or Court being closed will not hinder in any way for the completion of time.

Therefore, the only reason is the mistake made by the Appellant when making the application for a certified copy. Our Courts have always tried to accompany and meet justice to the vigilant. In *Rajkumar and another Vs Hatton National Bank Ltd*¹, Revision is not available to relieve parties from consequences of their own folly, negligence, and laches.

Even though both parties have discussed the main matter to some extent, those matters will not be discussed in this order. The only argument present is to consider should this Appeal be treated as a Revision application or not if the Appellant had proved to this Court that they have been vigilant and without laches. The delay was due to other external reasons this Court will allow the application. A mistake of the case number at the time of making an application for a certified copy for the purpose of lodging an appeal and paying money for a wrong case cannot be considered as an acceptable reason.

It only proves the negligence of the party. When someone makes a payment to obtain the receipt, it is the duty of the person paying the money to check and be satisfied as to what the receipt consists of, for example, the date, the amount of money, case number etc.

For a court to determine that the Appellant was vigilant and without laches, he will have to satisfy the Court that the test of a reasonable person. When one ignores the actual situation, the judge must be satisfied whether a reasonable person would make a mistake in a severe situation. One has to compare the mistake and seriousness of the situation. The judge should

¹ (2007) 2 SLR

be satisfied as to the fact that the Appellant had been cautious enough to reconsider converting his Appeal to a revision.

In English Law, discuss negligence. It stresses that "Equity does not relieve a person of the consequences of his or her carelessness". Further English law has made great emphasis on "Equity will not grant relief from a self-created hardship". These are some principles that have been adopted in Sri Lanka in many cases. The law is there to help the vigilant and not for those who sleep. As discussed earlier, applying for the wrong case record when the Appellant knew he must appeal within 14 days can only be described as negligence, which made hardships for the Appellant. Therefore, the Appellants should not be granted relief from hardships created by themselves.

For the reasons set out above, I hold that the Appellants Appeal is time-barred. Further, the reasons given are not strong enough to satisfy that the appellants were vigilant and not sleeping on their rights.

Therefore, the preliminary objections taken by the Respondents is upheld. I, therefore, make an order dismissing this Appeal subject to tax cost.

Judge of the Court of Appeal

PRESANTHA DE SILVA, J.

I agree.

Judge of the Court of Appeal