

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

In the matter of an appeal for the order dated 22.10.2015 of the Provincial High Court Case No. HC (Writ) 05/2013 under Article 154P of the Constitution.

Court of Appeal Case No:
CA (PHC) 184/2015

Provincial High Court Anuradhapura
Case No: Writ 05/2013

P.A. Sunil Premarathna,
No.1, 14 Stall, Trade Centre,
Dharmapala Mawatha,
Anuradhapura.

Petitioner

Vs.

Municipal Council,
Anuradhapura.

Respondent

AND NOW BETWEEN

Municipal Council,
Anuradhapura.

Respondent-Appellant

P.A. Sunil Premarathna,
No.1, 14 Stall, Trade Centre,
Dharmapala Mawatha,
Anuradhapura.

Petitioner-Respondent

Before: Prasantha De Silva, J.
K.K.A.V. Swarnadhipathi, J.

Counsel: Erosha Wellala instructed by Priyanthi Nissanka for the
Respondent-Appellant.
Dulindra Weerasuriya P.C with P. Malinda for the
Petitioner-Respondent.

Written Submissions 25.07.2022 by the Petitioner-Respondent.
tendered on: 03.08.2022 by the Respondent-Appellant.

Argued on: 06.06.2022

Decided on: 20.10.2022

Prasantha De Silva, J.

Judgment

The Petitioner instituted action bearing No. 05/2013 in the High Court of Anuradhapura praying inter alia the following relief:

- a) Issue notices;
- b) Grant and issue a mandate in the nature of a writ of mandamus to convey the No.1 stall, in the 14 Stall Trade Centre at Anuradhapura Dharmapala Mawatha according to the value of රු07 and conditions in රු09;
- c) Grant a stay order which will stay the proceedings of evicting Petitioner Respondent from the said stall until this matter is concluded;
- d) Grant an Interim Order restraining the sale of the said stall to a 3rd party until this matter is concluded.

However, the Respondent filed objections by way of written submissions and both parties agreed to file further written submissions to dispose this matter. It appears that the learned High Court Judge held in favour of the Petitioner and granted a writ of mandamus against the Respondent.

Being aggrieved by the said order dated 22.10.2015, the Respondent-Appellant had preferred an appeal in terms of Article 154P (4) of the Constitution. When this matter was taken up for hearing, a preliminary objection that the Respondent-Appellant's appeal is filed out of time was raised on behalf of the Petitioner-Respondent. On that basis, the Petitioner-Respondent sought a dismissal of this appeal.

Since both parties agreed to dispose the said preliminary objection by way of written submissions, Court allowed parties to file written submissions only in respect of the said preliminary objection. It was the contention of Petitioner-Respondent that the Respondent-Appellant had not filed the petition of appeal within the prescribed period. It was submitted on behalf of the Petitioner-Respondent that for the purpose of the preliminary objection, the following dates of events may be noted.

- i. The Judgment of the Provincial High Court was delivered on 22.10.2015
- ii. Notice of appeal was filed on 05.11.2015

iii. The petition of appeal was filed on 22.12.2015

As per Rule 11(3) of the Court of Appeal (Procedure for appeals from High Court) Rules 1988 regarding the procedure to be followed in Appeals from orders made by a High Court in the exercise of its jurisdiction under Article 154P (4) of the Constitution, a notice of appeal should be presented within a period of 14 days from the date of the Order appealed against was pronounced. How the said 14 days should be calculated is stated in the same Rule. In the case at hand, the notice of appeal has been filed within time. As per Rule 12(2), the petition of appeal should be filed in the High Court itself within 60 days from the date of the Order appealed against was pronounced.

The Order was pronounced on 22.10.2015.

When the date of pronouncement (22.10.2015) is not included, the number of days from October 23rd to 31st - 09 days

The number of days in November - 30 days

Therefore, the total number of days from 22.10.2015 to 30.11.2015 - 39 days

Remaining days for the petition to be presented - 21 days

Thus, petition of appeal should have been filed on 21.12.2015. However, the petition has been filed on 22.12.2015, which is 1 day out of time. Though Rule 11(3) as stated above specifies as to the manner how 14 days should be calculated, Rule 12(2) does not state as to how the 60 days should be calculated.

It appears that the Appellant has filed notice of appeal within 14 days from the date of Order in terms of Section 755 of the Civil Procedure Code. However, Appellant has failed to comply with Section 755(3) of the Civil Procedure Code by tendering the petition of appeal within 60 days from the date of Judgment.

It is seen that Section 755(3) of the Civil Procedure Code requires Appellant to tender the petition of appeal to the original Court within 60 days from the date of Judgement or Final Order. Thus, filing the notice of appeal in terms of Section 754 (4) and filing the

petition of appeal in terms of Section 755(3) are mandatory provisions when preferring an appeal.

In the case of *Vithana Vs. Weerasinghe & Another [1981] 1 SLR 52*, the Appellant had complied with the provisions of Section 754 of the Civil Procedure Code by giving notice of appeal within the prescribed period of 14 days but had failed to file the petition of appeal within 60 days. His petition of appeal was late by one day and his Attorney at Law filed an affidavit to show that the omission was due to his own illness and was a cause beyond the control of his client. *Justice Wanasundara* observed;

“I find that Section 759(2) is adequate to deal with an application of this kind and it is precisely to these provisions that a person such as the present appellant must look for relief. In my view, the facts of that case have no bearing to the instant case. It is my view that the presence of the Petitioner was not essential to present the petition of appeal. The Attorney at Law on record had the full authority to file the petition of appeal. It is the Attorney at Law on record who has to file the petition of appeal and specify the grounds of objection to the Judgment. The absence or the presence of the Petitioner in person is immaterial to the filing of the petition of appeal. It is my view that the provisions of Section 759(2) cannot be invoked to condone the negligence and carelessness of the Attorney at Law on record.”

Similarly, in *Municipal Council of Colombo Vs. Piyasena [1980] 2 SLR 39* *Justice Ranasinghe* emphasized that;

“Whilst the provisions of Section 754 (4) of the Civil Procedure Code specifically states that, in the computation of the period of 14 days set out therein, the day on which the Order or Decree appealed from was pronounced, the day on which the petition is presented to Court, and all intervening Sundays and public holidays should be excluded from such conclusion and no such exclusions are permitted in the computation of the period of 60 days set out in Section 755(3) of Civil Procedure Code.”

Having regard to the foregoing matter, His Lordship is of the opinion that in the computation on the 60 days set out in Section 755(3), Sundays and public holidays are not to be excluded and should be included in the calculation of the 60-day period.

Therefore, I am of the opinion that the petition of appeal, which has been presented in this case, has been so presented to Court after the expiry of the period of 60 days within which it had, according to the provisions of Section 755(3) of the Civil Procedure Code, to be presented to the District Court.

In view of the aforementioned Judgments, it is imperative to note that the provision made in Section 755(3) is mandatory. Thus, the preliminary objection raised on behalf of the Petitioner-Respondent that the appeal is out of time is upheld.

Hence, the appeal of the Appellant is dismissed without cost.

JUDGE OF THE COURT OF APPEAL

K.K.A.V. Swarnadhipathi, J.
I agree.

JUDGE OF THE COURT OF APPEAL