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

In the matter of an application for revision of the order of the Magistrate Court of Avissawella in case no. 79872 in terms of the provisions of High Court (Special Provision) Act No. 19 of 1990.

Court of Appeal Case No.:
CA (PHC) 65/2014

PHC of Avissawella Case No:
02/2012 (Rev)

Magistrate Court of Avissawella
Case No: 79872

Labour Officer,
Avissawella.

Complainant

Vs.

1. Eagle Toys Exports (Pvt) Ltd,
   Now known as Tusker Toys Lanka (Pvt) Ltd
   No. 30, Sandathanna Mawatha,
   Battaramulla.

2. Lasantha De Silva,
   Managing Director,
   Eagle Toys Exports (Pvt) Ltd,
   Now known as Tusker Toys Lanka (Pvt) Ltd
   No. 30, Sandathanna Mawatha,
   Battaramulla

Respondent

1. Kumari Nalika de Silva,
   Director,
   Eagle Toys Exports (Pvt) Ltd,
   Now known as Tusker Toys Lanka (Pvt) Ltd
   No. 30, Sandathanna Mawatha,
   Battaramulla.

2. D. E. G. Arulanandan,
   Director,
   Eagle Toys Exports (Pvt) Ltd,
   Now known as Tusker Toys Lanka (Pvt) Ltd
   No. 30, Sandathanna Mawatha,
   Battaramulla

Subsequently Added Respondents

AND

1. Lasantha De Silva,
   Managing Director,
   Eagle Toys Exports (Pvt) Ltd,
   Now known as Tusker Toys Lanka (Pvt) Ltd

No. 30, Sandathanna Mawatha,
Battaramulla

2. D. E. G. Arulanandan,
Director,
Eagle Toys Exports (Pvt) Ltd,
Now known as Tusker Toys Lanka (Pvt) Ltd
No. 30, Sandathanna Mawatha,
Battaramulla

Respondent-Petitioners

Vs

1. Labour Officer,
Avissawella.

2. Eagle Toys Exports (Pvt) Ltd,
Now known as Tusker Toys Lanka (Pvt) Ltd
No. 30, Sandathanna Mawatha,
Battaramulla

3. Kumari Nalika de Silva,
Director,
Eagle Toys Exports (Pvt) Ltd,
Now known as Tusker Toys Lanka (Pvt) Ltd
No. 30, Sandathanna Mawatha,
Battaramulla.

4. Hon Attorney General,
Attorney Generals Department,
Colombo 12.

Respondents

Ranasinghe Rachchige mallika,
No. A,248/A, Kandaudawatte Road,
Ihala Maniyangama,
Avissawella.

Intervenient-Petitioner and Others

AND NOW

Ranasinghe Rachchige mallika,
No. A,248/A, Kandaudawatte Road,
Ihala Maniyangama,
Avissawella.

Intervenient-Petitioner-Appellant and Others

1. Lasantha De Silva,
   Managing Director,
   Eagle Toys Exports (Pvt) Ltd,
   Now known as Tusker Toys Lanka (Pvt) Ltd
   No. 30, Sandathanna Mawatha,
   Battaramulla

2. D. E. G. Arulanandan,
   Director,
   Eagle Toys Exports (Pvt) Ltd,
   Now known as Tusker Toys Lanka (Pvt) Ltd
   No. 30, Sandathanna Mawatha,
   Battaramulla

Respondent-Petitioner-Respondents

1. Labour Officer,
   Avissawella.

2. Eagle Toys Exports (Pvt) Ltd,
   Now known as Tusker Toys Lanka (Pvt) Ltd
   No. 30, Sandathanna Mawatha,
   Battaramulla

3. Kumari Nalika de Silva,
   (More correctly Thushari Nalika de Silva)
   Director,
   Eagle Toys Exports (Pvt) Ltd,
   Now known as Tusker Toys Lanka (Pvt) Ltd
   No. 30, Sandathanna Mawatha,
   Battaramulla.

4. Hon Attorney General,
   Attorney Generals Department,
   Colombo 12.

Respondent-Respondents

Before:	**Prasantha De Silva, J.** **K.K.A.V. Swarnadhipathi, J.**
Counsel:	Shantha Jayawardena AAL with Thilini Vidanagamage AAL for the Intervenient-Petitioner-Appellants Kithsiri Liyanage AAL with Asoka Weerasooriya AAL, Ruwan Dias AAL and Rochelle Ariyawansa AAL instructed by Palitha Perera for the Respondent-Petitioner-Respondents Sumathi Dharmawardena, ASG, PC. With Medhaka Fernando, SC for the 1st and 4th Respondent-Respondents
Written Submissions: filed on	Written submissions filed for the Intervenient-Petitioner-Appellants on 09.12.2019 Written submissions filed by the 1st and 2nd Respondent-Petitioner-Respondents on 05.06.2023
Delivered on:	04.07.2023

Prasantha De Silva J.

Judgement

The Commissioner of Labour being the Complainant had filed the case bearing no 479872 on 23.03.2005 in the Magistrate Court of Avissawella under the Industrial Disputes Act No. 43 of 1950 (as amended) on the basis that Lasantha de Silva and Eagla Toys Exports (Pvt) Ltd (Respondents) has failed to honour a settlement order dated on 31.05.2014 between the Parties. The complaint was filed stating that Respondents company has violated section 40(1)(q), by failing to honor a settlement between the Parties, which is an offence under section 43(1) and (2) read with section 43 (4) of the said Act

The said complaint was inquired by the learned Magistrate, and at the conclusion of the inquiry the learned Magistrate has delivered the order dated 01.03.2012 convicting the said Respondents.

Consequently, on 09.03.2012 the learned Magistrate ordered the said Respondents to pay a sum of LKR 134,253,777.00 as a fine in Rs. 3,000,000.00 monthly installments. In the event of a default of such order, 24 months rigorous imprisonment was ordered. In addition to above the Respondents were fined Rs. 700. The learned Magistrate has further directed each Respondents to deposit Rs. 500,000.00.

The Respondent-Petitioners, being aggrieved by the said order of the learned Magistrate dated 01.03.2012 and 09.03.2012 invoked the revisionary jurisdiction of the High Court of Western Province holden in Avissawella in case bearing No 02/2012 (Rev). It appears that Ranasinghe Arachchilage Mallika had intervened as an intervenient Petitioner and had filed objections to the said revision application.

However, after the inquiry the learned Provincial High Court Judge revised the orders of the learned Magistrate dated 01.03.2012 and 09.03.2012 by his order dated 06.03.2014.

Being aggrieved by the said order/Judgement dated 06.03.2014, the intervenient-Petitioner-Appellant had preferred this appeal.

When this appeal was mentioned on 17.05.2023, 1st and 2nd Respondent-Petitioner-Respondent had raised a preliminary objection that Intervenient-Petitioner-Appellant cannot maintain the impugned appeal as the Petition of Appeal has been filed out of time.

It appears that the order of the learned Provincial High Court judge was pronounced on 06.03.2014. However, according to the date stamp appearing in the Petition of Appeal is dated 07.04.2014. Thus, the said Petition of Appeal had been filed more than a month from the date of delivering of the impugned order.

Therefore, it is seen that the Appellant has failed to comply with Rule 2 of Court of Appeal (Procedure for Appeals from High Court) Rules pertaining to appeals emanating from High Courts.

The Rule 2 reads as follows,

> *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 154P(3)(b) of the Constitution,* ***may*** *prefer an appeal to the Court of Appeal against such order/judgment for any error in law for 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)…..

The Article 154P(3) of the Constitution empowers the Provincial High Court to exercise subject to any law, appellate and revisionary jurisdiction in respect of orders made by the Magistrate Court and Primary Court within its province.

Thus, it is apparent that the said limitation set out by law is 14 days to appeal against the judgment/ order of the Provincial High Court exercising its revisionary jurisdiction.

It should also be noted that, Rule 3(1) of the said rules has provided to include the day on which the Judgment/order challenged of was pronounced, and to exclude all Saturdays, Sundays and public holidays when computing the time within which such appeal shall be preferred.

In this instance, court draws the attention to the plethora of authorities cited on behalf of the 1st and 2nd Respondent-Petitioner-Respondent to support their connection.

In the case of ***P.G. Indrani v H. H. K Janaranjana Premanath CA (PHC) 258/2006 [CAM 23.10.2014]*** the case was dismissed on the basis that the case was not filed within the statutory time frame.

When the law has provided for a right of appeal along with a time period within which that right is 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. [***Thennakoon Mudiyanselage Gunatilake v Aluthge Wijedasa CA (PHC) 162/2002 (CAM 25.09.2017)].***

It was emphasized by *Thennakoon CJ* in the case of ***Coomasaru vs. Mis Leechman and Co. Ltd., and Three Others,***

> *"Rules of Procedure must not always be regarded as mere technicalities which parties can ignore at their whim and pleasure".*

In the above case, the preliminary objection raised on behalf of the Respondent that relates to the noncompliance with Rules was upheld and the court dismissed the case.

Soza J, stated in the case of ***Navaratnasingham v. Arumugam [1980] 2 Sri LR I,***

> *"The Petition, therefore, should have been rejected for non-compliance with rules"*

It was further stated in the above case that Supreme Court Rules are imperative and should be complied with.

In ***Keralage vs. Marikkar Mohamed and others [1988 (2) SLR 299]*** it was held that,

> "compliance of the rules is a mandatory requirement and non-compliance is a material defect in the application and cannot maintain the application."

It was spotlighted by *Perera J.* in ***Balasingham and another vs. Purnthiram [2000 (1) SLR 163]***

> *"failure to comply with rules is indeed a failure to show due diligence."*

It is to be noted that in this case the appeal was accordingly dismissed.

Dr. Amerasinghe J. pointed out in the case of ***Fernando vs. Sybil Fernando and others [1997] 3 SLR 1*** that

> *"there is substantive law and procedural law. The two branches are complementary. Halsbury pointed out, it is by procedure that the law which puts life into substantive law, gives it remedy and effectiveness and brings it in to being."*

The requirement set out in these 'Rules' are imperative and the Court of Appeal has no discretion to excuse the failure to comply with the Rules.

There is a long line of authorities decided by superior courts that the noncompliance of the Rules is fatal. In the recent case of ***R. A. Ransinghe v AG CA/PHC 185/211*** [CAM 05.08.2015], *Malinie Gunrathene J.* with *Rohini Walgama J.* agreeing considered the long line of authorities on the issue of noncompliance of the Rules and held that,

> *"It has been held over and over again by this Court as well as the Supreme Court, non-compliance with the Court of Appeal (Appellate Procedure) Rules is fatal to the application. The importance and the mandatory nature of the observance of the Rules of the Court of Appeal in presenting an application has been repeatedly emphasized, and discussed in a long line of decided authorities by the Court of Appeal and the Supreme Court."*

It was further held in the above case, considering some of the authorities I have referred in the current judgement that, *Parties who invoke the jurisdiction of the Court cannot ignore the Rules and then ask to be heard.*

It is in the best of interest of the administration of justice that Judges shall not ignore or deviate from the Procedural Law and decide matters on Equity ***[Shanmugadivu vs. Kulatileke 2003 (1) SLR 215]***.

Thus, we hold that the filing of this instant Petition of Appeal in a manner contrary to the time frame stipulated in the Court of Appeal (Procedure for Appeals from High Court) Rules is fatal to the maintainability of this action.

Furthermore, it was submitted by the 1st and 2nd Respondents that in terms of Section 43A(3) and 44B of the Industrial Disputes Act that the responsibility of recovering any money due to a workman from an employer is cast on the Commissioner of Labour.

In this respect, it was cited the case ***Ranaweera vs. Mahaweli Authority of Sri Lanka [2004 BLR 08]*** where, it was highlighted that "it is apparent from Section 43A(3) and 44B of the Industrial Disputes Act that the responsibility of recovering any money due to a workman from an employer is cast on the Commissioner of Labour".

However, in the instant case the 1st Respondent - Respondent-Labour Officer did not prefer an appeal against the Order of the Provincial High Court of Avissawella in the said Revision application.

Therefore, it was submitted that the Appellant is precluded from preferring an appeal in her individual capacity to the Court of Appeal.

In view of Section 44 of the Industrial Disputes Act it states that:

> "No prosecution for an offence under this Act shall be instituted except by or with the written sanction of the Commissioner."

However, it is apparent, that the Appellant had not substantiated that the written sanction of the Commissioner of Labour has been obtained prior to the filing of the Petition of Appeal.

It is to be observed that the Appellant has averred in paragraph 3 of the Petition of Appeal that "delay in presenting this appeal was because she and the other employees were awaiting for the Commissioner General of Labour to prefer the impugned appeal and was informed only on the 04th of April 2014 that by the Hon. Attorney General that they would not be appealing against the Judgment/Order of the learned High Court Judge.

In light of Section 44 of the Industrial Disputes Act, appeal should be filed by or with the sanction of the Commissioner of Labour, it is obvious that according to the said averment in the Petition of Appeal, that no written sanction has been obtained from the Commissioner of Labour to file the Petition of Appeal.

Therefore, it is seen that the Appellant has slept over her rights. According to the legal maxim *Vigilantibus Non Dormientibus, Jura Subveniunt*[1] - law assists those who are vigilant, not those who sleep over their rights. Accordingly,

> "If a person were negligent for a long and unreasonable time, the law refused afterwards to lend him any assistance to enforce his rights; the law, both to punish his neglect, *nam leges vigilantibus, non durmeintibus, subveniunt* and for other reasons refuses to assist those who sleep over their rights and are not vigilant."[2]

As such, It is apparent that the Appellant has not exercised due diligence in respect of the instant appeal. Hence, it clearly manifests that the Appellant is precluded from preferring an appeal against the Order of the learned High Court Judge.

[1] Senanayake N., Legal Maxims and Phrases (1st Edition) 2023, pp, 228
[2] Senanayake N., Legal Maxims and Phrases (1st Edition) 2023, pp, 229

On the other hand, since the Petition of Appeal is filed without the written sanction of the Commissioner of Labour, the Petition of Appeal is bad in law.

Therefore, in view of the aforesaid reasons, we uphold the preliminary objection raised on behalf of the 1st and 2nd Respondent – Petitioner – Respondents. Thus, we dismiss the Petition of Appeal without costs.

Moreover, in the circumstances it is the duty of the Court to consider whether it is plausible to convert the instant Petition of Appeal to a Revision application.

It seems that the said application is made to convert this Appeal to a Revision application merely to overcome the statutory bars to filing this Appeal.

In view of the aforesaid authorities, it clearly indicates that by allowing to convert an Appeal filed out of time to a Revision application, the relevant Rules with regard to the filing of Appeals will be rendered nugatory.

Since the Appellant had not filed Written Submissions, the Appellant has failed to substantiate her contention and has also failed to establish any exceptional circumstances to convert an Appeal to a Revision application in the interest of justice.

Hence, application to convert the Appeal to a Revision application is also dismissed.

Thus, we uphold the Preliminary Objection raised on behalf of the 1st and 2nd Respondent – Petitioner – Respondents and dismiss the Petition of Appeal *in limine.*

Appeal dismissed without costs.

JUDGE OF THE COURT OF APPEAL

K.K.A.V. Swarnadhipathi, J.

I agree.

JUDGE OF THE COURT OF APPEAL