

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

Northern Power Company (Pvt) Ltd,
Power Plant Road, Chunnakam

C.A.Application
No. APN 29/2015

1st Respondent-Petitioner-Petitioner

Vs.

High Court of Jaffna No.
1791/15

1. Dr. Irajalingam Shiwasanker,
Chunnakam East, Chunnakam

And others

Respondents

Before : P.R.Walgama J.

L.T.B. Dehideniya J.

Counsel : Nihal Fernando PC with Wasantha Fernando for the 1st
Respondent Petitioner Petitioner.

K. Kanag-Iswaran PC with J. Lakshmanan K. V. S.
Ganesharajan and Sarath Gorge for the petitioner
Respondent Respondent.

Nihal Jayawardane PC with Malik Hanan for the 2nd and 3rd
Respondents Respondents

Argued on : 30.03.2016

Decided on : 29.04.2016

L.T.B. Dehideniya J.

This is a revision application from the High Court of Jaffna. The Appellant has constructed an electrical power house for power generation. Before commencing power generation, people of the area had made several complaints to the police on environmental pollution, specially the water pollution. The police referred the matter to the Magistrate Court of Mallakam where it has been ordered to suspend the operation of the power house. Being aggrieved by the order of the Learned Magistrate, the matter has been taken to the High Court on revision. The present revision application is against the order of the Learned High Court Judge.

The learned President's Counsel for the Appellant commenced the argument and submitted that the Appellant was cleared by all the institutions who had conducted scientific investigations. He drew the attention of Court on the reports submitted by the said institutions. His contention is that there is no environmental pollution by the Appellant.

At the end of his submissions, the learned President's Counsel for the Respondent Mr. K. Kanag-Iswaran asked the learned President's Counsel for the Appellant Mr. Nihal Fernando whether he had finished the submission for the Appellant and Mr. Nihal Fernando PC informed that he has concluded the submissions for the Appellant. At this stage Mr. K. Kanag-Iswaran PC raised a preliminary objection that the learned President's Counsel for the Appellant has not referred to any errors or mistakes committed by the Learned High Court Judge and moved to dismiss this appeal.

The practice of presenting the appellant's case before the Court is to read the judgment of the lower Court and to point out the errors and

mistakes in the order on facts and on law. No doubt that it is a worthy practice to follow, but can this Court dismiss an appeal for not following the said practice? My view is that it cannot.

Under section 769(2) of the Civil Procedure Code an appeal cannot be dismissed on the non appearance of the appellant. Under this section, if the appellant does not appear either in person or by an attorney at law to support his appeal, the court shall consider the appeal and make such order thereon as it think fit. The intention of the Legislature is that once an appeal is preferred, the Court shall not dismiss the appeal without considering, even if it is not supported. The Court was burdened with the task of considering the merits of the appeal. Under these circumstances, I believe that the Court cannot dismiss an appeal merely because of not pointing out the errors and mistakes of the lower court judge in the submissions of the Counsel of the Appellant.

I overrule the preliminary objection.

Judge of the Court of Appeal

P.R.Walgama J.

I agree.

Judge of the Court of Appeal