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

Director,
Plantation Management
Monitoring Division of Ministry
of Plantation Industries.

Applicant

Vs.

MC. Matugama Case No.63828
Kalutara High Court Revision
Application No. Rev.40/2004
Appeal No. CA(PHC) 100/2007

Govindan Raja Rajapaksha,
Asweliyawatte,
Badureliya.

Respondent.

AND

Govindan Raja Rajapaksha,
Asweliyawatte,
Badureliya.

Respondent – Petitioner

Vs.

1. Director,
   Plantation Management
   Monitoring Division of Ministry
   of Plantation Industries.

2. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

AND

1. Govindan Raja Rajapaksha,
Asweliyawatte,
Badureliya.

2. Director,
Plantation Management
Monitoring Division of Ministry
of Plantation Industries.

3. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

BEFORE: **W.M.M. Malinie Gunaratne, J. &**

P.R. Walgama, J.

COUNSEL: **Anuruddha Dharmaratne**
for the 1st Respondent

Yuresha Fernando, SSC
for the 2nd Respondent

Argued on : 29.05.2015

Written submissions filed on : 02.09.2015 and 14.10.2015

Decided on: 22.10.2015

Malinie Gunaratne, J.

The Applicant- Respondent- Respondent (hereinafter referred to as the Respondent) instituted proceedings under the Case No.63828, against the Respondent- Petitioner- Appellant (hereinafter referred to as the Appellant) in the Magistrate's Court of Matugama under the Provisions of State Land (Recovery of Possession) Act No.7 of 1979. It was filed on 20.11.2003, seeking for an order from the Magistrate's Court to eject the Appellant from the premises morefully described in the Schedule to the Application.

The learned Magistrate pronounced the Order, dated 24.03.2004, granting the relief sought by the Respondent and issued Order ejecting the Appellant from the said land, as the Appellant failed to show cause as required by Section 9 of the State Land (Recovery of Possession) Act, that he was in possession of the said land upon a valid permit or other written authority of the State.

Being aggrieved by the said Order of the learned Magistrate, the Petitioner preferred an application to the High Court Kalutara, seeking that the Order of the Learned Magistrate be revised. The learned High Court Judge, pronounced the judgment dated 14.06.2007, affirming the Order of the learned Magistrate, and dismissed the Petitioner's application. The

Appellant has now filed this Appeal, seeking to set aside the said judgment of the learned High Court Judge.

When the Appeal was taken up for argument, in the absence of the Appellant, Counsel for the 1st Respondent raised a preliminary objection as to the maintainability of this Appeal.

The Counsel submitted that, as required by Rule 14 (1) of the Court of Appeal Rules, the purported Petition of Appeal has not been forwarded to this Court and therefore the purported Petition of Appeal should be rejected *in limine.* Further he has submitted, the following defects are evident ex facia;

(a) The caption does not contain a name of an Appellant;

(b) the purported Petition of Appeal is not in duly numbered paragraphs;

(c) it does not contain a proper prayer and it merely states to grant the relief prayed for in the Petitioner's Petition and to set aside the Order of the learned High Court Judge dated 14.06.2007. Also there is no specific prayer to set aside the Order of the learned Magistrate made in Case No.62328.

I will now turn to consider the legal position of the preliminary objection which was raised by the Counsel for the 1st Respondent.

The Court of Appeal Rule 14 (1) reads as follows:-

14(1) The Petition of Appeal **shall** be distinctly written upon good and suitable paper and **shall** contain the following particulars:-

14(1)

(a) The name of the Court in which the application is pending;

(b) the names of the parties to the application;

(c) the names of the appellant and of the respondent;

(d) the address to the Court of Appeal;

(e) a plain and concise statement of the grounds of objection to the order appealed against such statement to be set forth in duly numbered paragraphs.

(f) a demand of the form of relief claimed.

It is important to note that the Appellant has not complied with the Rule (14)(1) (a), (c) and (f) of the Supreme Court Rules which is mandatory. I am agreeable with the contention of the learned Counsel for the 1st Respondent. Hence, I am of the view since the Appellant has not complied with the Rule 14 (1) of the Supreme Court, there is no proper petition of appeal filed and accordingly, the Appellant has not properly invoked the jurisdiction of this Court.

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 emphasised and discussed in a long line of decided authorities by the Court of Appeal and the Supreme Court.

In the case of Coomasaru vs. M/s Leechman and Co. Ltd., and Three Others, Tennekoon, C.J. stated as follows:

"Rules of Procedure must not always be regarded as mere technicalities which parties can ignore at their whim and pleasure". In that case, the preliminary objection raised on behalf of the Respondent that relates to the non compliance of Rules upheld and dismissed the case.

It was held in Nicholas vs. Macan Marker Ltd; (1981) 2 SLR 1, non compliance with the Rule which is in imperative terms would render such application liable to be rejected.

Justice Soza stated in Navarathnasingham vs. Arumugam and Another (1980) 2 SLR 1 "This Petition therefore should have been rejected for non-compliance with Rules. Further he stated that the Supreme Court Rules are imperative and should be complied with.

Same decision was followed in the case of Rasheed Ali vs. Mohamed Ali (1981) 2 SLR 29.

In the case of Koralage vs. Marikkar Mohamed and others (1988) 2 SLR 299, it was held, compliance of the Rules is a mandatory requirement and non –compliance is a material defect in the application and cannot maintain the application.

Same decision was followed in cases Brown and Company Ltd. Vs. Rathnayake (1990) 1 SLR 92, The Attorney General vs. Wilson Silva (1992) 1 SLR 44 and Balasingham and another vs. Puvanthiram (2000) 1 SLR 163. It was stated by Perera J. in Balasingham case, failure to comply with Rules is indeed a failure to show due diligence. The appeal was accordingly dismissed. In the cases of Facy vs. Sanoon and Others (2003) 2 SLR, and Jeganathan vs. Sajyath (2003) 2 SLR 372 same decision has been followed.

It was held in Shanmugadivu vs. Kulatilake (2003) 1 SLR 215, the requirements of Rules are imperative and the Court of Appeal had no discretion to excuse the failure to comply with the Rules.

Hence, the weight of authorities mentioned above, thus favours the view, that non-compliance with Rules is fatal to the application. Parties who invoke the jurisdiction of the Court cannot ignore the Rules and then ask to be heard.

It is to the best interest of the administration of Justice that Judges shall not ignore or deviate from the procedural law and decide matters on equity and justice as Dr. Amarasinghe J. pointed out in the case of Fernando vs. Sybil Fernando and Others (1997) 3 SLR 12. In that case Dr. Amarasinghe J. has made reference to the observation of Lord Justice Scrutton in his lecture "The Work of the Commercial Courts" (1921 – 23) 1 Cambridge Law Journal 6 at P 8 – 9. " ..... The Oath which every judge takes is: I will do right to all manner of people without fear or favour or prejudices according to the law and customs of the realm. And it is the laws and customs of this realm that the judges have to administer. If once you allow the laws and customs which you have to administer to be diverted by the particular view you take of the particular case, another judge may think otherwise on the same facts, and there ceases to be any certainty in the law. If the laws and customs you have to administer are wrong it is for Parliament to put them right – not for the judges. It is important that the Judges should interpret the settled laws without altering them according to their views of right or wrong in the particular cases".

Dr. Amarasinghe J. pointed out in the case of Fernando vs. Sybil Fernando "there is the substantive law and the procedural law. Procedural law is not secondary. The two branches are complementary. Halsbury points out it is by procedure that the law which puts life into substantive law, gives it remedy and effectiveness and brings it into being".

Hence, in the interests of the administration of justice, there must he order, and therefore there must be compliance with the Rules of the Court of Appeal. As I have observed the defect was not of a purely formal or technical nature. Invoking the jurisdiction of the court is a crucial step in the proceedings.

The Petition of Appeal filed by the appellant in this case has not been directed to the proper forum under the proper provision of law in as much as no proper legally tenable appeal is pending. Therefore my considered view is that the Appellant has not invoked the jurisdiction of this Court in a proper manner complying with Rule 14(1) of the Court of Appeal Rules.

For the reasons stated above the purported Petition of Appeal should be dismissed *in limine.*

Without prejudice to the aforesaid decision, now I will turn to consider the merits of the case.

The Respondent instituted proceedings in terms of Section 5 of the State Lands (Recovery of Possession) Act, against the Appellant, in the Magistrate's Court of Matugama, seeking for an order to eject the Appellant from the land morefully described in the schedule to the application.

The scope of the State Lands (Recovery of Possession) Act was to provide a speedy or summary mode of getting back possession or occupation of "State Land" as defined in the Act, where there was not subsisting on the relevant date, in the opinion of the Competent Authority a valid permit or authority.

The Appellant has failed to show that he was in possession of the said land upon a valid permit or other written authority of the State. Therefore the learned Magistrate has made an order ejecting the Appellant from the said land.

Being aggrieved by the said order of the learned Magistrate the Appellant preferred an application, seeking to revise the Order of the learned Magistrate. The learned High Court Judge made an Order affirming the Order of the learned Magistrate and dismissed the Appellant's application. The Appellant has filed this purported Petition of Appeal seeking to set aside the judgment of the learned High Court Judge.

On perusal of the entirety of the judgment of the learned High Court Judge, it is apparent that the learned High Court Judge has taken into consideration the submissions made by both parties and has come to the conclusion that the Appellant has failed to show cause as required by Section 9 of the State Land (Recovery of Possession) Act.

Hence, I do not see any error in the manner in which the learned High Court Judge has considered the facts and the way in which he has applied the law in this instance.

Accordingly, I see no basis to interfere with the Order made by the learned High Court Judge and affirm the Order of the learned High Court Judge dated 14.06.2007.

For the reasons stated above, this Appeal is dismissed with costs of Rs.25,000/-.

JUDGE OF THE COURT OF APPEAL

P.R.Walgama, J.

I agree

JUDGE OF THE COURT OF APPEAL

Appeal is dismissed