

1895.  
July 10.

PUNCHI BANDA v. APPUHAMY *et al.*

C. R., Kegalla, 1,336.

*Civil Procedure Code, ss. 755 and 765—Ground for leave to appeal notwithstanding lapse of time—Proctor and client—Proctor refusing to sign petition of appeal.*

The delay occasioned by the refusal of one's proctor to sign his petition of appeal is no ground for leave to appeal notwithstanding lapse of time, inasmuch as a party to an action can lodge a petition of appeal in person, in terms of section 755 of the Civil Procedure Code.

ON the 11th June, 1895, the second defendant presented a petition of appeal against the judgment entered against him in this case, which was dated the 30th May, 1895. The Commissioner rejected the petition on the ground of its being presented a day too late, whereupon the second defendant made the present application to the Supreme Court for leave to appeal notwithstanding lapse of time. He stated, as his reason for the delay, that his proctor refused to draw or sign the petition of appeal, and told him that he had withdrawn from the case.

*Alwis* appeared in support of this application.

10th July, 1895. BONSER, C.J.—

Even if I am disposed to help this would-be appellant, the law does not allow me to do so.

The application is one to be allowed to appeal from a judgment of the Court of Requests of Kegalla, notwithstanding lapse of time. Section 765 of the Civil Procedure Code provides that, although the time for appealing may have elapsed, yet it shall be competent to the Supreme Court to admit a petition of appeal, provided the Supreme Court is, among other things, satisfied that the petitioner was prevented by causes not within his control from complying with the provisions of the Code respecting appeals.

Therefore it is incumbent on a party applying for this indulgence to satisfy this Court that he could not have lodged his appeal in time owing to some cause not within his control. Now, what does the petitioner state on this point in his affidavit?

He says the reason why his petition was not lodged in time was because his proctor declined to sign it. But it is not necessary that a petition of appeal should be signed by a proctor. Section 755 provides that any party who wishes to appeal may go to the

chief clerk of the Court of Requests and state orally his reasons of appeal, and the chief clerk is bound to take down in writing such reasons in the form of a petition of appeal, which, when signed by the party and attested by the chief clerk, becomes a perfectly good petition of appeal. It is not stated or suggested that anything occurred to prevent this petitioner from taking this course. Therefore I am obliged by law to hold that I am not satisfied that he has been prevented, in the words of section 765 of the Code, "by causes not within his control" from lodging his petition in time.

1895.  
July 10.  
BONSER, C.J.

