

WIJESOORIYA
V.
PUSSEDENIYA, COMMISSIONER OF NATIONAL HOUSING
AND ANOTHER

SUPREME COURT

N. D. M. SAMARAKOON, C.J., VICTOR PERERA, J.

AND COLIN THOME, J.

S.C. APPEAL NO. 4/83 : S.C. APL. L.A. NO. 115/82 :

C. A. APPLICATION NO. 963/81.

MARCH 1, 1983.

Rules of the Supreme Court — Special Leave to Appeal — Failure to lodge written submissions within fourteen days of the granting of Special Leave to Appeal — Whether rule 12(2) of the Supreme Court Rules absolved the petitioner from complying with the mandatory provision of Rule 35(a) or whether an application for Special Leave was for all purposes to be regarded as “the petition of appeal” — Rules 12(1) and (2) and 35(a) and (e) of the Supreme Court Rules of 1978.

The Petitioner's application for a writ of Prohibition and Mandamus was dismissed by the Court of Appeal. Subsequently he was granted Special Leave to Appeal. However, he had failed to lodge his written submissions in Court within fourteen days of such granting of Special Leave to Appeal, which was a mandatory requirement under the Supreme Court Rules of 1978. The 2nd respondent, thereupon filed a motion on this ground for an order for disposal of the case.

Held —

That this is a non-compliance with a mandatory requirement of the Supreme Court Rules of 1978.

APPEAL from an order of the Court of Appeal.

Nimal Senanayake, Senior Attorney-at-Law with Miss S. M. Senaratne and Tilak Balasuriya for the Appellant.

H. L. de Silva, Senior Attorney-at-Law with L. C. Seneviratne for 2nd Respondent.

Cur. adv. vult

March 16, 1983

VICTOR PERERA, J.

The Petitioner had made an application to the Court of Appeal for a Writ of Prohibition and Mandamus. The Court of Appeal by its order dated 4th November 1982 dismissed the application.

The Petitioner on the 24th November 1982 lodged a petition in this Court for the grant of Special Leave to Appeal under Article 128(2) of the Constitution. After notice on the respondents was served and caveats lodged in terms of the Supreme Court Rules of 1978, the Petitioner was heard and order was made on 18th January 1983 granting Special Leave to Appeal.

The Petitioner had failed to lodge his written submissions in Court within 14 days of the granting of Special Leave to Appeal by this Court. The 2nd Respondent thereupon, on the 3rd February 1983, after the expiry of the said 14 days, filed a motion that this matter be put up for an order of Court and this came up before us on the 1st March 1983, after notice to the Petitioner, for disposal.

The Petitioner, however, had after this motion was filed on 3.2.83 by the 2nd Respondent, lodged a fresh petition of appeal in terms of Rules 12(2) on 8.2.83 and tendered written submissions on 11.2.83. The fresh petition of appeal and the written submissions were thus filed after 14 days had expired after leave was granted. It was contended on behalf of the Petitioner that Rule 12(2) enabled him to lodge a fresh petition of appeal after his earlier petition for Special Leave to Appeal had been allowed and that therefore he was entitled to file his written submissions within 14 days of the lodging of the fresh petition of appeal. On behalf of the 2nd Respondent, it was contended that the Rule 12(2) which enabled the lodging of a fresh petition of appeal did not absolve the Petitioner from complying with the mandatory provision of Rule 35(e) requiring him to file his written submissions within 14 days of the granting of leave as the application for leave was for all purposes now a "petition of appeal".

Rule 12 reads as follows :—

"12(1) Where an application for Special leave to appeal has been allowed, it shall not be necessary for the appellant to give notice of appeal or to lodge a fresh petition of appeal, but the application for leave to appeal shall in such case be **deemed** to be the **petition of appeal**, but in

all other matters he shall comply with the rules relating to appeals.

- (2) Nothing contained in Sub-rule (1) shall be deemed to preclude such appellant from lodging a fresh petition of appeal, in which case, he shall comply with the provisions of the Rules relating to appeals ”.

It is clear from an examination of this Rule that the original application for Special Leave dated 24th November 1982 was to be regarded as “ the petition of appeal ” although the Petitioner was permitted to lodge a fresh petition of appeal. In all other matters the petitioner was obliged to comply with the Rules relating to appeals.

Rules relating to applications for Special Leave to Appeal are contained in Part I — Rules 2 to 18. Therefore this Rule 12 does not apply to appeals filed in the Supreme Court for which provision is made in Part II — Rules 27 to 43. However, in regard to the steps to be taken after an application for Special Leave to Appeal ” which becomes for all purposes “ a petition of appeal ” filed in the Supreme Court, the Rules in Part II apply.

Rule 35(e) provides as follows :—

“35(e) The appellant shall, as soon as may be, and in any case, within fourteen days of the grant of special leave to appeal or the filing of an appeal lodge his submissions, and forthwith give notice thereof to each respondent serving on him a copy of such submissions ”.

The first limb of Rule 35(e) applies, but the second limb of Rule 35(e) cannot apply as the date of the “ filing of the appeal ” will relate back to the date of the application for Special Leave to Appeal and not to the date the fresh petition of appeal was lodged in terms of Rule 12, the latter date not being the date of the filing of the appeal.

The Petitioner in this case had thus failed to lodge his written submissions within 14 days of the grant of Special Leave to Appeal. As this is a non-compliance with a mandatory requirement of the Supreme Court Rules of 1978, the appeal stands dismissed with costs fixed at Rs. 525/- payable by the petitioner to the 2nd respondent.

SAMARAKOON, C.J. — I agree.

COLIN THOME, J. — I agree.

Appeal dismissed.