

**CHRISTOPHER
V.
DON PAUL**

**COURT OF APPEAL
WIJETUNGA, J. AND WIJEYARATNE, J.,
C.A. No. 778/89,
M.C. KULIYAPITIYA,
No. 21505,
FEBRUARY 26, 1990.**

Revision – Objections of respondent filed out of time – Discretion of Court — Rule 52 of the Supreme Court Rules- 1978.

Rule 52 of the Supreme Court Rules, 1978 stipulates that where notice is served upon the respondent, he shall file his objections, if any, within two weeks of the service of such notice, unless the Court directs otherwise.

The words "unless the court directs otherwise" in Rule 52 indicate that the Court, in its discretion, can grant the respondent further time for filing his objections. No doubt the respondent should ordinarily move the court for such extension of time and obtain a discretion. But the Court can in appropriate circumstances grant covering sanction by directing that objections tendered beyond the period stipulated by this rule be accepted, which necessarily would depend on the facts and circumstances of each case.

Cases referred to:

1. *Udeshi v. Mather*, [1988] 1 Sri L.R. 12
2. *Nocholas v. Macan Markar Ltd.* [1986] 1 Sri L.R. 245.

APPLICATION for Revision of Order made by the Magistrate (Primary Court Judge) of Kuliypitiya in section 66 proceedings.

Ran Banda Seneviratne for petitioner.
Faiz Musthapa, P.C. for respondent.

Cur.adv.vult.

May 11, 1990.

WIJETUNGA, J.

This is an application for revision of an order made by the Magistrate, Kuliypitiya, in proceedings under Section 66 of the Primary Courts, Procedure Act. Counsel for the petitioner had supported the application in open Court on 16.10.89 and the Court had directed that notice issue on the respondent, returnable on 3.11.89. It had also granted a Stay Order

in terms of paragraph (A) of the prayer to the petition. Notice had been despatched on the respondent on 19.10.89 and the case had been called in open Court on 3.11.89, being the notice returnable date. Although counsel for the petitioner had been present, the respondent had been absent and unrepresented. The Court had thereupon made order that the case be listed for hearing in due course.

By a motion dated 29.1.90, the Attorney-at-Law for the respondent had tendered the objections of the respondent together with the document marked 'X' which is a certified copy of the Journal Entries of the said case in the Original Court and had moved that the Court be pleased to accept the same. That motion further states that Counsel for the petitioner had agreed that he had no objection to the filing of the said objections. A copy of this motion, together with copies of the respondent's objections and the document marked 'X' had been sent to the Attorney-at-Law for the petitioner by registered post.

On 31.1.90 Counsel for the petitioner had written to the Attorney-at-Law for the respondent, with a copy to the Registrar of this Court, stating that he had received a copy of the objections, but as they are out of time and as he had not agreed to accept the objections at any time convenient to the Attorney-at-Law for the respondent; he would be objecting to these 'very belated objections'. On 1.2.90 the Attorney-at-Law for the petitioner had written to the Registrar of this Court, with copy to the Attorney-at-Law for the respondent, stating that the respondent had failed to appear on 3.11.89 and had also not filed a motion asking for time to file objections and as the objections had been filed on or about 28.1.90, which is out of time, the objections may be rejected.

Thereafter, by a motion dated 6.2.90, the Attorney-at-Law for the respondent had set out the reasons for the delay and had moved that the court be pleased to accept the said objections. In that motion it is stated that the respondent was unable to appear before Court on the notice returnable date due to the fact that he could not communicate with counsel in time and that on the same day counsel for the respondent had communicated with counsel for the petitioner and had informed him that the annexures to the petition had not been served and had also sought his consent for time to file objections. It is further stated that counsel for the petitioner had handed over the said annexures towards the end of November, 1989 and had agreed to counsel for the respondent filing his

objections thereafter. Counsel for the respondent had been out of the Island from 6.12.89 to 25.1.90 and the respondent had tendered the objections to Court on 29.1.90. He had moved that the matter be mentioned before court on 14.2.90 to enable counsel for the respondent to obtain an appropriate order in this regard.

There is no question that the objections have been filed out of time. Rule 52 of the Supreme Court Rules, 1978 states that "where notice is served upon the respondent, he shall file his objections, if any, within two weeks of the service of such notice, unless the Court directs otherwise". As was mentioned earlier, the objections had been filed only on 29.1.90, though notice had been despatched on 19.10.89. In the meantime, on 3.11.89, the notice returnable date, the Court had directed that the case be listed for hearing in due course. It is true that the respondent had not obtained the leave of Court by way of a motion asking for further time to file objections. But, by this motion dated 29.1.90, the Attorney-at-Law for the respondent had, whilst tendering the objections together with the document marked 'X', moved that the court be pleased to accept the same. In other words, the respondent was seeking the indulgence of Court to file these objections though they were out of time and if the Court were to accept and admit them, it would in effect be granting the respondent an extension of time.

It appears from the letter dated 31.1.90 referred to above that the real complaint of counsel for the petitioner too is that there had been a delay beyond what was in his contemplation when he agreed to accept the respondent's objections though they were out of time. However, it is relevant that during this period counsel for the respondent had been out of the Island from 6.12.89 to 25.1.90. This is a circumstance on which the respondent relies to explain the delay.

The words "unless the court directs otherwise" in Rule 52 indicate that the court, in its discretion, can grant the respondent further time for filing his objections. No doubt the respondent should ordinarily move the court for such extension of time and obtain a direction. But, in my view, the court can in appropriate circumstances grant covering sanction by directing that objections tendered beyond the period stipulated by this rule be accepted, which necessarily would depend on the facts and circumstances of each case.

In *Udeshi v. Mather* (1) where the petitioner tendered additional papers on a motion asking that the Court be pleased to accept the same and a copy of this motion was sent to the respondent's Attorney-at-Law but he did not object to their acceptance by court and there was nothing to indicate their non-acceptance by court, the Supreme Court has held that there has been substantial compliance with Rule 50. That Rule too lays down a time limit but empowers the court to direct otherwise.

In *Nicholas v. Macan Markar Ltd.* (2) the Supreme Court has held *inter alia* that where the parties fail to comply with the requirements in Rules 46 to 58, it is open to the Court, under Rule 59, after hearing the parties, either to direct compliance with the Rules or to dismiss the application.

Taking into account all the circumstances mentioned above and also the fact that no prejudice has been caused by this delay to the petitioner who has been granted a Stay Order until the final determination of this application, I am of the view that this is an appropriate case for the Court to exercise its discretion in favour of the respondent, I would, therefore, make order that the objections tendered by the respondent on 29.1.90, together with the document marked 'X', be accepted and admitted.

WIJEYARATNE, J. — I agree.

Objections accepted.
