

1958 *Present* : H. N. G. Fernando, J., and T. S. Fernando, J.

A. EDDIE PERERA, Petitioner, and YAPAS, LTD., Respondent

S. C. 263—Application under Rule 18 of the Appellate Procedure (Privy Council) Order, 1921, for an extension of time to deliver prints of the record in S. C. Case No. 426 | D.C. Colombo No. 31882 M to the Registrar

Privy Council—Election to print the record in Ceylon—Time limit—Application for extension of time—Proof of due diligence necessary—Appellate Procedure (Privy Council) Order, 1921, Rules 11, 18.

When an appellant fails to comply with Rule 11 of the Appellate Procedure (Privy Council) Order, 1921, an application under Rule 18 for extension of time will not be allowed unless material is furnished to show that the failure to comply with Rule 11 was occasioned by some circumstance beyond the control of the appellant.

APPPLICATION under Rule 18 of the Appellate Procedure (Privy Council) Order, 1921.

Sir Lalita Rajapakse, Q.C., with M. L. de Silva, for the petitioner.

C. Thiagalingam, Q.C., with N. C. J. Rustomjee, for the respondent.

Cur. adv. vult.

November 24, 1958. T. S. FERNANDO, J.—

This is an application by a party who has obtained final leave to appeal to the Privy Council from a judgment of this Court for an extension of six months' time to deliver the prints of the record to the Registrar. As the appellant elected to print the record in Ceylon, Rule 11 of the Appellate Procedure (Privy Council) Order, 1921, required him to deliver the prints of the record to the Registrar within two months after obtaining final leave to appeal. Final leave had been granted on 8th November, 1957. The prints should therefore have been delivered to the Registrar before 8th January, 1958. The present application is made under Rule 18 of the same Order which enables the Court for good cause shown to extend the time allowed by this Order for doing any act, notwithstanding that the time has expired. This application was presented to Court on 15th July, 1958, more than six months after the expiry of the time allowed for the delivery of the prints of the record.

There is nothing in this application or in the affidavit filed in support of it to show why there was delay in getting the record printed. It has been submitted to us by learned counsel who appeared for the appellant that there is delay in the Registry in preparing a certified copy of a record. If there is such delay, a vigilant appellant can always apply to this Court for an extension of time to do the act required of him by Rule 11, and a delay on the part of the Registry in certifying a record will no doubt constitute good cause for extending the time allowed for delivering the prints of the record.

The appellant appears to have caused the certified record to be forwarded to the printers of his choice, The Times of Ceylon Ltd., only on 21st February, 1958. After more than two months had expired he appears to have caused the record to be recalled from the Times of Ceylon Ltd. on the ground that the latter's charges were excessive and forwarded to another printer of his choice, the Associated Printers, on 24th April, 1958. According to his affidavit, he learnt about the 21st June, 1958, that the printing press of the Associated Printers had been seized on a writ of execution issued against them. The record would then appear to have been recalled and sent back to the Times of Ceylon Ltd., and the extension of time is prayed for to enable the Times of Ceylon to make the prints.

As was said by Gratiaen J. in *Samel Appuhamy v. Peter Appuhamy*,¹ “when the time allowed by the Rules contained in the Appellate Procedure (Privy Council) Order, 1921, for doing any act necessary for prosecuting an appeal to the Privy Council has already expired, this Court should not grant an extension of time for the doing of that act unless the applicant can show that he has throughout exercised due diligence in prosecuting his appeal, and that his failure to comply with the Rule was occasioned by some circumstance beyond the control of himself and his legal advisers”. No material has yet been furnished to this Court to satisfy it that the failure (a) to comply with Rule 11 or (b) to do up to date the act required by that Rule has been occasioned by some circumstance beyond the control of the appellant, and in that view of the matter the application for extension of time must be refused with costs.

H. N. G. FERNANDO, J.—I agree.

Application refused.

¹ (1951) 52 N. L. R. at 499.
