BROOKE BOND (CEYLON) LIMITED
v.
GUNASEKERA

SUPREME COURT.
ATUKORALE, J., H.A.G. DE SILVA, J. AND BANDARANAYAKE, J.
S.C. APPEAL No. 40/87; - C.A. APPLICATION No. 614/87 ; -
D.C. MT. LAVINIA 2281/ RE.

OCTOBER 18, 1988 & JANUARY 18, 19, AND 20, 1989.

Execution proceedings - Appeal - Execution pending appeal - Interim order of restoration after execution - Jurisdiction to entertain application for writ before expiry of time limit for appeal or until filing of petition of appeal - Time allowed for appeal - Civil Procedure Code. sections 761, 763, 754 (3), 755 (3) .

The Plaintiff - appellant sued the defendant for ejectment from certain premises on the basis that he was an overholding licensee. After trial judgment was entered on 19.1.1987 for plaintiff in ejectment, damages (Rs. 5000/=) and continuing damages (Rs. 2000/= p.m.). The defendant appealed and that appeal is pending (notice of appeal on 5.2.87 and petition on 16.3.87). The plaintiff also appealed (notice on 5.2.1987) against the part of the judgment awarding him continuing damages at Rs. 2000/= p.m. This appeal is also pending. On 6.2.87 i.e. the day after the defendant filed notice of appeal the plaintiff applied for writ of ejectment. The defendant filed objections and asked for stay of execution pending appeal on sufficient security being deposited. On 25.5.87 plaintiff's application for writ of ejectment pending appeal was allowed. On the same day writ was executed and the

defendant evicted. On 2.6.87 the defendant moved the Court of Appeal in revision to quash the order of eviction and praying for an interim order restoring him to possession pending final disposal of the application for revision. The Court of Appeal on 10.6.87 granted the interim order. The plaintiff applied to the Supreme Court for special leave to appeal. A stay order was granted in respect of the Appeal Court interim order. It was argued that under section 761 of the C.P.C. the Court had no jurisdiction to entertain the application for writ because when it was filed the time allowed for appealing (60 days) from the judgment and decree had not expired.

Held :

For the purposes of section 761 of the Civil Procedure Code the time allowed for appealing from an appealable decree is 14 days being the time allowed for the giving of notice of appeal. An appeal is preferred against such a decree upon the lodging of appeal within 14 days in terms of section 754 (3).

Per Atukorale J. :

" Section 761 should not be construed in such a way as to lightly interfere with a decree - holder's right to reap the fruits of his victory as expeditiously as possible Further it is the notice of appeal that has now to be duly stamped and not the petition of appeal . . . . . The petition of appeal is exempt from stamp duty".

Cases referred to :

(1) *Careem and another v. Amerasinghe 1 Sri Kantha Rep. 25*
(2) *Vithane v. Weerasinghe and another (1981) Sri L.R. 52*

APPEAL from an order of the Court of Appeal.

Dr. H.W. Jayewardene, Q.C. with E. Ratnayake, Miss T. Keenawinna and Harsha Amerasekera for the Plaintiff - Appellant

P.A.D. Samarasekera, P.C. with W.D.D. Weerasinghe for the Defendant - Respondent.

Cur. adv. vult.

June 6, 1989

ATUKORALE, J.

This is an appeal arising out of an interim order made by the Court of Appeal restoring the defendant (who is the respondent to this appeal) to certain promises pending the final disposal of his application to revise the order for his ejectment made by the District Court in execution proceedings pending appeal. The facts in so far as they are relevant for our purposes are as follows. The plaintiff (who is the present appellant) filed action in the District Court seeking to eject the defendant from the premises on the basis that he was an overholding licensee. After trial the learned District Judge held with the plaintiff and ordered the ejectment of the defendant with damages in a sum of Rs. 5,000/= with continuing

damages at Rs. 2,000/= per month. The judgment of the District Court was pronounced on 19.1.1987. The defendant duly filed a notice of appeal on 5.2.1987 in terms of s. 754 (3) of the Civil Procedure Code (hereinafter referred to as the Code) and a petition of appeal on 16.3.1987 in terms of s. 755 (3). This appeal of the defendant is still pending in the Court of Appeal. The plaintiff himself filed a notice of appeal as well as a petition of appeal on 5.2.1987 against that part of the decree awarding him continuing damages at Rs. 2,000/= per month. This appeal of the plaintiff is also pending in the Court of Appeal. Although in the course of the present proceedings before the Court of Appeal a certain amount of reliance appears to have been placed on the fact that on 5.2.1987 the plaintiff had duly lodged an appeal it was conceded before us that this appeal of the plaintiff would have no bearing on the question that arises for our determination in this appeal before us. On 6.2.1987 i.e. the day after the defendant filed the notice of appeal, the plaintiff instituted an application for execution of the decree by the issue of a writ of ejectment against the defendant. The defendant filed objections to this application and asked that writ of ejectment be stayed pending appeal on sufficient security being deposited. After inquiry the learned District Judge by his order dated 25.5.1987 allowed the plaintiff's application for writ of ejectment. On the very same day the writ was executed and the defendant ejected from the premises by the Fiscal.On 2.6.1987 the defendant filed an application in the Courts of Appeal (No. 614/87) seeking, by way of revision " to quash this order of the learned District Judge and praying for an interim order restoring him to possession of the premises pending the final disposal of his revision application. The motion for interim relief was taken up for argument on 10.6.1987 on which date, after hearing both parties, the Court of Appeal made order granting the interim relief prayed for by the defendant. On the same day the plaintiff filed an application in this Court for special leave to appeal from the interim order made by the Court of Appeal. On 12.6.1987 he obtained before a single Judge in chambers an order staying the execution of the interim order of the Court of Appeal until such time as the application for special leave to appeal was supported in Court. On 24.6.1987 this Court granted special leave to appeal and also directed that the stay order issued by the single Judge in chambers be extended until the disposal of the appeal. It is this appeal that has come up for hearing before us.

A perusal of the order of the Court of Appeal discloses that the basis upon which it granted interim relief to the defendant was the acceptance

by it *prima facie*, of the submission advanced on behalf of the defendant that the District Court had no jurisdiction to entertain the application for writ made to it on 6.2.1987 for the reason that when it was filed on that date the time allowed for appealing from the judgment and decree of the District Court (delivered on 19.1.1987) had not expired. It was urged on behalf of the defendant in the Court of Appeal (as well as before us) that the time allowed for appealing from an appealable decree of the District Court was 60 days, which is the period allowed for filing the petition of appeal, and that s. 761 of the Code prohibited the institution by the judgment - creditor or the entertainment by Court of an application for the execution of such a decree before the expiration of 60 days from the date of the decree or until such time as the petition of appeal was filed within such period. Apparently the Court of Appeal was *prime facie* satisfied that there was substance in this contention urged on behalf of the defendant. It, however, made no final decision on this point.

At the hearing before us it was contended by learned Queen's Counsel appearing for the plaintiff that the time allowed for appealing from an appealable decree is 14 days from the date of the decree being the period prescribed for the presentation of the notice of appeal and that an appeal is preferred or lodged from a decree upon the giving of notice within this period to the Court of first instance. We had the benefit of a full argument on both sides relating to the point at issue between them and as such it seems to me both expedient and necessary that we should decide this point finally in this appeal.

S. 761 of the Code reads as follows :-

> "No application for execution of an appealable decree shall be instituted or entertained until after the expiry of the time allowed for appealing therefrom :
>
> Provided, however, that where an appeal is preferred against such a decree, the judgment - creditor may forthwith apply for execution of such decree under the provisions of section 763."

In the instant case it is not denied that the judgment pronounced by the learned District Judge on 19.1.1987 constituted an appealable decree. The issue before us revolves on the correct construction of the words "until after the expiry of the time allowed for appealig therefrom" i.e. from the appealable decree and the words "where an appeal is preferred

against such a decree" appearing in s. 761 reproduced above. In short two questions arise for our determination, namely, when does the time allowed for appealing from an appealable decree expire and when and how is an appeal preferred against such a decree.

It may be useful at this stage to refer to and trace the history of the legislation pertaining to execution of decrees pending appeal. The Civil Procedure Code in force as on 31.12.1973 immediately prior to the repeal of Part VIII (including Chapter LIX relating to execution of decrees pending appeal) by the Administration of Justice Law, No. 44 of 1973 - hereinafter referred to as the 1973 Code for convenience - by s. 761 provided as follows:-

> "Execution of a decree shall not be stayed by reason only of an appeal having been preferred against the decree; but, if any application be made for stay of execution of an appealable decree before the expiry of the time allowed for appealing therefrom, the Court which passed the decree may for sufficient cause order the execution to be stayed:
>
> Provided that no order shall be made under this section unless the Court making it is satisfied -
>
> (*a*) .....
> (*b*) .....
> (*c*) .....

This section read along with s. 763, as it stood then, which stipulated that in the event of an application being made by the judgment-creditor for execution of a decree which is appealed against, the judgment-debtor shall be made a respondent clearly showed that in so far as the judgment-creditor was concerned there existed no restriction as to the time within which he could institute an application for execution of an appealable decree. It was open to him to do so immediately upon the entering of the decree - before the expiry of the time allowed for appealing or before the filing of an application for stay of execution - even on the very day of the pronouncement of the judgment. There existed no bar to the entertainment of such an application. Nor was there a requirement that the judgment-debtor should be made a party respondent to such an application. A practical consequence of this legal position was that very frequently there arose, immediately upon the judgment being delivered by the original

Court, a race between the judgment-creditor and the judgment-dabtor, the former rushing to Court in an endeavour to obtain execution of the decree before the latter could file in court an application for stay of execution and *vice versa*. S.754(1) of the 1973 Code provided that every appeal to the Supreme Court from a judgment, decree or order of any original Court shall be made in the form of a written petition to it in the name of the appellant and shall be preferred to it as provided thereinafter. An appeal had thus to be in the form of a written petition and had to be preferred in the manner prescribed in the relevant provisions subsequent to s.754 (1). According to s.754 (2) the petition of appeal had to be presented to the original Court within a period of 10 days in the case of an appeal from the decree of a District Court, the period of 10 days being computed as set out in that sub-section. If presented in terms thereof the court had to receive it and deal with it as stipulated in the subsequent sections. If not so presented the court had to refuse to receive it. When the petition of appeal was received by the Court under that sub-section, the 'petitioner' was required by s.756 (1) to give forthwith notice to the respondent that he would on a day to be specified therein and, in the case of an appeal from a decree of the District Court, within a period of 20 days of the date of the delivery of the judgment or order, tender security for the respondent's costs of appeal and that he would deposit a sufficient sum of money to cover the expenses of serving notice of appeal on the respondent. If the security was accepted and the deposit made within the period of 20 days, then the court must immediately issue notice of appeal (together with a copy of the petition of appeal) for service on the respondent through the Fiscal. Thereafter the court had to transmit the petition of appeal with the papers and proceedings relevant to the appeal to the Supreme Court. Thus whilst s.755 and s. 758 (1) of the 1973 Code prescribed the **form** of the petitions of appeal, s.754 (2) and s.756 prescribed **the time and manner** of preferring an appeal to the Supreme Court. Thus, in my view, under the 1973 Code an appeal was preferred against the judgment, decree or order of the District Court only upon compliance with the aforesaid provisions.

There had, therefore, to be compliance with two time-limits before an appeal could be held to have been preferred to the Supreme Court, namely, the presentation of the petition of appeal within 10 days as required by s.754(2) and the furnishing of security and the making of the deposit within 20 days as required by s.756 (1). Both such periods were to be computed from the date when the decree or order appealed against

was pronounced in the manner set out in those two subsections. Hence a would-be appellant who complied initially with s.754(2) was allowed time up to a total period of 20 days for compliance with s.756(1). It is only when there has been compliance with both time-limits that **notice of appeal** is ordered by Court to be served on the respondent. If there was compliance with s.754 (2), but 'the petitioner' failed or omitted to comply with s.756 (1), then 'the petition of appeal' must be held to have abated and no further steps were necessary - s.756(2). The scheme of the 1973 Code therefore shows that an appeal was preferred to the Supreme Court only where there was due compliance with the steps enumerated by sections 754(2) and 756(1) within the periods of limitation prescribed therein. It is, therefore, my view that the words "before the expiry of the time allowed for appealing" from the decree in s.761 of the 1973 Code means and includes the period of 10 days allowed for presenting the petition of appeal in terms of s.754(2) and, when there has been due compliance therewith, the period of 20 days allowed for the furnishing of security and the making of the deposit in terms of s.756 (1). Where, however, a would-be appellant fails to comply with the provisions of s.754 (2), the time allowed for appealing would expire on the lapse of the period of 10 days. These words cannot, in my view, be confined to mean only the time prescribed for the presentation of the petition of appeal. If this was the intention of the legislature it could have been so expressed simply and unequivocally by the use of the words "before the expiry of the time allowed for presenting the petition of appeal" - words which, by way of contrast, have been used in the proviso to s.755. It is also borne out by s.756(3) which stipulated that when a petition of appeal has been received under s.754(2) but 'the petitioner' has failed to give the security and to make the deposit as provided for by s.756(1), then 'the petition of appeal' shall be held to have abated. This phraseology indicates that the receipt of the petition of appeal by itself does not constitute an appeal.

Sections 753 to 778, including the aforementioned sections, of the 1973 Code were repealed by s.3(1) (b) of the Administration of Justice Law, No. 44 of 1973, with effect from 1.1.1974. Chapter IV of this Law is captioned APPEALS PROCEDURE and consists of sections 315 to 356, which have been classified, inter alia, under the following sub-headings, namely, Right of Appeal (sections 316 and 317); [Lodging of Appeals (sections 318 to 328); Pre-hearing Prceeedings (sections 329 to 338) and Hearing of Appeals (sections 339 to 347)]. A distinction was drawn for the first time in regard to the right of appeal from judgments on the one hand

orders on the other, of original Courts. S.318, appearing under the sub-heading Lodging of Appeals, enacted that an appeal against a judgment may be lodged by giving notice of appeal to the original Court within such time and in the form and manner prescribed therein. Sections 320, 321, 322 and 323 set out the time (within 14 days), the manner and the form of the lodging of the notice of appeal. Generally whilst s. 320 prescribed the time, s.321 and s.322 prescribed the manner and s.323 the form of the notice of appeal. The notice had to be given within 14 days from the date on which the judgment was pronounced as computed in s.320. It had to be accompanied by security for the respondent's costs of appeal or an acknowledgment of waiver of security by the respondent or his registered attorney and proof of service on the respondent or such attorney of a copy of the notice of appeal - s.321. Section 323, providing for the form of the notice of appeal, stipulated that it should contain the particulars prescribed by rules of court, that it should be signed by the appellant or his registered attorney and that it should be duly stamped. The rules of Court - Supreme Court Appeals Procedure Rules, 1974, published in the Gazette Extra-Ordinary dated 23.1.1974 - did not require the grounds of appeal to be specified in the notice of appeal. S.330, appearing under the sub-heading Pre-Hearing Proceedings, required the "appellant" to lodge in triplicate in the Supreme Court written submissions in support of his "appeal" with proof of service of a copy thereof on the respondent or his registered attorney. If the "appellant" failed to do so his "appeal" was deemed to have abated. It is relevant to note that the filing of written submissions was a step in pre-hearing proceedings before the Supreme Court subsequent to and independent of the lodging of the notice of appeal in the original Court. It is a stage that was reached only after an appeal had already been lodged. It presupposes the existence of an appeal. Once the notice of appeal was accepted by the original Court all further proceedings in the action (which would include execution proceedings) were stayed - s.325. An analysis of the above provisions of the Administration of Justice Law, No. 44 of 1973, shows that an appeal from a judgment was preferred by the lodging of a notice of appeal as provided for in s. 318 whereupon execution proceedings, if any, were automatically stayed.

The 1973 Code which was repealed by s. 2 of the Administration of Justice (Amendment) Law, No. 25 of 1975, with effect from 01.01.1976 was again revived and brought back into operation by virtue of the provisions of sections 2, 3 and 4 of the Civil Courts Procedure (Special

Provisions) Law, No. 19 of 1977, which came into operation on 15.12.1977. The Civil Procedure Code (Amendment) Law, No. 20 of 1977, which also came into force on the same date, by s. 109 repealed sections 754 to 756 of the revived Code and substituted therefor 3 new sections. It also repealed S. 761 of that Code and substituted] therefor a new s.761 which I have reproduced at the beginning this judgment. Sub-sections (1) and (2) of the new s. 754 retained the distinction between judgments and orders introduced by the said Law No. 44 of 1973. Sub-section (3) of this new section made provision for the lodging of an appeal to the Supreme Court (now to the Court of Appeal) from the judgment or decree of an original Court within such time and in the form and manner thereafter provided. Although cast in different phraseology this sub-section is substantially the same as s. 318 of Law No. 44 of 1973. In my view it embodied the concept introduced by the latter section of preferring an appeal by the lodging of a notice of appeal. Sub-section (4) of this new s. 754 and sub-sections (1) and (2) of the new s. 755 of the present Code stipulating the time within which and the form and manner in which the notice of appeal has to be presented to the original court are identical with the corresponding provisions of Law No. 44 of 1973 and the rules of Court made thereunder. As under those rules of Court, there is, under s. 755 (1), no requirement that the notice of appeal should contain the grounds of appeal. Thus s. 754(2) and (3) of the present Code in effect did away with the provisions contained in the 1973 Code for the preferring of an appeal by way of, firstly, presenting a petition of appeal within 10 days and, secondly, furnishing security and making a deposit within 20 days. If s. 754(3) and (4) and s. 755 (1) and (2) of the present Code stood by themselves, adopting and embodying as they do in almost identical terms the corresponding position under Law No. 44 of 1973 and the rules made thereunder, it would appear to be quite clear that an appeal to the Supreme Court (now to the Court of Appeal) has to be preferred by lodging the notice of appeal to the original Court within 14 days of the date of delivery of the judgment or decree. Then there can be no doubt that the expression 'until after the expiry of the time allowed for appealing' from the decree can but only mean until after the expiry of 14 days from the date of the decree. If within this period an appeal is preferred by the judgement-debtor by duly giving notice of appeal, then the judgment-creditor is entitled, in terms of the Proviso to s, 761, to apply forthwith (even before the expiry of the 14 days) for execution of the decree. Has this legal position in any way been altered by the provisions contained in s. 755 (3) of the present Code requiring every appellant to present to the original

court within 60 days from the date of the judgment or decree appealed against a petition of appeal setting out, inter alia, the grounds of objection to such judgment or decree? It was argued before us by learned President's Counsel appearing for the defendant that the filing of the petition of appeal constituted an essential step in the process of preferring an appeal, a process which is incomplete until and unless the petition is filed. The grounds of appeal set out in the petition of appeal, it was urged, formed the essence and soul of an appeal. A decree, learned President's Counsel maintained, became a decree appealed against only when both the notice of appeal as well as the petition of appeal were filed in compliance with the relevant sections. It was thus his contention that in the instant case as the period of 60 days had not lapsed and no petition of appeal had still been filed, the time allowed for appealing from the decree of the District Court had not expired nor had an appeal been preferred therefrom at the time the application for execution was made. As the application had thus been made in contravention of the statutory bars imposed by s. 761, not only was its institution bad in law but also the court had no jurisdiction to entertain the same and as such the proceedings and the order made in pursuance thereof were a nullity.

It is doubtless correct, as submitted by learned President's Counsel, that under the present Code the petition of appeal is required to set out the grounds of appeal and that it is upon its presentation that the original court has to forward along with it, all the relevant papers and proceedings to the Court of Appeal whereupon the Registrar has to number the petition and enter the same in the Register of Appeals and to notify the same to the parties concerned, vide s. 756 (1). The position was different under the corresponding section – s. 329 (1) – of Law No. 44 of 1973 according to which it was on the receipt of the notice of appeal (there being no provision thereunder for the filing of a petition of appeal) that the Registrar had to number the same and enter it in the Register of Appeals and to notify the parties concerned of the same. However upon a close and careful scrutiny of the relevant sections of the present Code both by themselves and in the light of the statutory changes that had preceded them and which I have outlined earlier, I have formed the view that in ascertaining, for the purposes of s.761, the time allowed for appealing from the decree and whether an appeal had been preferred therefrom, regard must be had solely to the lodging of the notice of appeal and not to the filing of the petition of appeal. In my view the plain and natural meaning of the simple and clear language in which s.754(3) of the present

Code is couched can admit of no doubt that an appeal is lodged or preferred upon the due presentation of the notice of appeal as stipulated therein. As pointed out by me already this was the position under Law No. 44 of 1973 which effected a clear and distinct change from that which prevailed under the 1973 Code. Moreover no valid reason had been adduced on behalf of the defendent as to why the legislature should have extended the time allowed for appealing from 20 days under the 1973 Code and 14 days under Law No. 44 of 1973 to as much as 60 days under the present Code as urged by learned President's Counsel. Nor is there any cogent reason for depriving a judgment-creditor or decree-holder of the right and opportunity of initiating execution proceedings for a period which, upon the contention of learned President's Counsel, may extend to as long as 60 days. S.761 should not be construed in such a way as to lightly interfere with a decree-holder's right to reap the fruits of his victory as expeditiously as possible. Further it is the notice of appeal [that has now to be duly stamped and not the petition of appeal] as under the 1973 Code. The petition of appeal is now exempt from stamp duty. A failure to present the notice of appeal in conformity with s. 754 (4) of the present Code debars the court from receiving it. But no such sanction seems to attach to the failure to file the petition of appeal within 60 days. Nor is the appellate court in deciding an appeal confined to the grounds of objection set down in the petition of appeal – s.758(2). These facts indicate that the present Code attaches much more significance and emphasis to the notice of appeal than the petition of appeal. The provision contained in s,765 of the present Code enabling the Court of Appeal to admit and entertain, in certain circumstances, a petition of appeal from a decree of the original court although the provisions of s.754 relating to the lodging of a notice of appeal have not been observed postulates that the lodging of a notice of appeal in terms of s.754 is tantamount to the filing of an appeal. All these facts and circumstances show unmistakably that the normal and regular appeal is by way of lodging a notice of appeal under s.754.

Learned Presidents's Counsel relied much on the decision of the Court of Appeal in *Careem and another v. Amerasinghe* (1) to support his contention. In that case the Court of Appeal observing that the process of appealing now involved two stages, namely the first stage of giving notice of appeal and the second stage of [the filing of the petition of appeal,] held that there was no warrant in the language used in s.761 to restricting the time allowed for appealing to the first stage i.e. the giving

of notice of appeal within 14 days. The Court held that according to the scheme of the present Code an appeal was preferred only upon the filing of the petition of appeal. In reaching this conclusion the Court relied on cartain observations of Wanasundera J. in the judgment of the Supreme Court in *Vithane v. Weerasinghe and another* (2). These observations of Wanasundera J. pertaining to the provisions relating to appeal were made not in reference to the point arising for our consideration in the instant case but in connection with the objection taken in that case that the petition of appeal not having been filed within 60 days the appeal was bad as being out of time, an objection which was raised in and upheld by the Court of Appeal which made order abating the appeal on the basis that it was powerless to grant any relief. So that the primary, if not sole, question to which Wanasundera J. addressed his mind was in regard to the nature of the scope and extent of the power of the Court of Appeal to grant relief, under s. 759(2), for lapses on the part of an appellant in complying with the provisions pertaining to appeals. He held that its terms were wide enough to cover a case of non-compliance with the second stage of the appellate procedure and that s. 765 which empowered the Court of Appeal to admit and entertain an appeal notwithstanding lapse of time had no application to such a non-compliance and was limited only to the first stage. The Supreme Court held that the Court of Appeal in such a case had the power to grant relief and was not obliged to abate the appeal as erroneously held by it. There are in the judgment of Wanasundera J. clear expressions which in fact support the position contended for by learned Queen's Counsel for the plaintiff in the instant case. For instance in the second paragraph itself of his judgment Wanasundera J., referring to the Civil Procedure Code (Amendment) Law, No. 20 of 1977, states:

> "It now provides, in the first instance, **for lodging an appeal by notice of appeal within 14 days** of the date of judgment." (the emphasis is added).

Again at page 56 in reference to sections 754 and 756 of the present Code he states:

> "The time limits in these two sections are in respect of, first **the lodging of the appeal by giving notice of appeal** and, second the filing of an application for leave to appeal." (Emphasis is added).

Viewed in the light and context of the matter that arose for decision of the Supreme Court in that case and the passages quoted by me above,

I am of the opinion that when Wanasundera J. in the course of his judgment used expressions such as "the present provisions relating to appeals" and "the appellate procedure which obtains today" and "the process of appealing involving two stages" they cannot in any way be taken to have any relevance on the point arising for our consideration in the instant appeal. These expressions have been used by him in the course of any analysis of the entire pre-hearing appellate procedure from the stage of presenting the notice of appeal up to the stage of filing of the petition of appeal under the present Code and the stage of the lodging of written submissions in the Supreme Court under Law No. 44 of 1973 which he observed was, in this respect, the forerunner of the appellate procedure obtaining today under the present Code. In the circumstances I am, with respect, unable to agree that the judgment of Wanasundera J. *in Vithane v. Weerasinghe and Another* (*supra*) is of much assistance in the determination of the question before us. I am of the view that the decision of the Court of Appeal in *Careem and Another v. Amerasinghe (supra)* in so far as it holds that under s. 761 of the present Code no application for the execution of an appealable decree can be instituted by a judgment-creditor or entertained by a court until after the expiration of 60 days (which is the time allowed for filing the petition of appeal) and that an appeal is preferred against such a decree not upon the giving of notice of appeal within 14 days in terms of s.754 (3) but upon the giving of such notice and the filing of the petition of appeal within 60 days as required by s. 755(3) is wrong and must be overruled. I hold that for purposes of s. 761 the time allowed for appealing from an appealable decree is 14 days (the time allowed for the giving of notice of appeal) and that an appeal is preferred against such a decree upon the lodging of the notice of appeal within 14 days in terms of s.754(3).

In view of the above finding I do not think it necessary to refer to or consider the other matters urged on behalf of the [plaintiff by learned] Queen's Counsel such as, for instance, whether upon the facts and circumstances of this case the revisionary powers of the Court of Appeal could be invoked or exercised for the grant of interim relief of the nature sought for by the defendant is this case and whether it was open to the defendant to raise, for the first time in the Court of Appeal, the question of the competency of the District Court to entertain an application for execution without having raised the same at the inquiry before the District Court.

For the above reasons the appeal is allowed, the order of the Court of Appeal dated 10.6.1987 is set aside and the Application in Revision (No. 614/87) pending in the Court of Appeal is dismissed. The Court of Appeal is also directed to accelerate the hearing of both appeals against the judgment and decree of the learned District Judge dated 19.1.1987. The plaintiff will be entitled to costs of this appeal fixed at Rs. 2100.

H. A. G. DE SILVA, J. – I agree.

BANDARANAYAKE, J. – I agree.

Interim Order of Court of Appeal set aside.
Application in Revision dismissed.