

CHARLET NONA
v.
BABUN SINGHO

SUPREME COURT
DHEERARATNE, J.
GUNASEKERA, J. AND
WEERASEKERA, J.
SC APPEAL 81/98
SC SPL. LA NO. 103/98
CA NO. 214/86 (F)
DC KALUTARA NO. 4314/P
08TH SEPTEMBER, 1998

Civil Procedure Code - Notice of appeal - Computation of time - Section 754(4) of the Code.

Section 754(4) of the Civil Procedure Code provides that the notice of appeal shall be presented to the court of first instance within a period of fourteen days from the date when the decree or order appealed against was pronounced, exclusive of the day of that date itself and of the day when the petition is presented and of Sundays and Public Holidays.

The judgment was pronounced by the District Court on 7th May 1986. The 11th, 18th and 25th were Sundays; the 22nd, 23rd and 24th were Public Holidays. The notice was filed on 28th Wednesday (the 15th day from the date of the judgment) which day too has to be excluded in computing the 14 days under the CPC.

Held :

The notice of appeal was filed within the stipulated 14 days.

APPEAL from the judgment of the Court of Appeal.

N. R. M. Daluwatta, P. C. with *M. Maharoo* for the appellant.

Mohan Peiris for the respondents.

Editors note:

Contra Sri Lanka State Trading (Consolidated Export) Corporation v. Dharmadasa (1987) 2 Sri. L. R. 235.

Cur. adv. vult.

September 08, 1998.

DHEERARATNE, J.

This is an application for special leave to appeal from the judgment of the Court of Appeal dated 5.5.98 rejecting the notice of appeal filed in the original court as having being filed out of time. We grant special leave and proceed to hear the Appeal today itself.

In terms of subsection 754(4) of the Civil Procedure Code, the notice of appeal shall be presented to the court of the first instance within a period of 14 days from the date when the order appealed from was pronounced, exclusive of that day itself and of the day when the petition is presented, and of Sundays and Public Holidays.

In this case the judgment was pronounced by the District Court on 7th May 1986. The 11th, 18th and 25th were Sundays, the 22nd, 23rd and 24th were Public Holidays according to the official calendar of 1986. The notice of appeal was filed on 28th which day too has to be excluded from the computation of 14 days in terms of the CPC. Therefore the notice of appeal was in fact filed within the stipulated 14 days.

For the above reasons, we allow the appeal, set aside the judgment of the Court of Appeal, and send this case back to the Court of Appeal to be heard on the merits. Parties will bear their own costs of this appeal.

We direct the Registrar of this Court to send the record of this case to the Court of Appeal as expeditiously as possible.

GUNASEKERA, J. - I agree.

WEERASEKERA, J. - I agree.

Appeal allowed.