

**SIRIWARDENA**  
**vs.**  
**FERNANDO AND OTHERS**

COURT OF APPEAL  
WIMALACHANDRA J.  
C. A. L. A. 127/2004  
D. C. NEGOMBO 582B/L  
JULY 27, 2001

*Civil Procedure Code - Section 754(4), 757(1), 767(1) - Leave to appeal - Computation of the 14 day period - Identical to the computation of 14 days for Notice of appeal.*

On the preliminary objection raised that, the application is out of time.

**Held :**

- (i) The impugned order was made on 15.03.2004. Leave to appeal application was filed on 01.04.2004. These two days should be excluded. All Sundays namely 21st, and 29th must also be excluded. then the number of days between 15.03.2004 and 01.04.2004 are exactly 14 days - Section 757(1).
- (ii) Computation of time under Section 754(4) for Notice of Appeal - is identical to the computation of 14 days under Section 757(1).

**Cases referred to :**

1. *Charlet Nona vs. Babun Singho* - 2000 - 3 Sri LR 149(SC)
2. *Selenchina vs. Mohamed Marikkar and others* - 2000 3 Sri LR 100 (SC)

S. F. A. Cooray for Defendant Petitioners

Lakshman Perera for Plaintiff Respondent

December 14, 2004

**WIMALACHANDRA J.**

This is an application for leave to appeal from the orders (altogether six orders) made by the District Judge of Negombo on 15.03.2004.

When the matter was taken up for inquiry before this Court the learned Counsel for the plaintiff-respondent raised a preliminary objection that the defendant-petitioner has not filed the notice of appeal within a period of 14 days from the date when the order appealed from was pronounced, as specified in Section 767(1) of the Civil Procedure Code. Section 757(1) provides that an application for leave to appeal shall be presented to the Court of Appeal with a period of 14 days from the date when the order appealed against was pronounced, exclusive of the day of that date itself and the day on which the petition is presented and of Sundays and public holidays.

Therefore it is very clear that in terms of Section 757(1) of the Civil Procedure Code the date of filing the notice of appeal and the date on which the order appealed against is pronounced, should be excluded in the computation of the 14 day period.

In the instant case the date on which the impugned orders were pronounced by the District Judge was 15.03.2004. The leave to appeal application was filed on 01.04. 2004. According to Section 757(1) these two days must be excluded. All Sundays namely, the 21st and 29th must also be excluded. Then the number of days between 15.03.2004 and 01.04.2004 are exactly 14 days, which is within the stipulated period in terms of Section 757(1). It is to be noted that the computation of 14 days under Section 757(1) is identical to the Computation of 14 days under Section 754(4), which is in respect of notice of appeal against a judgment.

In the Supreme Court case of *Charlet Nona vs. Babun Singho* <sup>(1)</sup> Dheeraratne, J. considered a similar application with regard to the computation of time made under Section 754(4) of the Civil Procedure Code in respect of a notice of appeal against a judgment. His Lordship observed:

"In terms of sub-section 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 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."

This position was affirmed by the Supreme Court in the Case of *Selenchina vs. Mohamed Marikkar and others*<sup>21</sup>. In this case as well the Supreme Court considered the computation of time under section 754(4) of the Civil Procedure Code which provides that the notice of appeal shall be presented to the Court of first instance within a period of 14 days from the date when the decree or order appealed against is pronounced, exclusive of the day of that date itself and of the day when the petition is presented and of Sundays and Public Holidays. This provision is identical to Section 757(1) of the Civil Procedure Code, which stipulates the procedure in respect of an application for leave to appeal in terms of Section 757(1). His Lordship, the Chief Justice S. N. Silva J. made the following observations at page 101, with regard to the computation of time under Section 754(4) of the Civil Procedure Code.

"In terms of the section, the days set out below have to be excluded in computing the period of 14 days in which the notice should be presented.

1. The day the judgment from which the appeal is taken is pronounced;
2. Intervening Sundays and public holidays;
3. The day the notice of appeal is presented to the Court.

In this case the notice of appeal was presented on 20.10.1986. If that day is excluded, the period of 14 days excluding the date of judgment pronounced (i.e. 30.09.1986) and intervening Sundays and Public holidays would end on 17.10.86 which was a public holiday. The next day on which the notice should have been presented was the 18th, being a Saturday, on which the office of the Court was closed. The next day, the 19th was a Sunday which too had to be excluded in terms of the section. In the circumstances, the notice filed on 20.10.1986 was within the period of 14 days as provided for in Section 754(4) of the Civil Procedure Code."

---

In the circumstances the preliminary objection raised by the plaintiff-respondent that the application for leave to appeal is out of time has no merit.

For the reasons stated above it is my considered view that the notice of appeal was filed within the stipulated period of 14 days in terms of Section 757(1) of the Civil Procedure Code. That is, the said application was filed within 14 days excluding the date of the order, date of filing and intervening Sundays and Public Holidays. Accordingly the preliminary objection raised by the plaintiff-respondent is overruled with costs fixed at Rs. 2,500.

*Preliminary Objection over-ruled*

---