

THE CEYLON CERAMICS CORPORATION
v.
PREMADASA

COURT OF APPEAL.

L. H. DE ALWIS, J. AND ABEYWARDENA, J.

C. A. No. 12/80 ; L. T. No. 1/7742/75.

AUGUST 7, 1984.

Application to re-list appeal – Listing of appeal on wrong date by advertence of the Registry of the Court of Appeal – Application for re-listing listed on date not asked for by Attorney-at-Law for appellant – Inherent powers of Court – Natural Justice.

The appellant-Corporation had lodged an appeal against an Order made by the President of the Labour Tribunal.

The appeal came on for hearing on 29.9.83 on which day Order was made fixing the hearing for 21.11.83. The Registry of the Court of Appeal inadvertently listed the hearing on 25.11.83 and not on 21.11.83. On 25.11.83 when the case came up for hearing the appellant was absent and unrepresented but the Court considered the appeal and dismissed it subject to a variation of the Order appealed from. On 18.5.84 the appellant made an application to reinstate the appeal as it had come up for hearing on the wrong date and moved that the matter be listed for support on 27.6.84. Again, by an oversight the Court fixed the application for support on 19.6.84 at 10.00 a.m. and not on 27.6.84 as requested.

On 19.6.84 the petitioner being absent and unrepresented the application to re-list was rejected. The petitioner then made a second application for re-listing and this was duly listed and counsel for the petitioner supported it.

Held –

Although the Court has no power to reinstate a criminal appeal dismissed in the absence of the appellant unless the Order has been made per incuriam yet the Court is not powerless to rectify a wrong committed by its own act. The Court has inherent power to repair the injury done to a party by its own act. Further the appeal had been heard in breach of the principle of natural justice which requires that appellant be afforded an opportunity of presenting his case.

Cases referred to :

- (1) *Elo Singho v. Joseph* (1948) 49 NLR 312.
- (2) *Nanhamy v. Ranawana* (1961) 62 NLR 573.
- (3) *Salim v. Santhiya* (1965) 69 NLR 490.
- (4) *Sinnivasa Thero v. Sudassi Thero* (1960) 63 NLR 31, 34.
- (5) *Albert v. Veeriahpillai* [1981] 1 S.L.R. 110.

Chula de Silva for Petitioner.

Respondent present in person.

Cur. adv. vult.

August 31, 1984.

L. H. DE ALWIS, J.

This appeal came on for hearing on 25.11.83. The appellant was absent and unrepresented. After hearing learned Counsel for the respondent, this court, on a consideration of the appeal, affirmed the order of the learned President of the Labour Tribunal entered in favour of the respondent subject to variation, and dismissed the appeal.

The appeal first came on for hearing on 29.9.83 and the appellant was absent and unrepresented. The docket showed that the appellant's brief had been despatched by registered post on 5.6.83, nevertheless, as it was the first date of hearing, order was made to list the appeal for hearing on 21.11.83. By inadvertence on the part of the Court Registry the appeal was listed for hearing on 25.11.83 and not on 21.11.83. On 25.11.83 when the matter came on for hearing the appellant and its counsel were absent and the appeal was dismissed.

An application was then made on 18.5.84, by the Attorney-at-Law for the appellant—Corporation to reinstate the appeal as it had come up for hearing on a wrong date, which was not a free date of the appellant's counsel. The Attorney-at-Law for the appellant-petitioner also filed a motion that the re-listing application be listed on 27.6.84 for support. Again, by an oversight, the court fixed the application for support on 19.6.84 at 10.00 a.m. and not on 27.6.84 as requested.

When the application came up for support on 19.6.84, the petitioner was absent and unrepresented and the application was rejected.

Thereafter the present application for reinstatement of the appeal was made on 25.6.84 and the matter was fixed for support on 25.7.84 with notice to the respondent. On that day, the application for re-listing was listed for hearing on 7.8.84 and was taken up on that day. Counsel for the petitioner and the respondent who appeared in person, were heard and order was reserved for 31.8.84.

The question that now arises for consideration is whether, in these circumstances, this court can grant relief by reinstating the appeal, even though section 325(2) of the Code of Criminal Procedure Act makes no provision for reinstating an appeal under that chapter, where the judgment has been entered after consideration of the appeal, unless it has been made *per incuriam*. Under section 31D(5) of the

Industrial Disputes Act the provisions of Chap. XXX of the Criminal Procedure Code (now Chap. XXVIII of the Code of Criminal Procedure Act) shall apply mutatis mutandis in regard to all matters connected with the hearing and disposal of an appeal preferred under this section.

In *Elo Singho v. Joseph* (1), Basnayake, J., as he then was, held that the Supreme Court had no power to reinstate a criminal appeal which has been dismissed in the absence of the appellant. His Lordship went on to say "except in the case of an order made per incuriam the reinstatement of an appeal in a criminal case decided by it is therefore purposeless and cannot in my view be allowed."

This judgment was followed by Sansoni, J., in *Nanhmy v. Ranawana* (2).

However, this court is not powerless to rectify a wrong committed by its own act.

In *Salim v. Santhiya* (3) it was held that the court has inherent powers to repair the injury done to a party by its own act. In the present case the appellant was absent and unrepresented due to the fault of the Registry in failing to list the appeal on the given date and fixing the re-listing application for a date other than that sought by the Attorney-at-Law for the petitioner. It is therefore the duty of this court to repair the wrong suffered by the petitioner as a result of the dismissal of the appeal and the rejection of the re-listing application, due to its absence unrepresented. The petitioner had no notice of the dates on which the matters were taken up for hearing.

In *Salim's case*, T. S. Fernando, J., referred to the case of *Sirinivasa Thero v. Sudassi Thero* (4), where the court pointed out that it is a rule that a court of justice will not permit a suitor to suffer by reason of its own wrongful act and that it is under a duty to use its inherent powers to repair the injury done to a party by its act.

In the present case the appeal was heard in breach of the principle of natural justice which requires the appellant be afforded an opportunity of presenting its case. In *Albert v. Veeriahpillai* (5), Sharvananda, J., in a Labour Tribunal case, said :

"Breach of principles of natural justice goes to jurisdiction and renders an order or determination made in proceedings of which the person against whom the order or determination was made has had

no notice, void. As the applicant had no notice of the hearing on the 2nd October, 1966, the proceedings of that date are a nullity, and the Tribunal had, in the circumstances, no jurisdiction to make an order dismissing the application of the appellant. Hence the order of dismissal dated 31st October 1966 was made without jurisdiction and the Labour Tribunal had the inherent jurisdiction to set aside that order, on it being satisfied that the applicant has had no notice of the hearing."

I am of the view that for the same reasons the judgment of this court dismissing the appeal is a nullity, and further that this court has the inherent power to rectify the wrong that the petitioner suffered by the act of the court. Chap. XXVIII of the Code of Criminal Procedure Act, no doubt, makes no provision to meet such a situation. But the inherent power of this court is an authority possessed without its being derived from another. It is a power reasonably necessary for the administration of justice. Vide *Black's Law Dictionary, 4th Ed.*

I accordingly allow the application and set aside the judgment of this court dated 25.11.83 dismissing the appeal and the order dated 19.6.84 rejecting the re listing application.

I allow the present re listing application and order that the appeal be reinstated and listed for hearing very early on a date convenient to counsel for the respective parties.

There will be no costs of this application.

ABEYWARDENA, J. – I agree.
