

**JINADASA
VS.
HEMAMALI & OTHERS**

COURT OF APPEAL.
BALAPATABENDI., J (P/CA)
EKANAYAKE, J. AND
WIMALACHANDRA, J.
CA 1164/2001 (F) (D. B.)
DC GAMPAHA 33465/L.
DECEMBER 2, 2005.
FEBRUARY 13, 2006.

Civil Procedure Code, section 755(3)—Interpretation Ordinance, sections 8(1), 14(9)- Petition of Appeal to be filed within 60 days - If the 60th day falls on a non-working day or a public holiday, can it be filed on the next working day following?—Meaning “from” a named date “to” another - Should the date of judgment be excluded ?—Rules of Interpretation.

HELD :

- (1) On the application of the Rules of Interpretation it would appear that the date of pronouncing the judgment should be excluded from the computation of time limits for filing the petition of appeal - section 755(3). For the purpose of excluding the first in a series of days or any period of time it shall be deemed to have been and to be sufficient to use the word “from”. Date of judgment should be excluded.
- (2) It is not the function of the Judge to modify the language of a section of the Act in order to bring it in line with what is reasonable. However, it is not improper where two constructions are possible, for the reasonable one to be chosen.
- (3) The law cannot expect the performance of what is impossible and when the law had given a party a limited time to perform a certain act he should be given the full benefit of that period as in this case, where it was not possible for the party having a period of sixty days to file the petition of appeal on the 60th day as the 60th and 61st days happened to be Saturday and Sunday.
- (4) The petition of appeal filed on the next working day was within the period as provided for in section 755(3).

APPEAL from the judgment of the District Court of Gampaha. On a preliminary objection that the petition of appeal is out of time.

Cases referred to :

- (1) *Sivapadasundaram vs. Pathmadan and Others* (2004) Bar Association Law Journal 89 at page 90
- (2) *Perera vs. Perera* (1981) 2 Sri LR 41
- (3) *Silva vs. Sankaran* 2002 2 Sri LR 209 (overruled)
- (4) *Chandrakumar vs. Kiribakaran* 1989 2 Sri LR 35 at 39
- (5) *Nirmal de Mel vs. Seneviratne and Others* 1982 2 Sri LR 569 at 572(sc)
- (6) *Selanchina vs. Mohamed Markdar and Others* 2000 3 Sri LR 100(sc)
- (7) *Brich vs. Wisen Corporation* (1953) 1 QB 13 at 142
- (8) *Wickremaratne vs. Samarawickrama and Others* (1995) 2 Sri LR 212

Kolitha Dharmawardane for plaintiff appellant.

S. C. B. Walgampaya, PC with *L. K. T. Perera* and *Ajith Liyanage* for defendant-respondent.

cur.adv.vult.

October 12, 2006.

WIMALACHANDRA, J.

The Registrar of the Court of Appeal submitted this appeal before the President, Court of Appeal for an order of Court on the basis that the petition of appeal had been lodged after the period of time stipulated by law. Similarly, in two other appeals, bearing Nos. : CA 964/94(F) and CA 829/02 (F) the petition of appeal had not been filed within a period of sixty days from the date of the judgment as stipulated by section 755(3). In all three cases the petitions of appeal had been filed on the 61st day as the 60th day happened to be public holidays.

Hence, as the same question was at issue in all three appeals, the President of the Court of Appeal referred all three cases to a divisional Bench.

The counsel appearing in all three appeals agreed that the order that will be made in C. A. No. 1164/2001 (F) shall apply to the other two appeals, namely C. A. 964/94 (F) and C. A. 829/02(F) as well.

The only question that arises for consideration in this appeal relates to the interpretation of section 755(3) of the Civil Procedure Code which limits the time within which the petition of appeal has to be filed. The relevant portion of section 755(3) of the Civil Procedure Code reads thus :

“Every appellant shall within sixty days from the date of the judgment or decree appealed against, present to the original Court, a petition of appeal setting out the circumstances out of which the appeal arises and the grounds of objection to the judgment or decree appealed against, and containing the particulars required by section 758, which shall be signed by the appellant or his registered attorney. Such petition of appeal shall be exempt from stamp duty. Provided that, if such petition is not presented to the original court within sixty days from the date of the judgment or decree appealed against, the court shall refuse to receive the appeal.”

The question that arises for consideration consists of two parts which are as follows :

- (a) Whether the date of delivery of the judgment is included (or excluded) in computing the sixty days; and
- (b) Whether an appeal that was lodged on Monday, when Saturday was the 60th day, complies with section 755(3) of the Civil Procedure Code.

It is to be observed that in terms of section 755(3) the day the judgment, from which the appeal is taken, is pronounced has to be excluded. It appears that the words “from the date of the judgment” in section 755(3) means that the day the judgment was pronounced is excluded.

The above statement of the law was expressly adopted by Justice Balapatabendi in the case of *Sivapadasundaram vs. Pathmanadan and Others* ⁽¹⁾ at 90 in the following terms :

“Our Courts in many instances have considered the provisions of both sections mentioned above and

interpreted the words “from the date of the judgment” contained in section 755(3) of the Civil Procedure Code. When computing 60 days from the date of the judgment, the date of pronouncement of the judgment should be excluded.”

Bindra on ‘Interpretation of Statutes’, 8th edition at page 982 states, that the phrase “From a named date” means, on and after that day. I shall now refer to section 14(a) of the Interpretation Ordinance, which reads as follows :

“for the purpose of excluding the first in a series of days or any period of time, it shall be deemed to have been and to be sufficient to use the word “from”.

Maxwell on ‘Interpretation of Statutes’, 12th edition at page 309, states thus :

“where a statutory period runs “from” a named date “to” another, or the statute prescribes some period of days or weeks or months or years within which some act has to be done, although the computation of the period must in every case depend on the intention of the Parliament as gathered from the statute, generally the first day of the period will be excluded from the reckoning, and consequently the last day will be included.”

In the case of *Perera vs. Perera* ⁽²⁾ the Court of Appeal considering section 755(3) of the Civil Procedure Code held that, the date on which the judgment was pronounced can be excluded.

In the circumstances, it is my considered view that on the application of the rules of interpretation and the case law on this point, it would appear that the date of pronouncing the judgment should be excluded from the computation of time in computing the time limits for filing the petition of appeal.

The next matter for consideration is whether a petition of appeal could be deemed to have been filed within time in terms of section 755(3) of the

Civil Procedure Code if filed on the next working day when the last day for filing the petition (60th day) happened to be a non-working day of Court.

In the case of *Silva vs. Sankaram* ⁽³⁾ the Court of Appeal held that section 755(3) of the Civil Procedure Code does not permit the appellant to lodge the petition of appeal beyond the time frame of sixty days.

In this case Dissanayake, J. held that the words “within sixty days” in section 755(3) restricts the right of the appellant to file the petition of appeal beyond the time frame of sixty days given, and also held that section 8(1), of the Interpretation Ordinance does not apply.

The Interpretation Ordinance is the law governing the general rules of interpretation. Section 8(1) of the Interpretation Ordinance reads thus :

“Where a limited time from any date or from the happening of any event is appointed or allowed by any written law for the doing of any act or the taking of any proceeding in a Court or office, and the last day of the limited time is a day on which the Court or office is closed, then the act or proceeding shall be considered as done or taken in due time, if it is done or taken on the next day thereafter on which the Court or office is open”

In explaining section 8(1) of the Interpretation Ordinance A. De Z. Gunawardana, J. in the case of *Chandrakumar vs. Kirubakaran* ⁽⁴⁾ at 39 made the following observation :

“It is seen that from the provisions in section 8(1) of the Interpretation Ordinance that where a person is allowed to do any act or take any proceedings in Court or office, and the last day of the limited time is a day on which the Court or office is closed, then the act or proceedings can be done or taken on the next day such Court or office is open. The word “closed” had been used in the said section as opposed to the word “open” because it is stated

there and act or proceedings taken on the next date on which Court or office is open is considered to have been done or taken in due time.”

In the case of *Sivapadasundaram vs. Pathmanadan and Others (supra)* Balapatabendi, J. too expressed the view, that in terms of section 8(1) of the Interpretation Ordinance “the only conclusion that could be arrived at is if the 60th day for filing of the petition of appeal falls on a day on which the Court or office of the Court is closed, the filing of the petition of appeal on the next day thereafter on which the Court or office is opened, should be considered as it had been filed ‘within time’ ”.

In *Nirmala De Mel vs. Seneviratne and Others*,⁽⁵⁾ at 572. Sharvananda, J. (as he then was) observed that—

“... according to Rule 35, the petition of appeal should have been filed latest on 14th February 1981, which fell on a Saturday, a day on which the office was closed. In this connexion section 8(1) of the Interpretation Ordinance embodies a relevant rule of interpretation. It states that—

“Where a limited time from any date or from the happening of any event is appointed or allowed by any written law for the doing of any act or taking proceedings in a Court or office and the last day of the limited time is a day on which the Court or office is closed, then the act or proceedings shall be construed as done or taken in due time if it is done or taken on the next day thereafter on which the Court or office is open.”

On the application of this rule of interpretation it would appear that the petition of appeal filed on Monday the 16th February 1981, which was the next working day was within time”

On a consideration of the above matters, I cannot agree with Dissanayake, J. when he held in the case of *Silva vs. Sankaram (supra)* that section 8(1) of the Interpretation Ordinance has no application in the interpretation of section 755(3) of the Civil Procedure Code.

A similar matter was dealt with by Chief Justice, Sarath N. Silva in the case of *Selanchina vs. Mohamed Markar and Others* ⁽⁶⁾ In this case the

Court of Appeal rejected the notice of appeal on the basis that it had not been filed within the period specified in section 754(4) of the Civil Procedure Code. In terms of section 754(4), the following days have to be excluded in computing the 14 days within which the notice of appeal shall be presented to the Court of first instance,

- (i) the day the judgment from which the appeal is made is pronounced.
- (ii) intervening Sundays and public holidays
- (iii) the day the notice of appeal is presented.

Considering the facts and circumstances of the case, His Lordship made the following observations at page 102;

“ 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 17.10.1986 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 a period of 14 days as provided for in section 754(4) of the Civil Procedure Code.”

In interpreting a statute preference may be given to a reasonable meaning if the provision does not seem to be plain. However, it is not the function of the Judge to modify the language of a section of the Act in order to bring it in line with what is reasonable. However, it is not improper where two constructions are possible, for the more reasonable one to be chosen.

In the case of *Silva vs. Sankaram and Others (supra)* the Court adopted the view that the words “within sixty days” in section 755(3) of the Civil Procedure Code restrict the right of the appellant to file the petition of appeal beyond the time frame of sixty days and held further that strict compliance is imperative and non-compliance is fatal to the appeal. However,

the more reasonable constructions were made by Sharvananda, J. (as he then was) in *Nirmala de Mel Vs. Seneviratne and Others* (supra) and Chief Justice Sarath N. Silva, in the case of *Selanchina vs. Mohamed Marikkar and Others* (supra).

Maxwell's 'Interpretation of Statues', 12th edition at page 203 states thus :

“Not only are unreasonable or artificial or anomalous constructions to be avoided, it appears to be an assumption (often outspoken) of the Courts that where two possible constructions present themselves, the more reasonable one is to be chosen”

In *Brich vs. Wigen Corporation* ⁽⁷⁾ at 142 Denning L. J., observed :

“Where there is a fair choice between a literal interpretation and a reasonable one - and there usually is - we should always choose the reasonable one.”

“It is equally well-settled that where alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating and that alternative is to be rejected which will introduce uncertainty, friction, or confusion with the working of the system” (Bindra - 'Interpretation of Statutes' (*supra*) at pages 243, and 244).

In the case of *Wickramaratne vs. Samarawickreme and Others* ⁽⁸⁾ Sarath N. Silva, J. (as he then was) made the following observations :

“In statutory interpretation there is a presumption that the legislature did not intend what is inconvenient or unreasonable. The rule is that the construction must be agreeable to justice and reason should be given.”

Maxwell at p. 199 has stated this rule of interpretation as follows :

“In determining either the general object of the legislature, or the meaning of its language in any particular passage, it is obvious that the intention which appears to be most in accord with convenience, reason, justice and legal principles should, in all cases of doubtful

significance, be presumed to be the true one. An intention to produce an unreasonable result is not to be imputed to a statute if there is some other construction available”.

Bindra’s ‘Interpretation of Statutes’ (*supra*) at page 231 states thus :

“It is a well known principle of interpretation of statutes that a construction should not be put upon a statutory provision which would lead to manifest absurdity or futility, palpable injustice, or absurd inconvenience or anomaly. Where the language of law is clear, it is not necessary to see whether the interpretation put on the law is likely to lead or not to hardships and to absurdities. But the test may be applied to see whether the interpretation is a sound one or not”

In the circumstances it appears that the most preferred view is that a petition of appeal filed on the next working day of the Court when the last day (60th day) happened to be a non-working day is within time as provided by section 755(3) of the Civil Procedure Code and this view is consistent with the Interpretation Ordinance as well as the rules of interpretation.

The law cannot expect the performance of what is impossible and when the law has given a party a limited period of time to perform a certain act, he should be given the full benefit of that period as in this case where it was not possible for the party having a period of sixty days to file the petition of appeal on the 60th day as the 60th and 61st days happened to be Saturday and Sunday. Accordingly, the petition of appeal filed on the next working day was within the period as provided for in section 755(3).

For these reasons, I am of the view that the petition of appeal of the appellant is within time and the objections raised by the respondent are rejected. The Registrar of the Court of Appeal is directed to list this appeal for hearing in due course. I make no order as to costs.

BALAPATABENDI J. (P/CA)—*I agree.*

EKANAYAKE J.—*I agree.*

*Preliminary objection overruled.
Appeal to be listed for hearing.*