

1952

Present : Gunasekara J. and Swan J.

KASIPILLAI *et al.*, Petitioners, and NAGALINGA
KURUKKAL, Respondent

S. C. 349—Application for conditional leave to appeal to the Privy Council in S.C. 51/D.C. Jaffna, 5,694

Privy Council—Application for leave to appeal—Notice to opposite party—Requirement of information as to ground of appeal—Appeals (Privy Council) Ordinance (Cap. 85), Schedule, Rules 1 and 2.

When, in an application for leave to appeal to the Privy Council, the appellant gives the opposite party notice of his intended application, he must inform which of the grounds specified in Rule 1 of the Schedule to the Appeals (Privy Council) Ordinance is the ground upon which the application would be made.

APPPLICATION for conditional leave to appeal to the Privy Council.

E. B. Wikramanayake, Q.C., with *P. Navaratnarajah*, for the petitioners.

H. W. Tambiah, with *S. Sharvananda*, for the respondent.

September 26, 1952. GUNASEKARA J.—

This is an application by the defendants for leave to appeal to the Privy Council from a judgment of this Court delivered on the 30th June. The plaintiff objects on the ground that they failed to give him "due and sufficient" notice of their intended application.

Rule 2 of the Rules in the Schedule to the Appeals (Privy Council) Ordinance (Cap. 85) provides that—

"Application to the court for leave to appeal shall be made by petition within thirty days from the date of the judgment to be appealed from, and the applicant shall, within fourteen days from the date of such judgment, give the opposite party notice of such intended application."

The evidence relied on by the defendants to prove that the plaintiff was given the notice required by this rule consists of the following paragraphs of an affidavit by a clerk in the employ of their Proctor :

“(2) I did on 11th day of July, 1952, send to V. Nadarajah, Proctor for the Plaintiff-Respondent Notice of the intention of the Appellants to appeal against the Judgment and Decree of the Honourable The Supreme Court dated 30th June, 1952, for conditional leave to appeal to Her Majesty the Queen in Council by Registered Post, Express Post and Ordinary Post at the Colombo Courts Post Office. The receipts for same are herewith annexed.

“(3) I did on the 11th day of July, 1952, send to the Plaintiff-Respondent to the like effect as in Paragraph 2 hereof by Registered Post, Express Post and Ordinary Post at the Colombo Courts Post Office. The receipts for same are herewith annexed.

“(4) I did on the 12th day of July, 1952, send to the Plaintiff-Respondent a Telegram from the Colombo Courts Post Office to the like effect as in Paragraph 2 hereof. The receipts for same are herewith annexed.”

There is no evidence of the actual terms of the notice and the telegram that are referred to in this affidavit, but the defendants have filed what according to an unsworn statement in the petition is a copy of the notice that was sent by post to the plaintiff and to Mr. Nadarajah. It sets out the number of the case and the caption and says :—

Take Notice that the Appellants abovenamed will in accordance with the Appeal (Privy Council) Ordinance apply to the Honourable The Supreme Court of the Island of Ceylon for leave to appeal to Her Majesty the Queen in Council against the Judgment and Decree of the Supreme Court dated 30th June, 1952.

It purports to be signed by the proctor for the defendants and is dated 10th July.

The notice that the defendants claim to have given the plaintiff is a bare notice of an intention to apply for leave to appeal, without any information as to which of the grounds specified in rule 1 is the ground upon which the application would be made. I do not think that the giving of such a notice would be a sufficient compliance with the requirement that a party intending to make an application for leave to appeal shall give the opposite party notice “of such intended application”. Dealing with a related question, as to whether an applicant for leave could be permitted at the hearing of his application to base it on a ground not set out in his petition, Wijeyewardene C.J. said, in *Vander Poorten v. VanderPoorten*¹ :

“Now Scheduled Rule 2 requires an application for conditional leave to appeal to be made within thirty days of the judgment of this Court and notice of the intended application to be given to the opposite party within fourteen days of that judgment. The main, if not sole,

¹ (1949) 51 N. L. R. 145, at 148.

object of giving notice is to enable the opposite party to be prepared to show, if possible, that the plaintiff is not entitled to appeal. The opposite party should, therefore, know in time whether the applicant claims a right to appeal and, in that case, on what grounds, or whether he pleads that the Court should exercise its discretion in his favour and permit him to appeal. It appears to me that the very object of requiring a party to give notice within a specified time will be defeated if the applicant is allowed to alter the ground on which he asks for leave to appeal after the lapse of fourteen days from the date of judgment."

It is implied in the view taken by the learned Chief Justice that the notice given by the applicant to the opposite party must set out the ground on which the application will be made. I respectfully concur in this view and I hold that the notice that is alleged to have been given to the plaintiff is insufficient.

In this view of the matter it is not necessary to consider the affidavits and other documents that have been submitted by the plaintiff to prove that the notice in question was not received by him, or his denial that Mr. V. Nadarajah was his Proctor at any time. The application must be refused with costs.

SWAN J.—I agree.

Application refused.

