TEA SMALL FACTORIES LTD.
v.
WERAGODA AND ANOTHER

SUPREME COURT.
G. P. S. DE SILVA, C. J.
KULATUNGA, J AND
RAMANATHAN, J.
S.C. APPEAL NO. 10/93
H. C. KURUNEGALA, APPEAL NO. 75/92
L. T. NO. 23/KU/3107
DECEMBER 16, 1993 AND MARCH 07, 1994

Industrial Dispute – Jurisdiction – Transfer of case filed in Labour Tribunal – Appeal – Conversion of Public Corporations or Government Owned Business Undertakings into Public Companies Act, No. 23 of 1987, ss. 2(2), 3(2) (e) – Industrial Disputes Act, ss. 31 D(3), 31 DD, 32 D (3) – Validity of proxy – Change of name – Time bar – Rules 7 and 28 of the Supreme Court Rules 1990.

The appellant was a public company incorporated by an order made under section 2 of the Conversion of Public Corporations or Government owned Business Undertakings into Public Companies Act. No. 23 of 1987 to take over the functions of the Factories Division of the Tea Small Holdings Development Authority (TSHDA).

On 29.01.80 the 1st respondent workman attached to the Factories Division of the TSHDA applied to the Labour Tribunal, Hatton against the termination of his employment naming as respondents the State Plantations Corporation and the TSHDA. When the case was pending in the L.T. Hatton an order was made under section 2 of Act No. 23 of 1987 incorporating a public company in the name of Tea Small Factories Limited to take over the functions of the Factories Division of TSHDA.

Under s. 3(2) (e) of the Act, all actions and proceedings instituted by or against the Corporation and pending on the day immediately preceding the relevant date (i.e. date of publication of the order under s. 2(2) and specified in the order made under s. 2(2)) shall be deemed to be actions and proceedings instituted by or against the company. In view of this provision Tea Small Factories Limited might have been either substituted or added as a party in the proceedings before the Tribunal, but this was not done and the case proceeded as between the original parties.

During the hearing the President of the Labour Tribunal was transferred to Kurunegala whereupon the parties consented to the said President hearing the application at Kurunegala. At the conclusion the Kurunegala L.T. President

ordered reinstatement with back wages. The TSHDA appeal to the High Court of Kurunegala and the appeal was dismissed on the ground of jurisdiction. The Tea Small Factories Ltd. then appealed to the Supreme Court.

The appeal was resisted on four grounds:

1. Appeal was filed out of time under Rule 7 of the Supreme Court Rules 1990.

2. The proxy filed on behalf of the appellant was invalid.

3. The Tea Small Factories Ltd. could not have appealed in its name to the exclusion of the TSHDA which was the party on record before the High Court.

4. The decision of the High Court that it has no jurisdiction to entertain the appeal to that Court is justified in the light of the provisions of s. 32D(3) of the Industrial Disputes Act.

Held:

(1) Rule 7 of the Supreme Court Rules 1990 stipulating six weeks applies to applications for special leave to appeal from a judgment of the Court of Appeal. Appeals from the High Court to the Supreme Court (specially provided by s. 31 DD of the Industrial Disputes Act No. 32 of 1990) are governed by Rule 28. However neither s. 31 DD nor Rule 28 provides for the period within which an aggrieved party may appeal to the Supreme Court. A week according to content may be a calendar week beginning on Sunday and ending on Saturday or any period of seven days. The first day of the period will be excluded and consequently the last day will be included. The prescribed fee was tendered with the appeal on the last day but as it was 4.00 p.m. it was accepted on the following day. The appeal was therefore within time and the explanation for the delay in the payment of the prescribed fee was acceptable. The appeal was not time barred.

(2) The proxy has been signed by the Directors of the Tea Small Holders Factories Ltd. but the name of the appellant company was Tea Small Factories Ltd. But the name of the company was later amended to read as "Tea Small Holders Factories Ltd. The defect in the proxy stands rectified by the amendment of the name of the appellant.

(3) The 1st respondent's application to the Labour Tribunal has been specified in the Order incorporating the appellant company and under s. 3(2) (e) of Act No. 23 of 1987 it is a proceeding deemed to be instituted against the appellant. Further the point raised is a mere technicality.

(4) In terms of s. 31 D(3) of the Industrial Disputes Act, the High Court which is competent to hear the appeal is the High Court for the Province within which the

tribunal which made the impugned order is situated. Hence the High Court, Kurunegala had jurisdiction to hear the appeal.

Cases referred to:

1. *Shah v. Presiding Officer, Labour Court, Coimbatore* AIR 1978 SC 12, 16.
2. *Kailayar v. Kandiah* 59 NLR 117.
3. *Udeshi v. Mather* (1988) 1 Sri LR 12.
4. *The State Timber Corporation v. Fernando* Application No. 225/92 – Supreme Court Minutes of 22.03.1993.
5. *Kumarasinghe v. State Development & Construction Corporation* S.C. Appeal No. 55/93 – Supreme Court Minutes of 22.10.93.

APPEAL from judgment of the High Court of Kurunegala.

D. S. Wijesinghe P.C. with *Ms. D. Dharmadasa* for appellant.

R. K. W. Goonesekera with *L. C. M. Swarnadhipathy* for 1st respondent.

Cur. adv. vult.

May 02, 1994.

KULATUNGA, J.

The appellant, a public company incorporated by an order made under s. 2 of the Conversion of Public Corporations or Government Owned Business Undertakings into Public Companies Act, No. 23 of 1987 to take over the functions of the Factories Division of the Tea Small Holdings Development Authority appeals from the judgment of the High Court of Kurunegala dismissing an appeal against an order of the Labour Tribunal Kurunegala made to that Court by the said Authority. The appeal was dismissed on the ground that since the application of the 1st respondent (workman) was originally made to the Labour Tribunal, Hatton, in the Central Province, the Provincial High Court which had the jurisdiction to entertain the said appeal (in terms of s. 31D (3) of 1990) is the Provincial High Court of the Central Province; and the Provincial High Court of the North Western Province has no jurisdiction to entertain it. The facts are as follows:

On 29.10.90 the 1st respondent who was a workman attached to the Factories Division of the Tea Small Holdings Development Authority made an application to the Labour Tribunal, Hatton against

the termination of his employment. The respondents to the said application are the State Plantations Corporation and the Tea Small Holdings Development Authority. The case was numbered LT Hatton 10/7839/90 after which the inquiry into the application commenced. During the pendancy of the inquiry an order was published in Gazette No. 686 dated 25.10.91 under S. 2 of Act No. 23 of 1987 incorporating a public company in the name of "Tea Small Factories Limited" to take over the functions of the Factories Division of the TSHDA.

Under s. 3(2) (e) of the Act, all actions and proceedings instituted by or against the Corporation and pending on the day immediately preceding the relevant date (i.e. the date of publication of the order under s. 2(2), and specified in the order made under s. 2(2) shall be deemed to be actions and proceedings instituted by or against the company. In view of this provision Tea Small Factories Limited might have been either substituted or added as a party in the proceedings before the Tribunal, but this was not done and the case proceeded as between the original parties. During the hearing the President of the Labour Tribunal was transferred to Kurunegala whereupon the parties consented to the said President hearing the application at Kurunegala. Thereafter, the case was given the abovementioned Kurunegala number; and at the conclusion of the hearing the Labour Tribunal ordered the reinstatement of the 1st respondent with back wages.

The appeal to the High Court from the said order of the Labour Tribunal was preferred by the party on record, namely the Tea Small Holdings Development Authority which appeal was dismissed by the High Court by its judgment dated 13.08.92. The appeal to this Court from that judgment was made by the "Tea Small Factories Ltd." This appeal was resisted before us on the following grounds:

1. The petition of appeal has been filed out of time.

2. The proxy filed on behalf of the appellant is invalid.

3. The Tea Small Factories Ltd. could not have appealed in its name to the exclusion of the Tea Small Holdings Authority who was the party on record before the High Court.

4. The decision of the High Court that it has no jurisdiction to entertain the appeal to that Court is justified in the light of the provisions of s.32D (3) of the Industrial Disputes Act.

On the objection regarding the time bar, learned Counsel for the 1st respondent relying on Rule 7 of the Supreme Court Rules 1990 submitted that the application for special leave to appeal in this case was filed on 24.09.92, after the lapse of the period prescribed by the said rule, namely six weeks of the judgment in respect of which special leave to appeal was sought. He argued that "six weeks" not being the equivalent of 42 days, the date of the judgment should be included in computing time; hence the last appealable date was 23.09.92. Counsel submitted that in any event the appellant had failed to pay the requisite fee on 24.09.92 which fee was paid only on 25.09.92 and as such no valid appeal has been filed even if the last appealable date is 24.09.92.

In reply, learned Counsel for the appellant submitted that Rule 7 relied upon by the respondent applies to applications for special leave to appeal from a judgment of the Court of Appeal; that the judgment which is the subject of this appeal is a judgment of the High Court; and that such appeals to this Court (specially provided by s.31DD of the Industrial Disputes Act No. 32 of 1990) are governed by Rule 28. However, neither the said s.31DD nor rule 28 provides for the period within which an aggrieved party may appeal to this Court. Counsel argued that in any event a 'week' means "the cycle of seven days" as was held in *Shah v. Presiding Officer, Labour Court Coimbatore* [1]. According to Strouds Judicial Dictionary (Third Edt.) it is stated that (i) "though a week usually means any consecutive seven days, it will sometimes be interpreted to mean the ordinary notion of a week reckoning from Sunday to Sunday and (2) probably, a week usually means **seven clear days**". Counsel also cited the decision in *Kailayar v. Kandiah* [2] where a consent decree awarded certain rights to the plaintiff if he deposited a sum of money "within a period of four weeks from today" it was held that the date of the order has to be excluded in computing the last date on which payment could be made.

Maxwell (The Interpretation of Statutes) 12th Ed. p. 309 states –

"A 'week' may according to context, be a calendar week beginning on Sunday and ending on Saturday or **any period of seven days.**

Where a statutory period runs 'from' a named date 'to' another, or the statute prescribes some period of days of 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 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".

As regards the delay in paying the prescribed fee the appellant's position (as set out in his written submissions) is that the petition of appeal was filed at about 4.00 p.m. on 23.09.92. Whilst the Registry of this Court accepted the petition, an officer told the Registered Attorney for the appellant that the fee could not be accepted at that time and that it should be paid on the following day; as such the appellant should not be penalised for "delay" in the payment of the fee.

I accept the above submissions made on behalf of the appellant (both as regards the time of appeal and the explanation for the delay in the payment of the fee) and hold that this appeal is not time barred.

The validity of the appellant's proxy has been questioned for the reason that it has been signed by the Directors of the "Tea Small Holders Factories Ltd." whereas the name of the appellant company is "Tea Small Factories Ltd.". The appellant's explanation of this discrepancy is that all along, the intention was to name the new company "Tea Small Holders Factories Ltd." and the seal of the company had been made accordingly. However, by mistake the company was registered in the name of "Tea Small Factories Ltd.". But the name has since been amended to read as "Tea Small Holders Factories Ltd." by a correction published in Gazette No. 734/18 dated 01.10.92. Counsel for the appellant submitted that the

registered Attorney always had the authority to act on behalf of the appellant and the defect in the proxy, if any, stands rectified by the aforesaid amendment of the name of the appellant. He cited *Udeshi v. Mather* [3] where it was held:

> "A defective proxy can be rectified and the acts done thereon ratified by the principal where the defects are curable. The question is whether the Proctor had in fact the authority of his client to do what was done on his behalf although in pursuance of a defective appointment. If in fact he had his client's authority to do so, then the defect is one which in the absence of a positive legal bar, could be cured".

I am in agreement with these submissions and accordingly reject the objection based on the alleged defect of the proxy.

In support of the third objection to the appeal, Counsel for the 1st respondent submitted that the correct procedure for appeal was that the Tea Small Holdings Development Authority (party on record) should have lodged the appeal and thereafter the present appellant ought to have moved to be added as a party; and that it was not competent for the appellant to have filed this appeal leaving out the original party on record. Counsel for the appellant submitted that the 1st respondent's application to the Labour Tribunal has been specified in the Order incorporating the appellant company and under s.3(2) (e) of Act No. 23 of 1987 it is a proceeding deemed to be instituted against the appellant. As such the failure to follow the procedure recommended by Counsel for the respondent does not invalidate the appeal. I am in agreement with this submission. In my view the point raised by Counsel for the respondent is a mere technicality. Accordingly, I reject the third objection raised against this appeal.

I am thus left with the question of the jurisdiction of the Provincial High Court of the North Western Province to entertain the appeal made to that Court. In this respect, I confirm the view this Court has taken in *The State Timber Corporation v. Fernando* [4] and *Kumarasinghe v. State Development & Construction Corporation* [5] that the opinion that the aggrieved party has no right to appeal to

another High Court but the High Court of the Province within which the tribunal to which the application was originally made is wrong. In terms of s.31(D) (3) of the Industrial Disputes Act, the High Court which is competent to hear the appeal is the High Court for the Province within which the tribunal which made the impugned order is situated. In the instant case, though the application was originally made to the Labour Tribunal, Hatton, it was transferred to the Labour Tribunal, Kurunegala, given a Kurunegala number and decided there. I hold that the High Court, Kurunegala has the jurisdiction to hear and determine the order made in such proceedings.

For the foregoing reasons, I allow the appeal, set aside the judgment of the High Court and direct the High Court to hear and determine the appeal against the order of the Labour Tribunal on merits. For the avoidance of doubt, I direct that the appellant would be competent to pursue the said appeal, as appellant. The respondent is directed to pay the appellant a sum of Rs. 750/- as costs.

G. P. S. DE SILVA, C.J. – I agree.

RAMANATHAN, J. – I agree.

Appeal allowed.
Case sent back to High Court, Kurunegala for decision on merits.