

1950

Present: Dias J. and Günasekara J.

FERDINANDO, Appellant, and ABRAHAM, Respondent

S. C. 516—D. C. Panadura, T.K. 866/25,551

Appeal—Case conducted in person by appellant—Non-compliance with Civil Appellate Rules—Abatement—Petition of appeal—Formalities necessary when not signed by advocate or proctor—Civil Procedure Code, s. 755.

Where an appeal has abated for non-compliance with Civil Appellate Rules, the appellant is not entitled to plead that he conducted the case in person and

that, therefore, it was the duty of the Secretary of the Court to have advised him as to the law and procedure relating to appeals.

Where a petition of appeal has been signed by the appellant but has not been taken down in writing by the Secretary or Chief Clerk of the Court in terms of section 755 of the Civil Procedure Code, such petition is irregular.

APPEAL from a judgment of the District Court, Panadura.

Defendant-appellant in person.

M. L. S. Jayasekera, for plaintiff respondent.

January 18, 1950. DIAS J.—

This application fails for two reasons. In the first place, the appeal must be deemed to have abated within the meaning of the Civil Appellate Rules, 1938 (Subsidiary Legislation of Ceylon, Volume IV, June 30th., 1938, to 1st January, 1941), Section 4 (2). This sub-section declares that where the appellant fails to pay the additional fees due under rule 2 sub-rule 4 within the time specified or before the expiry of the time allowed by rule 2 sub-rule 7, whichever is later, the appeal shall be deemed to have abated. The petitioner's contention is that he having conducted the case in person it was the duty of the Secretary to have advised him on the law. We do not think that any such duty is cast upon the Secretary of a Court to advise litigants as to what the law or the procedure is. This is a danger which a suitor in person always has to face when he thinks he can conduct litigation in person.

In the second place the application fails because under section 755 of the Civil Procedure Code it is provided that all petitions of appeal shall be drawn and signed by some advocate or proctor or else the same shall not be received. There is a proviso to the effect that any party desirous to appeal may within the time limited for presenting a petition of appeal and upon his producing the proper stamp required for a petition of appeal be allowed to state *viva voce* his wish to appeal together with the particular grounds of such appeal "and the same shall (so far as they are material) be concisely taken down in writing from the mouth of the party by the Secretary or chief clerk in the form of a petition of appeal." This admittedly has not been done. In the case of *Emmanuel v. Ratnasingham*¹ this Court held that where a petition of appeal was signed by the appellant but was not taken down in writing by the Secretary of the Court in terms of section 755 the petition of appeal was irregular.

The application must therefore be dismissed with costs.

GUNASEKARA J.—I agree.

Application dismissed.

¹ (1932) 34 N. L. R. p. 126.