

**RAJA NANAYAKKARA**  
**v**  
**MERCY JAYASINGHE AND OTHERS**

COURT OF APPEAL  
AMARATUNGA, J.  
WIMALACHANDRA, J.  
C.A.L.A. NO. 318/03  
D.C. MT. LAVINIA 1526/97/L  
JUNE 12, 2004

*Prescription Ordinance – Section 9 – action in tort – Within two years – Should the day on which the cause of action arose be excluded ? – If the last date of prescriptive period falls on a public holiday, could the action be filed on the next working day ? – Interpretation Ordinance Section 8(1) – "From" – "Within" – Civil Procedure Code – Section 147.*

The plaintiff-respondent claimed a certain sum of money as a result of a motor car accident which occurred on 8.12.95 resulting in the death of the husband of the plaintiff. The plaint is dated 5.12.97 and date stamp of the Registry bears the date 8.12.97. Under section 9 action had to be filed within 2 years from the time, when the cause of action arose.

**Held:**

1. Section 9 speaks of "within two years from the time when the cause of action shall have arisen." It appears that the word "from" means that the computation of two year period commences after excluding the day on which the cause of action accrued.
2. Hence when the day on which the cause of action arose is excluded the plaintiff has filed this action within two years from the date on which the cause of action arose.
3. If the last date of the prescriptive period is a public holiday, the plaintiff is entitled to file action on the next working day.

**APPLICATION** for leave to appeal from an order of the District Court of Mt. Lavinia.

**Case referred to :**

1. *Nirmala De Mel v Somawathie Seneviratne and others* – 1982-2 Sri LR 569 at 572

*Ranjan Suwandarathne* for 2nd defendant-petitioner.

*Rohan Sahabandu* for plaintiff-respondent.

*Cur. adv. vult.*

June 24, 2004

**WIMALACHANDRA, J.**

This is an application for leave to appeal against the order of the learned Additional District Judge of Mount Lavinia dated 7th August 2003.

The plaintiff-respondent (plaintiff) instituted the action bearing No.1526/97/L against the 1st defendant-respondent (1st defendant), 2nd defendant-petitioner (2nd defendant), and the 3rd defendant-respondent (3rd defendant) jointly and severally for a judgement in a sum of Rs.1.5 million with interest.

The fact relevant to this application as set out in the petition are briefly as follows:

The plaintiff claims the said sum of Rs.1.5 million from the defendants as damages, as a result of a motor car accident which occurred on 8.12.1995 resulting in the death of the plaintiff's husband Brindly Y. Jayasinghe. The 2nd and 3rd defendants were the owners of the Vehicle No.A A 36-95-5 and the 1st defendant was the driver. When the case was taken up for trial on 23.4.2003 the plaintiff raised 12 issues and the 1st defendant raised issue 13 and 14. The 2nd and 3rd defendants suggested issues 15 and 16. The Court accepted the issues. The 1st defendant moved Court that issues 13 and 14 be tried as preliminary issues in terms under section 147 of the Civil Procedure Code. The Court allowed this application and requested the parties to tender written submissions. The issues 13 and 14 read as follows:

13. is the plaintiff's action prescribed?

14. if so can the plaintiff have and maintain this action?

The learned Additional District Judge after considering the written submissions and the documents filed by the parties answered the aforesaid issues in favour of the plaintiff. Admittedly, the cause of action arose on 8.12.1995, the day the 1st defendant had driven the said vehicle and knocked down the husband of the plaintiff causing his death.

The 2nd defendant's position is that the plaintiff has filed the action on 8.12.1997. Hence the plaintiff's action is prescribed. Although the plaint is dated 5.12.1997, the date stamp of the Court registry bears the date 8.12.1997.

This would be an action in tort to which section 9 of the Prescription Ordinance would apply.

Section 9 of the Prescription Ordinance states that no action shall be maintainable for any loss, injury or damage, unless the same shall be commenced within two years from the time when the cause of action shall have arisen. Accordingly, the action is barred after two years from the death of the deceased.

It is to be observed that section 9 of the Prescription Ordinance speaks of "within two years from the time when the cause of action shall have arisen". It appears that the word "from" means that the computation of the two year period commences after excluding the day on which the cause of action accrued.

In this connection I refer to the following observation made by Weeramantry in his book "The Law of Contracts" Volume II at page 797.

"Section 5,6,7,9 and 10, (of the Prescription Ordinance) state that actions on the cause of action they specify shall not be maintainable unless commenced or brought within a stated period "from" the time laid down for the commencement of prescription. In relation to the use of the word 'from' as appearing in statutes, it is necessary to note the provisions of the Interpretation Ordinance that it shall be deemed sufficient to use the word 'from' for the purpose of excluding the first in a series of days or any period of time. This rule has been judicially applied in Ceylon in construing the word 'from' as

appearing in the Prescription Ordinance thus excluding the first terminal and including the second. In England, there is little authority on this question but in *Marren v Dawson Bentley & Co. Ltd.* it was held, contrary to the view prevailing till then, that the day on which the cause of action accrued is to be excluded from the computation of the period."

Hence, when the day on which the cause of action arose is excluded, the plaintiff has filed this action within two years from the date on which the cause of action arose. Therefore the plaintiff's action is not prescribed.

The learned Judge, in her order has referred to section 8(1) of the Interpretation Ordinance and held that the plaintiff in any event, was entitled to file the action on 8.12.1997 as the 6th and 7th of December 1997 happened to be Saturday and Sunday, which are public holidays. As the last date of the prescriptive period according to the 2nd defendant 7.12.1997 being a Sunday and the court office was closed, the plaintiff could file action on the next working day, which is 8.12.1997. It is admitted that the plaintiff has filed this action on 8.12.1997.

As regard the computation of the period, Weeramantry in his book "The Law of Contract" vol.II at page 796 states as follows:

"The Interpretation Ordinance provides by section 8(1) 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 talking of any proceeding in any court, and the last day of the limited time is a day on which the court 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 of office is open. This provisions is presumably capable of being invoked in extension of the period of limitation."

If the last date of the prescriptive period happens to be a public holiday and the Court office is closed, the plaintiff could file action on the next working day. It is within the meaning of section 9 of the Prescription Ordinance read with section 8(1) of the Interpretation Ordinance. I find further support for this view in the case of *Nirmala De Mel v Seneviratne and others*<sup>(1)</sup> at 572, reads

as follows:

“.....Where at any time after leave being granted by the Court of Appeal to the Supreme Court the applicant dies before an appeal to the Supreme Court could be lodged, within the period stipulated by Rule 35. (of the Supreme Court rules of 1978)

Counsel contended 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 connection 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.”

In the circumstances it is my considered view that the order of the learned District Judge dated 7.8.2003 in respect of issues 13 and 14 in answering the said issues in favour of the plaintiff is correct and valid in law.

For these reasons, there is no need for this Court to interfere with the order made by the Additional District Judge, Mount Lavinia dated 7.8.2003 and therefore I refuse to grant leave to appeal.

**AMARATUNGA, J.** - I agree.

*Application dismissed.*