CADERAMANPULLE AND OTHERS
VS
CADERAMANPULLE AND OTHERS

COURT OF APPEAL
AMARATUNGA, J AND
BALAPATABENDI J.,
C.A. NO. 512/2002
D.C. COLOMBO 34200/T
FEBRUARY 14, 2003.

Court of Appeal (Appellate Procedure) Rules 1990, Rule 3(1)(a), 3(1)b – Civil Procedure Code, sections 753, 754(2), 757, 758 and 766 – Amendment Act, No. 38 of 1998 – Constitution, Articles 105(3), 138, 140, 141 and 143 – Supreme Court Rules of 1978, Rules 46 and 60 – Application for leave to appeal – Rule 3(1) of Court of Appeal (Appellate Procedure) Rules of 1990 – Not complied with – Failure to annex certified copies – Rule 3(1) – Is it applicable to leave to appeal applications ? – Failure – Has the court power to dismiss the application ?

A preliminary objection was taken that the petitioner has failed to file certified copes of documents (Rule 3(1)) and therefore the leave to appeal application should be rejected.

Held :

(i) Rule 3 of the Court of Appeal (Appellate Procedure) Rules 1990 is not applicable to leave to appeal applications.

Per Amaratunga, J.,

"The reason for the absence of any reference to leave to appeal applications in Rule 46(old) and Rule 3(1) (new) is the existence of specific provisions in the Civil Procedure Code, prescribing the manner in which leave to appeal applications are to be made."

(ii) The scope of Rule 3(15) is restricted to the category of applications similar to those set out in Rule 3(1) (a) and (b) and accordingly Rule 3(15) is applicable to other applications namely, those applications where the respondent has to file a statement of objections. There is no provision for the filing of objections to leave to appeal applications under section

754(2) and under section 757 of the Civil Procedure Code.

(iii) There is no requirement under section 757 and section 758 of the Code to annex any document to an application for leave to appeal except the affidavit of the petitioner. The Civil Procedure Code (Amendment) Act, No. 38 of 1988 made provision in section 757(4) for the Court of Appeal to grant interim relief pending the decision whether leave to appeal should be granted or not. However, subsequent to the amendment of section 757(4) the Court of Appeal Rules have not been amended in order to make the filing of other documents along with a leave to appeal application mandatory in situations before granting interim relief.

(iv) Court has no power to dismiss a leave to appeal application *in limine* on the petitioner's failure to produce certified copies of documents.

APPLICATION for leave to appeal from an order of the District Court of Colombo on the preliminary objections raised.

Cases referred to :

1. *Perera vs Perera* - (2001) 3 Sri LR 30 (not followed)
2. *Caderamanpulle* vs *Ceylon Paper Sacks Ltd.*, - (2001) 3 Sri LR 1 (not followed)
3. *Imamdeen* vs *The People's Bank* – CALA 150/97 – CAM 30.06.2000 (not followed)
4. *Wijesinghe* vs *Metalix Engineering Co. Ltd.*, – CALA 173/79 – CAM 07.03.2001 (not followed)
5. *Daintee* vs *B. K. William* – CALA 338/2000 – CAM 04.10.2001 (not followed)
6. *Navaratnasingham* vs *Arumugam* – (1980) 2 Sri LR 1
7. *Rasheed Ali* vs *Mohamed Ali* – (1981) 2 Sri LR 29
8. *David Appuhamy* vs *Yassassi Thero* – (1987) 1 Sri LR 253
9. *Koralage* vs *Marikkar* – (1988) 2 Sri LR 299
10. *Karunawathie* vs *Kusumaseelee* – (1990) 1 Sri LR 127
11. *Samarasekera* vs *Mudiyanse* – (1990) 1 Sri LR 137
12. *A. G.* vs *Chandrasena* – (1991) 1 Sri LR 85
13. *Keangnam Enterprises* vs *Abeysinghe* – (1994) 2 Sri LR 271
14. *Carolis* vs *Sugunawathie* – 4 Sri Skantha LR 78
15. *Mary Nona* vs *Francina* – (1988) 2 Sri LR 250
16. *Chelliah* vs *Ponnambalam* – 4 Sri Skantha LR 61
17. *Kiriwanthe* v. *Navaratne* - (1990) 1 Sri, L R 1
18. *Brown* and Co. v. *Ratnayake* - (1994) 3 Sri LR 91
19. *John Keells Holdings* vs *Caldera* – (1986) 1 CALR 575
20. *Paramanathan* vs *Kodithuwakkuaratchi* – (1988) 1 Sri LR 315 (CA)
21. *Paramanathan* vs *Kodithuwakkuarachchi* – (1994) 2 Sri LR 284 (SC)

22. *S. S. Magnhild (Owners)* vs *McIntyre Brothers & Co.* – (1920) 3 KB 321

Nihal Fernando with *Rajendra Jayasinghe* for petitioner.

Wijedasa Rajapakse, P.C., with *Rasika Dissanayake* for 3rd petitioner respondent.

Cur.adv. vult.

October 28, 2003

GAMINI AMARATUNGA, J.

This is an application for leave to appeal. The learned counsel for the respondent raised a preliminary objection *in limine* to this leave to appeal application on the basis that the petitioner has not complied with Rule 3(1) of the Court of Appeal (Appellate Procedure) Rules of 1990, by his failure to annex to his petition, duly certified copies of some of the documents tendered along with his application. The learned counsel cited the decision of this Court in *Perera* vs *Perera*[1] in support of his objection. That decision relates to the leave to appeal application filed in this Court bearing No. CALA335/2000, D. C. Mount Lavinia 729/95D.

In that case the objection was taken that the petitioner has failed to file certified copies of documents ; that he has failed to file certain other documents ; that he has failed to aver reasons for the failure to file such documents and that he has failed to seek permission of Court to file duly certified copies of such documents at a later stage. This Court, in its judgment dated 6/4/2001 made the following observation. "This Court on numerous occasions held that in applications for leave to appeal compliance with rule 3(1) of the Supreme Court Rules 1990 pertaining to appellate procedure is mandatory." (page 31) Having made the above observation, this Court proceeded to dismiss the application with the following words, "I am compelled to hold that non-compliance with the Supreme Court Rules is fatal to the application and proceed to sustain the preliminary objection raised by the defendant-petitioner-respondent and dismiss this application with costs." (page 33 *per* Udalagama J).

Again in *Caderamanpulle* vs. *Ceylon Paper Sacks Limited*[2] this Court has given a similar decision on 22/5/2001 stating that " I would reject the submission of the learned President's Counsel contained in his written submissions that objection pertaining to certified copies is a baseless

objection not warranted by statute or case law" and that I "hold that the violation of SC Rules is fatal to this application and I would uphold the 2nd preliminary objection of the respondent and refuse leave to appeal ....." (*per* Udalagama J. at page 7)

I have come across three other decisions of this Court, holding that in leave to appeal applications, failure to comply with the Rules relating to the filing of copies of documents is fatal. In *Imamdeen* vs. *The People's Bank*[3] this Court has refused to grant leave to appeal as the petitioner has failed to produce necessary documents. In the judgment the rules referred to were the Supreme Court Rules, but I presume that what the Court meant was the Court of Appeal (Appellate Procedure) Rules of 1990. In *Wijesinghe* vs. *Metalix Engineering* Co. Ltd.[4] this Court, following the decision in *Imamdeen* vs. *The Peoples Bank* (*supra*) upheld an objection that the petitioner has failed to produce certified copies of documents other than the impugned order. Even in this case reference was to made Supreme Court Rules. In *Daintee* vs. *B. K. William*[5] this Court has again upheld the objection that the petitioner's failure to tender certified copies of documents was fatal to the leave to appeal application. In all five cases cited above, *the applicable Rule had not been quoted and examined.*

The response of the learned counsel for the petitioner to the preliminary objection raised in this case was that Rule 3 of the Court of Appeal (Appellate Procedure) Rules of 1990 is not applicable to leave to appeal applications made by a person dissatisfied with any order made by any original court in the course of any civil action and that the manner of preferring such leave to appeal application is governed by section 757 of the Civil Procedure Code read with section 758 of the Code and therefore the said Court of Appeal Rule is not applicable to the present application and accordingly the above cases cited are not authority for the same proposition.

As the starting point to consider the argument of the learned Counsel, I set out below Rule 3(1)(a) and (b) of the Court of Appeal (Appellate Procedure) Rules of 1990.

Rule 3(1)(a)

"Every application made to the Court of Appeal for the exercise of the powers vested in the Court of Appeal by Articles 140 and 141 of the Constitution shall be by way of petition, together with an affidavit in

support of the averments therein, and shall be accompanied by the originals of documents material to such application (or duly certified copies thereof) in the form of exhibits. Where a petitioner is unable to tender any such document, he shall state the reason for such inability and seek the leave of the Court to furnish such document later. Where a petitioner fails to comply with the provisions of this rule, the Court may *ex mero motu* or at the instance of any party dismiss such application."

Rule 3(1)(b)

"Every application by way of revision or *restitutio in integrum* under Article 138 of the Constitution shall be made in like manner together with copies of the relevant proceedings (including pleadings and documents produced), in the Court of First Instance, tribunal or other institution to which the application relates."

A striking feature of both Rules quoted above is the *absence of any reference to leave to appeal applications at all.* It appears therefore that notwithstanding the decisions referred to above, this is a fit matter to be considered again. Before I proceed to examine the submission of the learned counsel, it is necessary to refer to Rule 3(15) of the Court of Appeal (Appellate Procedure) Rules of 1990, which reads as follows.

"These rules shall apply, *mutatis mutandis*, to applications made to the Court of Appeal under any provision of law other than Article 138, 140 and 141 of the Constitution, subject to any direction as may be given by the Court in any particular case."

This Rule is similar to Rule 60 of the Supreme Court Rules of 1978. I propose to consider the following questions.

1. Whether rule 3(1)(a) and (b) of the Court of Appeal (Appellate Procedure) Rules apply to leave to appeal applications made in terms of section 757(1) of the Civil Procedure Code ?
2. If the answer to the above question is in the negative, whether such leave to appeal applications attract the provisions of the said Rule 3(1) (a) and (b) by virtue of the application of the said Rule 3(15).

I shall now consider the question No. 1 set out above. The precursor to the present rule 3(1)(a) and (b) of the Court of Appeal (Appellate Procedure) Rules of 1990 was Rule 46 of the Supreme Court Rules, published in the Government Gazette (Extraordinary) No. 9/10 of 8/11/1978 which reads as follows.

Rule 46 : "Every application made to the Court of Appeal for the exercise of the powers vested in the Court of Appeal by Articles 140 and 141 of the Constitution shall be by way of petition and affidavit in support of the averments set out in the petition and shall be accompanied by originals of documents material to the case or duly certified copies thereof, in the form of exhibits. Applications by way of revision or *restitution in integrum* under Article 138 of the Constitution shall be made in like manner and be accompanied by two sets of copies of proceedings in the Court of First Instance, tribunal or other institution."

Rule 46 of the Supreme Court Rules thus referred to three types of applications, namely applications for the exercise of the powers vested in the Court of Appeal by Articles 138, 140 and 141 of the Constitution. Article 140 of the Constitution deals with the power of the Court of Appeal to issue writs of certiorari, prohibition, procedendo, mandamus and quo warranto. Article 141 deals with the power of the Court of Appeal to issue writs of habeas corpus. Article 138 sets out the jurisdiction and the powers of the Court of Appeal in the exercise of its appellate and revisionary jurisdiction. The appellate jurisdiction of the Court of Appeal is exercised when a party who has a right of appeal conferred on him by law presents a petition of appeal to the Court of Appeal in accordance with the procedure laid down for filing the appeal. Revision is a discretionary remedy. No one can invoke the revisionary jurisdiction of the Court of Appeal as a matter of right. Any party to an action or a proceeding in any Court of First Instance, tribunal or other institution, whose rights are affected by an error of fact or law committed by such Court of First Instance, tribunal or other institution may make an application to the Court of Appeal for the correction of errors of fact or law committed in such action or in such proceedings. Even a person who is not a party to an action may make a revision application if his rights are prejudiced by an order made in any action or a proceeding.

Although, the Constitution (Article 138) and other enactments such as the Civil Procedure Code (section 753) and the Code of Criminal Procedure Act (section 364) set out the jurisdiction and the powers of the Court of Appeal in revision, there is no enactment which sets out the procedure for

making a revision application. The Supreme Court Rules of 1978 (Rule 46) and the Court of Appeal (Appellate Procedure) Rules, Rule 3(1)(a) and (b), set out the procedure to be followed in filing a revision application. On the other hand statutes which confer rights of appeal set out the procedure for filing the appeal and the manner in which the petition of appeal should be prepared. It is therefore significant to note that in Rule 46 and Rule 3(1) there is reference only to 'applications by way of revision under Article 138 of the Constitution.' In both Rules, there *is no reference to applications or petitions made to the Court of Appeal to invoke its appellate jurisdiction.*

Beginning with the case of *Navaratnasingham* vs. *Arumugam*[6] there is a long line of cases decided by the Supreme Court and the Court of Appeal holding that, Rule 46 of the Supreme Court Rules of 1978 is mandatory, non-compliance with the Rule is fatal but the Courts have the power in appropriate cases to grant relief notwithstanding the failure of a party to comply with the mandatory Rule 46.

Since the contention of the learned counsel for the respondent is that Rule 3(1) is applicable to leave to appeal applications, I examined those reported cases, where Rule 46 was applied, to see whether there are cases in which Courts have held that Rule 46 was applicable to applications for leave to appeal. I set out below those cases and the nature of the application considered in each case. The following are the cases which dealt with revision applications.

1. *Navaratnasingham vs. Arumugam (supra)*
2. *Rasheed Ali vs. Mohamed Ali*[7]
3. *David Appuhamy vs. Yasassi Thero*[8]
4. *Koralage vs. Marikkar*[9]
5. *Karunawathie vs. Kusumaseelee*[10]
6. *Samarasekara vs. Mudiyansee*[11]
7. *A. G. vs. Chandrasena*[12]
8. *Keangnam Enterprises vs. Abeysinghe*[13]
9. *Carolis vs. Sugunawathie*[14]
10. *Mary Nona vs. Francina*[15]
11. *Chelliah vs. Ponnambalam*[16]

In the following cases Rule 46 was applied in applications for writs.

1. *Kiriwanthe vs Navaratna*[17]
2. *Brown and Compnay vs Ratnayake*[18]

All thirteen cases cited above were not applications for leave to appeal and as such they are not authority for the proposition that Rule 46 was applicable to applications for leave to appeal.

In John Keels Holdings vs *Caldera*[19] the plaintiff-respondent obtained *ex parte* an interim injunction against the defendant-appellant. On the injunction being served on the defendant-appellant he filed answer and moved the District Court to vacate the injunction. His application was refused. The defendant then filed an application for leave to appeal (CALA 11/86) and an application for revision (CA Application No. 101/86) against the order of the District Court. In both applications the defendant has not filed a copy of his answer filed in the District Court. When both applications were consolidated and heard together, the learned Queen's Counsel who appeared for the plaintiff-respondent raised an objection *in limine* that the application in revision should be rejected as the defendant-appellant has failed to file a copy of the answer filed in the District Court.

Jameel J. having referred to the case of *Rasheed Ali* vs *Mohamed Ali* (*supra*) stressed the mandatory nature of Rule 46 and held that the defendant's answer filed in the District Court was a material document in considering whether the Court should grant interim relief. The Court dismissed the revision application for non compliance with Rule 46 but allowed the leave to appeal application and granted leave to appeal. There is no specific discussion in the judgment whether Rule 46 was applicable to leave to appeal applications but it is implicit from the order made by Court that Rule 46 was not applicable to leave to appeal applications.

In the case of *Paramanathan* vs. *Kodituwakkuarachchi*[20] the facts were similar. The defendant-petitioner filed an application in revision (C.A. Application 383/87) and an application for leave to appeal (CALA 48/87) against the order of the District Court allowing execution of the writ pending appeal. Both applications were consolidated and heard together. The Order of the learned District Judge allowing execution pending appeal was not annexed to both applications. The position of the petitioner was that the order made by the learned judge on 24/3/87 was not available in the record when he obtained a certified copy of the proceedings on 25/3/87. The revision application had been filed on 25/3/87 and the leave to appeal application was filed on 31/3/87. When the respondent filed his statement of objections a copy of the impugned order was filed with it. The Court of Appeal refused the revision application on the basis that the petitioner has failed to comply with Rule 46.

The learned counsel for the petitioner relying on the decision in *John Keels Holdings* vs. *Caldera (supra)* submitted that there was no rule requiring the filing of the document in a leave to appeal application and to enforce such a course of conduct there must be (a) a Rule, and (b) it should be mandatory and not merely directory. He submitted that there was no such rule governing leave to appeal applications and as such the leave to appeal application was not liable to be rejected. Rejection could take place only when there was failure to comply with a mandatory Rule, but section 757(1) of the Civil Procedure Code contained no such Rule. [(1988) 1 SLR 315 at 328].

Tissa Bandaranayake, J. in the course of his judgment said as follows.

"The Rule making power is exercised by the Supreme Court. *Vide* Article 136 of the Constitution. *There is no Rule with regard to leave to appeal applications that the proceedings and documents must be supplied when leave is sought."* (page 328). emphasis added) Having made the above observation he went on to say "*There is no necessity for any Rule to govern the situation as the procedural provisions already provide for it,* understood as they should be with common sense and reason. These steps are mandatory in nature. The Court has no discretion to waive them. Failure to comply with those steps necessarily deprive the applicant of seeking further relief." (page 332 emphasis added) Bandaranayake J. then held that even the leave to appeal application too failed in *limine.*

This is the solitary case where it has been held that Rule 46 was applicable to leave to appeal applications. It is to be noted here with utmost respect, that Bandaranayake J. has not specified the "procedural provisions" which specify that a petitioner who makes a leave to appeal application should annex documents to his petition.

In appeal this decision was set aside by the Supreme Court. *Vide Paramanathan vs Kodituwakkuarachchi*[21]. The Supreme Court has not dealt with the question whether Rule 46 was applicable to leave to appeal applications. On the facts the Supreme Court was satisfied that when the petitioner obtained a certified copy of the proceedings from the District Court on 25/3/87, reasons for the order made by the judge on 24/3/87 were not available in the record and that there was no evidence as to when the reasons were filed of record. In those circumstances the Supreme

Court held that to hold that there was non compliance with Rule 46 would be to ignore the principle 'lex non cogit ad impossibilia'. (The law does not compel the performance of what is impossible). Further the Supreme Court held that at the time of hearing, a copy of the impugned order submitted by the respondent along with his statement of objections was before Court of Appeal and that this was sufficient for the purpose. The Supreme Court accordingly set aside the decision of the Court of Appeal and directed the Court of Appeal to decide the revision and leave to appeal applications on merits.

I shall now turn to the 'procedural provisions' referred to by Tissa Bandaranayake, J. Section 757 of the Civil Procedure Code sets out the procedure for filing an application for leave to appeal. Such application must be made :

(*a*) by duly stamped petition, containing the particulars required by section 758, signed by the aggrieved party or his attorney-at-law, and

(*b*) shall be supported by affidavit; and

(*c*) shall be presented to the Court of Appeal within the period of 14 days prescribed in section 757(1).

When a leave to appeal application is presented in the manner set out in section 757(1), the section says that "the Court of Appeal shall receive it and deal with it as hereinafter provided ..." Section 758 of the Civil Procedure Code specifies the particulars to be set out in an application for leave to appeal (as well as in a petition of appeal). Sub paragraph (e) of section 758 is as follows. The petition of appeal shall contain :

(*e*) "a plain and concise statement of the grounds of objection to the judgment, decree or order appealed against such statement to be set forth in duly numbered paragraphs."

It is significant to note that in sections 757 and 758 of the Civil Procedure Code, there is no requirement that copies of documents must be annexed. On the other hand section 776 of the Civil Procedure Code which provides for applications for leave to appeal notwithstanding lapse of time, there is a requirement that the "petition shall be accompanied by a certified copy of the decree or the order appealed from and of the judgment on which it is based, as well as by such affidavits of facts and other materials as may constitute *prima facie* evidence that the conditions precedent to the petition

of appeal being entertained which are prescribed in the last section are fulfilled."

When a leave to appeal application is filed there is no provision to file a statement of objections. When the application comes up before this Court in the first instance *inter partes*, *the task of the Court of Appeal is to consider whether the question of law set out in the application for leave to appeal is a matter fit to be considered by the Court of Appeal by way of an interlocutory appeal.* If the Court grants leave to appeal the Registrar shall inform the original Court that leave has been granted and *the original Court shall then forward to the Court of Appeal all the papers and proceedings in the case, relevant to the matter in issue* [section 757(5)]. Thus when leave is granted the relevant parts of the entire record of the original Court are before the Court of Appeal and this obviates the necessity to file copies of documents at the time when the appeal is heard. In considering an application for leave to appeal notwithstanding lapse of time the Court's task is wider. In such a situation the *Court has to consider whether the petitioner has a good ground of appeal.* For this purpose the Court has to go beyond the grounds of appeal set out in the petition and satisfy itself that good grounds of appeal in fact exist. For this purpose the Court may need the judgment and even the proceedings including the evidence. This is the reason for specifying the documents to be produced along with an application for leave to appeal notwithstanding lapse of time.

As I have already pointed out Rule 3(1)(a) and (b) of the Court of Appeal (Appellate Procedure) Rules and Rule 46 of the Supreme Court Rules of 1978 *refer only to applications made to the Court of Appeal for writs and for applications by way of revision or restitutio in integrum. Both Rules do not refer to applications made to the Court of Appeal to invoke the appellate jurisdiction of the Court of Appeal under Article 138 of the Constitution.* At the time the Constitution was promulgated in 1978, the Civil Procedure Code already had provisions prescribing the procedure for making leave to appeal applications and there was therefore no necessity to prescribe Rules setting out the manner of filing leave to appeal applications. Rules were made by the Supreme Court in the exercise of the powers vested in the Supreme Court by Article 136 of the Constitution and were published as *'Writs and Examination of Records Rules"* (Part IV of the Supreme Court Rules of 1978) Rule 46 was a Rule to be found in those Rules.

What is the significance of the omission to have any reference in Rule 46 to applications for leave to appeal made to the Court of Appeal ? The

maxim 'Inclusio unius exclusio ulterius' which means inclusion of one excludes the other is an auxiliary rule of construction adopted for the purpose of ascertaining the intention of the law giver or the rule maker. "it is to be applied only when in the natural association of ideas the contrast between what is provided and what is left out leads to an inference that the latter was intended to be excluded." Bindra *Interpretation of Statues.* 8th Ed. p. 154. As I have already stated the reason for the absence of any reference to leave to appeal applications in Rule 46 and Rule 3(1) is the existence of specific provisions in the Civil Procedure Code prescribing the manner in which leave to appeal applications are to be made. If there is any doubt about this, the application of the auxiliary rule of construction expressed in the maxim 'Inclusio unius exclusio alterius' puts the matter beyond doubt and the conclusion is that Rule 3(1) of the Court of Appeal (Appellate Procedure) Rules of 1990 is, and Rule 46 of the Supreme Court rules of 1978 was, not applicable to applications for leave to appeal.

In view of the above finding, I now turn to the 2nd question I have set out, namely whether leave to appeal applications attract the provisions of the said Rule 3(1)(a) and (b) by virtue of the application of Rule 3(15) of the said Rules ? For convenience of reference, I set out again the said Rule 3(15) which reads as follows.

> "These rules shall apply, mutatis mutandis, to applications made to the Court of Appeal under any provision of law other than Articles 138, 140 and 141 of the Constitution, subject to any direction as may be given by the court in any particular case."

Is there any special feature in applications made under Articles 138, 140 and 141 of the Constitution to bring them within one category in view of such special feature ? The answer is in the affirmative. If a respondent to any of those applications wishes to oppose the application, he is required to file his statement of objections. It is imperative. Rule 3(4)(b), Rule 3(5), (6) and (7) specifically refer to statements of objections to be filed in respect of applications set out in Rule 3(1)(a) and (b). This special feature, i.e. the necessity to file a statement of objections if the respondent wishes to resists the application, brings all those applications within one category. Are there other applications made to the Court of Appeal which do not fall within the category of applications to which a statement of objections has to be filed ? There are such applications. The obvious example is the leave

to appeal application made in terms of section 754(2) and under section 757 of the Civil Procedure Code. There is no provision for the filing of objections to a leave to appeal application. In such applications, the Court holds an inquiry when both parties appear before Court and decides whether the Court should grant leave to appeal or not. The question therefore is, whether Rule 3(15) applies to all applications made to the Court of Appeal or whether the said Rule is applicable only to those applications which fall within the category of applications where the filing of a statement of objections is necessary and imperative ?

The rule of construction 'ejusdem generis' means that where general words follow particular and specific words of the same nature, the general words must be confined to things of the same kind as those specified. In order to apply this rule it is necessary that the specific words must form a distinct category. The 'test is whether the specified things which precede the general words can be placed under some common category." *S. S. Magnhild (owners) vs. Mc. Intyre Brothers and Co.*[21]. Applying this rule of construction, I hold that the scope of Rule 3(15) is restricted to the category of applications similar to those set out in Rule 31 (a) and (b) and accordingly the said Rule 3(15) is applicable to other applications belonging to the same category namely those applications where the respondent has to file a statement of objections in order to resist 3(1)(a) the application. The following are some examples of such applications.

I Applications under Article 143 of the Constitution.

II Applications under section 46 of the Judicature Act, No. 2 of 1978 for the transfer of cases.

III Applications for bail in cases where original jurisdiction to grant bail is vested in the Court of Appeal. Eg. Offensive Weapons Act.

IV Applications by a party to invoke the powers of the Court of Appeal under Article 105(3) of the Constitution to punish for contempt of court.

The above are few examples but the list is not exhaustive. For the reasons set out above I hold that even under Rule 3(15) of the Court of Appeal (Appellate Procedure) Rules of 1990, leave to appeal applications cannot be made subject to Rule 3(1)(a) and (b) of the said Court of Appeal Rules.

For those reasons set out above, I am not persuaded to follow the decisions I have referred to at the beginning of this judgment, namely the decision in *Perera vs. Perera (supra) Caderamanpulle vs. Ceylon Paper Sacks Ltd. (supra) ; Imamdeen vs. The People's Bank (supra) ; Wijesinghe vs. Metalix Engineering Co. Ltd.(supra) and Daintee vs B. K. William(supra).* I therefore hold that Rule 3(1)(a) and (b) of the Court of Appeal (Appellate Procedure) Rules of 1990 are not applicable to leave to appeal applications filed in terms of section 757(1) of the Civil Procedure Code. In consequence I uphold the submission of the learned counsel for the petitioner that Rule 3(1) (a) and (b) of the Court of Appeal (Appellate Procedure) Rules are not applicable to leave to appeal applications and overrule the preliminary objection raised by the learned President's Counsel for the respondents that the petitioners' failure to produce material documents is fatal to this application.

Before I conclude this order, I wish to add the following observations. At the time the Court of Appeal (Appellate Procedure) Rules of 1990 were promulgated, the Court of Appeal did not have the power of grant interim relief by way of a stay order in a leave to appeal application before it granted leave to appeal. The proceedings in the original Court were stayed only after leave to appeal was granted by the Court of Appeal. It was therefore the practice to file a revision application along with the leave to appeal application when the petitioner wished to obtain relief by way of a stay order until the Court granted leave to appeal. Such revision application had to be made in accordance with Rule 3(1) (b) of the Court of Appeal Rules. With the revision application the Court had before it all necessary documents.

The Civil Procedure Code (Amendment) Act, No. 38 of 1998 made provision in section 757(4) for the Court of Appeal to grant interim relief pending the decision whether leave to appeal should be granted or not. In view of this amendment now the Court of Appeal has the power to grant interim relief on a prayer made for that purpose and included in the leave to appeal application. [Section 757(2)]. In order to decide whether interim relief should be granted or not it is very often necessary to peruse the impugned order, written or oral submissions made to the original Court, and sometimes, copies of proceedings. But as the matter now stands, there is no requirement under sections 757 and 758 of the Civil Procedure Code to annex any documents to an application for leave to appeal except

the affidavit of the petitioner. Subsequent to the amendment of section 757(4) in 1998, Court of Appeal Rules have not been amended in order to make the filing of other documents along with a leave to appeal application mandatory in situations where interim relief is sought by the same leave to appeal application. This is a lacuna in the law. As the rules presently stand the Court has no power to dismiss a leave to appeal application on the basis that necessary documents have not been filed. If the Court is of opinion that a party seeking interim relief should have filed documents necessary for the Court to peruse before granting interim relief, the Court may either refuse to grant interim relief or may in its discretion direct the petitioner to furnish copies of the necessary documents. But the court has no power to dismiss a leave to appeal application *in limine* on the petitioner's failure to produce copies of documents. This application is to be fixed for inquiry to decide whether leave to appeal should be granated.

BALAPATABENDI, J. - I agree,

Preliminary objection overruled ; matter set down for inquiry.