

SANOON
v
RAHUMAN

SUPREME COURT.
SARATH SILVA, C.J.
DR. SHIRANI BANDARANAYAKE, J.
ISMAIL, J.
SC 26/98.
CA 515/92.
DC COLOMBO 7318/RE.
FEBRUARY 9, 2000

Supreme Court Rules – 25 (1) – Tendering of notice within prescribed period – Non compliance – Leave to appeal from a judgment of the Court of Appeal – Granted by Court of Appeal – Mandatory?

Held:

- (1) Rule 25(1) requires the appellant to lodge in the Registry of the Supreme Court, within 14 days of grant of leave by the Court of Appeal a notice of appeal in the prescribed form together with such number of copies as required for service on the respondents and himself and three additional copies.
- (2) The Rule is mandatory since time sequence provided for the subsequent steps to be taken in bringing up the appeal for hearing are based on due compliance with the requirements of Rules 25 (1).

Leave to appeal to the Supreme Court with leave being granted by the Court of Appeal – on a preliminary objection taken.

Hemasiri Withanachchi for appellant.

V. Thevasenadhipathy for respondent.

Cur.adv.vult.

February 9, 2000

S. N. SILVA, C. J.

Counsel for the defendant-respondent-respondent has raised a preliminary objection to this appeal being considered by Court on the

basis that there has been a non-compliance with Rule 25(1) of the Supreme Court Rules of 1990.

The judgment of the Court of Appeal was entered on 06.01.1998 and that Court granted leave to appeal from the judgment on the motion of the plaintiff-appellant-appellant on 05.02.1998. In such a situation, Rule 25(1) requires the appellant to lodge in the Registry of the Supreme Court within fourteen days of the grant of leave, notice of appeal in the prescribed form together with such number of copies as required for service on the respondents and himself and three additional copies, and also tender the required number of stamped addressed envelopes for service on the respondents by registered post. In terms of the said Rule notices should have been tendered to the registry of the Supreme Court on or before 19.02.1998. It is conceded by the appellant that he has failed to tender notice within the said period. Notices have been tendered only on 24.02.1998.

The plaintiff-appellant has sought to excuse the delay in tendering notices by an affidavit dated 24.02.1998 where he has stated that on the night of 06.02.1998 he was affected with a severe bout of wheezing which required immediate medical attention, and in support of that position he has tendered two certificates X1 & X2. The certificates do not appear to have been issued by a doctor being a medical practitioner recognised by law. It is also noted the second certificate dated 21.02.1998 is addressed to the Court itself. It is manifest that these certificates have been procured purely for the purpose of being filed in Court. In the circumstances, the excuse sought to be given by the plaintiff-appellant for his default does not bear scrutiny. In any event we are of the view that the Rule is mandatory since the time sequence provided for the subsequent steps to be taken in bringing up the appeal for hearing are based on a due compliance with the requirements of Rule 25(1) referred above. Hence we have to uphold the preliminary objection raised by the defendant-respondent and make order rejecting the notice of appeal that had been tendered out of time. The appeal is accordingly dismissed. No costs.

DR. SHIRANI BANDARANAYAKE, J. – I agree.

ISMAIL, J. – I agree.

Appeal dismissed.