

1959

Present: Basnayake, C.J., and Palle, J.

A. HAJI HABIB CO. (CEYLON), LTD., Appellant, and KUTHALA-
THAMMAL, Respondent

S. C. 1—D. C. (Inty.) Colombo, 5914/MB

Appeal—Application for typewritten copies—Failure to furnish therewith Kachcheri receipt regarding deposit of prescribed fees—Abatement—Civil Appellate Rules, 1938, Rules 2 (1), 4—Payment into Court Order, 1939.

Under Rules 2 (1) and 4 of the Civil Appellate Rules, 1938, read together with the Payment into Court Order, 1939, an appeal will be deemed to have abated if the application for typewritten copies is not accompanied by the Kachcheri receipt showing that the prescribed fees have been deposited in the Kachcheri.

APPPEAL from an order of the District Court, Colombo.

A. C. Nadarajah, with *C. Ranganathan*, for Plaintiff-Appellant.

S. Sharvananda, for Defendant-Respondent.

October 21, 1959. BASNAYAKE, C.J.—

Learned counsel for the respondent has taken a preliminary objection to the hearing of this appeal. He submits that the appeal must be deemed to have abated by the operation of Rule 4 of the Civil Appellate Rules, 1938, as the appellant has failed to make the application for typewritten copies of the record in accordance with those Rules. Rule 2 (1) requires that every application for typewritten copies of the record shall be accompanied by the fees prescribed in the schedule to the Civil Appellate Rules, 1938. In the instant case the application for typewritten copies was handed on 26th December 1958 but was not accompanied by the fees or proof that the fees had been deposited at the Kachcheri. Learned counsel for the appellant relies on the case of *Sopaya Peiris and another v. Wilson de Silva*¹. In that case this court held that the requirement that the application for typewritten copies of the record should be accompanied by the fees prescribed in the schedule was rendered impossible of performance, in the sense that neither the Judge nor the officers of the court are permitted by the existing administrative machinery, the Payment into Court Order, 1939, and the financial regulations applicable to the courts, to accept the prescribed fees in cash even if tendered along with the application. In the same judgment this court held that in view of those regulations and Order it would be sufficient compliance with Rule 2 (1) if the prescribed fees were paid into the Kachcheri and the Kachcheri receipt accompanied the application for typewritten copies.

¹ (1957) 59 N. L. R. 73.

In the course of the argument my brother Pulle drew my attention to the fact that there is no real conflict between the Civil Appellate Rules, 1938, and the Payment into Court Order, 1939. The Payment into Court Order, 1939, provides :

“ 1. (1) Where any person elects or is required by any order of Court or by any written law for the time being in force, to make payment of any money into Court, in connection with any action or proceeding, the payment shall not be made otherwise than in accordance with the provisions of the next following paragraphs of this order, and where any such person is represented by a proctor, the payment shall not be made except through that proctor.”

It further provides that—

(2) (a) Whenever any person whether acting for himself or as proctor for any other person, has occasion to pay money into Court, he shall signify his intention so to do, in the case of a District Court, to the Secretary or, in the case of a Court of Requests, to the Chief Clerk of the Court, either personally or by letter, and the Secretary or the Chief Clerk, or other officer duly authorised for the purpose by the Court, shall furnish such person with a deposit note in such form as may be prescribed by the Financial Regulations of the Government for the time being in force. Such person shall deliver the deposit note, or send it by post, together with, the money to the Kachcheri or Treasury of the district.”

and

(b) Receipt of the money at the Kachcheri or the Treasury shall be acknowledged by the signature of the Government Agent or the Assistant Government Agent or other officer duly authorised in that behalf, on that part of the deposit note which bears the heading ‘Payer’s Slip’, and such part shall be detached and delivered or sent by post to the person who made the payment, the other part being retained at the Kachcheri or Treasury as the authority for the retention of the money. The usual Kachcheri receipt shall be forwarded to the Court forthwith.”

Clause (5) provides that—

(5) In each of the cases referred to in the foregoing paragraph the date of the Kachcheri receipt shall be deemed to be the date of payment into Court.

When the Civil Appellate Rules are read together with the Payment into Court Order, 1939, it would follow that the application for typewritten copies shall be accompanied by proof that the prescribed fees have been deposited in the Kachcheri and that proof can only be furnished by the Kachcheri receipt. In the instant case the Kachcheri receipt did not accompany the application for typewritten copies. In our opinion the

appellant has failed to make an application for typewritten copies in accordance with the requirements of the Civil Appellate Rules and his appeal must therefore be deemed to have abated.

We accordingly reject the appeal.

PULLE, J.—I agree.

Appeal rejected.

