

1938

Present: Maartensz and Moseley JJ.

KANDASAMYTHEWAR v. CASSIM.

150—C. R. Jaffna, 3,905.

Appeal—Leave to appeal in Court of Requests' case—Time within which the appeal should be perfected—Sundays and public holidays not excluded—Civil Procedure Code, ss. 754 and 756.

The Supreme Court in granting leave to appeal in a Court of Requests' case ordered that the appeal should be perfected within fourteen days of the receipt of the record by the Court of Requests.

In this case the record was received by the Court on July 9, 1937, the petition was filed on July 22, security was tendered and the bond filed on July 26.

Held, that the appeal had not been perfected within the time fixed by the Supreme Court.

Sundays and public holidays are not excluded in the computation of the time allowed to perfect the appeal.

Held, further, that the Supreme Court had no power to grant relief under section 756 of the Civil Procedure Code.

Murugesu v. Arumugam et al. (16 Cey. L. Rec. 228) followed.

THIS was an appeal from a judgment of the Commissioner of Requests, Jaffna, from which the appellant had been granted special leave to appeal by the Supreme Court.

E. B. Wikramanayake, for the respondent, raised a preliminary objection to the hearing of the appeal.—The appeal has not been perfected within the time (fourteen days) ordered by the Supreme Court which heard the petition for leave to appeal and laid down the condition under which leave was granted. The fourteen days from the date of the receipt of the record by the Court below should be reckoned inclusive of Sundays and public holidays. It is conceded that if such days be excluded the appeal is in time. The provisions of section 756 of the Civil Procedure Code have no application here in so far as they relate to the calculation of time within which an appeal should be preferred to the Court of first instance in cases where there is a right of appeal. Those statutory provisions refer only to such cases. Here we have a specific order of the Supreme Court defining a time limit into which the mode of calculation laid down in section 756 cannot legitimately be imported. See in this connection the case of *Murugesu v. Arumugam and another*¹.

N. Nadarajah (with him *G. E. Chitty* and *S. Mahadeva*), for the appellant.—The provisions of section 756 either apply or have no application in cases where leave is obtained from the Supreme Court. If they are to be applied they must be applied as to the whole of them or not at all. It cannot be said that they apply in part, namely, as to the mode in which the appeal is to be perfected, and not as to the manner in which the time is to be computed. It would be highly inconvenient and misleading to have two different systems of computation where the mode of perfecting of the appeal is one and the same in both cases. If the provisions of the

¹ 16 Cey. L. Rec. 228.

section have no application at all, the appellant is still in time for the reason that the appeal was filed within the fourteen days proper. It was only the perfecting of security which was delayed; but the very necessity for such security only arises from the requirements of this identical section 756. It would be inequitable therefore to apply its provisions only in part.

May 10, 1938. MOSELEY J.—

This appeal was brought by leave of the Supreme Court, which ordered that the appeal should be duly perfected within fourteen days of the receipt of the record by the Court of Requests. It was called for hearing before me on March 23, when Counsel for the respondent raised the objection that the appeal had not been perfected within the stipulated time. The circumstances differ in no material fashion from those which existed in the case of *Murugesu v. Arumugam and another*¹, and whilst I was prepared to follow the decision of Fernando J. in that case, I ordered the point to be argued before a Bench of two Judges for the purpose of obtaining a ruling that would be binding in future cases.

In this case the record was received by the Court of Requests on July 9, 1937. The petition was filed on the 22nd, security was tendered and the bond filed on the 26th. The appeal was therefore not perfected within the time fixed by the Court. I may observe here that while the term "perfected" has not, as far as I am aware, received interpretation in law, I think it must be taken to imply that all steps have been taken by the appellant which are necessary preliminaries to the transmission by the Court of Requests of the petition of appeal to the Supreme Court.

Counsel for the appellant argued that, since the steps necessary for perfecting the appeal are laid down in section 756 of the Civil Procedure Code, the computation of time should be as directed in that section. Section 756 applies to appeals received by the Court of first instance under section 754 and provides for the computation of time as in the latter section directed. The relevant portion of section 754 is as follows:—

"The petition of appeal shall be presented to the Court of first instance for this purpose by the party appellant or his proctor within a period of ten days, or where such Court is a Court of Requests, seven days, from the date when the decree or order appealed against was pronounced, exclusive of the day of that date itself and of the day when the petition is presented and of Sundays and public holidays"

Counsel for the appellant contended that for "the date when the decree or order appealed against was pronounced" there should be substituted "the date of the receipt of the record in the court of first instance", and that, if the intervening Sundays are excluded, the appellant is in time.

The power of the Supreme Court to grant leave to appeal in such a case as this is conferred by section 13 (2) of Ordinance No. 12 of 1895. The Supreme Court may order that a petition of appeal be admitted "upon such conditions and within such time as to the Judge shall seem meet". The time is clearly within the discretion of the Judge, and unless the order expressly refers to section 756, that section does not seem to me to have any application.

¹ 16 Cey. L. Rec. 228.

I have referred to the case of *Murugesu v. Arumugam* and another (*supra*) in which Fernando J. considered the terms of section 7 of the Interpretation Ordinance, No. 21 of 1901, and went on to say "When this Court ordered the petition of appeal to be perfected within 14 days, no consideration was taken of the fact that there may be Sundays or holidays intervening, and it must be presumed that all days whether Sundays or holidays or not were to be reckoned within that period. In other words, I presume that in fixing that period the Court had due regard to the provision of section 7 of Ordinance No. 21 of 1901".

With those observations I respectfully agree. The appeal has not, in my view, been perfected in the time allowed by the Court and must therefore be rejected.

We were invited by Counsel for the appellant to exercise the power given to this Court by section 2 of Ordinance No. 42 of 1921 and grant relief accordingly. The section, however, only applies to cases of non-compliance with the provisions of section 756. I have already expressed the opinion that the order admitting the appeal has no reference to that section. We have not, therefore, the power to grant the relief asked, even if it should appear to be a case meriting consideration.

The respondent will have his costs of the appeal.

MAARTENSZ J.—I agree.

* *Appeal dismissed.*
