

1957 Present : Basnayake, C.J., and Pulle, J.

ALICE NONA, Appellant, and EWSOHAMY and others, Respondents

S. C. 153—D. C. (Inty.) Gampaha, 3543/P

*Appeal—Copy of petition of appeal—Duty of appellant to furnish it in time—Civil Procedure Code, s. 756 (1) and (3).*

Failure to furnish a copy of the petition of appeal in terms of section 756 (1) of the Civil Procedure Code at or before the time the security is accepted and deposit made is fatal to the appeal and is not a matter in respect of which relief may be granted under section 756 (3).

**A**PPPEAL from an order of the District Court, Gampaha.

*H. W. Jayawardene, Q.C.*, with *P. Ranasinghe*, for 3rd Defendant-Appellant.

*H. A. Koatlegoda*, for 1st and 2nd Plaintiffs-Respondents.

March 22, 1957. BASNAYAKE, C.J.—

Objection is taken to the reception of this appeal on the ground that the appellant has failed to comply with the requirement of section 756 (1) of the the Civil Procedure Code to furnish the District Court with copies of the petition of appeal for service on the respondents along with the notice of appeal. It is not disputed that the appellant failed to comply with the requirement of that section on or before the date on which security was accepted. It was argued that as the copies of the petition of appeal were furnished before the date on which the notice of appeal was made returnable the appollant should not be penalised for his default. The only question for consideration is whether this is a matter in which this Court has the power to grant relief under section 756 (3) of the Civil Procedure Code. Learned counsel for the respondents has drawn our attention to the case of *de Silva v. Seenathumma et al.*<sup>1</sup> in which it has been held by a full Bench of this Court that failure to furnish a copy of the petition of appeal at or before the time the security is accepted and deposit made is fatal and section 756 (3) does not permit relief to be granted by this Court in respect of it. We are bound by that decision and must uphold the preliminary objection taken by the respondents to the hearing of this appeal. We therefore reject the appeal with costs.

PULLE, J.—I agree.

*Appeal rejected.*

<sup>1</sup> 41 N.L.R. 241.