

1937

Present : Abrahams C.J.

HAFEEL *v.* IBRAHIM *et al.*

14—C. R. Colombo, 21,977.

Appeal—Order to perfect appeal within fourteen days—Computation of time—Dies non—Relief under Civil Procedure Code, s. 756.

Where the Supreme Court ordered an appeal to be perfected within fourteen days of a given date, Sundays and public holidays are not excluded in reckoning the period.

Where the appeal has not been perfected in time, the appellant is not entitled to relief under section 756 of the Civil Procedure Code.

A PPEAL from a judgment of the Commissioner of Requests, Colombo.

L. A. Rajapakse (with him *M. I. M. Haniffa*), for plaintiffs, appellants.

N. E. Weerasooria (with him *H. A. Wijemanne*), for defendant, respondent.

December 3, 1937. ABRAHAMS C.J.—

A preliminary objection has been taken on this appeal. It is submitted that the appeal has not been perfected within the fourteen days directed by the Supreme Court in giving leave to appeal. The fourteen days were to be calculated from the date when the record was received by the Court of Requests from which the appeal was preferred.

The record was received by the Court of Requests on December 22, 1936. It has recently been held by Fernando J. (then Fernando A.J.) in a case which has not yet, I think, found its way into the reports, that when the Court orders an appeal to be perfected within fourteen days from a given date those fourteen days are calendar days, that is to say, they include *dies non*. I am not asked to differ from that decision. Therefore, the fourteen days would have expired on January 5, 1937. Rs. 26 was required as security. It was deposited in the Kachcheri on December 23, but the bond was not signed until January 8. Therefore the appeal was not perfected as the fourteen days had expired.

I am urged by the appellants to exercise indulgence by virtue of the powers conferred upon the Supreme Court by the amending provisions to section 756 of the Civil Procedure Code. It is pleaded that the proctor for the appellants did not sign the security bond on account of the closing of the Court of Requests Office for the Christmas vacation, *i.e.*, from December 24, 1936, to January 3, 1937, inclusive, and that he was under the impression that *dies non* were excluded from the calculation of the fourteen days ordered by the Supreme Court.

Counsel on the other side submits that the appellants are not entitled to any indulgence. He says first of all that the excuse of the appellants is not supported as it should be by an affidavit setting out the facts upon which the indulgence is requested. He also argues that in any event this is not a case for any indulgence in view of the fact that there has been a serious omission in the procedure. The Rs. 26 which was deposited was not secured for costs because it had not been hypothecated by the requisite

bond and therefore the appellants did not carry out their duty, and it cannot be said that because no prejudice was ultimately caused to the respondent the Court should exercise any indulgence. I am referred in support of this contention to the case of *Silva v. Goonesekera*¹, where Fisher C.J. said that he did not think that the additional paragraph to section 756 could be held to apply to cases where there has been a substantial non-compliance with the provisions of the section. It applied, he thought, to more or less trivial omissions where it may be said that although the strict letter of the law has not been complied with the party seeking relief has been reasonably prompt and exact in taking the necessary steps. I do not see how this can be regarded as a trivial omission, and further it is distinctly open to argument as to whether the excuse given by the appellant even if vaild, is one to which I can pay due regard.

I therefore allow the objection and dismiss the appeal with costs.

Appeal dismissed.
