

**BANK OF CEYLON**  
**v.**  
**THE CEYLON BANK EMPLOYEES UNION**  
**(ON BEHALF OF KARUNATILAKA)**

SUPREME COURT  
GUNASEKERA, J.  
ISMAIL, J., AND  
YAPA, J.  
SC APPEAL No. 30/2002  
HC (LT) HCA 199/97  
LT CASE No. 23/K/2400  
12TH SEPTEMBER, 2002

*Industrial Dispute – Notice of special leave to appeal to the Supreme Court – Rule 8(2)(a) of the Supreme Court Rules – Failure to file a caveat opposing special leave to appeal – Whether such failure would disentitle respondent's right to be heard at hearing of appeal.*

The High Court dismissed the appeal of the appellant ("the employer") against the order of the Labour Tribunal which granted re-instatement and back wages to Karunathilake ("the workman") represented by the respondent ("the Union"). The employer sought special leave to appeal to the Supreme Court from the decision of the High Court.

The Registrar of the Supreme Court failed to send the Union, notice of the application for leave to appeal within five days after it was lodged calling upon the Union to file a caveat if it intended to oppose special leave as required by Rule 8(2)(a) of the Supreme Court Rules, but gave the said notice after about forty five days from the lodging of the application. As the workman had changed his address the Union was unable to trace him with the result special leave to appeal was granted *ex-parte*. However, when the Union learnt that the appeal had been fixed for hearing, the Union retained counsel to appear for the Union. At the hearing the Senior State Counsel for the employer took up an objection that the Union was not entitled to be heard as it had failed to file a caveat opposing the grant of special leave.

**Held:**

In terms of Rule 8 the failure to file a caveat would disentitle the Union from opposing special leave to appeal. However, it does not preclude the Union from being heard at the hearing of the appeal.

**APPEAL** from the judgment of the High Court (Preliminary Objection),

*S. Rajaratnam*, Senior State Counsel for appellant.

*Shirley Fernando*, PC with *Ruwan D.V. Dias* and *Palith Perera* for respondent.

*Cur. adv. vult.*

December 13, 2002

**GUNASEKERA, J.**

The Applicant Respondent Union made an application to the Labour Tribunal, Kurunegala on behalf of its member R.A. Karunathilaka on 10.10.1989 alleging that the services of its member had been unlawfully terminated by the Respondent Appellant on 6.9.1983 and by way of relief prayed for reinstatement with back wages. The Respondent Appellant by its answer took up the posi-

tion that the worker's services were terminated for justifiable reasons in that he had committed various fraudulent acts set out therein and prayed that the application be dismissed. After a prolonged inquiry the learned President by his Order dated 30.9.1997 held that the services of the workman had been terminated unjustifiably and directed that the workman be reinstated with back wages in a sum of Rs. 2,64,135.60. An appeal was filed against the said Order by the Respondent Appellant on 26.11.1997 and the said appeal was dismissed on 28.9.1998 for non prosecution. Thereafter on 13.2.1999 an affidavit was filed on behalf of the Respondent Appellant praying for the restoration of the appeal for reasons stated and after considering submissions made on behalf of both parties the appeal was restored to the Roll of Appeals. The appeal was taken up for hearing on 6.2.2002 and after a consideration of the submissions made by Order dated 13.12.2001 the learned Judge of the High Court upheld the Order made by the learned President of the Labour Tribunal and directed that the workman be reinstated with effect from 1.2.2002.

An application for special leave to appeal to this Court from the Order dismissing the appeal dated 13.12.2001 was made on 24.1.2002, and notices to be served on the Applicant Respondent were tendered only on 13.3.2002 which notices were posted under registered cover on 15.3.2002 contrary to the provisions of Rule 8 of the Supreme Court Rules 1990 which required the notices to be despatched within 5 working days after the application has been lodged. The notices specified that the application for the granting of special leave would be considered by Court on 28.5.2002 and specified that the Applicant Respondent should file a caveat within 14 days of the receipt of such notice if he was intending to oppose the grant of special leave as provided for in Rule 8(2)(a) of the said Rules.

On 28.5.2002 the Applicant Respondent was absent and unrepresented having failed to file a caveat expressing its intention to oppose the grant of special leave. The Court after considering the submissions made by learned counsel for the Respondent Appellant made an ex-parte Order granting special leave to appeal on the following question "Did the High Court err in law in affirming the Order for reinstatement made by the Labour Tribunal consider-

ing the findings made by the High Court that the employee was guilty of several instances of negligence and dereliction of duty, and fixed the date of hearing the appeal as 25.7.2002. On that day too the Applicant Respondent was absent and unrepresented and the hearing of the appeal was refixed for 12.9.2002 and the Court directed the Registrar to issue notice on the Applicant Respondent that the hearing of the appeal was refixed for 12.9.2002.

It appears from the docket that on 10.9.2002 an attorney-at-law had filed a proxy of the Applicant Respondent together with the written submissions on its behalf.

When this appeal was taken up for hearing on 12.9.2002 learned Senior State Counsel who appeared for the Respondent Appellant objected to the Applicant Respondent being represented at the hearing and contended that the Applicant Respondent was not entitled to be heard on account of the fact that the Applicant Respondent had not filed a caveat opposing the grant of special leave.

In the written submissions filed on behalf of the Applicant Respondent learned President's Counsel has submitted that although the application for the grant of special leave had been filed on 24.1.2002 that contrary to Rule 8 which requires that notices on the Respondent has to be despatched within 5 working days of the lodging of the application, in the instant case contrary to the said Rule that notice has been despatched only on 15.3.2002 nearly 45 days after the lodging of the application. It was his contention that both Rule 8 and the prescribed form in schedule 1 to the Rules requires the Respondent to file a caveat only if he intends to oppose the grant of special leave.

It was submitted by learned President's Counsel that the notice that had been despatched on 15.3.2002 had been received by the Respondent only 19.3.2002 as evidenced by Document 'A' filed with the written submissions. On the same day the Secretary of the Respondent's Union had written to the workman to meet him and the office copy of the said letter had been produced marked 'B'. The workman had not contacted the Secretary as he had not received the letter. Upon inquiries made the Secretary had learnt that the workman had changed his address. Thereafter the

Respondent had received a copy of the written submissions filed on behalf of the Appellant and a notice from the Registrar on 1.8.2002 that this appeal had been listed for hearing on 12.9.2002 as evidenced by document 'C'. Thereupon the Respondent's Union had retained Counsel to represent the Respondent at the hearing of this appeal. It was contended by learned President's Counsel that the Supreme Court Rules 1990 do not make any provision as to the consequences that would arise upon the failure of the Respondents to file a caveat provided for in Rule 8(2) unlike the provision in Rule 30(1) which provides for the consequences upon the failure to file written submissions which states that 'no party to an appeal shall be entitled to be heard unless he has previously lodged 5 copies of his written submissions' (hereinafter referred to as "submissions") complying with the provisions of this Rule.

I have carefully considered the submissions made and examined the Rules and I find that the purpose of giving notice of an application for the grant of special leave to a Respondent is to enable him to express his intention to oppose the grant of special leave to appeal and in my view, the failure of the Respondent to file a caveat is that he would be precluded from opposing the grant of special leave when the application is considered for that purpose. I see no basis for the objection taken as the failure to file a caveat opposing the grant of special leave does not preclude the Respondent from being heard at the hearing of the appeal. For the reasons stated I overrule the objections taken by the Appellant and permit counsel for the Respondent to represent the Respondent at the hearing of this appeal.

**ISMAIL, J.**        -        I agree.

**YAPA, J.**         -        I agree.

*Preliminary objection overruled.*