

**Rasiah**  
**v.**  
**Ranmany and others**

COURT OF APPEAL

ABDUL CADER, J., AND RODRIGO, J.

C.A. (S.C.) 804/75 (F)—D.C. JAFFNA L/ 3686.

DECEMBER 18, 1978.

*Civil Procedure Code, section 29—Notice ordered to be served on appellant—Notice served on his Attorney-at-Law—Whether sufficient notice on appellant.*

The Supreme Court (as formerly constituted) made order that a certain sum of money be deposited by the appellant within six weeks. The Registrar of the Court issued notice both on the Appellant and on his Attorney-at-Law but only the notice on the Attorney-at-Law was served. The order to deposit the said sum was not complied with and

the appeal was accordingly abated. In making an application to have the Appeal reinstated it was submitted on behalf of the Appellant that notice should have been served on the appellant.

#### **Held**

That in terms of section 29 of the Civil Procedure Code a notice served on the Attorney-at-Law for the appellant was sufficient notice to the appellant and accordingly the appeal was rightly abated.

APPLICATION for reinstatement of an Appeal.

*P. Kangeyan*, for the petitioner.

*C. Ranganathan, Q.C.*, with *S. Mahenthiran*, for the plaintiffs-respondents.

*Cur. adv. vult.*

January 2, 1979.

**ABDUL CADER, J.**

On 1.12.77 the Supreme Court made order that the appellant be noticed to deposit a sum of Rs. 90 within 6 weeks. The Registrar issued notice not only on the appellant, but also on his Attorney-at-Law, Mr. Visuvalingam, on 13.12.77. The Registrar submitted a minute to the Supreme Court on 28th March, 1978, which reads as follows :

“ This order was communicated to the appellant with copy to his Attorney-at-Law by registered post on 14.12.77. The letter sent to the appellant has been returned undelivered. The copy of the letter sent to the *appellant* however appears to have been received by him.”

There appears to be a mistake in this report. The last sentence should have read :

“ The copy of the letter sent to the Attorney-at-Law however appears to have been received by him ; ”

because the earlier part of this report states that the copy was sent to the Attorney-at-Law and because the letter sent to the appellant had been returned undelivered and is yet in the docket. Therefore, the true position would have been that the letter sent to the appellant had not been received by the appellant, but the letter sent to the Attorney-at-Law appeared to have been delivered to him.

Since the fees were not deposited, on 11.4.78 Court made order that the appeal be abated. On 27th October, 1978, the appellant filed papers in this Court and moved that the appeal be reinstated. It is this matter of reinstatement that was argued before us in respect of which this order is made.

Counsel for the appellant submitted that the Supreme Court made order that notice should be sent to the appellant only. The notice sent to the appellant had not been served on him and, therefore, when the appellant had no knowledge of this requirement, the appeal had been abated. He urged, therefore, that the appellant should be given an opportunity to deposit fees and the appeal should be reinstated.

In respect of the notice that had been sent to the Attorney-at-Law, he filed an affidavit from the Attorney-at-Law that he did not receive the copy of the notice that is alleged to have been sent to him. He submitted, therefore, the presumption that would arise, when a registered article is not returned, to the effect that it had been delivered to the addressee, has been rebutted by the affidavit of the addressee that he had not received it. Therefore, there had been no notice on the Attorney, too.

He then drew our attention to section 29 of Civil Procedure Code. Section 29 reads as follows :—

“ Any process served on the proctor of any party or left at the office or ordinary residence of such proctor, relative to an action or appeal, except where the same is for the personal appearance of the party, shall be presumed to be duly communicated and made known to the party whom the proctor represents ; and, unless the court otherwise directs, shall be as effectual for all purposes in relation to the action or appeal as if the same had been given to, or served on, the party in person.”

He pointed to the words “ unless the court otherwise directs ” and submitted that service on the Attorney-at-Law would be effectual as if the same had been served on the appellant only where the Court had directed service on the Attorney, but in this case, the Supreme Court had directed that notice was to issue on the appellant only and therefore service should have been effected on the appellant in compliance with the order of Court before abatement. We are unable to agree with this interpretation of section 29. The Court did not direct any service otherwise when the Court made order “ serve notice on the appellant.” The Court made the usual order of issue of notice and did not exercise its powers of directing service otherwise in terms of section 29.

Counsel for the respondent also drew our attention to the fact that it is in respect of personal appearances of the party that this exemption applies. We think that the appellant cannot avoid the

consequence of section 29 of the Civil Procedure Code if the notice was served on the Attorney-at-Law.

The question now arises whether, in fact, notice had been served on the Attorney-at-Law. As stated earlier, there is an affidavit filed by the Attorney-at-Law that he did not receive the copy of notice that was sent to him. As against this affidavit, there is an affidavit filed by the 3rd plaintiff that on making inquiries from the Post Master, Jaffna, he was informed that the registered postal article bearing No. 1497 of 17.8.1977 and No. 0565 of 14.12.77 were delivered to the Attorney-at-Law. Annexed to his affidavit, he has filed an official communication received by him from the Post Master, Jaffna. The communication is dated 2.12.78 under reference JA/10183/78 and reads as follows:—

“Registered article 0565 of 14.12.77. Dear Sir, with regard to the inquiry on the above, I have the honour to inform (sic) that the article in question was duly taken delivery of on 13.12.77.”

I have checked with the office and the officer has reported to me that the letter was sent to the notary under number 0565 of 14.12.77. Therefore, the Post Master's report would indicate that the copy of the notice that was issued under registered cover bearing this number has been served on the Attorney-at-Law. Since the appellant failed to comply with the requirement of this Court within the stipulated period, we hold that the appeal was rightly abated.

I have so far not referred to another item of evidence that is available against the appellant which, however, was not raised before us, but of which there is evidence to be obtained from the material in the record. The 3rd plaintiff in his affidavit has referred to postal article 1497 dated 17.8.77—vide above. According to the minute of this office, the registered article bearing this number was sent under registered cover on 17.8.77 and this letter has not been returned to this office, leading thereby to the presumption that it had been delivered. According to the docket, the letter was issued to the *defendant* according to the J.E. of 11.8.77. Because there was no response from the appellant it was put up for order of Court but the Court made a further order on 1.12.77 and it was in respect of this latter order the argument took place before us. It would, therefore, appear that the appellant has not only been noticed on 14.12.77 which was only served on the Attorney-at-Law, but also that he was noticed on a prior occasion personally and which notice can

be presumed to have been received by him because it was not returned to Court as happened in respect of the notice issued on him in terms of the order of 1.12.77.

Counsel for the appellant attempted to produce a letter from the Bank of Ceylon to the effect that Rs. 50 had been deposited immediately after this appeal was lodged, but Mr. Ranganathan objected to it saying there is nothing on record to show that an application was made for a requisition to deposit money in the bank ; nor is the receipt issued to the appellant or the duplicate sent by the Bank to Court produced.

We hold that there is no proof that any sum was deposited. However, even if the sum of Rs. 50 was deposited, there was yet a balance of Rs. 40 due in respect of which the appellant had defaulted.

Counsel for the respondent raised several further objections. He submitted that Mr. Kangeyan, the present Attorney-at-Law, had filed his proxy along with the petition in this Court while the proxy of Mr. Visvalingam, the previous Attorney, was subsisting in the record. Mr. Kangeyan pointed to the fact that he had made an application in the District Court and for that purpose, he had submitted his proxy along with the revocation of proxy of Mr. Visuvalingam and, although Court had made no express order revoking the proxy granted to Mr. Visvalingam, he was permitted to make a certain application and that application was entertained although refused by Court and it was thereafter that he filed an application in this Court along with his proxy. We are satisfied that no lapse on this account can be attributed to the appellant.

Mr. Ranganathan raised a further objection based on the Constitution. He referred to section 169 (3) and (5) of the Constitution and submitted that this appeal having been abated by the Supreme Court, this Court has no right to restore the appeal. Counsel for the appellant submitted that this submission would involve an interpretation of the Constitution which should be done by the Supreme Court. Mr. Ranganathan's submission can await a decision in some other proceeding as it is not necessary for us to decide this question for the purpose of this case. Mr. Ranganathan also pointed out that the order abating the appeal has passed the seal of Court and it is now too late to restore this appeal. These various submissions, though placed

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on record, are not really essential for the reason that we have held that the appeal was rightly abated on the ground that the appellant after due notice failed to deposit the brief fees within the due time.

This application is, therefore dismissed with costs.

**RODRIGO, J.**—I agree.

*Application dismissed.*

S. Mahenthiran,  
Attorney-at-Law.

