

**SIVAPADASUNDARAM**  
**v**  
**PATHMANADAN AND OTHERS**

COURT OF APPEAL  
BALAPATABENDI, J.  
IMAM, J.  
C.A. No. 373/89 (F)  
D.C. CHILAW NO. 20658/L  
MAY 25, 2004

*Civil Procedure Code – as amended by Act 79 of 1988 – Section 755(3)  
– Filing of Appeal within 60 days – Interpretation – 60th day falling on a  
non-working day – Can the petition be filed on the next working day?  
Interpretation Ordinance – Section 8(1), section 14(a).*

**Held:**

- i) If the 60th day for filing of the Petition of Appeal falls on a day on which the Court or office of the Court is closed, the filing of the Petition of Appeal on the next day thereafter on which the Court or office is open, should be considered as it had been filed "Within time" – in view of section 8(1) Interpretation Ordinance.

*Per* Balapatabendi, J.

"It behoves this Court to be constructive and purposive in the Interpretation of statute with the object of doing justice within the law, to avoid an undesirable and unjust result without defeating the intention of the legislature."

**APPEAL** from the Judgment of the District Court of Chilaw.

Preliminary objection that the appeal is out of time.

**Cases referred to:**

1. *Gani Arachchige Sarath Perera v Mirihana Arachchige Karunawathie* – C.A. 536/94, 537/94, D.C. Colombo No. 14714/P.
2. *Silva v Sankaran and others* – (not followed) 2002 2 Sri LR 209
3. *Wickremanayake v de Silva* – 1978/79 – 2 Sri LR 69 (not followed).
4. *K.A. Wilbert Fernando v P.K. Chamal Kulasuriya and others* C.A. 1274/01 (F) – CAM 14.5.2004 – Followed.
5. *Wickreumaratne v Samarawickrama* – 1995 – 2 Sri LR 212.
6. *Selenchina v Mohamed Marikkar and others* – 2000 3 Sri LR 102.
7. *Nirmala de Mel v Seneviratne and others* – 1982 2 Sri LR 569 (followed)

*A.R. Sunrendran* with *K.V.S. Ganesharajan* for appellant.

*M.A. Sumanthiran* with *A. Premalingam* for respondents

*Cur. adv. vult.*

July 5, 2004

**JAGATH BALAPATABENDI, J.**

When this matter was taken up for hearing counsel for the defendant-respondents raised a preliminary objection that the petition of Appeal is out of time, as it had been tendered to court after 60 days from the date of pronouncement of the Judgment. Counsel for both parties agreed to resolve the matter, by way of Written submissions.

On page 56 of the brief it appears that the Judgment dated 13.12.1989 had been pronounced on the same day 13.12.1989, (as per J/E 89). Thereafter, due notice of appeal had been given within the stipulated time, and the Petition of Appeal had been tendered to Court on 12.2.1990. viz- when correctly computed it was tendered to Court on the 61st day from the date of pronouncement of the Judgment. (as admitted by the defendants-respondents in their written submissions).

The provisions of section 755(3) of the Civil Procedure Code as amended by Act No. 79 of 1988 states as follows:- "Every appellant shall within sixty days from the date of the judgment or decree appealed against, present to the original court, a petition of appeal setting out the circumstances out of which the appeal arises and the grounds of objection to the Judgment or decree appealed against, and containing the particulars required by section 758, which shall be signed by the appellant or his registered attorney. Such petition of appeal shall be exempt from stamp duty:

Provided that, if such petition is not presented to the original court within sixty days from the date of the judgment or decree appealed against, the Court shall refuse to receive the appeal."

Also, the provisions of section 14(a) of the Interpretation Ordinance which states that – (a) for the purpose of excluding the first in a series of days or any period of time, it shall be deemed to have been and to be sufficient to use the word "from".

Our Courts in many instances have considered the provisions of both sections mentioned above, and interpreted the words "from the date of Judgment" contained in section 755(3) of the Civil Procedure Code. "When computing 60 days from the date of the Judgment, the date of pronouncement of the Judgment should be excluded. (on the contrary the plaintiff-appellant in his written submission has included the date of the pronouncement of the Judgment while computing 60 days, and stated that the petition of appeal had been filed on the 62nd day, – which is incorrect.)

It is obviously clear that the petition of appeal had been filed in Court on 12.2.1990, the 61st day from the date of the Judgment (13.12.1989) (as admitted by the defendants-respondents in their written submissions). It appears that the 60th day (11.2.1990) was

a Sunday, wherein the office of the Court was closed and on the next working day viz-Monday (12.2.1990) on the 61st day, the Petition of Appeal had been tendered to Court.

At this point I would like to refer to the applicability of the provisions of section 8(1) of the Interpretation Ordinance, which reads as follows: 8 (1) where a limited time from any date or from the happening of any event is appointed or allowed by any written law for the doing of any act or the taking of any proceeding in a Court or office, and the last day of the limited time is a day on which the Court or office is closed, then the act or proceeding shall be considered as done or taken in due time, if it is done or taken on the next day thereafter on which the Court or office is open."

In terms of the above mentioned section, the only conclusion that could be arrived at is that if the 60th day for filing of the petition of appeal falls on a day on which the Court or office of the Court is closed, the filing of the Petition of Appeal on the next day thereafter on which the Court or office is open, should be considered as it had been filed 'within time'.

In *Gani Arachchige Sarath Perera v Mirihana Arachchige Karunawathie*<sup>(1)</sup>, the decisions of this Court in cases *Silva v Sankaran and others*<sup>(2)</sup>, and *Wickremenayake v de Silva*<sup>(3)</sup>, were followed to wit: "the words "within 60 days" mentioned in section 755(3) of the Civil Procedure Code restrain the appellant from filing the Petition of Appeal exceeding the time frame of 60 days given in the statute and that the appellant should not wait until the 60th day which fell on a Sunday, and complaint later that he should be allowed to file the Petition of Appeal on the next day thereafter."

Even though, Somawansa, J. agreed with the decision of Dissanayake, J. in *Gani Arachchige Sarath Perera v Mirihana Arachchige Karunawathie* (*supra*) he took a completely different view in the case of *K.A. Wilbert Fernando v P.K. Chamal Kulasuriya and others* <sup>(4)</sup>, wherein I agreed with the reasoning given by Somawansa, J. to wit: "the provisions of the section 755(3) should be read along with the provisions of section 8(1) of the Interpretation Ordinance, thus, if the 60th day falls on a Sunday when the Court and its office is closed, the Petition of Appeal filed on the next working day thereafter (Monday) is "within time" as stipulated in the section 755(3) of the Civil Procedure Code."

It is needless for me to repeat the reasoning given by Somawansa, J. in arriving at the decision in (*K.A. Wilbert Fernando v P.K. Chamal Kulasuriya and others*) (*supra*) wherein I have agreed. It is relevant to note that the facts in the above mentioned case are almost similar to that of the instant case.

In Maxwell on Interpretation of status (Twelfth edition) at page 309, states 'where a statutory period runs' from 'a named date 'to' another, or the statute prescribed some period of days or weeks or months or years within which some act has be done, although the computation of the period must in every case depend on the intention of Parliament (legislature) as gathered from the statute, generally the first day of the period will be excluded from reckoning, and consequently the 1st day will be included." Further in page 312 states "The word 'daily' includes Sunday – and for procedural purposes Sundays are included in computation of time, except when the period in question is seven days or less in which case the Sunday is excluded. Acts which are Judicial cannot be done on a Sunday, unless there is express statutory provision to the contrary."

In the case of *Wickremaratne v Samarawickrama*<sup>(5)</sup> where S.N.Silva, J. (as he then was) observed that "In statutory interpretation there is a presumption that the legislature did not intend what is inconvenient or unreasonable. The rule is that the construction must be agreeable to justice and reasons should be given."

In the case of *Selenchina v Mohamed Marikkar and others*<sup>(6)</sup> – Sarath N. Silva, C.J. observed that – "in this case the Notice of Appeal was presented on 20.10.1986. If that day is excluded, the period of 14 days excluding the date of judgment pronounced (i.e. 30.09.1986) and intervening Sundays and Public Holidays would end on 17.10.1986 which was a Public Holiday. The next day on which the notice should have been presented was the 18th being a Saturday, on which the office of the Court was closed, the next day the 19th was Sunday, which too had to be excluded in terms of the section. In the circumstances, the notice filed on 20.10.1986 was within a period of 14 days as provided for in section 754(4) of the Civil Procedure Code."

It is pertinent to note the finding of the above mentioned case, that despite the fact that the Saturday was to be included, in computing the period of 14 days, it was excluded as the office of the Court was closed.

Sharvananda, J. on *Nirmala de Mel v Seneviratne & others*<sup>(7)</sup> considered the applicability of section 8(1) of the Interpretation Ordinance in giving an interpretation to Rule 35 of the Supreme Court Rules.

“Thus, it is my opinion that in terms of the section 755(3) of the Civil Procedure Code the appellant is entitled and empowered in law, to file the Petition of Appeal even on the 60th day from the date of the pronouncement of the Judgment and if the 60th day falls on a Sunday the compliance is impossible as the Court and office is closed, as such the Petition of Appeal filed on the next day thereafter (Monday) is within time, in view of the provision of the section 8(1) of the Interpretation Ordinance”.

*“It behoves this Court to be constructive and purposive in the Interpretation of statute with the object of doing justice within the law, to avoid an undesirable and unjust result without defeating the intention of the legislature.”*

In the circumstances, the objections raised by the counsel for the defendants-respondents is rejected.

The Registrar of this Court is directed to list the main appeal for hearing in due course.

**IMAM, J.** - I agree.

*Preliminary objection overruled.*