

SELENCINA
v.
MOHAMED MARIKAR AND OTHERS

SUPREME COURT
S.N. SILVA, C.J.
PERERA, J. AND
WEERASEKERA, J.
SC APPEAL 71/99
SPL.LA NO. 52/98
CA NO. 480/86 (F)
DC KEGALLE NO. 18225 (P)
24TH JULY, 2000

Civil Procedure Code - Notice of appeal - Computation of time - Section 754(4) of the Code.

Section 754(4) of the Civil Procedure Code provides that the notice of appeal shall be presented to the court of first instance within a period of fourteen days from the date when the decree or order appealed against was pronounced, exclusive of the day of that date itself and of the day when the petition is presented and of Sundays and Public Holidays.

Held :

Per S.N. Silva, C.J.

“... 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. 86 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 a Sunday which too had to be excluded in terms of the section. In the circumstances the notice filed on 20. 10. 1986 was within the period of 14 days as provided for in section 754(4) of the Civil Procedure Code”

Case referred to :

1. *Charlet Nona v. Babun Singho* SC Appeal 81/98
SC Minutes of 08. 09. 98

APPEAL from the judgment of the Court of Appeal.

Rohan Sahabandu with Athula Perera, Ms. Menaka Haputhanthri and Ms. Subhani Keerthiratne for 5th defendant - appellant.

D.M.G. Dissanayake for 2nd Plaintiff - Respondent.

Sathya Hettige, DSG with N. Pulle, SC for A.G. as Amicus.

Cur. adv. vult.

Editor's Note :

Contra Sri Lanka State Trading (Consolidated Exports) Corporation v. Dharmadasa (1987) 2 Sri LR 235

July 24, 2000.

S.N. SILVA, C.J.

This is an appeal from the judgment dated 03. 03. 1998. By that judgment, the Court of Appeal has rejected the appeal of the 5th defendant - appellant from the judgment of the District Court of Kegalle dated 30. 09. 1986.

The Court of Appeal rejected the notice of appeal on the basis that it has not been filed within the period specified in section 754(4) of the Civil Procedure Code which reads thus :

“The notice of appeal shall be presented to the Court of first instance for this purpose by the party appellant or his registered attorney within a period of fourteen days from the date when the decree or order appealed against was pronounced, exclusive of the day of that date itself and of the day when the petition is presented and of Sundays and public holidays . . .”

In terms of the section, the days set out below have to be excluded in computing the period of 14 days in which the notice should be presented.

1. the day the judgment from which the appeal is taken is pronounced.
2. intervening Sundays and public holidays.

3. the day the notice of appeal is presented to the Court.

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. 86 which was a public holiday. The next day on which a 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 a 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.

The Court of Appeal appears to have based its decision on the premise that in view of the word "within" appearing in section 754(4) the date on which the notice of appeal is filed in Court should be taken into account in computing the period of 14 days. Such an interpretation may have been tenable if there was no specific provision to the contrary in section 754(4). In the face of the unambiguous provision in section 754(4) that the day the notice is presented should be excluded from the period of 14 days it would not be open to interpret the word "within" appearing in the provision to include such date in the computation of the period. This court has decided the issue on the same lines in the case of *Charlet Nona v. Babun Singho*¹¹.

The appeal is accordingly allowed and we set aside the judgment dated 03. 03. 1998 of the Court of Appeal and refer the matter to the Court of Appeal to hear and determine the appeal. We direct that the appeal be given priority since it has been filed in 1986. We make no order as to costs.

PERERA, J. - I agree.

WEERASEKERA, J. - I agree.

Appeal allowed.