

DHARMADASA AND OTHERS

v.

KUMARASINGHE

COURT OF APPEAL.

RANASINGHE, J. AND ATUKORALE, J.

C.A. APPLICATION (REVISION) No. 1801/79—D.C. COLOMBO 1808/8E.

APRIL 2, 1981.

Civil Procedure Code, section 754—Notice of appeal—Computation of time under sub-section 4 for filing such notice—Whether Saturdays excluded—Fuel Conservation Five Day Week Act, No. 11 of 1978—Holidays Ordinance (Cap. 177)—Holidays Act, No. 17 of 1965, section 4—Holidays Act, No. 29 of 1971—Interpretation Ordinance (Cap. 3) section 8 (3).

Held

In calculating the period of fourteen days within which a notice of appeal should be lodged against a judgment or decree appealed against Saturdays should also be excluded although not specifically referred to in section 754 (4). This is so as long as the provisions of section 2 of the Fuel Conservation Five Day Week Act, No. 11 of 1978, which provides that "Saturdays shall not be working days. . . ." remain in operation.

Cases referred to

- (1) *Chalonona v. Weerasinghe*, (1967) 70 N.L.R. 46.
- (2) *Kulantaivelpillai v. Marikur*, (1918) 20 N.L.R. 471.
- (3) *Jayawardhena v. Tiruchelvam*, (1968) 71 N.L.R. 134.
- (4) *Dharmasena v. The State*, (1974) 79 (1) N.L.R. 320.
- (5) *Municipal Council of Colombo v. Piyasena*, (1980) 2 Sri L.R. 39.

APPEAL from the District Court, Colombo.

H. W. Jayewardene, Q.C., with *Chula de Silva* and *Winston Siriwardena*, for the defendants-petitioners.

N. S. A. Goonetilleke, for the plaintiff-respondent.

Cur. adv. vult.

May 25, 1981.

RANASINGHE, J.

The question which arises for determination in this appeal is whether, in the computation of the period of fourteen days, specified in section 754 (4) of the Civil Procedure Code, within which a notice of appeal should be presented, the intervening Saturdays are also to be excluded. It is agreed that, if Saturdays are also to be excluded, then the notice of appeal, which has been presented in this case by the defendants-petitioners has been presented within time and should be accepted. If not, the order

of the learned District Judge refusing to receive the said notice of appeal should stand.

The contention advanced on behalf of the said petitioners is: that the Fuel Conservation Five Day Week Act, No. 11 of 1978, the provisions of which are deemed to have come into operation on 17.2.1977, has provided that Saturdays shall not be working days: that Saturdays are, therefore, now days on which the Court offices are closed and no party to a case could take any step in an action on such a day: that Saturdays should also not, therefore, be included in the computation of the period of fourteen days set out in section 754 (4) of the Civil Procedure Code.

Section 754 (2) of the Civil Procedure Code (Cap. 101), which was introduced in the year 1889, provided, as it stood prior to 1.1.1976, that, in the computation of the period of ten days within which an appeal from a District Court should be filed, Sundays and public holidays were to be excluded. The Civil Procedure Code, as it then stood, did not provide for a notice of appeal to be presented before the filing of the petition of appeal itself. It is only in the said Civil Procedure Code, as revived in December, 1977, by Act No. 19 of 1977 and amended by Act No. 20 of 1977, that two stages in the lodging of an appeal—viz: the presentation of a notice of appeal (section 754 (4)), and the subsequent presentation of the petition of appeal (section 755 (3))—came to be introduced.

Section 8 (3) of the Interpretation Ordinance (Cap. 2) which was passed in the year 1901, provided that, in the calculation of a period less than six days, all intervening Sundays and public holidays are to be excluded. Thus, although in terms of the provisions of the Interpretation Ordinance, the intervening Sundays and public holidays could not be excluded in the calculation of the said period of ten days, yet, they have to be excluded in view of the specific provisions in the said section 754 (2) itself.

The Holidays Ordinance (Cap. 177) of 1928 is the earliest Ordinance passed "to provide for Public and Bank Holidays", and its provisions were in operation until the said Ordinance was repealed in the year 1965 by the Holidays Act, No. 17 of 1965. Section 4 of the said Holidays Ordinance of 1928 provided that

public holidays specified in the said Ordinance "shall, in addition to Sundays, be dies non and shall be kept (except as hereinafter provided) as holidays in Ceylon". This section specifically provides that a day, which is a "dies non", should be kept as a holiday.

The Holidays Act, No. 17 of 1965, provided: that, in Ceylon, Sunday should, notwithstanding any custom, usage or written law, henceforth cease to be a dies non, and should not be kept as a holiday: that every Poya Day and the days specifically referred to therein should be public and bank holidays: that every public holiday shall be a dies non, and be kept as a holiday. Thus thereafter Sundays ceased to be dies non and ceased to be kept as holidays. Under the provisions of this Act all public holidays became "dies non".

Thereafter came the Holidays Act, No. 29 of 1971, which proceeded to repeal Act No. 17 of 1965 but kept alive the regulations already made under it. The provisions of the 1971 Act declared every Full Moon Poya Day and every Sunday to be both a public holiday and a bank holiday: that the days set out in the two schedules be additional public and bank holidays: that every public holiday shall be a dies non and shall be kept as a holiday. This Act too shows that the legislature has not been content merely to declare a day as a "dies non", but has proceeded to provide expressly that such a day should also be kept as a holiday.

A consideration of the statutory provisions referred to above dealing with public holidays and dies non do show: that all public holidays are not "dies non": that once a day is declared a "dies non" it should be kept as a holiday.

The Fuel Conservation Five Day Week Act, No. 11 of 1978, which though certified on 5.12.1978 is nevertheless deemed to have come into operation on 17.2.1977, provides that 'Saturdays shall not be working days.....' There is no express provision that Saturday shall be a dies non or that Saturday shall be a public holiday. Yet, it is a non-working day; and a day on which the courts would not ordinarily sit and a day on which the court offices would not ordinarily be open for a party to an action to take any step in any such action.

As already stated, the Civil Procedure Code (Cap. 101) having been revived, as it stood on 1.1.1976, by Act, No. 19 of 1977, was

then amended by Act, No. 20 of 1977, which too came into operation on 15.12.1977. Section 754 (4) of the said Civil Procedure Code, as so amended, provided that the notice of appeal, which now became the first step in the lodging of an appeal, should be presented within a period of fourteen days from the judgment or decree appealed against and that, in the calculation of the said period of fourteen days, *inter alia*, Sundays and public holidays are to be excluded. Section 755 (3) of the said Code which deals with the next step, *viz.* the presentation of a petition of appeal, provides that such petition of appeal should be presented to Court within a period of sixty days from the said judgment or decree so appealed against. This sub-section, however, does not provide that, in the computation of such period of sixty days, any day—either a Sunday or a public holiday—shall be excluded. It is, therefore, quite clear that Sundays and public holidays are to be excluded in the computation of only the period of fourteen days specified in section 754 (4), and not in the period of sixty days set out in section 755 (3) of the said Civil Procedure Code. At the time the said sections 754 and 755 were so enacted the provisions of the Holidays Act of 1971—declaring Sunday to be a public holiday and directing every public holiday to be a *dies non* and to be kept as a holiday—were in operation. The intention of the legislature has, therefore, been made very clear—that, in the computation of the period of sixty days, Sundays and public holidays, even though they were, by another provision of law, declared to be *dies non*, and were to be kept as holidays, are not to be excluded, but that, in the computation of the shorter period of fourteen days set out in section 754 (4), Sundays and public holidays are to be excluded. At the time of such enactment Sundays and public holidays were both, as already stated, non-working days, and the intention of the legislature has been that, in the calculation of this shorter period of fourteen days, only working days be included, and that all non-working days be excluded. The legislature has taken very great care to ensure that, where the period of time within which an act has to be done is short—whether it be not exceeding six days as in section 8 (3) of the Interpretation Ordinance, or ten and fourteen days as in the Civil Procedure Code, or ten days as in the earlier Criminal Procedure Code (Cap. 16) or fourteen days as in the Code of Criminal Procedure Act, No. 15 of 1979—only such days as on which such act could actually be done should be counted.

In the case of *Chalonona v. Weerasinghe* (1), where the judgment appealed from was delivered in January, 1965, when the provisions of the Holidays Act, No. 17 of 1965, in terms of which Sunday had ceased to be a *dies non* and was not kept as a holiday, were in operation, the Supreme Court decided that Sundays were not to be excluded in the computation of the period of ten days specified in section 754 (2) of the Civil Procedure Code (Cap. 101) as it stood prior to 1.1.1976.

The legal effect and the significance of a day being declared a *dies non* was considered in the case of *Kulantaivelpillai v. Marikar* (2) by Bertram, C. J. whose views have been cited with approval by the Supreme Court in the more recent cases of *Jayawardhena v. Tiruchelvam* (3) and *Dharmasena v. The State* (4) at 327; and by me in the case of *The Municipal Council of Colombo v. S. P. Piyasena* (5).

In the case of *Jayawardhena v. Tiruchelvam* (supra), Samerawickrame, J. held that, as Sunday has ceased to be a *dies non* by virtue of section 2 (a) of the Holidays Act, No. 17 of 1965, the provision of section 339 of the Criminal Procedure Code (Cap. 16) for the exclusion of Sundays, in calculating the time within which an appeal must be filed, has ceased to be law.

A consideration of the judgments of Samerawickrame, J. in *Jayawardhena's* case (supra), and of Tambiah, J. in *Chalonona's* case (supra), shows that Their Lordships have both proceeded on the basis that what has been intended to be excluded are only days, which, in terms of the law existing at the time, are non-working days on which the Court Offices are not kept open.

In *Dharmasena's* case (supra) Wijayatilleke, J. and Wijesundera, J., two of the three judges who constituted the said Bench of the Supreme Court, differed as to whether in the calculation of the period of 24 hours, specified in section 214 of the Criminal Procedure Code, within which a District Judge is required to record his verdict, an intervening Poya Day, which at the relevant time was a *dies non*, by virtue of the provisions of the Holidays Act, No. 17 of 1965, then in operation, should be excluded or not. While Wijayatilleke, J. was of opinion that such an intervening Poya day should not be excluded, Wijesundera, J. was of the view that it should be. Rajaratnam, J. the third judge did not express an opinion on this point. The appeal was finally decided upon the

view formed by Rajaratnam, J. and Wijesundera, J. on the facts of the case.

The question which was considered by me in my judgment in the case of *The Municipal Council of Colombo v. Piyasena (supra)* was in regard to the computation of the period of 60 days set out in section 755 (3) of the Civil Procedure Code (Cap. 101) as amended by Act No. 20 of 1977 referred to above; and the decision was that in the computation of the said period of sixty days, intervening Sundays and public holidays are not to be excluded. What arises for consideration now in this case is the manner in which the period of 14 days, set out in section 754 (4) of the said Civil Procedure Code, should be calculated.

I am, therefore, of opinion that, during the period the provisions of section 2 of Act No. 11 of 1978 are in operation, Saturdays should also be excluded in the computation of the period of fourteen days set out in section 754 (4) of the Civil Procedure Code (Cap. 101) as amended by Act No. 21 of 1977.

For these reasons, the application of the defendants-petitioners is allowed; the order of the learned District Judge, dated 12.7.1979, is set aside; and the learned District Judge is directed to forward the record, as prayed for in paragraph (b) of the prayer to the defendants-petitioners' petition.

The plaintiff-respondent is directed to pay the defendants-petitioners a sum of Rs. 525 as costs of this application.

ATUKORALE, J.—I agree.

Application allowed.