

PEREIRA
V.
BALASOTHY AND ANOTHER

SUPREME COURT.

H. A. G. DE SILVA, J.

G. P. S. DE SILVA, J. AND

FERNANDO, J.

S. C. (S. L. A.) APPLICATION NO: 203/88

C. A. (REVISION) APPLICATION NO: 526/88

PRIMARY COURT MONERAGALA NO: 5919

21 FEBRUARY 1989.

Appeal — Application for re-listing a dismissed application on appeal

Once the list for a particular period is prepared or after notices of hearing are despatched to the parties, applications for postponements, variation and other adjustments cannot be dealt with by the Registrar.

- (1) Apart from applications made in open Court all such applications have to be made to His Lordship the Chief Justice or the senior Judge of the Bench before which a matter is listed or the listing Judge nominated from time to time by His Lordship the Chief Justice.
- (2) Counsel who finds himself unable to appear during a particular period by reason of intended absence abroad or illness or other like cause must make an application to His Lordship the Chief Justice for postponements; a communication to the Registrar is insufficient and, if any such

communication is made, at the very least the Registrar must be requested to submit the matter to His Lordship the Chief Justice for directions.

- (3) Such applications should not be made *ex parte* except possibly in circumstances of great urgency when it is not possible to inform the adverse parties or their Attorneys-at-Law; and even then, it is the obligation of Counsel obtaining an *ex parte* postponement to ensure that the adverse party is notified as soon as possible.
- (4) All such applications must be in writing with requisite particulars.
- (5) Counsel who is retained only after a matter is listed is not entitled to assume that such matter will be taken out of the list automatically or as of right.

APPLICATION to re-list dismissed application.

Faiz Mustapha, P.C. with *A. A. M. Marleen* for the Petitioner.

Sanath Jayatileke with *Rohan Sahabandu* for the Respondents.

Cur. adv. vult.

21st February 1989

H. A. G. DE SILVA, J.

Application No. 203 of 1988 for special leave to appeal to this Court was filed on 28.10.88; a stay order was granted in Chambers on 31.10.88 upon an application made on behalf of the Petitioner, supported by learned President's Counsel. Notice of hearing dated 1.12.88 having been duly served on the parties, the special leave application was taken up for hearing on 9.1.89; the Petitioner being absent and unrepresented, the application was refused after hearing Counsel for the Respondents. The present application for relisting was made on 24.1.89, in the circumstances set out below.

On the directions of His Lordship the Chief Justice, a Notice dated 31.10.88 was issued by the Registrar, requiring all Counsel to submit a list of the appeals and applications in which they appear as well as free dates for the 1st Term of 1989; this was done in an endeavour to improve the listing system, to have regard to the convenience of Counsel, and to ensure adequate

notice to Counsel and parties. It was expressly stated therein that "applications for postponements or variations will have to be made to His Lordship the Chief Justice."

Learned President's Counsel, in compliance with that Notice, submitted a list of appeals and his free dates. Special leave application No. 203 of 1988 was not included in that list, for the reason, as learned President's Counsel tells us, that he had only been retained to support the application for a stay order; the free dates given did not include any dates in January 1989, presumably because by then he was expecting to be away from Sri Lanka in January. After receipt of the notice of hearing dated 1.12.88, learned President's Counsel was retained to appear in support of the special leave application; as 9.1.89 did not suit him, he prepared a letter, dated 15.12.88, addressed to the Registrar and handed this to junior Counsel; this letter makes no reference, direct or indirect, to the special leave application, and merely requests the Registrar "in listing the cases in which (he) appears . . . to note that (he) would be out of the island from 9th to 20th January". However, junior Counsel in his affidavit states that when he handed this letter to the Registrar, he asked the Registrar not to list that application during that period, and that the Registrar indicated that it would not be listed on 9.1.89; and, further, that it would be listed in the latter part of January—which appears unlikely as no free dates had been given for January. The Registrar, in a report to us, states that he has no recollection of making any such statement; had he done so, we would have expected either an endorsement on the letter or a minute in the docket, and in the absence thereof it is difficult to conclude that such a statement was made. However, as Counsel for the Respondents stated that he does not challenge this affidavit, we must assume that junior Counsel was under the mistaken impression that the special leave application would be taken out of the list of 9.1.89.

Learned President's Counsel frankly admitted that there had been a lapse on his part in failing to notify the Registrar, either in his letter dated 15.12.88 or otherwise, that he was appearing in the special leave application; he conceded that his request for an adjustment ought to have been made to His Lordship the Chief

Justice, and that too with notice to Counsel for the Respondents. He urged, nevertheless, that an order for relisting be made as junior Counsel was under a mistaken impression, as aforesaid; but for such error, the Petitioner would not have been absent and unrepresented on 9.1.89.

It is necessary that the current practice and procedure in regard to the postponement of matters which are on the list of pending matters, and the alteration of that list, be re-stated so as to avoid any possible uncertainty or misunderstanding, and also to ensure strict compliance in future. Once the list for a particular period is prepared or after notices of hearing are despatched to the parties, applications for postponements, variations and other adjustments cannot be dealt with by the Registrar; presently, he has not been authorised by His Lordship the Chief Justice to deal with such matters. Under the current procedure, (apart from applications made in open Court) all such applications have to be made to His Lordship the Chief Justice, the senior Judge of the Bench before which a matter is listed, or the listing Judge nominated from time to time by His Lordship the Chief Justice. The Registrar had therefore no authority to take special leave application No. 203/88 out of the list of 9.1.89. Secondly, Counsel who finds himself unable to appear during a particular period, by reason of intended absence abroad, illness or other like cause, must make an application to His Lordship the Chief Justice for postponements; a communication to the Registrar is insufficient, and if any such communication is made, at the very least, the Registrar must be requested to submit the matter to His Lordship the Chief Justice for directions. In the absence of such directions, it must not be assumed that a matter will be taken out of the list. Thirdly, such applications should not be made *ex parte*, except possibly in circumstances of great urgency when it is not possible to inform the adverse parties or their Attorneys-at-Law. And even then, it is the obligation of Counsel obtaining an *ex parte* postponement to ensure that the adverse party is notified as soon as possible, so as to minimise inconvenience and expense. Finally, all such applications must be made in writing, with the requisite particulars, so as to avoid controversies as in this instance. It

needs to be added that Counsel who is retained only after a matter is listed is not entitled to assume that such matter will be taken out of the list automatically or as of right.

The expeditious disposal of matters pending before this Court requires the co-operation of Counsel, so as to minimise delay, inconvenience and expense, to the Court, the parties and their colleagues, and we have no doubt that this we will receive in full measure.

In these circumstances, we would normally have refused this relisting application with costs. However, as junior Counsel was labouring under a mistaken impression that the Registrar could, and would, take the matter out of the list of 9.1.89, and as there might have been some uncertainty as to the proper procedure, we are, with some reluctance, allowing this application, in the confident expectation that it will be the last of its kind. We set aside the order made on 9.1.89, dismissing the special leave application, and direct that that application be relisted for hearing, before any Bench. The Petitioner will pay a sum of Rs. 525/-, as costs, to the Respondents.

G. P. S. DE SILVA, J. — I agree

M. D. H. FERNANDO, J. — I agree

Application for re-listing allowed