

**MARY NONA
V.
FRANSINA**

COURT OF APPEAL

RAMANATHAN, J.

C. A. 1184/85 — PRIMARY COURT KEGALLE NO. 508/84

MARCH 30, 1988

Revision — Rules of the Supreme Court — Rule 46 — Is compliance imperative?

Compliance with Rule 46 of the Supreme Court Rules 1978 in an application for revision is mandatory. A copy of the proceedings containing so much of the record as would be necessary to understand the order sought to be revised and to place it in its proper context must be filed. Merely filing copies of three journal entries with no bearing on the matters raised in the petition is not a compliance with Rule 46.

Cases referred to

1. *Navaratnasingham v. Arumugam* (1980) 2 Sri L. R. 1
2. *Mohamed Haniffa Rasheed Ali v. Khan Mohamed Ali and another*
S. C. No. 6/81 S. C. Minutes of 20.11.1981.

APPLICATION for revision of order of Primary Court, Kegalle.

Eardlay Ratwatte for petitioner

D. S. Wijesinghe with Miss D. Dharmadasa for respondent.

Cur. adv. vult.

May 24, 1988

RAMANATHAN, J.

This is an application for revision of the order of the learned Magistrate of Kegalle in proceedings taken under Section 66 of the Primary Courts Procedure Act No. 44 of 1979.

When this matter came up for hearing learned counsel appearing for the respondent-respondent raised a preliminary objection on the ground that there had been a failure to comply with Rule 46 of the Supreme Court Rules 1978 (published in

Gazette Extraordinary No. 9/10 of 18.11.1978). Rule 46 reads thus —

“Every application made to the Court of Appeal for the exercise of powers vested in the Court of Appeal by Articles 140 and 141 of the Constitution shall be by way of petition and affidavit in support of the averments set out in the petition and shall be accompanied by originals of documents material to the case or duly certified copies thereof in the form of exhibits. Application by way of revision or restitutio in integrum under Article 138 of the Constitution shall be made in like manner and be accompanied by two sets of copies of proceedings in the Court of first instance, tribunal or other institution”.

The meaning of the expression ‘proceedings’ occurring in Rule 46 was considered by Soza, J. in *Navaratnasingham v. Arumugam* (1). In the course of his judgment Soza, J stated: “In relation to an application for revision the term “proceedings” as used in Rule 46 means so much of the record as would be necessary to understand the order sought to be revised and to place it in its proper context. The expression can, and often will, include the pleadings, statements, evidence and judgment”.

Thus it would appear that a mandatory duty is cast by Rule 46 of the applicant for revision to furnish with his petition and affidavit, documents material to his case.

The question is whether Rule 46 is mandatory was considered by the Supreme Court in the case of *Mohamed Haniffa Rasheed Ali v. Khan Mohamed Ali and another* (2). The majority of the Judges appeared to be of the view that Rule 46 is mandatory. Wanasundera, J. delivering the majority judgment stated thus: “While I am against mere technicalities standing in the way of this Court doing justice, it must be admitted that there are rules and rules. Sometimes courts are expressly vested with powers to mitigate hardships, but more often we are called upon to decide which rules are merely directory and which mandatory carrying certain adverse consequences for non-compliance. Many procedural rules have been enacted in the interest of the due

administration of justice, irrespective of whether or not a non-compliance causes prejudice to the opposite party. It is in this context that Judges have stressed the mandatory nature of some rules and the need to keep the channels of procedure open for justice to flow freely and smoothly".

In the present application on a perusal of the petition filed by the respondent reveals that only the three journal entries marked (P1, P2 and P3) were produced with the application. The three journal entries have no bearing on the matters raised in the petition. A copy of the order to be revised has not been filed.

In the objections of the respondent-dated 2.12.85 he has specifically averred that there has been a failure to comply with Rule 46 of the Supreme Court Rules. Subsequent to the filing of the objections, a copy of the order of the learned Magistrate had been filed without even an accompanying affidavit. The "information" referring the dispute to court, the affidavits and counter affidavits and documents have not been filed. In my view, it would not be possible to review the order of learned Magistrate without these documents.

I accordingly dismiss the application for non compliance with Rule 46 of the Supreme Court Rules 1978. There will be no costs.

Application dismissed.