

**CHETTIYAR**  
**v**  
**CINEMAS LIMITED**

COURT OF APPEAL  
AMARATUNGA, J.  
C.A. 333/2001  
D.C. KANDY 2365  
MAY 13, 2003  
SEPTEMBER 3, 2003

*Civil Procedure Code – Section 754(4), section 757 (1) – 14 day period –  
Computation – Interpretation Ordinance sections 8(1) & 8 (5)*

The Leave to Appeal Application was filed on Monday, the 17th day. Since the 14th day is a Friday and the 15th a Saturday, not excluded by section 757(1) should the petitioner have filed the Leave to Appeal Application on Friday the 14th. The defendant-respondent contends that the Application be dismissed in limine.

**HELD**

- i) In terms of section 757(1), a Leave to Appeal Application has to be filed within 14 days of the Order, in computing the period of 14 days, the date of the Order, all Sundays and public holidays and the date on which the Petition is filed have to be excluded.
- ii) By virtue of the provisions of the Holidays Act, Saturdays are non working days on which the Courts are closed. If the last day falls on a Saturday, the Appeal could be lodged on the next Monday (working day) – section 8(1) Interpretation Ordinance.
- iii) In considering whether the Application has been filed within time, Court has to take into consideration section 8(1) along with section 757(1) of the Code.

Section 757(1) does not stand alone; it is supplemented by the Rule in section 8(1).

*Per* Amaratunga, J.,

“Method of computation set out in section 757(1) of the Code is similar to that contained in section 754(4), therefore the decision in *Selenchina’s* case and *Charlet Nona’s* case are good guides when one has to decide whether an application filed under section 757(1) is within time.”

**APPLICATION** for Leave to Appeal from an Order of the District Court of Kandy – Preliminary Objection.

**Cases referred to:**

1. *V.P. Perera v A.L.M. Laffir* – CA 208/08 (f) – CAM of 19.10.90 (distinguished)
  2. *Silva v Sankaran* – 2002 – 2 SLR 209 (distinguished)
  3. *Selenchina v Mohamed Marikkar and others* – 3 Sri LR 100 at 102 (followed)
  4. *Sri Lanka State Trading (Consolidated Exports) Corporation v Dharmadasa* – 1987 – 2 Sri LR 235 (not followed)
  5. *Charlet Nona v Babun Singho* – 2000 – 3 Sri LR 149 (followed)
- P. Nagendra P.C., with C.W. Pannila, A.R. Surendran, D.K. Subaschandra-bose* for plaintiff-petitioner,  
*M.A. Sumanthiran with A. Premalingam* for defendant-respondent

May 6, 2004

**GAMINI AMARATUNGA, J.**

This is an application for leave to appeal against an order made by the learned District Judge of Kandy on 30.08.2001. The defendant-respondent (respondent) raised a preliminary objection in limine to this application on the basis that this leave to appeal application is out of time. On this question both parties filed written submissions and invited the Court to give a ruling.

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For the present purposes it is not necessary to set out the facts relevant to this application. It is sufficient to state that the order of 30.8.2001 is an order against which the petitioner has a right to make a leave to appeal application. This application had been filed in this Court on 17.09.2001.

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In terms of section 757(1) of the Civil Procedure Code, a leave to appeal application has to be filed within 14 days of the Order against which leave is sought. In computing the period of 14 days, the date of the order has to be excluded. All Sundays and public holidays also should be excluded. The date on which the petition is filed is also to be excluded.

In the present case, the date of the order i.e. 30.08.2001 must be excluded. The counting of the days begins from 31.08.2001, and 02.09.2001 and 9.9.2001 were Sundays. When those two days are excluded, the 14th day was 15.09.2001, which happened to be a Saturday. Since the date of filing is to be excluded, an application filed within the 15th day is also within time. In this instance, the 15th day was 16.9.2001, a Sunday, a day to be excluded in terms of section 757(1). It also happened to be a day on which the Registry of the Court of Appeal was closed. The petitioner has filed this application on 17.9.2001, the next working day of the Registry.

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The tenor of the argument of the respondent is that since the 14th day happened to be a Friday and the 15th day, which was a Saturday, not excluded by section 757(1), the petitioner should have filed his application on Friday, the 14th of September 2001. It was therefore contended that the application filed on 17.9.2001 was out of time.

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In support of his contention the learned counsel has cited two decisions of the Court of Appeal, *V. P. Perera v. A.L.M. Laffir*<sup>(1)</sup> and

*E.A. J.M. Silva v Subramaniam Sankaran*. The first case, *V.P. Perera v. Laffir*, dealt with the question whether the Court has the power under section 759(2) to grant relief when the notice of appeal was out of time. Accordingly that case has no relevance to the manner of computation of the period of 14 days.

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The other case dealt with a situation where the petition of appeal had been filed after 60 days. The 60th day was a Sunday. The petition of appeal was filed on Monday. The Court held that the petition of appeal was out of time.

In this case, the learned President's Counsel has contended that since the 14th day was a Saturday the petitioner was unable to file his petition on that day as the Registry of the Court of Appeal was closed. Even on Sunday the same situation prevailed. The learned President's Counsel contended that in those circumstances, the petitioner was entitled in law to file his petition on the next working day i.e. Monday the 17th of September 2001. For his submission the learned President's Counsel relied on section 8(1) of the Interpretation Ordinance, which reads as follows.

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"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."

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The learned President's Counsel contended that 15.9.2001, which was the 14th day, was a Saturday on which the Registry was closed. The petitioner could have filed his application on the 15th day and yet be within time as the date of filing is also excluded. However the 15th day i.e. 16.9.2001 happened to be a Sunday and again the Registry was closed. In addition Sunday is a day to be excluded in terms of section 757(1). In short the learned President's Counsel's argument was that in considering whether a leave to appeal application had been filed within the period allowed by the law the Court has to look not only at section 757(1) of the Civil Procedure Code, but also at section 8(1) of the Interpretation Ordinance.

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By virtue of the provisions of The Holidays Act, No. 29 of 1971, Saturdays are non-working days on which the Courts are closed. If the last date for filing an appeal falls on a Saturday, can a party file his appeal on the next Monday and contend that his appeal has been filed within time? In view of the provisions of section 8(1) of the Interpretation Ordinance I answer that question in the affirmative. *Lex non cogit ad impossibilia*. (The law does not 80  
compel the performance of what is impossible). In considering whether an application has been filed within time, a Court has to take into consideration section 8(1) of the Interpretation Ordinance along with section 757(1) of the Civil Procedure Code. Section 757(1) does not stand alone. It is supplemented by the rule in section 8(1) of the Interpretation Ordinance. This is clear in view of the provisions of section 8(5) of the Interpretation Ordinance which is as follows. "This section shall apply to written laws made as well before as after commencement of this Ordinance".

The following words of S.N. Silva, C.J., in *Selenchina v. Mohamed Marikar and others*<sup>(3)</sup> at 102 show that the aforesaid two 90  
enactments apply together.

"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. 30.9.1986) 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 100  
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 above decision given in respect of a notice of appeal filed in terms of section 754(4), is equally applicable to the present case where the facts are identical. I have carefully considered the decision of the Supreme Court in *Sri Lanka State Trading (Consolidated Export) Corporation v. Dharmadasa*.<sup>(4)</sup> I prefer to follow the recent decisions given by the Supreme Court in *Selenchina's* case and in *Charlet Nona v. Babun Singho*<sup>(5)</sup> with 110  
regard to the manner of computation of the period of 14 days

stipulated in section 754(4). Those two decisions give effect to the intention of the Legislature clearly expressed by the unambiguous words used in section 754(4) of the Civil Procedure Code. See S.N. Silva C.J.'s reasoning in the *Selenchina's* case, (*Supra*)102, paragraph 2.

The method of computation set out in section 757(1) of the Civil Procedure Code is similar to that contained in section 754(4). Therefore the decisions in *Selenchina's* case and *Charlet Nona's* case are good guides when one has to decide whether an application filed under section 757(1) is within time. 120

For the reasons I have set out above I hold that the petitioner's leave to appeal application has been filed within the time allowed by law. I accordingly overrule the preliminary objection and decide to fix this application for inquiry.

*Preliminary Objection over-ruled.*

*Matter set down for Inquiry.*