

**NATCHIYA**  
**v.**  
**MARIKKAR**

**SUPREME COURT**  
**SHARVANANDA, J., RATWATTE, J., and SOZA J.**  
**SC:77/81**  
**C.A. (LA 9/81)**  
**D.C. PUTTALAM 214/L**  
**OCTOBER 11, 1982**

*Civil Procedure - Computation of time - Civil Procedure Code, Section 756(4) - Mode of counting 14 days - Holidays Act No.17 of 1965 Sections 2, 3 and 4 - Fuel Conservation (Five day week Act No. 11 of 1974), Section 2.*

Should Saturdays be included or excluded in computing the fourteen days prescribed by Section 756 (4) of Civil Procedure Code for the application of leave to appeal to the Supreme Court?

**Held -**

In computing fourteen days in terms of Section 756(4) of Civil Procedure Code, Saturdays should be counted.

**Cases referred to:**

- (1) *Muthusamy v. Leathen Tea Estates Association Ltd. C.A. Minutes 6.9.1979.*
- (2) *Dharmadasa v. Kumarasinghe (1981) 2 Sri L.R. 113.*
- (3) *Chalo Nona v. Weerasinghe (1967) 70 N.L.R. 46.*
- (4) *Jayawardane v. Thiruchelvam (1968) 71 NLR 134*

**APPEAL** from Judgment of Court of Appeal.

**N.S.A. Gunatilleke** with **N. Mahenthiran** for appellant

**M.Y.M. Faiz** for the respondent.

November 2, 1982.

**SHARVANANDA, J.**

The question that is involved in this appeal is whether Saturdays should be excluded or included in computing the fourteen days prescribed by section 756(4) of the Civil Procedure Code for the application for Leave to Appeal to be presented to the Court of Appeal. This sub-section provides that "the application for Leave to Appeal shall be presented to Supreme Court for this purpose by the party appellants or his registered attorney within a period of fourteen days from the date when the order appealed against was pronounced exclusive of the date of that date itself and of the day when the application is presented and of Sundays and public holidays". Article 169(2) of the Constitution provides that every reference in any existing written law to the Supreme Court shall be deemed to be a reference to the Court of Appeal. Counsel for the appellants conceded that if Saturdays are not excluded, the preliminary objection raised by Counsel for respondent, that the application had been filed out of time should succeed. The Court of Appeal has upheld the objection and hence this appeal by the appellants.

There is a conflict of views in the Court of Appeal on this question. Ratwatte, J., with whom Thambiah, J., agreed, held in C.A. No.55/76 – *Muttusamy Vs. Leathen Tea Estates Association Ltd.* (1) – C.A. Minutes of 6th September, 1979, that Saturdays have to be included in computing the time for preferring an appeal under section 1(d)(4) of the Industrial Disputes Act, which reads as follows:

"In computing the time within which the appeal must be preferred to the Supreme Court the day on which the order appealed from was made shall be included, but all Sundays and Public Holidays shall be excluded."

In that case Counsel for the appellants had argued that at the relevant time in 1976 the Emergency (Fuel Conservation – Five Day Week) Regulations had declared Saturday to be a non-working day. (This matter is now governed by the Fuel Conservation – Five Day Week Act, No.11 of 1978). His argument was that since Saturday had been declared a non-working day it should be treated as Public Holiday for the purpose of computing the time for appeal prescribed by section 31(d)(4) of the Industrial Disputes Act. The Court held that public holidays were only those days which were declared to be so by the Holidays Act No. 29 of 1971 and by any amendment made to the Schedules to the Act by the Minister under section 4 of that

Act and that since Saturday had not been declared to be a public holiday under that Act, Saturdays had to be included in computing the period of appeal.

As against the above view, Ranasinghe, J., with whom Atukorale, J., agreed, held in *Dharmadasa Vs. Kumarasinghe* (2), in computing the period of fourteen days specified in section 754(4) of the Civil Procedure Code within which notice of appeal should be presented, the intervening Saturday should be excluded. This conclusion is based on 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 in any Government Department etc.,”. In reaching this decision Ranasinghe, J., has not however considered the earlier judgment of Ratwatte, J., as apparently it had not been cited to him. After analysing the relevant statutory provisions he observed that “a consideration of the statutory provisions ..... 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.”

Section 2 of the Interpretation Ordinance (Cap. 2) defines a Public Holiday to mean “any day which is to be observed as a public holiday under the provisions of the Holidays Ordinance.”

The Holidays Ordinance (Cap.177) of 1928 is the earliest Ordinance passed to provide for Public and Bank Holidays in Ceylon. Section 4 of this Ordinance provides that the “several days mentioned in the Second Schedule (in this Ordinance referred to as “public holidays”) shall, in addition to Sundays, be “dies non” and shall be kept (except as hereinafter provided) as holidays in Ceylon”

This Ordinance was repealed by the Holidays Act No.17 of 1965. Section 3 & 4 of this Act declared what days should be public holidays; section 6 provided that every public holiday –

- (a) shall be a “dies non”; and
- (b) shall be kept as a holiday.

Section 2 of this Act specially enacted that Sunday should henceforth cease to be a “dies non” and should not be kept as a holiday. This Act was superseded by the Holidays Act No.29 of 1971. This last Act is currently in force. Section 2 of this Act declares that every full-moon day should be a public holiday; section 3 provides that the several days specified in the First Schedule to the Act shall be

public holidays; section 5 of the Act states that every public holiday –

- (a) shall be “dies non”; and
- (b) shall be kept as a holiday

The provisions of section 5 militate against the conclusion of Ranasinghe, J., that all public holidays are not “dies non”. According to this section all public holidays are “dies non”, and should be kept as holidays. Non sequitur that “once a day is declared “dies non” it should be kept as a public holiday.” All “dies non” are not public holidays; it is only when a day is declared a public holiday that such “dies non” is required to be kept as a holiday. A “dies non” does not proprio vigore operate as a public holiday.

Section 2 of the Fuel Conservation – Five Day Week – Act No.11 of 1978 provides that “Saturdays shall not be working days in any Government Department.” The effect of this provision is that Saturday has become a day on which the Court or office will be closed and the office will not be open to any party for the doing of any act or the taking of any proceeding otherwise, but it is not a holiday.

A “dies non” should be distinguished from a public holiday. Section 8 of the Interpretation Ordinance reflects this distinction clearly. Section 8(1) provides that

*“where a limited time from any day 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 proceedings 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 at the time if it is done or taken on the next day thereafter on which the Court or office is open.”*

On the other hand section 8(3) provides that

*“where a limited time not exceeding six days from the date of happening of any event is appointed or allowed by any written law for the doing of any act or taking of any proceeding in a Court or office, every intervening Sunday or public holiday shall be excluded from the computation of such time.”*

Thus it is clear that “dies non” does not have the attributes of a “Public Holiday” and cannot be equated to it. While section 8(3) prescribes that Sundays and Public Holidays should be excluded it does not direct from the computation of the six days. According to section 8(1) the legal consequence in this context of a day being

“dies non” is that if the last day on which an act is to be done or proceedings to be taken in a Court or office happens to be a “dies non” the doing of such act or the taking of any proceeding in Court or office can be performed on the next day on which the Court or office is open.

Counsel for the appellant referred us to *Chalo Nona Vs. Weerasinghe*, (3) and *Jayawardane Vs. Thiruchelvam*, (4), where it was held that according to section 2(1) of the Holidays Act No.17 of 1965, Sunday was no longer a “dies non” and that Sundays therefore should not be excluded in computing the time within which an appeal must be filed, even though the relevant operative provisions of the Civil Procedure Code and the Criminal Procedure Code expressly excluded same. The reasoning of Tambiah, J., and of Samarawickrema, J., respectively was that since Sunday which was earlier a “dies non” had ceased to be so by reason of the enactment of section 2(a) of the Holidays Act No.17 of 1965, the statutory provisions excluding Sunday should no longer be construed as continuing in force. The maxim “cessante ratione legis cessat ipsa lex” (Reason is the soul of law, and when the reason of any particular law ceases, so does the law itself) was invoked to reach that conclusion. Counsel for the appellant relied on that reasoning in support of his submission that Saturdays being “dies non” should be regarded as public holidays for the purpose of computing the appealable time. With all respect to Tambiah, J., and Samarawickreme J., I cannot persuade myself to agree with their reasoning. In my view the maxim “cessante ratione legis cessat ipsa lex” does not operate to repeal a statutory provision on the ground that changed circumstances have nullified the reason for that statutory rule. The maxim appropriately applies to rules of law embodied in precedents or custom which have lost their persuasive force by reason of changed conditions or perceptions. The maxim is not a licence to the Court when performing within its limited perspective, its constitutional role of interpreting enacted law to disregard a statutory provision even though the reason for the original enactment had changed or ceased to exist. It would be legislation pure and simple were the Court to treat such provision as inoperative or abrogated on that ground. The legislature and legislature alone is competent to effect any repeal expressly or impliedly of any enacted law. The existence of anomalies does not entitle the Court to read words into a statute or to imply a repeal. The Court is bound to administer statute law so long as it stands unrepealed and is in operation. Unless the two statutes covering the

same subject-matter are so plainly repugnant to each other that effect cannot be given to both at the same time, a repeal will not be implied.

The task of this Court is to construe the plain language of the statute. Section 756(4) of the Civil Procedure Code has provided for the exclusion of Sundays and public holidays only. This Court can only speculate on the rational basis for the exclusion of these two classes of days, namely that they are "dies non". But, Parliament has not, for some reason, chosen to exclude all "dies non" in the computation of the time allowed for preferring the application for leave to appeal. When the meaning of what the legal draftsman has stated is clear, the Court cannot, by process of interpretation enlarge or erode its ambit on the ground of apparent anomaly, imperfection or omission.

In my judgment the case of *Dharmadasa vs. Kumarasinghe* (2)<sup>2</sup> was not correctly decided, and should not be followed; the view of Ratwatte, J., expressed in *Muttusamy vs. Leathen Tea Estates Association Ltd.* (1) on the question in issue represents the correct view.

I affirm the judgment of the Court of Appeal and dismiss the Appeal with costs.

**RATWATTE, J.** – I agree.

**SOZA, J.** – I agree.

*Appeal dismissed.*