

1907.
September 6.

Present : Mr. Justice Middleton.

RANKIRA v. SILINDU et al.

C. R., Kegalla, 7,280.

Application for leave to appeal notwithstanding lapse of time—Delay due to oversight on the part of the proctor—" Causes not within applicant's control "—Civil Procedure Code, ch. LX.

A mistake or oversight on the part of the proctor of a party to a suit is not such cause within the meaning of section 765 of the Civil Procedure Code as would entitle such party to the relief of leave to appeal notwithstanding the lapse of time.

THIS was an application for leave to appeal notwithstanding the lapse of time made under chapter LX. of the Civil Procedure Code by the plaintiff against the judgment of the Commissioner (Mr. H. J. V. Ekanayeke, Esq.) dismissing his action. In explanation of the delay the following affidavit of the proctor was submitted:—

" 1. That I am a proctor of the District Court of Kegalla, and am practising as such at Kegalla.

" 2. That the action of the plaintiff above named, for whom I appeared, was dismissed on December 3, 1906, by the Commissioner of Requests.

" 3. That the plaintiff, who was desirous of appealing against the said judgment, supplied me with the funds necessary for appealing, and I filed his petition of appeal within the time required by law.

" 4. The plaintiff on December 11, 1906, furnished me with a report certifying that one Rajapassadewayalage Lapaya of Dunukewala was possessed of property, which report I had to show to the proctor on the other side, and if it satisfied him I was to obtain his consent to making the said Lapaya a surety for the payment of defendant-respondents' costs of appeal.

" 5. I, however, omitted to see the proctor on the other side about the giving of security. The matter had escaped my attention. On the morning of December 21, 1906, I took up my file and discovered that I was one day too late for giving security.

" 6. The omission to tender security in time was due to an oversight caused by some press of work, and was also occasioned by the accident of my file in the case having got mixed up with another bundle of files which were not for immediate attention.

" 7. To the best of my knowledge my client has a very good appeal on the merits of his case.

" 8. I have been a proctor since August, 1899, "and this is the first occasion on which, through any fault on my part, an appeal has been out of time." 1907. September 6.

Schneider, for the applicant.

A. St. V. *Jayewardene*, for the respondent.

September 6, 1907. MIDDLETON J.—

In this case I am asked to admit a petition of appeal notwithstanding lapse of time, and it is clear that the petition is out of time solely and entirely by the laches of the proctor engaged by the applicant, and I take it when a proctor is retained in an action he becomes the recognized and accredited full agent of the party in the action, and any act of his in the proceedings must be looked upon as an act of the party himself. He is also fortified by the peculiar technical knowledge that his office is clothed with, and if he makes an error, it is to all intents and purposes the error of his client which that client must be responsible for. In the cases decided by me a few days ago and quoted by Mr. Jayewardene (*Silva v. Goonesekara*¹ and D. C., Galle, 8,398²) the facts were even more favourable to the applicant than here, but we held, and I think rightly, that the appellant or petitioner was not prevented by causes not within his control from complying with the provisions of the Code.

In the present case also considerable indifference has been manifested by the petitioner in bringing this matter before the Court. His counsel says that he made his affidavit on February 27, 1907. The judgment was delivered in the case on December 3, 1906, and the original application in the case was not made until August 3, 1907.

Again, to notice a technical objection, his affidavit does not state that which it is requisite it should state under sections 765 and 766 of the Civil Procedure Code.

I therefore feel I ought not to entertain the application. I therefore dismiss it with costs.

Application disallowed.

¹ (1907) 1 App. Court Reports 100.

² S. C. Min. Aug. 23, 1907.