

1965 Present : T. S. Fernando, J., and Sri Skanda Rajah, J.

M. A. C. M. SALIM, Petitioner, and P. SANTHIYA and others,  
Respondents

*S. C. 251/64—Application for Conditional Leave to Appeal to the Privy Council in S. C. 39 (Inty.) of 1960/D. C. Kurunegala, 6772/P*

*Appeal—Judgment of Supreme Court—Requirement that it should be pronounced on an appointed date—Non-compliance—Effect on inability to comply with Rule 2 of Schedule to Appeals (Privy Council) Ordinance—Inherent power of Court to grant relief—Civil Procedure Code, s. 774 (1).*

After the termination of the hearing of an appeal, the judgment of the Supreme Court was pronounced on a date which was not notified to the parties in compliance with the requirement of section 774 (1) of the Civil Procedure Code. In the present application for conditional leave to appeal to the Privy Council against the judgment, the petitioner, who came to know of the judgment about four weeks after it was pronounced, was consequently unable to give the opposite parties notice, within the time prescribed by Rule 2 of the Schedule to the Appeals (Privy Council) Ordinance, about his intention to appeal to the Privy Council.

*Held*, that the petitioner should be granted relief. In such a case, the Court has inherent powers to repair the injury done to a party by its own act.

**A**PPPLICATION for conditional leave to appeal to the Privy Council.

*Hannan Ismail*, for the Petitioner.

*S: Sharvananda*, for the Plaintiffs-Respondents.

*Clarence de Silva*, for the 11th (A.E) and 12th Defendants-Respondents.

*Cur. adv. vult.*

June 14, 1965. T. S. FERNANDO, J.—

Judgment on appeal against which it is now sought to appeal to the Privy Council was pronounced by this Court on the 30th June 1964. This application for conditional leave to appeal was presented to this Court on the 30th July 1964. Notice of the intention of the petitioner to make this application was given to the respondents only by letter dated 29th July 1964 and reached them only on the 30th July 1964. It is therefore quite apparent that the petitioner has failed to comply with rule 2 of the Rules in the Schedule to the Appeals (Privy Council) Ordinance (Cap. 100) which requires that notice of intention to appeal shall be given to the opposite parties within fourteen days of the pronouncing of the judgment.

As an explanation for his omission to comply with the said rule 2, the petitioner contends that the judgment in question was not pronounced by this Court in the manner contemplated by section 774 (1) of the Civil Procedure Code. That sub-section requires the Court, on the termination of the hearing of an appeal, to pronounce judgment in open court either at the conclusion of such hearing or, on some future day which shall either be appointed at the conclusion of the hearing or of which notice shall subsequently be given to the parties or their counsel. It is admitted that judgment on this appeal was not pronounced at the conclusion of the hearing and also that it was pronounced neither on an appointed day nor on a day of which notice had been given to the parties or their counsel as contemplated by the Code.

The petitioner states that the first intimation he had of the pronouncing of the judgment was on the 27th July 1964. We do not doubt this statement. Counsel appearing for him has brought to our notice an unreported judgment of this Court (Sansoni, J. and G. P. A. Silva, J.) of the 6th July 1962 in S.C. Application No. 161/62—Application for Conditional Leave to Appeal in S.C. 2 of 1961/Income Tax Case Stated BRA 285—by which conditional leave was granted where the Court was doubtful whether there had been a compliance with section 774 (1) of the Civil Procedure Code. In the instant application the petitioner has succeeded in establishing that there has been no compliance with the requirement of the aforesaid section in respect of notice to parties of the pronouncing of the judgment.

The petitioner has shown himself quite diligent from the moment he became aware of the pronouncing of the judgment. This Court pointed out in *Sirinivasa Thero v. Sudassi Thero*—(1960) 63 N.L.R. at p. 34—that it is a rule that a Court of Justice will not permit a suitor to suffer by reason of its own wrongful act and that it is under a duty to use its inherent powers to repair the injury done to a party by its act. In these circumstances it is plain that our duty is to grant conditional leave to appeal, and that leave is hereby granted on the usual terms.

SRI SKANDA RAJAH, J.—I agree.

*Application allowed.*

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