

**IN THE COURT OF APPEAL OF THE DEMOCRATIC  
SOCIALIST REPUBLIC OF SRI LANKA**

COURT OF Appeal Application

**No: CA (PHC) 24/09**

Dharmarathna Wasam Palliyage  
Sampath Manjula Nanayakkara,  
Mathale Road,  
Bambawa,  
Galewela.

**Petitioner – Appellant**

***Vs.***

01. Commissioner of Co-operative  
Development & Registrar of Co-  
operative Societies, (Central  
Province)  
Department of Co-operative,  
Ehelepola Kumarihami Mawatha,  
Bogambara, Kandy.

***And Others***

**Respondents – Respondents**

**Before : W.M.M.Malinie Gunarathne, J**

**: P.R.Walgama, J**

**Counsel : Mahanama de Silva for the Appellant.**

**: Nayomi Kanavita S.C. for the 1<sup>st</sup> Respondent.**

**: J.M.S. Nanayakkara for the 4<sup>th</sup> & 5<sup>th</sup> Respondent.**

**Argued on : 01.12.2015**

**Decided on: 10.06.2016**

CASE -NO- CA (PHC)-24/ 2009- JUDGMENT- 10.06.2016

**P.R.Walgama, J**

The instant appeal is being lodged by the Petitioner- Appellant against the order of the learned High Court Judge, dated 03.02.2009, by which order the application of the Petitioner – Appellant was rejected.

The Petitioner by the said application moved for a mandate in the nature of a writ of Certiorari to quash the decision of the 1<sup>st</sup> Respondent dated 21.09.2006 and 08.12.2006 and for a writ of Mandamus directing the 1<sup>st</sup> Respondent to accept the Appeal preferred by the Petitioner in accordance with Corporative Rules.

The impugned orders purported to have been made by the 1<sup>st</sup> Respondent respectively on 21.09.2006, which is marked as P4 AND rejecting the appeal of the Petitioner, by the 1<sup>st</sup>

Respondent is marked as P5. It is contended by the Counsel for the Respondent that the Appellant has failed to mark the said documents accordingly.

Nevertheless it is viewed from the document dated 21.09.2006, the 1<sup>st</sup> Respondent acting in terms of the Rules 49 (X11)(A) had informed the Petitioner- Appellant to deposit a sum of Rs. 203184/27, as the deposit, to accept the appeal. The Petitioner - Appellant has deposited only Rs. 50/ as the fee for the acceptance of the appeal, which is contrary to the above Rules. Further it was informed by the 1<sup>st</sup> Respondent that the said amount shall be made within 14 days and the failure to do so, the appeal will be rejected.

Besides, by the document dated 08.12.2006, the 1<sup>st</sup> Respondent has informed the Petitioner that as he has failed to deposit the said amount his appeal has been rejected in terms of Rules 49 (XII) ( b).

It is against the above said orders the Petitioner- Appellant moved in the Provincial High Court, to issue a writ of Certiorari to quash the said orders and for a writ os Mandamus to compel the 1<sup>st</sup> Respondent to hold an inquiry before rejecting the appeal.

It is salient to note that the Learned High Court Judge by his order dated 03.02.2009, rendered

that the above decisions of the 1<sup>st</sup> Respondent is invalid and the same was quashed by the issuing a writ of Certiorari. But it is observed by the said impugned judgment that the Learned High Court Judge has made order that the Appellant to deposit the said sum of Rs. 203,234.26 within a specified period and a directive was also issued to the 1<sup>st</sup> Respondent, to hear the appeal and to take necessary steps accordingly. Further it was held that if the Appellant does not deposit the said sum within the prescribed time period the appeal to be dismissed.

It is apparent that the Appellant had failed to pay the said deposit, but nevertheless had lodged the instant appeal to have the said order of the Learned High Court Judge to be set aside.

The pith and substance of the Appellant's argument is that, the requirement to pay an appeal deposit in terms of Rule 49( XII)(a) of Co operatives Law is ultra vires.

Further it is contention of the Appellant that as per said rule that there was an option to the aggrieve party to deposit either of two sums and the Registrar of Co operatives Societies is bound to accept the appeal.

In essence it is the position of the Appellant that he was denied the procedural fairness by the 1<sup>st</sup> Respondent, by not accepting his appeal.

For convenience and brevity the above Rule 49 (XII) is reproduce herein below;

“a. Every appeal to the Registrar from an award of an arbitrator or panel of arbitrators shall be made within 30 days from the date of the award by a written statement setting out the grounds of Appeal. Every such appeal shall be forwarded to the Registrar with an appeal deposit of Rs. 50/ or 10% of the sum awarded where the appeal is made by the party against whom the award has been made and by Rs.50/ or 10% of the sum claimed in the dispute where the appeal is made by the party claiming any sum of money whichever sum is higher sum in either case.

(b) An appeal not made in conformity with the above shall be rejected by the Registrar

(c) The Registrar may make a decision on the appeal without hearing any parties to the dispute.

(d) where the Registrar is satisfied that the appellant had reasonable grounds to appeal, the sum deposited by him shall be returned to the appellant.

(e) here the Registrar is satisfied that the appellant had no reasonable grounds to appeal, the appeal

deposit shall be forfeited and credited to the consolidated fund”

It is the contention of the Appellants, that the requirement to pay an appeal deposit in terms of the Rule 49 (XII) (a) is ultra vires. In addition it is stated that if the appellant has deposited either of two sums of appeal deposit the Registrar of Co operative Societies is legally bound to accept and hear the appeal.

It is salient and pertinent to note that the Learned High Court Judge by his impugned order, has issued the writ of Certiorari sub nomine, and quashed the decisions made by documents marked P4 and P5 and made order that the Appellant shall deposit a sum of Rs. 203,234.26, three weeks from the said date of the impugned order.

In making the determination Learned High Court Judge was of the view that as per Rules 49(XII)(a) has set out a deposit of Rs 50 / will be sufficient to accept an appeal, and was of the view that the case of Sebastian .vs. Katana Multipurpose Co operative Society, their Lordships had not made any observation as to the said Rule whether it is mandatory or not, but Their Lordships opinion cannot be treated as the ratio decidendi of the said case.

The Appellant without depositing the said amount had appealed to this Court to have the above order of

the Learned High Court set aside, by issuing a writ of Certiorari.

Section 58 (3) of the above Act any party aggrieved by the award of the arbitrator or arbitrators may appeal there from to the Registrar within such period and in such manner as may be prescribed by rules.

Further Section 61(1) of the above Act recognises the Minister's power to make certain rules. Section 61(2) (y) provides for the rules to be made prescribing the forms to be used, the fees to be paid, the procedure to be observed and all other matters connected with and incidental to the presentation, hearing and disposal of appeals under this law.

The said Rule 49(XII) was published in the Gazette Extraordinary bearing No. 93/5 dated 10.01.1974.

The Appellant planks his argument on the decision of the case of SEBASTIAN .VS. KATANA MUTIPURPOSE COR OPERATIVE SOCIETY- 1990 1 ASLR- 342

The Respondent in analysing the above case has submitted that in the said case the Appellant has deposited one instalment of the 10% due and had failed to pay the balance within 30 days. But in the instant case it is to be noted that the Appellant did not pay the 10% of the award but chose to deposit only Rs. 50 / as the deposit,

according to the Respondent which is contrary to the above Rule. Further it is contended by the Respondent that the Appellant was given the opportunity to pay the said amount although he has failed to do so.

The Counsel for the Respondent has adverted Court to the key passage of the above case, which is reproduced herein below;

“ in the petition filed in the Court of Appeal, although the Appellant contended that the Registrar (4<sup>th</sup> Respondent) should not have refused to entertain the appeal, he did not contend that the requirement in Rule 49 (XII) (a) of an appeal deposit is ultra vires or that the rejection of the appeal was bad for any reason, nor did he pray for a Certiorari or Mandamus against the Registrar to quash the order of rejecting the appeal and to direct him to hear and determine the same..”(emphasis added)

Therefore it is abundantly clear that the said case did not deal with the issue of the Rule 49 (XII) (a) of the Co - operatives law. Hence there is no ratio decidendi in respect of the said rule.

Further it is observed from the contents of the above case that Their Lordships did not come to a finding in respect of the said Rule in the above



case, and the determination was made in a different  
aura.

To fortify the above position the Counsel for the  
Respondent has also highlighted the case of  
WEERAKKODY PATHIRENHALAGE SOMARATNE .VS.  
D.D.PREMARATNE OF CO OPERATIVE SOCIETY AND  
OTHERS – has held that Rule 49 (XII) (a) is not  
ultra virus and that it should be mandatory and  
Their Lordships were of the view that the rule  
making power conferred on the Minister under 58 (3)  
provides the period within which the appeal may  
be filed can be prescribed by the rules”

Therefore it is apposite to mention that by virtue of  
Section 58 (3) and 61 (2)(y) of the Act and the  
Minister is empowered to make Rules accordingly.  
Therefore this Court is persuaded to accept the  
gravamen of the argument put forth by the Counsel  
for the Respondent.

To cap it all the Appellant's in ordinate delay in  
making the instant application against the order of  
the Learned High Court Judge will render the  
application invalid.

Hence, when reviewed the facts in the said back drop  
we are of the view that the appellant's appeal should  
fail.

Accordingly we dismissed the appeal subject to a cost of Rs. 10,000/.

**JUDGE OF THE COURT OF APPEAL**

W.M.M.Malinie Gunarathne, J  
I agree,

**JUDGE OF THE COURT OF APPEAL**