IN THE COURT OF APPEAL OF THE

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an appeal against a judgment of Provincial High Court exercising its writ jurisdiction.

C A (PHC) 131 / 2005

Provincial High Court of

Central Province (Kandy)

Case No. (writ) 16 / 2003

Jamaldeen Mohamed Azis,

No 200/36, (700/27),

Peradeniya Road,

Kandy.

PETITIONER - APPELLANT

-Vs-

1. Akurana Pradeshiya Sabha,

   Alawathugoda.

2. Chairman,

   Akurana Pradeshiya Sabha,

   Alawathugoda.

3. Secretary,

   Akurana Pradeshiya Sabha,

   Alawathugoda.

4. A M M Anwar,

   No 09,

   Harisson John Road,

   Matale.

RESPONDENT - RESPONDENTS

Before: P. Padman Surasena J (P/CA)

K K Wickremasinghe J

Counsel; Nizam Kariapper PC with M I M Iynullah for the Petitioner - Appellant.

Shantha Jayawardena with Chamara Nanayakkarawasam for the 1st to 3rd Respondent - Respondents

S N Vijithsingh for the 4th Respondent - Respondent.

Argued on : 2017 - 08 - 08

Decided on : 2018 - 02 - 21

JUDGMENT

P Padman Surasena J (P/CA)

The Petitioner- Appellant (hereinafter sometimes referred to as the Appellant) had filed an application in the Provincial High Court of the Central Province holden in Kandy praying for a writ of Certiorari to quash the decision of the 1st Respondent to register the 4th Respondent as the owner of the premises bearing No. 203 of 7th Post, Matale Road, Akurana.

Further, the Appellant had also prayed from the Provincial High Court, a writ of Mandamus to compel the 1st Respondent to insert the name of one A S Noor Mohammed as the owner thereof.

Perusal of the judgment dated 2005-05-19 pronounced by the learned Provincial High Court Judge, shows that he has refused the application of the Appellant on the ground that the Appellant has violated rule 3(1).[1]

It is because the Appellant had failed to submit the originals or certified copies of the documents he had relied on, in support of his case that the learned Provincial High Court Judge had arrived at the said conclusion.

In arriving at the said conclusion learned Provincial High Court Judge had taken in to consideration

i. the fact that the said application was filed in the Provincial High Court on 2003-04-02;
ii. that the relevant documents were not available before Courts even when the said application was taken up for argument for the second time on 2004-12-06;

[1] Court of Appeal (Appellate Procedure) Rules 1990.

iii. that the court had informed the Appellant to support any application to admit the said documents with notice to the Respondent;

iv. that the Appellant had sought permission to tender those documents on 2005-03-10 and the Court had directed the Appellant to support that application on the next argument date;

v. that when the said application was made on 2005-03-10, learned counsel for the Respondent had objected to the said application.

It is appropriate at this juncture to turn to the rules relevant to this issue. Rule 3 (1) (a)[2] states as follows;

"....Every application made to the Court of Appeal for the exercise of the powers vested in the Court of Appeal by Articles 140 or 141 of the Constitution shall be by way of petition, together with an affidavit in support of the averments therein, and shall be accompanied by the originals of documents material to such application (or duly certified copies thereof) in the form of exhibits. Where a petitioner is unable to tender any such document, he shall state the reason for such inability and seek the leave of the Court to furnish such documents later. Where a petitioner fails

[2]Court of Appeal (Appellate Procedure) Rules 1990.

to comply with the provisions of this rule the Court may, ex mere mortu or at the instance of any party, dismiss such application.

(b) Every application by way of revision or restitutio in intergrum under Article 138 of the constitution shall be made in like manner together with copies of the relevant proceedings (including pleadings and documents produced), in the Court of First Instance, tribunal or other institution to which such application relates. ....."

While plain reading of the above rules makes it clear that it is mandatory for a Petitioner to tender originals or duly certified copies of documents material to his/her application, this Court as well as the Supreme Court has repeatedly held that it is so. One such example is the case of Shanmugawadivu Vs Kulathilake[3]. In that case the Supreme court has held as follows "..... the new Rules permit an applicant to file documents later, if he has stated his inability in filing the relevant documents along with his application, and had taken steps to seek the leave of the Court to furnish such documents. In such circumstances, the only kind of discretion that could be exercised by

[3] 2003 (1) S L R 216.

Court is to see whether and how much time could be permitted for the filing of papers in due course.

The appellant had made no such statements in her petition and the Court of Appeal had rightly decided that in the absence of the relevant documents, the Court is "unable to exercise its revisionary powers in respect of the order sought to be revised" by the Appellant. ....."
It is to be observed that the Appellant neither sought leave of Court nor had undertaken in the petition[4] he filed in the Provincial High Court to tender originals or duly certified copies of the documents he relies on.

The Appellant has neither controverted the position taken up by the Respondent with regard to non-tendering of certified copies to the Provincial High Court nor had taken any step to address that issue. It is also to be noted that despite the undertaking, the Appellant has not filed written submissions after the argument was concluded[5] in this Court.

As has been stated in this judgement before, our courts have consistently held that the compliance of these rules is mandatory. There is no

[4] Paragraph 02, Prayer (e) of the Petition and the journal entry dated 2007-06-22.
[5]vide Minute dated 2017-08-08 in the docket.

acceptable reason as to why the Appellant had not complied with this rule. As has been done by this Court in several of its judgements (where this Court had to deal with the question of compliance of rules), it would re-iterate the importance of the following passage from the judgement in the case of Brown & Co. Ltd. and another Vs. Ratnayake, Arbitrator and others.[6]

"*.... So the fact that the record was subsequently made available to court is not an excuse for failure to comply with basic requirements of the rule. To hold otherwise would lead to unfairness. The Rule itself is a commonsense response to litigants wanting the disturbance of an order or award. It is no more than a normal procedural step deemed necessary to inform both court and respondents of the matters of complaint. It is consistent with ordinary practice. One cannot claim a right to proceed to the next step without compliance with a valid invocation of jurisdiction in the first place. Such would lead to uncertainty, unreasonableness and oppressive results. In this sense the rule is mandatory. ...*"[7]

[6]1994 (3) SLR 91.
[7](Ibid) at page 100.

The Supreme Court took this view despite the fact that this rule[8] did not specifically provide for dismissal for non-observance of Rule 46.

In these circumstances, this Court sees no reason to interfere with the findings of the learned Provincial High Court Judge. Thus, this Court decides to dismiss this appeal with costs.

PRESIDENT OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL

[8] Rule 46 of the Supreme Court Rules of 1978.