

1971 Present : Samerawickrame, J., and Weeramantry, J.

V. JOHN SILVA, Petitioner, and C. WILLIAM DE SILVA and another, Respondents

*S. C. 86/68 (with S. C. 87/68)—Application for conditional leave to appeal to Her Majesty the Queen in Council under the Appeals (Privy Council) Ordinance (Cap. 100) in S. C. 620/65 (F) D. C. Matara 1704/L*

*Privy Council—Application for conditional leave to appeal thereto—Deficiency in stamps—Curable defect—Appeals (Privy Council) Ordinance (Cap. 100). Schedule, Rule 2—Stamp Ordinance (Cap. 247), ss. 41, 43 (1).*

An application for conditional leave to appeal to the Privy Council is not void if it is insufficiently stamped and the deficiency has not been supplied within the period of 30 days specified in Rule 2 of the Schedule to the Appeals (Privy Council) Ordinance. In such a case the Supreme Court may direct the petitioner to supply the deficiency in stamps before a specified date.

*Sandanam v. Jamaldeen* (71 N. L. R. 145) followed.

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

*E. B. Wikramanayake, Q.C.*, with *N. R. M. Daluwatte*, for the petitioner-appellant.

*C. Ranganathan, Q.C.*, with *M. T. M. Sivardeen*, for the respondents-respondents.

*Cur. adv. vult.*

October 29, 1971. SAMERAWICKRAME, J.—

Learned counsel for the respondents submitted that the application for conditional leave to appeal should be rejected on the ground that it was insufficiently stamped and the deficiency has not been supplied within the period of thirty days specified in Rule 2 of the Schedule to the Appeals (Privy Council) Ordinance (Cap. 100). Though the view had been taken in some earlier cases that where an application for leave to appeal was insufficiently stamped the application should be rejected, H. N. G. Fernando, C.J., in *Sandanam v. Jamaldeen*<sup>1</sup>—71 N. L. R. 145—held that a deficiency arising from a *bona fide* error in the stamping of an application is not a fatal defect and that the deficiency may be supplied.

The object of the Stamp Ordinance is the collection of revenue and the provisions that provide a sanction in respect of instruments that are not stamped or insufficiently stamped must be given such effect as will serve the object of the Ordinance without unduly interfering with the rights of parties or causing any injustice. That no greater detriment than the payment of a penalty should ordinarily result, by reason of non-stamping or insufficient stamping of an instrument, is clear from an examination of the provisions of the Stamp Ordinance itself. Section 41 provides that an instrument not properly stamped should not be received in evidence, but the proviso permits such an instrument to be admitted if the duty along with the penalty set out therein is paid. There was judicial decision upon the earlier Stamp enactment that where an instrument had been admitted in evidence without objection, it could not be called in question at any later stage of the action on the ground that it had not been duly stamped. This principle has found statutory expression in s. 43 (1) of the Stamp Ordinance (Cap. 247). It is also clear that an instrument not properly stamped is not void for the reason that there are provisions which permit the Commissioner to allow such an instrument to be duly stamped on payment of the stamp duty and/or stamp duty plus penalty except in the cases of instruments chargeable with six cents or bills of exchange or promissory notes.

It appears to me clear that the petition for conditional leave to appeal was not void. The application should not therefore be rejected on the ground that no valid petition was filed within the period of thirty days provided for in the rules.

Section 41 of the Stamp Ordinance also provides that an instrument not properly stamped shall not be acted upon. Had the deficiency been apparent to the Registrar, he could have called for the deficiency before he took steps to have this application listed for hearing. It may be that in making an order upon this application this Court will be acting upon it within the meaning of s. 41. I follow the procedure adopted by My Lord the Chief Justice in the case referred to above and I direct the petitioner

<sup>1</sup> (1968) 71 N. L. R. 145.

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to supply the deficiency in stamps before 25th November, 1971, and I make order that the application for conditional leave be allowed if the deficiency is duly supplied.

There is an application by the petitioner for stay of execution and an application by the respondents for execution of decree. If the petitioner furnishes security for due performance of the decree by depositing a sum of Rs. 35,000 in cash with the Registrar of this Court and by hypothecating it on or before 30th November, 1971, then execution of decree will be stayed. If security is not given as directed the respondents will be entitled to take out execution on entering into a bond in a sum of Rs.20,000 with one surety for the due performance of any order that may be made in appeal.

WEERAMANTRY, J.—I agree.

*Application allowed conditionally.*

