

**IN THE SEYCHELLES COURT OF APPEAL**

**SOUTHERN OCEAN SHIP CHANLERS**

**APPLICANT**

**versus**

**SEYCHELLES FISHING AUTHORITY**

**RESPONDENT**

Civil Appeal No: 22 of 2001

*[Before: Silungwe, Pillay & De Silva, JJ.A]*

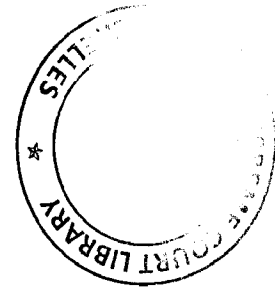
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Mr. P. Pardiwalla for the Applicant

Mr. F. Chang-Sam for the Respondent

**JUDGMENT OF THE COURT**

*(Delivered by De Silva, JA)*



On 27<sup>th</sup> June 2000 the Rent Board delivered Judgment against the applicant Company ordering it to vacate the premises it occupied by 27<sup>th</sup> September 2000. The applicant Company filed an appeal against the Judgment of the Rent Board. On 26<sup>th</sup> September 2000 an application for stay of execution was filed. On 19<sup>th</sup> March 2001 the Supreme Court refused the application for stay of execution. The appeal preferred against the Judgment of the Rent Board was withdrawn on 9<sup>th</sup> May 2001. The present position therefore is that there is no appeal pending before the Supreme Court. However, the applicant has moved the Supreme Court for filing out of time his original grounds of appeal and the Court has not given its ruling yet.

According to the present motion, the applicant wants this Court to exercise its discretion in its favour for the filing out of time of both the

appeal against the order refusing stay and the appeal proper before the Supreme Court.

At this point, it is very relevant to set out paragraphs 7 and 8 of the affidavit dated 26<sup>th</sup> October 2001 filed on behalf of the applicant Company.

**Paragraph 7:**

“The applicant Company was made to understand by the respondent that if it proceeded with its appeal, the respondent would immediately move for execution, but if it withdrew the appeal, it would be permitted to stay in occupation, pending the allocation of alternative site which had been promised.”

**Paragraph 8:**

“It was on the basis of this understanding that the applicant Company on 9<sup>th</sup> May 2001 instructed Counsel to withdraw the appeal, which was done.”

In reply to the aforesaid affidavit; the Chief Executive of the Seychelles Fishing Authority (the respondent) has filed an affidavit specifically denying paragraphs 7 and 8 set out above. It is averred in paragraph 8 of the affidavit dated 24<sup>th</sup> March 2002 filed on behalf of the respondent as follows:

“As the stay of execution has been denied the respondent was within its right at any time to apply to execute the Order made by the Rent Board. It did not need to negotiate with the applicant. It was in fact the applicant when it became aware that the respondent had applied for enforcement of the Rent Board Order (a copy of the application is attached and marked as exhibit 3) which pleaded for time from the respondent to be able to find alternative

accommodation and in order to persuade the respondent in this direction voluntarily offered to withdraw its appeal.” (Emphasis added).

There is a further affidavit dated 27/3/2002 filed on behalf of the respondent by Glenn Savy, Chairman of the Seychelles Fishing Authority, stating that:

“At no time after the Rent Board had delivered its Judgment did I offer or promise to allow the applicant to remain on the premises if it withdrew its appeal . . . .”

Thus it is clear that there are two affidavits filed on behalf of the respondent contradicting the circumstances in which the applicant alleges that its appeal was withdrawn. Moreover, no evidence has been placed before this Court in rebuttal of the two affidavits filed on behalf of the respondent.

Mr. Pardiwalla, on behalf of the applicant, invited this Court in the exercise of its discretion to make an order staying the execution of the Judgment of the Rent Board pending the determination of the Supreme Court of its client’s motion to file its original appeal out of time. Learned Counsel further submitted that this application was made in the interests of justice and equity. It is well settled law that a Court would exercise its discretion in favour of a party judicially and on adequate and proper material. The salient facts which emerge from the affidavits placed before us are:-

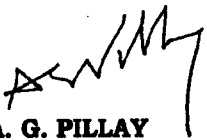
- (a) the Rent Board made its Order for ejection of the respondent as far back as 27<sup>th</sup> September 2000;
- (b) an application for stay of execution was rejected on 19<sup>th</sup> March 2001;

- (c) the appeal was withdrawn in May 2001;
- (d) the respondent has been kept out of possession of the premises since September 2000; and
- (e) exhibit 7 filed by the respondent shows that the applicant is in arrears of rent in a sum of SR.130,208.33 as at 31<sup>st</sup> June 2001.

It is clear therefore that the equities are with the respondent rather than with the applicant.

The interests of justice also show beyond doubt that this application should be refused because the applicant has all along been employing dilatory tactics and, for the reasons given, we make order accordingly. The applicant is to pay the costs of this application.

**A. M. SILUNGWE**  
**JUSTICE OF APPEAL**

  
**A. G. PILLAY**  
**JUSTICE OF APPEAL**

  
**G. P. S. DE SILVA**  
**JUSTICE OF APPEAL**

Dated at Victoria, Mahe this 16<sup>th</sup> day of **December** 2002.