

**IN THE SUPREME COURT OF SEYCHELLES**

**MACDONALD POOL**

**APPELLANT**

**VERSUS**

**DESPILLY WILLIAM**

**RESPONDENT**

**Civil Side No. 244 of 1993**

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**R U L I N G**

**On the application for Stay of Execution of Judgment pending the determination of the Plaintiff's appeal before the Seychelles Court of Appeal**

The judgment of this court entered on the 9th of July 1996 awarded to the Plaintiff damages in a sum of Rs.17,406.75 while the defendant was also awarded damages in a sum of Rs.283,035.00. An appeal by the plaintiff was lodged on the 22nd of July 1996 and the application for stay of execution of judgment was made on the 24th July 1996 on the ground, that to the best of his information and belief that he has a good chance of success in his appeal. There is no doubt that every appellant entertains such hopes of success on an appeal.

The defendant judgment creditor vehemently opposed the plaintiff's application. The Court of Appeal Rules 1978 is silent as to what principles courts should follow and what grounds qualify a respondent to be entitled to stay of writ pending appeal. The relevant rule S3 reads thus,

"An appeal shall not operate as a stay of execution or of proceedings under the decision appealed from unless the Supreme Court or the Court so orders

subject to such terms as it may impose  
..."

In the case of *Becker vs. Earl's Court Ltd.* (1911) 56 S. J. 206 it was decided that the question whether or not to grant a stay is entirely in the discretion of the court.

It has been accepted by the courts in the United Kingdom that the court will not grant a stay unless satisfied that there are good reasons for doing so.

In the cases of *The Anot Lyle* (1886) 11 p. 114 p. 116 CA & *monk v Bartran* (1891) IQ.B. 366, (see the Supreme Court Practice 1995 volume 1 paragraph 59/13/1) the decisions were to the effect that "The Court does not make a practice of depriving a successful litigant of the fruits of his litigation and locking up funds to which prima facie he is entitled, pending appeal".

In the Sri Lankan case of *Sokkhalal Ram Sait v Kumaravel Nadar and Others* 13 C L W 52 Keuneman J. stated thus;

"It has been stated in England that "the usual course is to stay proceedings pending an appeal only when the proceedings would cause irreparable injury to the appellant: mere inconvenience and annoyance is not enough to induce the Court to take away from the successful party the benefit of its decree - *Walford V Walford* LR 1867-83-Ch.App. Cas 812. Even if we had to regard the damages as being irreparable in the sense that the defendants could not recover the damages yet I think, that under our law, it must be shown that the damage would also be substantial and I do not think that has been established in this case".

Both in England as well as in Sri Lanka Courts have held with approval the following circumstances in granting a stay of execution of judgment pending appeal.

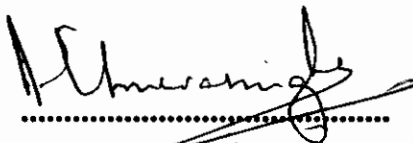
- (a) "The appellant would suffer loss which could not be compensated in damages"
- (b) "where special circumstances of the case so require"

- (c) "there is proof of substantial loss that may otherwise result".
- (d) "there was a substantial question of law to be adjudicated upon at the hearing of the appeal"
- (e) "is likely to grant a stay where the appeal would otherwise be rendered nugatory"

The ground adduced by the appellant in his affidavit, that to the best of his information and belief that he has a good chance of success in his appeal has to be considered inadequate as held in the case of *Atkins v Great Western Railway Co.* (1886) 2 T.2. R400 under similar circumstances.

Mr. Boule, learned counsel for appellant urged court to take into account the grounds of appeal in the Memorandum of Appeal. I hold that it is incumbent on the appellant to disclose in his affidavit the grounds on which he relies upon to support his application for stay of execution. The said requirement finds emphasis in the case of *Atkins v. G.W. Ry* (1886) 2 T.LR 400 where court held thus, "As a general rule the only ground for a stay of execution is an affidavit showing that if the damages and costs were paid there is no reasonable possibility of getting them back if the appeal succeeds." Hence, in view of the Court of Appeal rules the appellant has failed to make out a case to establish that there are acceptable grounds for the Supreme Court to justify making an order to stay execution of the judgment pending appeal.

Therefore appellants motion is denied.



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**C.A. AMERASINGHE**

**JUDGE**

Dated this 11th day of October 1996