IN THE SEYCHELLES COURT OF APPEAL

SEYCHELLES HOUSING DEVELOPMENT CORPORATION APPELLANT

versus

MARIE CLAIRE VADIVELLO RESPONDENT

Civil Appeal No: 13 of 1999

[Before: Ayoola, P., Pillay & Matadeen, JJ.A]

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Mr. J. Renaud for the Appellant
Mr. A. G. Derjacques for the Respondent

JUDGMENT OF THE COURT

(Delivered by Ayoola, P.)

The main question that has arisen in this appeal is whether the Supreme Court acting pursuant to Order 47 Rule 1 of the Rules of the Supreme Court (England) ("RSC"), has jurisdiction to vary an order of conditional stay of execution pending the determination of an appeal, which it has made.

On 3rd March 1999, Perera, J., granted to the Seychelles Housing Development Corporation ("The appellant") against the respondent a decree of possession of a property comprising Parcel H2259 at Anse Etoile. The respondent appealed from that decision and in the meantime applied for a stay of execution of the decree. On 19th May 1999, Perera, J., granted a conditional stay of execution in terms that the respondent should pay half of the amount due to the appellant in respect of the property, that is SR.35,000 on or before 19th June 1999. It was ordered that if she failed to

deposit the money at the Registry of the Supreme Court as ordered, a writ of possession should issue forthwith thereafter.

On 30th June 1999 the respondent made an application for an order to "vary and amend the ruling of the Honourable Court delivered by the Honourable Judge Perera on 19th May 1999." On the matter coming up this time before Juddoo, J., Mr. Renaud, learned counsel for the appellant, raised the point that the Supreme Court was functus officio and could not vary its decision. Mr. Derjacques, learned counsel for the respondent, argued to the contrary. Counsel addressed the Court on the merits of the application as well.

In his ruling, Juddoo, J. held that he was permitted by Section 17 of the Courts Act (Cap.50) to have recourse to the procedure, rules and practice of the High Court of Justice in England in the absence of provision to meet the situation in the local rules. In the event, he considered the application as one brought, pursuant to Order 47, Rule 1 of the RSC. That rule provides that :

> "Where a judgment is given or an order made for payment by any person of money and the Court is satisfied on an application made at the time of the judgment or order, or at any time thereafter, by the judgment debtor or any party liable to execution –
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> (a) that there are special circumstances which render it inexpedient to enforce the judgment or order, or
> (b) that the applicant is unable from any cause to pay the money ...

> then ... the Court may by order stay the execution of the judgment or order by writ of fieri facias either absolutely or for such period and subject to such conditions as the Court thinks fit."

Having founded his jurisdiction on that rule, the learned judge proceeded to consider the merits of the application which he granted on grounds which may be seen as overruling the decision of Perera, J. Relying on the Mauritian case of Boulanger v Marlin (1889) MR 13 he held that "the Court cannot by way of provisional execution of the said judgment direct that the defendant shall deposit in Court the sum for which they are found liable to deposit." He also said:-

> "The pegging of the condition for stay of execution to half of the sum due in the main action might lead to the wrong impression that it amounted to a partial and qualified execution of the liability of the applicant under the main case. Moreover the applicant has satisfied the court that she is not in the ability to comply with the order."

For these reasons, he varied the conditional stay granted by Perera, J., to the extent only that the respondent shall pay the taxed costs of the trial to the appellant within seven days of its taxation subject to the appellant refunding them if the appeal is successful.

The two grounds raised by the appellant on its appeal from that decision are that the Supreme Court has no power or jurisdiction to amend or vary the order made by that court on 19th May 1999 and that reliance on Order 47 Rule 1 of the Supreme Court Rules (England) was erroneous.

The Supreme Court has power to correct clerical errors in judgments by virtue of Section 147 of the Seychelles Code of Civil Procedure. By virtue of Section 150 of that Code, it may, after hearing both parties "alter, vary or suspend its judgment or order" but such must be done "during the sitting at which such judgment or order has been given". It is evident that these two provisions do not apply. What was sought was neither a correction of clerical error, nor an alteration or variation of the order sought during the sitting at which such judgment or order has been given. Where a party against whom an interlocutory order has been made is of the opinion that the order is erroneous, his remedy lies in an appeal. The Supreme Court has no jurisdiction to review its order on the ground that it had erred in making it. Juddoo, J., lacked jurisdiction to vary the order made by Perera, J on grounds which amounted to a review of Perera, J's ruling.

Recourse to Order 47 Rule 1 of the Rules of the Supreme Court (England) is inappropriate in this case. That rule is applicable only to a judgment or order for payment of money. The judgment to which Perera J's order related was not one for payment of money but of possession of property. The condition which Perera, J. attached to the order of stay of execution was not one which could be executed "by writ of fieri facias." Failure to comply with the condition would only lead to a loss of the benefit of the order for a stay of execution.

It is pertinent to observe that this Court by virtue of Rule 53 of the Seychelles Court of Appeal Rules ("the Rules") has concurrent jurisdiction with the Supreme Court to order a stay of execution. An application for the order is made to the Supreme Court in the first instance in compliance with the provisions of Rule 20 of the Rules. Where the Supreme Court refuses such application or imposes a condition which an appellant considers onerous or unreasonable, he is at liberty, by virtue of Rule 53, to make a second application within a reasonable time to this Court. Such

second application is not an appeal. Rule 53 of the Rules is substantially similar to Order 59 Rule 13(1) of the RSC. Notes on that rule contained in paragraph 59/13/4 of the Supreme Court Practice, 1995 read thus:-

> "The application must be made in the first instance to the court below but if it is refused, the application to the Court of Appeal is not an appeal; the jurisdiction is concurrent."

A party who sought an absolute stay of execution but was granted a conditional stay, may either accept the conditional stay or regard it as a refusal. If he treats it as a refusal, he is at liberty to make a second application to this Court.

For the reasons which have been stated, we allow the appeal and set the ruling of Juddoo, J. We make an striking out the respondent's motion for variation of Perera, J's. order.

E. O AYOOLA	**A. G. PILLAY**	**K. P. MATADEEN**
PRESIDENT	**JUSTICE OF APPEAL**	**JUSTICE OF APPEAL**

Dated at Victoria, Mahe this 13th day of April 2000.