

1965 Present : Sri Skanda Rajah, J., and Alles, J.

VAGISWARACHARYA MORONTUDUWE SRI GNANESWARA
DHAMMANANDA NAYAKA THERO, Petitioner, and KALU-
KONDAYAWE PANNASEKERA NAYAKA THERO, Respondent

*S. C. 245/64—Application for Stay of Execution of Decree in
D. C. Colombo, 2882/L*

Privy Council—Execution of decree of Privy Council—Order made by Supreme Court directing District Court to enforce the decree—Separate application to District Court for execution unnecessary—Appeals (Privy Council) Ordinance, Schedule, Rule 31—Civil Procedure Code, ss. 224, 323.

Where, in an application made under Rule 31 of the Appeals (Privy Council) Ordinance for execution of a decree of the Privy Council for delivery of immovable property, the Supreme Court transmits the Order of the Privy Council to the District Court requiring it to enforce and execute the Order, a separate application for execution of the decree need not be made to the District Court in terms of section 323 of the Civil Procedure Code before the District Court directs a writ of execution to issue.

APPPLICATION for stay of execution of a decree in the District Court, Colombo.

C. Thiagalingam, Q.C., with C. G. Weeramantry, Walter Wimalachandra and R. L. de Silva, for 1st Defendant-Petitioner.

E. B. Wikramanayake, Q.C., with D. R. P. Goonetilleke, for substituted Plaintiff-Respondent.

February 11, 1965. SRI SKANDA RAJAH, J.—

Mr. Wikramanayake Q.C., counsel for the substituted-plaintiff-respondent, has taken the preliminary objection that this Court has no jurisdiction to entertain this application.

The facts briefly are these : The deceased plaintiff filed this action in the District Court of Colombo in July, 1942, making the present petitioner the first defendant. Decree was entered against the first defendant and an order was made to eject him. The first defendant appealed to this Court. This court affirmed the judgment of the District Court and ordered the defendant to be ejected from the premises : Vide 59 N. L. R. page 12. Then the first defendant appealed to the Privy Council. Pending appeal, the original plaintiff died and substitution was effected under Rule 27 of the Appeals (Privy Council) Ordinance.— (Vide 63 N. L. R. page 278). The appeal was thereafter heard and the

concurrent findings of the District Court and this Court were affirmed by the Privy Council and the first defendant was ordered to be ejected. (Vide (1963) 65 N. L. R. 196). Thereafter, an application for execution was made to this Court on the 18th of March, 1964, (i.e. nearly twenty-two years after action) under Rule 31 of the Appeals (Privy Council) Ordinance.

Rule 31 enacts :

“ 31. Any Order which Her Majesty in Council may think fit to make on an appeal from a judgment of the court may be enforced and executed in manner hereinafter appearing :—

- (a) whoever desires to enforce or to obtain execution of any Order of Her Majesty in Council shall *apply by petition, accompanied by a certified copy of the decree or Order made in appeal and sought to be enforced or executed, to the court ;*
- (b) such court shall, when the court which made the first decree appealed from is the Supreme Court, enforce and execute such order in the manner and according to the rules applicable to the enforcement and execution of its original decrees ; but when the court which made the first decree appealed from is a court other than the Supreme Court, *shall transmit the Order of Her Majesty to the court which made such decree, or to such other court as Her Majesty by Her said Order may direct, and shall (upon the application of either party) give such directions as may be required for the enforcement or execution of the same ; and the court to which the said Order is so transmitted shall enforce and execute it accordingly in the manner and according to the rules applicable to the enforcement and execution of its original decrees.*”

When the application of the 18th March, 1964, was made to this Court, this Court transmitted the Order of Her Majesty in Council to the District Court of Colombo requiring it to enforce and execute the Order.

Mr. Wikramanayake submits that the District Judge was not called upon to exercise any discretion. He was only called upon to carry out the order of this Court. Therefore, an application to revise his order to issue a writ will not lie. This submission is, in our view, sound.

Mr. Thiagalingam submits that : an application has not been made to the District Court in terms of Section 323 of the Civil Procedure Code. No application has been made in the District Court under Section 224 with the necessary modifications. Therefore, there being no application for execution to the District Judge the latter could not lawfully issue writ.

The District Judge held that no application need be made to him. We are of the view that the application made to this Court as required by Rule 31(a) is sufficient. A separate application need not be made to the District Court.

The words “. . . in the manner and according to the rules applicable to the enforcement and execution of its original decrees” in Rule 31 (b) quoted above do not require an application to be made in the District Court itself as provided by Section 323 of the Civil Procedure Code.

Therefore, we uphold the preliminary objection and refuse this application for stay of execution with costs. The writ should be executed expeditiously. It is already very nearly twenty-three years after the institution of this action.

ALLES, J.—I agree.

Application refused.

