

**MRS. RONALD DE LIVERA**  
**V.**  
**TALAGUNA**

COURT OF APPEAL.  
PALAKIDNAR, J. & AMEER ISMAIL, J.  
C. A. L.A. 11/91.  
C. A. NO. 224/90.  
D. C. COLOMBO 4925/ZL.  
SEPTEMBER 16, 1991.

*Appeal - Leave to appeal - Execution proceedings - Whether order in execution proceedings is interlocutory or final.*

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An order to stay execution proceedings made by the Court of Appeal is an interlocutory order. The Court of Appeal does not have jurisdiction to grant leave to appeal to the Supreme Court on an interlocutory matter.

**Cases referred to:**

1. *Chitty v. Parameswary* C.A.L.A. 40/79, Minutes of the Court of Appeal of 25.02.1983.
2. *Rasheed Ali v. Khan Ali* [1981] 1 Sri L.R. 262.

APPEAL for leave to appeal to the Supreme Court.

*H.L. de Silva* P.C. with *Lucian Perera* for respondent - petitioner.

*S. Mahenthiran* for petitioner - respondent.

*Cur.adv.vult.*

OCTOBER 01, 1991.

**PALAKIDNAR, J.**

The Petitioner in this application is seeking leave to appeal to the Supreme Court from an order delivered on 18.3.91 staying the operation of the Writ of Execution issued by the District Court of Colombo. The Petitioner had in addition filed an application to revise the order of this Court (C.A. 224/90).

Learned President's Counsel for Petitioner rested his argument on the basis that the order of this Court was a final order in terms of Article 128(1) of the Constitution in so far as the application of the Respondent has been allowed by this Court.

In this case the proceedings that came up before this Court relate to execution proceedings. The order of this Court was that execution proceedings should be stayed till the final determination of the appeal. The scope of the order of this Court was defined by the judgment of the Supreme Court and the

order of this Court was made in compliance with the direction given therein. The directions related to the grant of security and such ancillary matters in the event of this Court staying writ or allowing it.

The time frame allowed to this Court made it imperative that an interim order had to be made to resolve the question of the writ of execution within it. The matter adjudicated upon did not in any way include the main matter of the right of the parties in regard to the ownership and tenancy of the property in dispute.

It is quite clear that execution proceedings are incidental to the main matter and execution pending appeal is pointedly and indisputably so.

In *Chitty v. Parameswary* (1) it was held that a step in execution between parties involves an interlocutory order and not a final order.

In *Rasheed Ali v. Khan Ali* (2) Justice Sharvananda (as he then was) stated that the appellate jurisdiction of the Supreme Court can be invoked by a party to question an interlocutory order or judgment of the Court of Appeal only with the special leave of the Supreme Court.

The Court of Appeal has no jurisdiction to grant leave to appeal from an interlocutory order.

I hold that the matter adjudicated upon by this Court in the application referred to us by the Supreme Court was clearly in respect of an interlocutory matter relating to the issue of the writ of execution. I therefore dismiss this application on the basis that the Court of Appeal does not have the jurisdiction to grant leave to appeal to the Supreme Court on an interlocutory matter.

Ameer Ismail J. — I agree.

*Application refused.*