

(2002) 01 MAD CK 0057

In the Madras High Court

Case No : Civil Revision Petition No. 4030 of 2001

S. Elango

APPELLANT

Vs

Special Tahsildar, Adi Dravidar Welfare Dept., Camp at
Tirupattur, Vellore Dist.

RESPONDENT

Date of Decision : 31-01-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (2002) 01 MAD CK 0057

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : Krishnaveni, for the Appellant; No appearance, for the Respondent

Judgement

P.K. Misra, J.—The copy of the C.R.P. along with the impugned order was served on the learned Special Government Pleader who accepts notice on behalf of the sole respondent. On the consent of the counsel appearing, the matter is taken up for disposal at the stage of admission. It appears that the respondent has filed an appeal before this court against the award passed by the Subordinate Judge, Tirupattur enhancing the compensation. The present petitioner filed an application for realisation of awarded amount which has been deposited before the Sub Court. Such application has been rejected by the court merely on the ground that appeal against the award is pending in the High Court.

2.Learned counsel appearing for the petitioner submitted that since no stay order was passed by the Appellate Court, the Sub Court should not rejected the application merely on the ground of pendency of the appeal. Order 41 Rule 5 of CPC is as follows:

"An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree."

3. It is thus obvious that mere pendency of an appeal does not operate as stay of the decree or order. Therefore, the trial court should not have rejected the application merely on the ground of pendency of the appeal. The matter is therefore required to be re-determined by the Sub Court. It is however made clear that in case a stay order is passed by the Appellate Authority, obviously the Sub Court has to follow such order. Subject to such observation, this C.R.P. is disposed of as expeditiously as possible.