

(1981) 07 KAR CK 0027
In the Karnataka High Court
Case No : CRP 1796/81

Sangangowda

APPELLANT

Vs

Spl L.A.O., U.K. Project

RESPONDENT

Date of Decision : 10-07-1981

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 1

Citation : (1981) 2 KarLJ 334

Hon'ble Judges : M. P. Chandrakantaraj Urs, J

Judgement

1. This Civil Revision Petition is disposed of by the following order, after notice to the respondents.

2. The petitioner herein was executing in the Court of the Civil Judge, Bagalkot, the award made in L.A.C. No. 733/80 on its file. The execution was for recovery of Rs. 99,862-76 Ps. The respondent-State herein, which was the judgment-debtor, had deposited 1/3rd of the amount. The petitioner applied to withdraw the amount deposited in the Court. The said judgment debtor resisted the same by contending that the State intended to file an appeal against the award passed by the Civil Court, and therefore, the petitioner should be put on terms. Accepting the argument advanced by the State, the Court below has passed an order directing the furnishing of Bank guarantee for the amount to be withdrawn in the sum of Rs. 37,723-34 Ps. Aggrieved by the same the petitioner has moved this Court under S. 115 of the C.P. Code.

The learned Counsel contends that the Court below had no jurisdiction to impose any condition on him to offer security merely because the Government intended to file an appeal. There is merit in the contention. It is not open to the executing Court to, in any way, facilitate the judgment debtor to obtain stay from the appellate forum. It should not have concerned itself with that aspect of the case. It was open to the judgment-debtor-State to obtain, stay in the appeal filed by it or proposed to be tiled by it. In this view of the matter the condition imposed by the Court below is not justified and therefore, it is set aside. It is not disputed

that the amount deposited in the Court is only 1/3rd of the award amount in respect of the wet land acquired and 1/2 the amount in respect of dry lands. Withdrawal of such amounts is not likely to prejudice the case in the appeal as well, unless appropriate orders are passed in the appeal, which is now said to be pending.

In the result, the condition imposed by the Civil Judge as regards tike security to be furnished is set aside.

In other respects the order of the lower Court stands.