



CRP(MD).No.2295 of 2023

WEB COPY

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 12.09.2023**

**CORAM**

**THE HON'BLE MR.JUSTICE C.KUMARAPPAN**

**C.R.P(MD)No.2295 of 2023**

**and**

**C.M.P.(MD)No.11827 of 2023**

Elsi D.Raju

: Petitioner

Vs.

Biblyana Elsimony

: Respondent

**PRAYER:** Civil Revision Petition filed under Section 115 of the Civil Procedure Code, praying to set aside the impugned order and decreetal order passed in E.A.No.1 of 2023 in E.P.No.1 of 2022 in O.S.No.166 of 2019 dated 31.07.2023, on the file of the Sub Court, Padmanabhapuram, by allowing the Civil Revision Petition.

For Petitioner : Mr.G.Ramanathan

**ORDER**

This Civil Revision Petition has been filed against the fair and decreetal order, dated 31.07.2023 made in E.A.No.1 of 2023 in



*CRP(MD).No.2295 of 2023*

E.P.No.1 of 2022 in O.S.No.166 of 2019, on the file of the Subordinate Court, Padmanabhapuram.

2.Learned Counsel for the petitioner would submit that he moved an application for stay of the execution of the decree under Order 21 Rule 26 of CPC, till the disposal of A.S.No.40 of 2021. Learned Counsel for the petitioner would further submit that since 2021, the appeal is pending and he was not in a position to get this stay application being heard by the First Appellate Court. Therefore, he would submit that he moved an application for stay of the execution petition, till the disposal of the first appeal.

3.Learned Counsel for the petitioner would further submit that the order passed by the Court below is erroneous. However, while perusing the typed set of papers, it is apparent that already the petitioner has moved an appeal in A.S.No.40 of 2021.

4.It is pertinent to mention here that Order 41 Rule 5 of CPC states that mere filing of the appeal is not the stay of the execution of the decree. The appeal is continuation of the suit and when the decree is not stayed, the executing Court cannot be expected to stay the decree in view of the pendency of the appeal,



CRP(MD).No.2295 of 2023

which is nothing but contrary to the provisions made in Order 21 Rule 26 of CPC. Therefore, this Court does not find any merit in the present petition and the same is liable to be dismissed. However, learned counsel for the petitioner prayed for a direction to dispose of the stay application by the first appellate Court.

5.Considering the submissions made by the learned Counsel for the petitioner, the First Appellate Court namely, Additional District Court, Padmanabapuram, is directed to dispose of the stay application within a period of four [4] weeks and the First Appeal in A.S.No.40 of 2021, within a period of three [3] months, thereafter.

6.Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

**12.09.2023**

Index : Yes / No

Internet : Yes / No

MR



WEB COPY



*CRP(MD).No.2295 of 2023*

To

1.The Sub Court,  
Padmanabhapuram.

2.The Additional District Court,  
Padmanabhapuram.



WEB COPY



*CRP(MD).No.2295 of 2023*

**C.KUMARAPPAN, J.,**

MR

**C.R.P(MD)No.2295 of 2023**

**12.09.2023**