IN THE COURT OF THE SUBORDINATE JUDGE, KARUNAGAPPALLY

Present:- Sri.Santhosh Das, Civil Judge (Senior Division), Karunagappally.

Wednesday the 22nd day of October, 2025/ 30th day of Aswinam, 1947.

IA.01/2024 in AS.21/2024

Between

Petitioner/Appellant:- Sheref, aged 50 years,
S/o.Mytheenkunju,
Kattil House, Padanayarkulangara North,
Karunagappally

(By Adv.Shri.Sethukrishnan.S)

And

Counter Petitioner/
Respondent:- Anandan, aged 58 years,
S/o.Kochunarayanan,
Madhuram, Padanayarkulangara North,
Karunagappally

(By Adv.Shri.S.Jayaprakash).

This Petition coming on for hearing before me on 22.10.25 and on the same day the Court passed the following.

ORDER

1. This is an application purportedly filed under O. XLI R. 5 CPC for staying the execution proceedings in pursuance to the

judgment and decree in OS 177/2019 of Munsiff Court Karunagappally, which decree and judgment is in challenge in the instant appeal suit.

2. Learned Counsel for the appellant pointed out that the plaintiff is taking hasty steps to execute the decree, and the Counsel would submit that there is every possibility of reversing the judgment and decree. Learned Counsel cited the judgment of Hon’ble Apex Court in ‘**Lifestyle Equities CV & Anr. V. Amazon Technologies INC**’, reported in 2025 INSC 1190 and pointed out that the Apex Court had ruled that benefit of stay of execution of a money decree may be granted by the Appellate Court unconditionally, if the impugned judgment and decree is egregiously perverse, if the same is riddled with patent illegalities, if the same is facially untenable, and / or such other exceptional causes similar in nature. In this regard, learned Counsel contended that the impugned judgment and decree is egregiously perverse in as much as the promissory note which was claimed to have been witnessed is not having any witnesses. According to him, if the decree holder is permitted to proceed with the execution, applicant/appellant would be put to great hardships and the appeal will become infructuous. Therefore, it is prayed that the operation and execution of the decree is to be stayed till the disposal of the appeal without any conditions.

3. Advocate who represented for the decree holder, stoutly

submitted that the decree in challenge being a money decree can only be stayed on deposit of decree amount. Regarding the claim that the impugned judgment and decree is egregiously perverse, learned Counsel invited attention to the impugned judgment and pointed out that the trial Court had given cogent reasons for accepting the promissory note. It is added that the evidence of PW2 also shows that he had witnessed the execution of Ext.A1 promissory note. Therefore, according to the learned Counsel, '**Lifestyle Equities CV'** will not help the petitioner for getting a stay without conditions. It is further highlighted that the appeal suit is not properly valued.

4. In the light of the contentions, the following points are drawn up for consideration:-

    1. Whether the applicant has made out sufficient ground for staying the operation of the decree and judgment in OS 177/2019, without any conditions ?

    2. Order and costs ?

5. **Point No.1:-**

    1. At the outset, I will consider the objection regarding the valuation of the appeal suit. When this part of the objection was put to the notice of the learned Counsel for the

petitioner, it is clarified by him that the deficit Court fee is already remitted and memo to that effect is already filed. In the light of that development, it cannot be said that the appeal suit is defective.

2. Now, turning to the main question regarding stay of the operation of the impugned judgment and decree, going by O. 41 R. 5 (3) CPC, no order for stay of execution shall be made under sub rule (1) or sub rule (2) unless the Court making it satisfied that substantial loss may result to the party applying for stay of execution unless the order is made, and that the application has been made without unreasonable delay, and that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him. O 41 R 1(3) provides that where the appeal is against a decree for payment of money, the appellant shall, within such time as the Appellate Court may allow, deposit the amount disputed in the appeal or furnish such security in respect thereof as the Court may think fit.

3. Admittedly, the appeal is not hit by delay. Now, the impugned decree is a money decree, and going by the same plaintiff is allowed to recover an amount of ₹ 7,77,600/- from the defendant with interest @ 9% per annum on the principal amount of ₹ 6,00,000/- from the date of suit till date of decree and thereafter @ 6 % per annum from the date of decree till date of realization.

4. It was the claim of the petitioner / appellant that the impugned judgment and decree is egregiously perverse and therefore he is entitled for getting a stay without any conditions. In that regard, it is the contention of the Counsel that Ext. A1 promissory note though claimed as having a witness does not has the junction of any witnesses. However, a reading of the impugned judgment would show that the trial Court was satisfied with the execution of Ext. A1 from the evidence of PW1 and PW2, and it is understood that PW2 had deposed that he had witnessed the physical execution of Ext. A1. Therefore, as pointed out by the learned Counsel for respondent / decree holder, benefit of ‘**Lifestyle Equities CV’** will not be available for the petitioner.

5. Now, therefore, even if it is accepted that the appellant is having an arguable case, stay if any can only be on conditions. Admittedly, execution petition is already filed, and that is now posted to 11/11/2025 before the Trial Court. If the execution is not stayed, the very purpose of the appeal would be defeated and stay will be on conditions.

6. Therefore, this point is answered accordingly.

6. **Point No. 2:-**

1. For the discussions on point No. 1 above, the operation of the assailed judgment and decree can be stayed, but on satisfaction of O. 41 R 1(3) and O. 41 R. 5 (3) (c) CPC. Now, going by the appeal, the entire decree amount is disputed and therefore going by O. 41 R 1(3) appellant has to deposit the entire decree amount.

2. Therefore, to strike a balance, it is hereby ordered that pending consideration of this appeal suit, there will be an interim stay of further proceedings in execution of the decree and judgment in OS 177/2019 of Munsiff Court Karunagappally, on condition that the appellant / applicant deposits 25 % of the decree amount in cash and furnishes security by way of bond for the balance, within a period of 15 days from the date of this order, before the Execution Court.

3. For enabling the appellant / petitioner to comply the condition above, the execution steps if any, will be kept in abeyance by the Execution Court for a period of 15 days from this date.

4. It is clarified that if deposit is made as above, the same can be claimed by the decree holder, and execution Court can release the same to the decree holder on bond,

stipulating that the release will be subject to the final outcome of this appeal suit, and that if the decree is reversed, the released amount will be returned by the decree holder with interest at 6% per annum, from the date of release.

7. In fine, this application stands allowed on conditions as above.

8. Office of this Court will forward a copy of this order to the office of the learned Execution Court for their records, **forthwith.**

(Dictated to the CA, typed by her, corrected by me and pronounced in open Court on this the 22nd day of October, 2025.)

Sd/-
Santhosh Das,
(Civil Judge (Senior Division).

Appendix:- Nil.

Id/-
(Civil Judge (Senior Division).

//True Copy//

Typed by : Sunil Kumar.S,
Compared by: Sini.G

(Civil Judge (Senior Division).