

[WILSON, P., ZEKIA, VASSILIADES and JOSEPHIDES, JJ.]

COSTAS P. PAPADAKIS,

*Appellant (Respondent),*

GEORGE S. STAVRINAKIS IN HIS CAPACITY AS  
TRUSTEE OF THE ESTATE OF COSTAS  
CHRISTOFIDES.

*Respondent (Applicant).*

*(Civil Appeal No. 4365).*

1961  
Oct. 16  
COSTAS S.  
PAPADAKIS  
v.  
GEORGE S.  
STAVRINAKIS  
ETC.

*Bankruptcy—Proceeds of sale under writ of movables—Collected by the execution creditor—No order can be made under sections 45(2), 90 and 92 of the Bankruptcy Law, Cap. 5, that he should pay back to the trustee in bankruptcy of judgment debtor moneys so collected—Nor can such order be made under the inherent jurisdiction of the Court—Section 45(2) (supra) regulates only the duties of the Sheriff as to goods taken in execution and the proceeds of sale thereof, while in his hands.*

On August 22, 1961, the District Court, purporting to act under section 45(2), 90 and 92 of the Bankruptcy Law, Cap. 5, and the "inherent powers of the Court", made an order directing the appellant, an execution-creditor, to refund to the trustee in bankruptcy of the judgment-debtor, the respondent, the sum of £904,700 mils collected by the appellant about five months before the order (*viz.* on March 24, 1961) from the Registrar of the District Court of Nicosia, under a writ of movables executed more than fourteen days earlier by the Deputy-Sheriff of the District of Limassol; such payment having been made by the said Registrar, under directions from a Judge, given upon the application of the appellant. Against that order of the 22nd August 1961 (*supra*) the execution-creditor appealed. The High Court allowing the appeal:

*Held:* (1) The order appealed from could not be made under section 90 or 92 of the Bankruptcy Law, Cap.5, or under the inherent powers of the Court.

(2) Nor could it be made under section 45(2) of the same law. Section 45(2) merely regulates the duties of the Sheriff as to goods taken in execution and the proceeds from the sale thereof, while in his hands and the section cannot form the

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basis of an order, such as the one complained of, made against the appellant in the circumstances of that case.

*Per curiam* : The result of this appeal does not affect or prejudice any other rights which the trustee in bankruptcy or any other person may have in connection with this matter

*Appeal allowed and the order appealed from set aside with costs here and in the District Court payable out of the estate in bankruptcy.*

### Appeal

Appeal against the judgment of the District Court of Nicosia (A.S. Stavrinides, P.D.C. and Chr. Ioannides, D.J.) dated the 22.8.61 (Action No. 194/61) whereby the Appellant was ordered to pay to the trustee in bankruptcy of the debtor the sum of £904.700 mils paid out to him by the deputy-sheriff, Nicosia, on the 24th March, 1961, as being the net proceeds of a sale in execution of the judgment of the 9th February, 1961.

*St. Pavlides* for the appellant.

*G.S. Stavrinakis* for the respondent.

The judgment of the Court was delivered by VASSILIADES, J.

WILSON, P. : We are of the opinion that this case may be disposed of on the basis of the arguments which we have heard thus far without going into all the grounds of the appeal except the one which Mr. Justice Vassiliades will deal with when delivering the judgment of the Court.

VASSILIADES, J. : As stated by the President of the Court, we think that this appeal can be determined on the short, but decisive ground, on which we heard counsel on both sides. We are of the opinion that the District Court could not make under section 45(2) of the Bankruptcy Law (Cap.5) the order complained of.

The order was made on the application of the Official Receiver, based on "the inherent powers of the Court, and sections 45(2), 90 and 92 of the Bankruptcy Law, Cap. 5".

It is clear, at this stage, that the order sought, could not be made under sections 90 or 92 of the Bankruptcy Law ; or under what the applicant invoked as "inherent powers of the Court", in this matter. What, therefore, remains as the basis of the application is section 45(2) under which the District Court apparently purported to act, in determining the application.

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The order complained of, was made on the 22nd August, 1961, against the appellant, an execution-creditor, to pay to the trustee in bankruptcy of the judgment debtor, (the respondent herein) the sum of £904,700 mils collected by the appellant about five months before the order (on March, 24th, 1961) from the Registrar of the District Court of Nicosia, under a writ of movables executed more than fourteen days earlier by the Deputy-Sheriff of the District of Limassol; such payment having been made by the said Registrar, under directions from a Judge, given upon the application of the appellant (Vide pages 8, 9 and 12 of the record).

Reading section 45 of the Bankruptcy Law in its context, we are unanimously of the opinion that regulating as it does, the duties of the Sheriff as to goods taken in execution and the proceeds from the sale thereof, while in his hands, the section cannot form the basis of an order, such as the one complained of, made against the appellant in the circumstances of this case.

The appeal must, therefore, be allowed ; and the Order appealed from, be set aside with costs here and in the District Court, payable out of the estate in bankruptcy.

What may, perhaps, be added to remove all doubt, is that the result of this appeal does not affect or prejudice any other rights which the trustee in bankruptcy, or any other person, may have in connection with this matter.

*Appeal allowed.*