

1975
Sept 30

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IN RE
SHINORIK
DJEREDJIAN

[HADJIANASTASSIOU, A. LOIZOU, MALACHTOS, JJ.]
IN THE MATTER OF SHINORIK DJEREDJIAN,

Appellant-Applicant.

(Civil Appeal No. 5479).

Bankrupt—Discharge of Bankrupt on condition that any property acquired by her during the next five years will vest in the trustee—Sections 26 and 27 of the Bankruptcy Law, Cap. 5—Discretion of trial Court under section 26 of the Law—Principles on which it may be 5 overruled by Court of Appeal—Said condition not so excessive and severe as to justify Court of Appeal in interfering with the discretion of the Court below.

Upon an application made to the Court under s. 27 of the Bankruptcy Law, Cap. 5, it was ordered that the 10 Bankrupt be discharged on condition that any property acquired by her during the next five years or in any way coming to her will vest in the trustee.

It was argued by counsel for the bankrupt that the trial Court erred in imposing those conditions, particularly so because the applicant was a refugee; and 15 that it failed to exercise its discretion properly, because the said conditions ought to have been less severe. And he referred to the case in *Re Smith* [1947] 1 All E.R. 769. 20

Held, 1. The exercise by the trial Court of its discretion under s. 26 of the Bankruptcy Law, Cap. 5 will not be readily overruled, unless it is exercised upon a wrong view of the facts.

2. No rule as to length of period, for the purpose 25 of judging its severity, can be laid down so as to be applicable to every class of case.

3. One has to look at the whole circumstances of the bankruptcy and to see whether the date to which the discharge of the bankrupt is ultimately remitted is 30 excessively remote. There, again, it is a question of discretion, subject to this, that the Court will always interfere where it comes to the conclusion that the dis-

cretion has been unconscionably exercised in the matter of the length of the suspension.

5 4. In the circumstances of this case, the decision of the Court below does not violate any principle, and there was no misdirection in law in imposing the said condition. Such condition does not appear to us to be so excessive and severe as to justify this Court in interfering with their discretion.

Appeal dismissed.

10 Cases referred to :

Re Smith [1947] 1 All E.R. 769.

Appeal.

15 Appeal by applicant against the order of the District Court of Larnaca (Pikis, Ag. P.D.C. and Artemis, D.J.) dated the 23rd July, 1975 (Bankruptcy Pet. No. 1/65) whereby the applicant-bankrupt was discharged on the condition that any property acquired by her during the next five years or in any way coming to her will vest in the trustee.

20 *L. Papaphilippou*, for the appellant-applicant.

Th. Constantinides, for the Official Receiver,
present.

The facts sufficiently appear in the judgment of the Court delivered by :

25 HADJIANASTASSIOU, J. : This is an appeal by the bankrupt from the order of the Full District Court of Larnaca dated July 23, 1975, whereby it ordered that the bankrupt be discharged on the condition that any property acquired during the next five years or in any way coming to her will vest in the trustee. The application was made under s. 27 of the Bankruptcy Law, 30 Cap. 5 under which the Court has power, after taking into consideration a report of the Official Receiver as to the bankrupt's conduct and affairs, (including a report 35 as to his conduct during the proceedings under his bankruptcy) to grant or refuse an absolute order of discharge or suspend the operation of the order for a specified time or grant an order of discharge subject to any conditions with respect to any earnings or income which

may afterwards become due to the bankrupt or with respect to his after acquired property.

It appears that the adjudication took place as long ago as February 4, 1966. The Official Receiver applied for her discharge on November 30, 1968, apparently under s. 28 of the law, but the application was refused. On April 30, 1975, the bankrupt applied for an order of discharge of her adjudication as bankrupt, and the application was supported by affidavit sworn by her, putting forward that she is now a refugee at Nicosia and that at the time of her adjudication and/or on the issue of a receiving order against her she possessed no movable or immovable property and that she does not have any property now. Furthermore, the affiant stated that no amount was paid by her estate to the creditors and that no misdemeanour or any other offence was committed by her. Finally, she said that the continuation of her adjudication will serve no purpose.

On July 23, 1975, counsel on behalf of the bankrupt put those facts before the Full District Court of Larnaca and stated that the bankrupt, although a partner in the partnership, she was used as a means of convenience, in the commercial transactions of the said partnership. He then invited the Court, using its discretionary powers, to suspend the discharge of the bankrupt conditionally.

Counsel on behalf of the Chartered Bank, the biggest creditor, objected to the said discharge on the ground that the debts due by the bankrupt exceeded the amount of £600,000 and were still unpaid. On the other hand, the Official Receiver stressed to the Court that according to his report no dividend has been paid and that there was no possibility of any dividend being paid out of the personal estate of the bankrupt; and that there might be a payment of a smaller dividend out of the partnership estate. He further informed the Court that in view of the fact that the debts are of such an extensive amount, no bankruptcy purpose would be served by ordering the percentage to be paid before the discharge.

The Court, having considered the relevant facts and the contents of the report of the Official Receiver, and applying rightly its mind to the purpose of the law, that the provisions of the Bankruptcy Law were designed

to secure a maximum possible payment for the benefit of the creditors and that the law was designed to remove the impediment of bankruptcy if no useful purpose was served, and that the interest of creditors were not likely
5 to be prejudicially affected, decided to make an order for the discharge of the bankrupt on condition that any property acquired during the coming five years or in any way coming to the applicant will vest in the trustee.

Counsel for the bankrupt urged that the trial Court
10 erred in imposing those conditions, particularly so because the applicant was a refugee; and that the Court failed to exercise its discretion properly because the conditions attached to the discharge of the bankrupt ought to have been less severe. He referred to the case in *Re*
15 *Smith* [1947] 1 All E.R. 769.

We have considered the argument of counsel, and we have had occasion to go through the case cited, and it is clear in our view that the exercise by the trial Court of its discretion under s. 26 of our law will not be readily
20 overruled, unless it is exercised upon a wrong view of the facts. We, therefore, find ourselves in agreement with what has fallen from the lips of Lord Greene M.R. in the Court of Appeal, in *Re Smith* that no rule as to length of period, for the purpose of judging its severity,
25 can be laid down so as to be applicable to every class of case. One has to look at the whole circumstances of the bankruptcy and to see whether the date to which the discharge of the bankrupt is ultimately remitted is excessively remote. There again, it is a question of discretion, subject to this, that the Court will always inter-
30 fere where it comes to the conclusion that the discretion has been unconscionably exercised in the matter of the length of the suspension.

Having considered the order, we have come to the
35 conclusion that in the circumstances of this case, the decision of the Court does not violate any principle, and we find that there was no misdirection in law in imposing a discharge on the condition that any property acquired during the next five years would vest in the

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trustee. This condition which the Court ordered does not appear to us to be so excessive and severe as to justify this Court in interfering with their discretion. The appeal, therefore, is dismissed.

Appeal dismissed. 5