

1989 April 12

(KOURRIS J)

IN THE MATTER OF ARTICLE 155 4 OF THE CONSTITUTION  
AND SECTION 9 (OF THE COURTS OF JUSTICE  
(MISCELLANEOUS PROVISIONS) LAW, 1964,

AND

IN THE MATTER OF AN APPLICATION BY THEOCHARIS  
CHARALAMBIDES FOR AND ORDER OF CERTIORARI

(Application No 5/89)

*Civil Procedure — Execution of Judgments for payment of money —  
Order that judgment debt be paid by instalments — Committing  
debtor to prison for failure to pay an instalment — Prerequisites —  
The Civil Procedure Law, Cap 6, section 82 — The Court must be  
5 satisfied that the debtor had sufficient money to pay the instalment  
and refused or neglected to do so — Committing debtor to prison  
without holding an inquiry in respect of such matters — Quashed by  
certiorari for excess or abuse of Jurisdiction*

10 The facts of this case sufficiently appear in the hereinabove  
headnote

*Order of Certiorari issued*

**.Application.**

15 Application for an order of certiorari to remove into the  
Supreme Court and quash the decision of the District Court of  
Nicosia committing the debtor to prison on the application of the  
creditor under Part VIII of the Civil Procedure Law, Cap 6 in  
action No 184/83.

*A Eftychiou, for the applicant*

*M Tsangandes for T Papadopoulos, for the respondents*

20 *Cur adv vult*

KOURRIS J read the following judgment This is an application  
or an Order of Certiorari to remove into this Court and quash the  
decision of the District Court of Nicosia committing the debtor to

prison on an application of the creditor under part VIII of the Civil Procedure Law, Cap. 6 in case No. 184/83. On 28.12.1988, leave was granted to applicant to move this Court for an Order of Certiorari and, in pursuance of such leave, applicant filed the present application. 5

The facts of the case, as they appear from the affidavit filed in support of the application for leave to apply for an Order of Certiorari, are as follows:

On 13.6.1983, Popular Bank Ltd. obtained Judgment in case No. 184/83 against Galatia Anastassiadou as principal debtor and against the applicant as guarantor for the sum of £550 plus interest at 9% from 3.5.1982 and £104.25 costs. 10

The judgment debtors failed to pay the judgment debt and on 26.2.1985 the Judgment creditor filed an application for monthly instalments whereupon the District Court of Nicosia on 26.2.1985, ordered them to pay the Judgment debt and costs by monthly instalments of £35 each, commencing on 1.4.1985 until final payment plus £40.15 cents costs. 15

On 14.2.1987, the judgment creditor filed an application under s.82 of the Civil Procedure Law, Cap. 6, praying for an Order of imprisonment of the judgment debtors on the ground that they failed to pay the monthly instalments. On 23.3.1987 applicant filed a notice opposing the said application and in support he swore an affidavit dated 23.3.1987 and a supplementary affidavit sworn on 29.4.1987. 20 25

According to the affidavit in support of the application, the learned trial Judge instead of hearing the application and examining the Judgment debtor in accordance with s.82 of the Civil Procedure Law, Cap. 6, proceeded to issue an Order for committing to prison the applicant. (See exhibit 1 to the application and exhibit 3 of the opposition). 30

The grounds on which the present application are based are: (a) the Order committing to prison the applicant was wrong in law and there is an error of law apparent on the face of the record; and (b) that the trial Judge acted in excess or abuse of jurisdiction to issue the said committing order. 35

Respondents opposed the application and in the affidavit filed in support, they say in effect that the committing order was lawfully

issued by the trial Judge in that there has been in substance compliance with s.82 of Cap. 6.

5 Counsel for the respondents also argued that there was ample evidence before the Judge to issue the Order committing the applicant to prison.

10 I do not agree with counsel for the respondents that there has been compliance with s. 82 of the Civil Procedure Law, Cap. 6. Section 82 provides, inter alia, that the Court, before committing a debtor to prison for any term, must be satisfied that «the debtor then, has or since the making of the Judgment or Order, has sufficient money to pay the money directed to be paid by him, or some part thereof which still remains unpaid, and that he refuses or neglects to pay it according to the Judgment or Order».

15 In the present case, the trial Judge proceeded to issue the Order committing to prison the debtor without holding an inquiry to satisfy himself that the Judgment debtor has sufficient means to pay the monthly instalments, and that he refused or neglected to pay same. He relied on some statements made by counsel and  
20 statements by the applicant on the date when the application to commit the applicant to prison was fixed for hearing.

For this purpose, I have also perused not only the exhibits filed in support of the application, but also the file of No. 184/83 and I  
25 have been satisfied that the Court failed to comply with the provisions of s.82 of Cap. 6.

For these reasons, I think the trial Court acted in excess or abuse of jurisdiction to issue the said committing order.

For all these reasons, I direct that the proceedings reviewed be quashed. Order of Certiorari to issue. No order for costs.

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*Application granted.  
No order as to costs.*