

1959  
April 10, 17

PANAYIOTIS  
VASSILIADES  
v.  
STELIOS  
MOUSKOURIS  
AND NOTHER

[ZEKIA, J. and ZANNETIDES, J.]

PANAYIOTIS VASSILIADES.

*Appellant* (Defendant),

v.

STELIOS MOUSKOURIS AND ANOTHER.

*Respondent* (Plaintiff).

(*Civil Appeal No. 4274*).

*Practice—Costs—Security for costs—Order against defendant entering appearance after time limited by writ—Civil Procedure Rules, Order 16, r. 7.*

*Held*: There is no power in a District Court to order a defendant entering appearance after the time limited by the writ for appearance to give security for costs.

*Naamlooze Vennootschap Beleggings Compagnie "Uranus" v. Bank of England and others* (1948) 1 All E.R. 465, followed.

*Appeal allowed.*—

Case referred to :

(1) *Naamlooze Vennootschap Beleggings Compagnie "Uranus" v. Bank of England and others* (1948) 1 All E.R. 465.

#### **Interlocutory Appeal.**

This was an appeal by one of two defendants from an order, dated January 3, 1959, made by the full District Court of Nicosia (Dervish P.D.C., and Feridun, D.J. in action No. 4080/56) under which he was ordered to give security for costs. The facts appear in the judgment.

*G. Constantinides* for the appellant.

*Glafcos Clerides* for the respondent.

*Chr. Mitsides* for the other defendant.

*Cur. adv. vult.*

The judgment of the Court was delivered by:—

ZEKIA, J.: The appellant is a defendant in this action, which was filed in the year 1956, and the trial between a co-defendant and plaintiff was nearly completed when he, the appellant, decided to enter an appearance in the beginning of this year (1959). Under Order 16, Rule 7, a defendant may appear at any time before judgment that is, even after the time limited by the writ for appearance, subject to his being ordered to pay any costs properly incurred by the plaintiff due to his failure to appear within the time limited by the writ. There appears to be no discretionary power on the Court to impose conditions on a defendant who deliberately

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has gone to sleep over his right to defend himself for a considerable time, causing further delay in the proceedings between a co-defendant and plaintiff, even if such defendant appears to be an insolvent one and unlikely to meet the costs thrown away. The learned President of the District Court dealt with the application of the appellant-defendant to enter an appearance in the following terms:

“We have no alternative but to accept the memorandum of appearance by the defendant 1 so late in the day. We, however, think, and this is obvious, that the defendant 1 is grossly at fault in delaying so long to defend this action and we consider that it is only just and fair that he should deposit in Court within 15 days from to-day the sum of £100. as security for costs thrown and to be thrown away for which he is liable. What these costs actually are will be decided at a later stage.

Plaintiff to deliver a statement of claim to defendant 1 within 20 days from to-day and defendant 1 to file his statement of defence within 15 days of delivery of the statement of claim.

Plaintiff to apply for hearing within 40 days from to-day.

Defendant 1 will not be allowed to take any further steps in the action unless he deposits the sum of £100. within 15 days from to-day”.

In other words the Court thought it fair to order the deposit of £100 as security for costs and also to stay the proceedings as far as the appellant is concerned until such deposit was effected. However, there appears to be no provision authorising a Court to order an insolvent defendant who is considerably late in entering a memorandum of appearance to provide security for costs or to stay proceedings as far as he is concerned until he pays the money ordered for costs thrown away, save making an order to pay costs properly incurred by the plaintiff due to defendant's failure to appear in time. Instances are given exhaustively in the Annual Practice of cases where security for costs might be required. No instance of an insolvent dilatory defendant is quoted. On the contrary the following appears in the notes to Order 65, Rule 6, of the Rules of the Supreme Court under the heading “Defendant” : “There is no rule or principle that a defendant who has not counter-claimed should be ordered to give security for costs”. In the case referred to in the Annual Practice 1959 (1) the guiding principle appears to be that “The person who is exercising the right of any defendant to defend

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(1) *Naamlooze Vennootschap Beleggings Compagnie “Uranus” v. Bank of England and others (1948) 1 All E.R. 465.*

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himself against attack ought to be allowed to do so and not prevented or hampered by being ordered to give security”.

We have considered also the Court's inherent jurisdiction to stay proceedings or to strike out proceedings where an abuse of process is involved. We have not been able to trace an authority which might be helpful to the respondent-plaintiff in the circumstances of this case. We find, therefore, that the order to lodge money as security for the costs thrown away and disallowing the appellant-defendant to take further steps in the case until the making of such a deposit cannot stand. The order of the trial Court should be altered to read as follows:—

Defendant is ordered to pay the costs thrown away due to his delay to enter his appearance. Plaintiff to deliver statement of claim to defendant 1 within 20 days from to-day and defendant 1 to file his statement of defence within 15 days of the delivery of the statement of claim.

Plaintiff to apply for hearing within 10 days from the close of the pleadings.

*Appeal allowed.*