

1962
April 25
THE NATIONAL
BANK OF GREECE
S.A.
v.
PARASKEVAS
MITSIDES
AND ANOTHER

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

THE NATIONAL BANK OF GREECE, S.A.,

Appellants (Plaintiffs),

PARASKEVAS MITSIDES, DEBTOR,
AND ANOTHER

Respondents (Defendants).

(Civil Appeal No. 4353).

Practice—Discovery of documents—Meaning of phrase “documents relating to any matter in question therein” appearing under O.28, r. 1 of the Civil Procedure Rules—Object of discovery of documents—Proper discovery essential before a party proceeds to trial.

The respondents (defendants), applied on 16, March 1961, to the District Court of Nicosia for an order of discovery under O.28 r.1 asking for (a) the regulations of the plaintiff Bank regulating the duties of employees towards its customers and people pledging goods with the Bank as security for money advanced and (b) to inspect the documents set out in the affidavit. The order granted the relief sought in (a) but not in (b).

The High Court accepted the reasons given by the President of the District Court, and dismissed the appeal.

Held : (1) Before a party proceeds to trial he should have proper discovery.

(2) The meaning of the words “documents..... relating to any matter in question therein”, appearing in Order 28, r.1 of the Civil Procedure Rules is correctly set forth in the Annual Practice, 1962, p.719 (*infra*).

(3) The reasons given in the judgment of the President of the District Court are correct and the President drew the proper inference from the material before him.

Appeal dismissed.

Appeal.

Appeal against the order for discovery and inspection of the District Court of Nicosia (Stavrinides P.D.C.) dated

the 3rd October, 1961 (Action No. 2701/60) under 0.28 r.1 of the Civil Procedure Rules in an action for £3,791.240 mils by virtue of a contract of credit dated 17th December, 1953.

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G. Tornaritis for the appellant.

Chr. P. Mitsides for the respondent.

The judgment of the Court was read by :

WILSON, P. : This is an appeal by the plaintiffs from an order made on October 3, 1961, by the President of the District Court of Nicosia, upon an application by the defendants filed March 16, 1961. The order granted the defendants the relief asked in (a) *infra* and refused that sought under (b). They asked for an order requiring the plaintiffs, within seven days from that date, to make discovery on oath of the documents which are or have been in their possession or power relating to the matters in question in the action and particularly, (a) the regulations of the plaintiff Bank regulating the duties of employees towards its customers and people pledging goods with the Bank as security for money advanced; (b) to inspect the documents set out in the affidavit for discovery dated July 21, 1961, and the documents applied for in the first and immediately preceding paragraph.

At the hearing of the application counsel for the defendants abandoned a request for production of the documents because he had part of the information he had requested given in an affidavit by one Kyprianou, an employee of the plaintiffs, filed in support of the motion heard by the learned President.

Upon the understanding that the defendants were not asking for the production of the documents the learned President ordered the plaintiffs *to make a statement on oath seven days from the date of the order* as to whether it has or have had at any time in their possession, custody or power the regulations regulating the Bank's duties or duties of its employees towards their customers and/or people pledging goods with the Bank as Security for money advanced.

The order was sought under 0.28, r.1, of the Civil Procedure Rules which comes under the general heading of "Discovery Inspection" and reads in part as follows :

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“Any party may, without filing any affidavit apply to the Court or a Judge for an order directing the other party to any cause or matter to make discovery on oath of the documents which are or have been in his possession or power relating to any matter in question therein”

We are not concerned here with the interpretation of the words “relating to” matters in question in respect of “production” of documents, this point being abandoned at the commencement of the hearing of the appeal. We do have to consider, however, their meaning in relation to discovery on oath under the rule quoted.

It is important that a party should have proper discovery before proceeding to trial and we think for purposes of this appeal the interpretation of the words “relating to” is correctly set forth in the Annual Practice 1962, p.719 which reads : “Documents are relevant which may either directly or indirectly enable the party seeking discovery either to advance his own case or damage that of his adversary, or which may fairly lead to a train of enquiry which may have either of these two consequences”.

After listening carefully to the arguments of counsel we are of the opinion that the reasons given in the judgment by the President of the District Court are correct and he drew the proper inference from the material filed. It is of course necessary that the documents in respect of which discovery is sought should relate to the matters in question in the action.

For these reasons, in our opinion, the appeal must be dismissed. We think that the costs in this case should be to the defendants in any event.

Appeal dismissed.