1969
Feb. 13
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F. HOFFMAN—
LA ROCHE
AND CO. A.G.
v.
INTER—
CONTINENTAL
PHARMACEUTICALS
(BLETCHLEY)
LIMITED CURTIS
AND CO. LTD.
AND ZYGMUNT
(CHEMISTS)
LIMITED
AND
CHARTERED
BANK OF
FAMAGUSTA

[JOSEPHIDES, LOIZOU & HADJIANASTASSIOU JJ.]

F. HOFFMAN-LA ROCHE AND CO. A.G.,
Appellants – Plaintiffs
Ex Parte Applicants,

v.

INTER-CONTINENTAL PHARMACEUTICALS (BLETCHLEY) LIMITED CURTIS AND COMPANY LTD. AND ZYGMUNT (CHEMISTS) LIMITED,
Defendants,

and

THE CHARTERED BANK OF FAMAGUSTA,
Garnishees.

(*Civil Appeal No.* 4788).

Foreign Judgment—The Foreign Judgments (Reciprocal Enforcement) Law, Cap. 10, *proviso to section* 4(2), *and the Foreign Judgments (Reciprocal Enforcement) Rules* 6(3) *and* 11(3)—*Expression "execution" therein—Includes execution by attachment of money under Part VII (sections* 73 *to* 81) *of the Civil Procedure Law, Cap.* 6, *and the Civil Procedure Rules, Order* 43, *rules* 1 *and* 2—*The Civil Procedure Law Cap.* 6, *sections* 14(1) *and* 15—*See also, herebelow.*

Foreign Judgment—Registration thereof—Section 4(1)(2) *of Cap.* 10, supra—*A registered foreign judgment stands on the same footing as a Cyprus judgment for purposes of execution—When execution of a foreign judgment so registered may issue—Section* 4(2) *proviso of Cap.* 10, *and rules* 6(3) *and* 11(3) *of the Foreign Judgments (Reciprocal Enforcement) Rules—Meaning of the term "execution" therein—See section* 14(1) *of the Civil Procedure Law, Cap.* 6.

Execution—See above.

Attachment of money or other movable property—Writ of—Is a method or mode of execution—Section 14(1) *of the Civil Procedure Law, Cap.* 6.

Words and Phrases—"Execution" in section 4(2) proviso of Cap. 10 (supra) and the Rules made thereunder, rules 6(3) and 11(3).

This is an appeal from the order of a Judge in the District Court of Famagusta dismissing the appellant's (applicant's) ex parte application for a writ of attachment of debts under the provisions of Part VII of the Civil Procedure Law, Cap. 6 and the Civil Procedure Rules, Order 43. The judgment of which execution is sought is a foreign judgment for £14,000 given in favour of the appellants by the Court of Appeal in England, in respect of which an application was made (and granted, *infra*) for registration under the provisions of section 4 of the Foreign Judgments (Reciprocal Enforcement) Law, Cap. 10 and rule 2 of the Foreign Judgments (Reciprocal Enforcement) Rules. This application for registration, made to the District Court of Famagusta, was granted on the 1st February, 1969, by a District Judge in the aforesaid Court in the following terms:

> "Application granted. Respondent to be at liberty to apply to set aside registration within forty days from service upon him of this application. Execution shall not issue until *after the expiration of the aforesaid period.*"

On February 3, 1969, the present garnishee proceedings were instituted under Part VII of Cap. 6 (*supra*) for a writ of attachment of a certain debt due to the respondent—judgment debtor by the Chartered Bank of Famagusta (Garnishee). This application was heard on February 4 and the order challenged by this appeal was given on the following day. The trial Judge refused and dismissed the application, holding that the writ applied for is a mode of execution under the provisions of section 14 of the Civil Procedure Law, Cap. 6 (*infra*); and that, consequently, the Court cannot order the issue of the writ of attachment in view of the order already made on February 1 (*supra*) that no execution shall issue within the aforesaid period of forty days (*supra*).

All relevant statutory provisions as well as all relevant rules of Court are quoted *post* in the judgment of the Supreme Court.

By section 4(2) of the Foreign Judgments (Reciprocal Enforcement) Law, Cap. 10, a registered judgment under this Law shall, "for the purposes of execution, be of the same force and effect.....and the registering Court shall have the same control over the *execution* of a registered judgment, as if the

judgment had been a judgment originally given in the registering Court and entered on the date of registration:

> "Provided that execution shall not issue on the judgment so long as, under this Part of this Law and the Rules of Court made thereunder, it is competent for any party to make an application to have the registration of the judgment set aside or....."

Rule 11(1) of the Foreign Judgments (Reciprocal Enforcement) Rules, made under Cap. 10, provides that no "execution" shall issue on a registered judgment until after the expiration of the period which, in accordance with the provisions of rule 6(3) of these Rules, is specified in the order giving leave to register. This period in the present case is the period of forty days specified in the order of the trial Court of the 1st February, referred to above.

By section 15 of the Civil Procedure Law, Cap. 6 "no judgment or order for the payment of money shall be executed except under the provisions of this Law". On the other hand under section 14(1) of the same Law: "Any judgment or order of the Court directing payment of money may....., be carried into execution by all or any of the following means: (a)..... (b)..... (c)..... (d) by attachment of property under Part VII of this Law; or....."

It is not disputed that the writ of attachment in question in these proceedings is a writ of attachment of money coming within Part VII of the Civil Procedure Law, Cap. 6 intended to secure the payment of the debt under the foreign judgment already registered on February 1, 1969 as aforesaid under Cap. 10 (*supra*).

It was argued by counsel for the appellant that the expression "execution" in the proviso to section 4(2) of Cap. 10 (*supra*) and rules 6(3) and 11(1) of the Rules made under that Law Cap. 10 (*supra*), should be construed in a wider sense to mean the final act of execution whereby the judgment debtor is actually dispossessed of his property and the property vests in the judgment creditor. At all events, counsel went on, the term "execution" must be construed as excluding the order *nisi* under section 73 of Cap. 6 (post in the judgment); and must be confined to the final order under section 78 of Cap. 6 directing that the money attached previously under the order *nisi* should be paid over to the judgment creditor.

Dismissing the appeal and affirming the order appealed from, the Court:—

Held, (1)(a). In our view sections 14(1) and 15, coupled with Part VII of Cap. 6 (*supra*) are conclusive. The methods of execution are expressly laid down therein and attachment of money or other movable property is one of these methods. Once a foreign judgment is put on the same footing as a Cyprus judgment (see section 4(2) of Cap. 10 *supra*), its execution is covered by the provisions of the Civil Procedure Law, Cap. 6 and the relevant rules, and the attachment of money or property is a form of execution within the meaning of Cap. 10 (*supra*) and the Rules made thereunder (*supra*).

(b) English cases on the point are not very helpful in the construction of our statute Cap. 10, and the Rules made thereunder, because, as it will be seen from the judgment of Lord Coleridge C.J. in *Fellows* v. *Thornton* [1884] 14 Q.B.D. 335, they had to construe the expression "attachment" occurring in one of their rules.

(2) The language of our statute Cap. 6 (*supra*) being clear and unambiguous that an application for a writ of attachment of money or other movable property is "execution" within the meaning of the Law, we cannot exclude from the term "execution" any step in the method of execution described as "attachment of property" in section 14(1)(d) and Part VII (sections 73 to 81) of the Civil Procedure Law, Cap. 6 (*supra*); and, also, see post in the judgment).

(3) The net result is that we hold that the expression "execution" in the proviso to section 4(2) of the Foreign Judgments (Reciprocal Enforcement) Law, Cap. 10 and in rules 6(3) and 11(3) made thereunder (*supra*), includes execution by attachment of money or other movable property; and that no form of execution, including the attachment of money in the hands of the garnishee in the present case, may issue until after the expiration of the period of forty days specified in the order of the District Court dated February 1, 1969.

Appeal dismissed.

Cases referred to:

In re Smith, Ex parte Brown [1888] 20 Q.B.D. 321, C.A. at p. 329, per Fry L.J.;

Fellows v *Thornton* [1884] 14 Q B D 335, at p. 336 per Lord Coleridge C J and at p 338, per Stephen J ,

Vassiliadou v *Harikli*, 1964 C L R. 274

Appeal.

Appeal against the judgment of the District Court of Famagusta (Pikis D J) dated the 5th February 1969 (Application No. 10/69) dismissing applicants *ex parte* application for a writ of attachment of debts under the provisions of Part VII of the Civil Procedure Law, Cap. 6 and the Civil Procedure Rules Order 43

A Triantafyllides, for the appellants (*ex parte* applicants)

No other party was served or represented.

The judgment of the Court was delivered by

JOSEPHIDES, J. This is an appeal from the order of a Judge in the District Court of Famagusta dismissing the applicants' *ex parte* application for a writ of attachment of debts under the provisions of Part VII of the Civil Procedure Law, Cap 6, and the Civil Procedure Rules, Order 43. The judgment of which execution is sought is a foreign judgment in respect of which application was made for registration under the provisions of section 4 of the Foreign Judgments (Reciprocal Enforcement) Law, Cap 10, and rule 2 of the Foreign Judgments (Reciprocal Enforcement) Rules

The judgment was given by the Court of Appeal in England on the 30th July, 1968, in a case between the present appellants F Hoffman–La Roche and Co A G (plaintiffs) and the Inter-Continental Pharmaceuticals (Bletchley) Ltd and two other companies, (defendants), and in the matter of an application by F Hoffman–La Roche for a writ of sequestration against the said Inter-Continental Pharmaceuticals (Bletchley) Ltd. and for an order for committal or writ of attachment of Zygmunt Sieczko for contempt of court A copy of the formal judgment has been filed and it shows that these proceedings for sequestration and contempt of Court were taken on the ground that the said company and its director Zygmunt Sieczko had broken an undertaking given to one of Her Majesty's Judges in England not to infringe the plaintiffs' Letters Patent by selling, supplying or otherwise dealing in a medicine known as "Diazepam".

Eventually, the Court of Appeal in England did not impose any punishment for such breach of undertaking, but ordered the company and Sieczko to pay the costs of the motion, and appeal, such costs to be taxed by the Taxing Master as between solicitor and own client. Those costs were taxed on the 15th January, 1969, at the sum of £13,982.17.2d. In addition to this, the plaintiffs (appellants) claim also interest at the rate of 4% per annum.

This judgment was produced to the District Court of Famagusta on the 1st February, 1969, for registration accompanied by a full affidavit sworn by a partner of the Cyprus agents of the plaintiffs (appellants). The affidavit seems to comply with the statutory provisions, and, *inter alia*, it states that to the best of the knowledge, information and belief of the deponent, the applicants are entitled to enforce the judgment, that the said judgment has not been satisfied and that it can be enforced by execution in England. In paragraph 6 of the affidavit it is further stated that, to the best of the knowledge, information and belief of the deponent, if the judgment were to be registered "the registration would not be or be liable to be set aside under section 6 of Cap. 10 in that no ground under section 6, subsection (1)(a) and (b) can properly be invoked by the judgment creditor (debtor?) to that effect". It is also stated in the affidavit that the application, wherein the judgment sought to be registered was obtained, was fully heard in the Court of Appeal of the Supreme Court of Judicature in England, the judgment debtors having appeared and contested the aforementioned appeal which the said Court or Appeal had jurisdiction to hear and determine. The application for registration was granted on the 1st February, 1969, by a District Judge in the District Court of Famagusta in the following terms:

> "Application granted. Respondent to be at liberty to apply to set aside registration within forty days from service upon him of this application. Execution shall not issue until after the expiration of the aforesaid period".

On the 3rd February, 1969, the present application for a writ of attachment was filed in Court. It was heard on the following day and the order challenged, which is fully reasoned, was given on the 5th February, 1969.

The question which the learned trial judge posed for his

determination was, "can the Court order the issue of such a writ of attachment in view of the order already made that no execution shall issue pending the expiration of the period within which defendant will be at liberty to apply to set aside the judgment?" After considering the matter, the learned judge, in a careful judgment, came to the conclusion that the provisions of section 14 of the Civil Procedure Law, Cap. 6, were conclusive on the matter and he dismissed the application.

Before we proceed further I think we should quote the relevant statutory provisions which are applicable to the present case. The material part of section 4(1) of the Foreign Judgments (Reciprocal Enforcement) Law, Cap. 10, reads as follows:

"4. (1) A person being a judgment creditor under a judgment to which this Part of this Law applies, may apply to the District Court.....to have the judgment registered in the District Court, and on any such application the Court shall, subject to proof of the prescribed matters and to the other provisions of this Law, order the judgment to be registered....."

"(2) Subject to the provisions of this Law with respect to the setting aside of registration—

(a) a registered judgment shall, for the purposes of execution, be of the same force and effect; and

(b) proceedings may be taken on a registered judgment; and

(c) the sum for which a judgment is registered shall carry interest; and

(d) the registering Court shall have the same control over the execution of a registered judgment,

as if the judgment had been a judgment originally given in the registering Court and entered on the date of registration:

Provided that execution shall not issue on the judgment so long as, under this Part of this Law and the Rules of Court made thereunder, it is competent for any party to make an application to have the registration of the judgment set aside, or, where such an applica-

tion is made, until after the application has been finally determined".

Rules 6(3) and 11(1) of the Foreign Judgments (Reciprocal Enforcement) Rules, made under the provisions of Cap. 10, read as follows:—

"6.—(3) Every such order shall state the period within which an application may be made to set aside the registration and shall contain a notification that execution on the judgment will not issue until after the expiration of that period".

"11.—(1) Execution shall not issue on a registered judgment until after the expiration of the period which, in accordance with the provisions of rule 6(3) of these rules, is specified in the order giving leave to register as the period within which an application may be made to set aside the registration, or, if an order is made extending the period so specified, until after the expiration of the extended period".

Pausing there, it should be observed that, for the purposes of execution, a foreign judgment stands on the same footing as a judgment originally given in the District Court. We refer below to the methods whereby judgments in Cyprus may be carried into execution.

Sections 73 to 81 (Part VII) of the Civil Procedure Law, Cap. 6 (which we need not quote verbatim) provide that, if an application for the issue of a writ of attachment is granted by the Court, a writ goes out to the third party (the garnishee) calling on him to appear before the Court and be examined regarding the money or other movable property in his hands which is alleged to be the property of, or be due to, the judgment debtor. Under the provisions of section 74, that property becomes security in the hands of the garnishee, for the satisfaction of the claim of the judgment creditor. Finally, under section 78, the Court, after hearing all interested persons, may order that any part of the money attached shall be paid over to the judgment creditor in satisfaction of his judgment. Sections 73 to 81, referred to above, are contained in Part VII of the Civil Procedure Law, which part has as its heading "Execution by Attachment of Property".

Sections 14(1) and 15 of the Civil Procedure Law, Cap. 6, which lay down the methods of execution of judgments in Cyprus, read as follows:

"14. (1) Any judgment or order of a Court directing payment of money may, subject to the provisions of this Law, be carried into execution by all or any of the following means:

(a) by seizure and sale of movable property;

(b) by sale of or making the judgment a charge on immovable property;

(c) by sequestration of immovable property;

(d) by attachment of property under Part VII of this Law; or

(e) by imprisonment of the debtor under Part VIII of this Law".

"15. No judgment or order for the payment of money shall be executed except under the provisions of this Law".

Finally, we have the provisions of Order 43 of our Civil Procedure Rules, which Order is entitled "Execution by Attachment of Debt or Property". Rule 1 reads as follows:—

"Whenever in any proceedings to obtain an attachment under Part 7 of the Civil Procedure Law, Cap. 7, it is suggested by the garnishee that the debt or property sought to be attached belongs to some third person, or that any third person has a lien or charge upon it, the Court or Judge may order such third person to appear and state the nature and particulars of his claim upon such debt or property".

Rule 2 empowers the Judge to order "execution to issue" against the garnishee or to make such other order as he may think fit with respect to any lien or charge.

Mr. Triantafyllides argued his case before us on two main grounds: His first ground was that the expression "execution" in the proviso to section 4(2) of the Foreign Judgments (Reciprocal Enforcement) Law, Cap. 10, and rules 6(3) and 11(1) of the Rules made under Cap. 10, should be interpreted in a wider sense to mean that form of proceeding whereby

the debtor's property passes to the creditor, that is to say, the final act of execution whereby the judgment debtor is actually dispossessed of his property and the property vests in the judgment creditor. In making his submission counsel referred to Halsbury's Laws of England, third edition, volume 16, page 2, paragraph 1, where it is stated:

> "The word execution in its widest sense signifies the enforcement of or giving effect to the judgments or orders of Courts of justice. In a narrower sense, it means the enforcement of those judgments or orders by a public officer under the writs of fieri facias, elegit, capias, sequestration, attachment, possession, delivery, fieri facias de bonis ecclesiasticis, etc."

And the quotation goes on:

> "Besides these writs, there are certain analogous methods of enforcing judgments or orders, namely, attachment of debts or garnishee proceedings, charging orders on stock and shares....."

In footnote (d), on the same page (page 2), reference is made to the judgment of Fry, L.J., in *Re Smith, Ex parte Brown* [1888] 20 Q.B.D. 321, C.A., at page 329, where he says: "It is, to say the least, doubtful whether it" (a garnishee order) "can be accurately described as an execution".

We have looked at this case, which was referred to in argument by learned counsel and, with great respect, we do not think that it is helpful in the present proceedings. There, the learned Judge was construing the provisions of section 27 of the Debtors Act, 1869, in connection with consent judgments, and execution thereon in respect of persons who were subsequently adjudged bankrupt, and he made this observation without giving any reasons in support.

In an earlier case, that of *Fellows* v. *Thornton* [1884] 14 Q.B.D. 335, this question, whether attachment of debts was execution or not, was considered by the Court in England. The Court held that a garnishee against whom proceedings under Order XLV had been duly taken, may be ordered to pay to a judgment creditor a debt due from such garnishee to the judgment debtor, although more than six years have elapsed since the judgment.

The Chief Justice in his judgment had to construe rule 8 of Order 42, in which the expression "attachment" occurred. It was stated in that rule that "writ of execution" shall include "writs of fieri facias, capias, elegit, sequestration, and attachment,.....". At page 336, Lord Coleridge, C.J. says:

> "In my opinion, on the strict construction of those words, they do not include what is ordinarily called attachment of debts, but are confined, by Order XLIV, to writs of attachment attaching a person for non-compliance with an order of the Court, for contempt, for offences against the discipline of the Courts, and other like cases. Such a writ cannot be issued without the leave of the Court, to be applied for on notice given to the party".

The other member of the Court (Stephen, J.), however, did not agree on this point with the learned Chief Justice and, at page 338, he says: "attachment of debts appears to me to be a form of 'execution' ".

Our view is that the English cases on the point are not very helpful in the construction of our statute, Cap. 10, and the Rules made thereunder, because, as it will be seen from the judgment of Lord Coleridge, they had to construe the expression "attachment" occurring in one of their rules.

The question now before us is the construction of the expression "execution" in our own law, Cap. 10, and the rules made under that Law, and for this purpose we have to look to our Civil Procedure Law, Cap. 6, and the relevant Civil Procedure Rules on execution. In our view, sections 14(1) and 15, coupled with Part VII of Cap. 6, are conclusive. The methods of execution are expressly laid down therein and attachment of money or other movable property is one of those methods. Once a foreign judgment is put on the same footing as a Cyprus judgment its execution is covered by the provisions of the Civil Procedure Law, Cap. 6, and the relevant rules, and the attachment of money or property is a form of execution within the meaning of Cap. 10 and the rules made thereunder.

Learned counsel for the appellants asked this Court to subdivide execution by attachment in two stages: the first stage to be the nisi order, which should not be treated as "execution" proper; and the second stage to be the final order (under section 78 of Cap. 6) directing the payment of the money,

which should be treated as execution within the meaning of the Law. We do not think that that construction is open to us. The statute is clear that an application for a writ of attachment of money or other movable property is execution within the meaning of the Law. If we held otherwise, we would also have to hold that an application to the Land Registry to have a judgment registered as a charge on land, under the provisions of section 53 of the Civil Procedure Law, Cap. 6, would not be considered execution. But it has been held by this Court that registration of a judgment under that section is execution within the meaning of the Law: see *Afroditi Vassiliadou* v. *Charilaos E. Harikli*, 1964 C.L.R.274.

The second ground argued by learned counsel for the appellant was that the term "execution" must be construed as excluding the order nisi under section 73 of Cap. 6. Otherwise, he submitted, the object of the law would be defeated and it was the duty of the Court to advance such object. He further submitted that, if the order nisi were granted, there would be no hardship on the debtor as he would still have the opportunity of contesting the registration of the judgment. Once, learned counsel said, there was an affidavit before the Court that the debtor could not have the judgment set aside, it was right that the order nisi should go. The language of our statute being clear and unambiguous, we cannot exclude from the term execution any step in the method of execution described as "attachment of property" in section 14(1)(d) and Part VII (sections 73 to 81) of the Civil Procedure Law, Cap. 6.

The net result is that we hold that the expression "execution" in the proviso to subsection (2) of section 4 of the Foreign Judgments (Reciprocal Enforcement) Law, Cap. 10, and in rules 6(3) and 11(1) of the Foreign Judgments (Reciprocal Enforcement) Rules, includes execution by attachment of money or other movable property; and that no form of execution, including the attachment of money in the hands of the garnishee in the present case, may issue until after the expiration of the period specified in the order of the District Court as the period within which the defendant may make an application to have the registration of the Judgment set aside, or, where such an application is made, until after the application has been finally determined.

For these reasons, the appeal is dismissed.

Appeal dismissed.