

1973
June 28

[TRIANTAFYLLIDES, P., STAVRINIDES, HADJIANASTASSIOU, JJ.]

ALECCOS
VASSIADES
v.
M. MICHAELIDES BROS.

ALECCOS VASSIADES,

Appellant-Defendant,

v.

M. MICHAELIDES BROS.,

Respondents-Plaintiffs.

(Application in Civil Appeal No. 4993).

Civil Procedure—Appeal—Notice of Appeal—Amendment—Application for leave to amend—Made in the course of the hearing of the appeal and almost two years after filing original notice of appeal—Proposed new ground seeking to extend considerably the basis on which judgment appealed from is challenged—In the light of the particular circumstances of this case the Supreme Court not prepared to exercise its discretion in appellant's favour—Civil Procedure Rules, Order 35, rule 4.

Appeal—Notice of appeal—Amendment—Refused—See supra.

The facts of this case sufficiently appear in the ruling of the Court whereby they dismissed this application for leave to amend the original grounds of appeal, holding that in the particular circumstances under consideration (see summary *supra*) they are not prepared to exercise their discretion in favour of the appellant.

Application.

Application for leave to amend the notice of appeal against the judgment of the District Court of Nicosia (Stavrinakis and Stylianides, D.JJ.), given on the 29th May, 1971, (Action No. 1779/65) whereby the sum of £75 without costs was awarded to the defendant on his counterclaim.

A. Pouyouros with E. Tooulara (Miss), for the applicant.

A. Emilianides, for the respondents.

The ruling of the Court was delivered by:—

TRIANTAFYLLIDES, P.: This an application, under Order 35, rule 4, of the Civil Procedure Rules, for leave to amend the notice of appeal by including therein a further ground of appeal.

The notice of appeal was filed on the 7th July, 1971, and at the end of it there appear the following :

“ Note : As the Notes of the judgment have just been delivered further grounds may be submitted in due course.”

We take it that by “ due course ” counsel for the appellant meant “ within a reasonable time after having had a chance of perusing the text of the judgment ”.

On the 18th July, 1972, counsel for the appellant were notified that this appeal was fixed for hearing on the 9th November, 1972 ; they had received a copy, not only of the judgment, but of the full record of the case, long before the 9th November, 1972 ; and yet until that date no application for the amendment of the notice of appeal was filed by them.

On the 9th November, 1972, the hearing of this appeal was adjourned, for want of time, to the 16th February, 1973 ; during the intervening period no application for the amendment of the notice of appeal was made by counsel for the appellant.

On the 16th February, 1973, in the course of the hearing of the appeal, an oral application was made by counsel for the appellant for an adjournment in order to be enabled to file an application for leave to amend the notice of appeal ; the adjournment was granted without, of course, deciding whether the amendment would, eventually, be allowed.

On the 24th February, 1973, the application for leave to amend the notice of appeal was filed but counsel for the appellant withdrew it on the 20th April, 1973—while it was being dealt with by the Court—as the proposed new ground of appeal had not been framed in a manner conforming with the requirements of the said Order 35, rule 4.

Then, on the 8th May, 1973, the present application was filed. It is quite clear that by the proposed new ground the appellant is seeking, at this very late stage, during the hearing of the appeal, to extend considerably the basis on which he challenges the judgment appealed from. In the light of the particular circumstances of this case we are not prepared to exercise our discretion in favour of the appellant ; and, therefore, this application is dismissed ;

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of course, anything contained in the reasons given in support of the disallowed new ground, which may fairly be said to be covered by the grounds already contained in the notice of appeal, as originally filed, can still be raised in argument during the resumed hearing of the appeal.

The application is dismissed with costs.

Application dismissed with costs.