

1975  
Nov 8

[MALACHTOS, J.]

SENIOR SERVICE LTD. AND OTHERS,

SENIOR  
SERVICE LTD  
AND OTHERS

*Plaintiffs,*

v.

v.  
CHRYSANTHI  
SHIPPING CO  
LTD. AND  
ANOTHER

CHRYSANTHI SHIPPING CO. LTD. AND ANOTHER,

*Defendants.*

(Admiralty Action No. 36/75).

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*Admiralty—Practice—High Court of Justice in England—  
Practice of Admiralty Division of—When applicable—  
Security for costs—Special provision therefor in rule  
185 of the Cyprus Admiralty Jurisdiction Order, 1893  
—Practice of said division not applicable—Rule 237 5  
of the said Order.*

*Admiralty—Practice—Security for costs—Plaintiffs not residing  
in Cyprus—Application by defendants—May be made  
in writing—Affidavit not necessary—Amount to be  
ordered for such security—Principles applicable—Rules 10  
185 and 203 of the Cyprus Admiralty Jurisdiction Order,  
1893—Order 48 rule 9(t) and Order 60 of the Civil  
Procedure Rules.*

*Hight Court of Justice in England—Practice of Admiralty  
Division of—When applicable. 15*

The plaintiffs not being resident in Cyprus, the defendants applied, under rules 185 and 203 of the Cyprus Admiralty Jurisdiction Order, 1893 for security for costs.

Plaintiffs opposed the application on the following 20  
main grounds:

1. That no letter was written by the defendants to plaintiffs requesting security for costs in a reasonable amount before the filing of the present application.

2. That no allegation is made in the defendant's affidavit as to what is the defence. 25

In support of ground 1 plaintiffs' argument was that the defendants did not follow the proper procedure

prescribed by the practice of the Admiralty Division of the High Court of Justice of England, which is applicable in Cyprus by virtue of r. 237 of the Cyprus Admiralty Jurisdiction Order, 1893. Rule 237 provides that in all cases not provided by the Cyprus rules, the practice of the Admiralty Division of the High Court of Justice of England, so far as the same shall appear to be applicable, shall be followed.

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*Held*, 1. The practice of the Admiralty Division of the High Court of Justice of England does not apply in the present case in view of the fact that there is a special provision, that is, rule 185 in our rules. So, ground 1 of the opposition cannot stand.

2. If the fact relied is plaintiffs' residence out of Cyprus and such fact appears on the writ, as in the present case, then the application for security for costs need not be accompanied by affidavit (see in this respect the Civil Procedure Rules Order 60 and Order 48, rule 9(t) ). It follows, therefore, that this ground also cannot stand.

3. Although under r. 203 a party desiring to obtain an order from the Court or judge shall ordinarily make an oral application for such order, I hold the view that the word "shall" in this Rule is not imperative and does not exclude an applicant to apply straight away in writing under r. 185.

*Application granted.*

#### **Application.**

Application by defendants for an order directing the plaintiffs to give security for costs in an admiralty action whereby plaintiffs claimed the sum of £8,500.27 (sterling) for the damages caused to goods belonging to plaintiffs while in transit on board the vessel s/s "Chrysanthi".

*L. Papaphilippou*, for the applicants-defendants.

*X. Xenopoulos*, for the respondents-plaintiffs.

The following judgment was delivered by:-

MALACHTOS, J.: This is an application by the defendants applying under Rules 185 and 203 of the

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Cyprus Admiralty Jurisdiction Order 1893 for security for costs. Rule 185 reads as follows :

“185. If any plaintiff (other than a seaman suing for his wages or for the loss of his clothes and effects in a collision) or any defendant making a counterclaim is not resident in Cyprus, the Court or judge may, on the application of the adverse party, order him to give such security for the costs of such adverse party as to the Court or judge shall seem fit; and may order that all proceedings in the action be stayed until such security be given.”

It is clear from the above Rule that the Court may order security for costs if the plaintiff or any defendant making a counterclaim is not resident in Cyprus. In the present case it is not disputed that the plaintiffs are not residing in Cyprus. Therefore, on the face of the application the applicants are entitled to the order applied for.

The respondents-plaintiffs opposed the said application and in paragraph 3 of their affidavit in support of the opposition put forward five grounds on which they based their opposition.

The main argument of counsel for the respondents is that the applicants did not follow the proper procedure prescribed by the practice of the Admiralty Division of the High Court of Justice of England, which is applicable in Cyprus by virtue of rule 237 of the Cyprus Admiralty Jurisdiction Order 1893, which provides that in all cases not provided by these rules, the practice of Admiralty Jurisdiction of the High Court of Justice of England, so far as the same shall appear to be applicable, shall be followed.

I must say straight away that this practice does not apply in the present case in view of the fact that there is a special provision and that is, rule 185 under which the present application is made. So, ground 1 of the Opposition, that no letter was written by the defendants to plaintiffs requesting security for costs in a reasonable amount before the filing of the present application, cannot stand. Likewise, ground 3 that no application for security for costs was filed by the defendants before the date fixed for directions or before such directions were

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ordered, cannot stand. In fact, this case did not come to the directions stage before the filing of the present application but to the stage where the conditional appearance, which was entered by the defendants on 17/7/75 was considered on 20/9/75 as unconditional in view of the fact that no application by the defendants was filed up to that date in order to set aside the issue and service of the writ of summons. It must be noted here that the present application was filed three days later, *i.e.* on 23/9/75 and after the filing of the Opposition on 13/10/75 it was fixed for today for hearing. Also, for the same reasons ground 4, that the defendants ought to have given notice of an application for further directions, as an order for directions had already been given by the Court, and ground 5 that the application made by the defendants after the directions were given by the Court was to delay the proceedings and a fair trial of the action, cannot be sustained.

With regard to ground 2 that no allegation is made in the said affidavit as to what is the defence, useful guidance may be obtained from our Civil Procedure Rules, Order 60, which provides for security for costs. Under Order 48, rule 9(t) an application under Order 60 for security for costs if the fact relied upon is plaintiff's residence out of Cyprus and such fact appears on the writ, as in the present case, then the application for security for costs need not be accompanied by affidavit. It follows, therefore, that this ground also cannot stand.

Although under Rule 203 a party desiring to obtain an order from the Court or a judge shall ordinarily make an oral application for such order, I hold the view that the word "shall" in this Rule is not imperative and does not exclude an applicant to apply straight away in writing under Rule 185.

For the reasons stated above the application of the defendants for security for costs should be granted.

The only point that remains for consideration is the amount to be ordered for such security. Ordinarily, the amount to be given for security for costs is the amount which under normal circumstances, such costs are likely to be incurred by the party applying for such order. As it appears from the affidavit in support of the appli-

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cation, the amount claimed for security for costs is £500.- and this includes, expenses of assessors and other witnesses who will have to come from abroad. In view of the fact that this allegation is too vague I am not going at this stage to take into account this allegation as regards the amount of security for costs to be given by the plaintiffs respondents. I consider that an amount of C£150.- in cases of this kind is the amount of usual costs incurred. 5

In the result I hereby Order that the plaintiffs respondents deposit with this Court an amount of C£150.- as security for costs within one month as from today. 10

In the meantime all proceedings in this action should be stayed until such security is given and in the event of the security not being given within the time appointed, the action should stand dismissed. 15

Applicants defendants are entitled to their costs to be assessed at a later stage.

*Order accordingly.*