

1976
Nov. 12

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

GRADE ONE
SHIPPING LTD.
(No. 4)

GRADE ONE SHIPPING LTD., OWNERS OF THE CYPRUS
SHIP "CRIOS II", (NO. 4),

Appellants,

v.

v.

CARGO
ON BOARD
THE SHIP
"CRIOS II"

THE CARGO ON BOARD THE SHIP "CRIOS II", NOW LYING
IN THE PORT OF LARNACA,

Respondents.

(Application in Civil Appeal No.
5626).

*Admiralty—Arrest of property—Rule 50 of the Cyprus Admiralty
Jurisdiction Order, 1893—Appeal against discharge of order of
arrest of property—Application to stay execution of order
appealed from pending determination of appeal—Whether Court
entitled to make order applied for—In any event Court not pre- 5
pared, in the circumstances of this case, to make a new order for
arrest under the said r. 50—Therefore, no justification for doing
so under section 32 of the Courts of Justice Law, 1960 or section
4 of the Civil Procedure Law, Cap. 6.*

*Civil Procedure—Appeal—Against discharge of order of arrest of 10
property—Application for interlocutory order pending determi-
nation of Appeal—See, also, under "Admiralty."*

After filing an appeal against a decision* of a Judge of this
Court by virtue of which an order for the arrest of the defendant
cargo, made under rule 50 of the Cyprus Admiralty Jurisdiction 15
Order, 1893 was discharged, the appellants (plaintiffs) filed an
interlocutory application in the appeal seeking an order, pre-
serving the status quo in relation to the said cargo, until the de-
termination of the appeal. In the alternative they sought an
order saying the execution of the decision appealed from. A 20
similar application for stay of execution was made to the trial
Judge, but it was refused.

*Held, (1) There does not arise, in the circumstances of this
case, any question of exercising our concurrent, with those of
the trial Judge, powers of granting, under rule 18 of Order 35 25*

* See p. 350 ante.

1976
Nov. 12

—
GRADE ONE
SHIPPING LTD.
(No. 4)
v.
CARGO
ON BOARD
THE SHIP
"CRIOS II"

of the Civil Procedure Rules, a stay of execution because there is nothing to be stayed; and, assuming, without so deciding—as it is not necessary in this case—that this is a matter which could be raised before us by way of an original application in an appeal, we have reached the conclusion that, in any event, we would not be prepared, in the circumstances of the present case, to exercise our discretionary powers, assuming again that we are entitled to do so, in order to issue now a new order for the arrest of the defendant cargo under rule 50.

(2) Once we would not be prepared to make, in any event, an order for the arrest of the cargo under the said rule 50, we see no justification, as at present advised, for acting under any one of the analogous provisions in the province of the Civil Procedure, such as section 32 of the Courts of Justice Law, 1960 (Law 14/60), or section 4 of the Civil Procedure Law, Cap. 6. for the purpose of making an order for the preservation of the status quo in relation to the defendant cargo pending the hearing and determination of the appeal.

Application dismissed

Application.

Application for an order preserving the status quo in relation to the defendant cargo until the determination of the appeal against the decision of a Judge of the Supreme Court (Malachtos, J.) given on the 29th October, 1976 (Admiralty Action No. 83/76) whereby an order for the arrest of the said cargo was discharged.

L. Papaphilippou, for the appellants,

C. Erotokritou with *E. Psillaki (Mrs.)*, for the respondents.

Cur. adv. vult.

The judgment of the Court was delivered by:—

TRIANAFYLLIDES, P.: By means of the present interlocutory application in this appeal the appellants, as plaintiffs in a pending admiralty action, are seeking an order preserving until the determination of the appeal, what, according to their contention, is the status quo in relation to the defendant cargo.

The appeal has been made against the decision of a Judge of this Court, dated October 29, 1976, by virtue of which an order for the arrest of the said cargo, made by him under rule 50 of our Admiralty Jurisdiction Rules on June 9, 1976, was discharged.

1976
Nov. 12

—
GRADE ONE
SHIPPING LTD.
(No. 4)
v.
CARGO
ON BOARD
THE SHIP
"CRIOS II"

In the alternative, the appellants seek an order staying the execution of the said decision of October 29, 1976.

We do not think that there arises, in the circumstances of this case, any question of exercising our concurrent, with those of the trial Judge, powers of granting, under rule 18 of Order 35 of the Civil Procedure Rules, a stay of execution of the afore-said decision of October 29, 1976, because, actually, there is nothing to be stayed, since the appellants, who are applying for such a stay, are not required by means of such decision to do anything in order to comply with it; it is, simply, a decision which discharged an order of arrest of the defendant cargo which had been previously made on the application of the appellants. A similar application for stay of execution was made to the trial Judge, after his said decision, but it was refused by him on October 30, 1976.

We have perused carefully all the material before us, including the reasoned decision of the trial Judge for the discharge of the order of arrest and the grounds of appeal filed in support of the appeal against such decision, and, assuming, without so deciding—as it is not necessary for us to do so in this case—that this is a matter which could be raised before us by way of an original, such as the present, application in an appeal, we have reached the conclusion that, in any event, we would not be prepared, in the circumstances of the present case, to exercise our discretionary powers, assuming again that we were entitled to do so, in order to issue now a new order for the arrest of the defendant cargo under the said rule 50.

Once we would not be prepared to make, in any event, an order for the arrest of the cargo under the said rule 50, which is the specific provision in the Rules applicable in relation to this Court's Admiralty Jurisdiction, in the exercise of which the appellants' appeal is to be heard by us and by virtue of which we are dealing with the present interlocutory application, we see no justification, as at present advised, for acting under any one of the analogous provisions in the province of the Civil Procedure, such as section 32 of the Courts of Justice Law, 1960 (Law 14/60), or section 4 of the Civil Procedure Law, Cap. 6, for the purpose of making an order for the preservation of the status quo in relation to the defendant cargo pending the hearing and determination of the appeal.

This application is, therefore, dismissed with costs.

Application dismissed with costs.