TAFCO (FOREIGN TRADE ORGANIZATION FOR CHEMICALS AND FOODSTUFFS) OF SYRIA (NO. 2),

Plaintiffs,

v.

THE SHIP "LAMBROS L" AND HER CARGO,

Defendant.

(*Admiralty Action No.* 23/77).

Injunction—Interlocutory injunction—Stay of, pending determination of an appeal therefrom—Within power and discretion of trial Court—Principles applicable—Admiralty Action in rem by cargo-owners—Interim order directing delivery of cargo to them subject to furnishing of security—Amount of security more than sufficient to satisfy any possible claim of the applicants—If stay is not granted a possible reversal of the judgment appealed from would not be rendered nugatory—Application refused.

Appeal—Stay of interlocutory injunction pending determination of an appeal therefrom.

On February 24, 1977 the Court made an order* directing the delivery of the cargo on Board the defendant ship to the plaintiffs in this action upon the furnishing by them of a security in the sum of U.S. dollars 220,000. The defendant ship appealed against this order and by means of the present application there was sought an order that the execution and/or operation of the said order and/or injunction be stayed or suspended until the appeal therefrom shall have been heard and decided.

The main ground in support of the application was the sufficiency of the amount ordered by way of security.

Held, (1) that an application for the stay of an order or an interlocutory order is a matter within the powers of a trial Court, even if it has delivered its own judgment on the issue; that where the application is for an injunction pending an ap-

* Reported at p. 143 *ante.*

peal the question is whether the judgment appealed from is one on which the successful party ought to be free to act despite the pendency of an appeal; and that one of the important factors in making such a decision is the possibility that the judgment may be reversed or varied. (See *Erinford Properties Ltd., v. Cheshire County Council* [1974] 2 All E.R. 448 at p. 454).

(2) That the very essence of the order appealed from was to preserve, being a matter of urgency, the goods in question which were of a perishable nature; that a stay is a matter of discretion and there would be no difficulty in granting the stay sought, until an increased amount of security was given, had this Court been persuaded that this was a just case, irrespective of the views expressed in granting the order, but it has not been so persuaded.

(3) That if the stay is not granted, a possible reversal of the order appealed from would not be rendered nugatory, as the amount ordered to be given as security is, on the material before this Court, more than sufficient to satisfy any possible claim of the defendant ship; and that, accordingly, the application will be dismissed.

Application dismissed.

Cases referred to:

Erinford Properties Ltd. v. Cheshire County Council [1974] 2 All E.R. 448 at p. 454.

Application.

Application by the defendant ship for an order staying the execution and/or operation of an order or injunction, directing delivery of the cargo on board the defendant ship to the plaintiffs, pending the hearing and determination of an appeal therefrom.

E. Montanios, for the applicant.

X. Syllouris, for the respondents.

Cur. adv. vult.

The following ruling was delivered by:-

A. LOIZOU, J.: This is an application by the defendant

ship for an order that "the execution and/or operation of the order and/or injunction of this Court dated 24th February, 1977 be stayed or suspended until the appeal therefrom of which the defendant has given notice by a Notice of Appeal dated 2nd March, 1977 shall have been heard and decided".

The order* referred to above was to the effect that upon the respondents-plaintiffs in this application furnishing a security in the sum of US dollars 220,000 or the equivalent in Cyprus Pounds to the satisfaction of the Registrar of this Court and valid until the final determination of this action, for the satisfaction of any judgment to be given in favour of the defendant ship or its owners against the plaintiffs, the cargo on board the defendant ship to be delivered and/or taken delivery of, by the plaintiffs who are the owners and persons entitled to same.

The application is based on sections 19, 29(2) (a) and 32 of the Courts of Justice Law, 1960, on rules 175, 176, 203, 205, 212 and 237 of the Rules of the Supreme Court of Cyprus in its Admiralty Jurisdiction, on Order 35, rr. 18 and 19 of the Civil Procedure Rules and on the inherent powers of the Court.

The Notice of Appeal from that order was filed on the 2nd March, 1977 and the grounds of the appeal and reasons thereof, briefly, are to the effect that,

(a) in law, the order should not have been made, and

(b) in any event the amount of US dollars 220,000 was insufficient to satisfy the defendant's claim.

There is a further complaint that a mistake was made in the mathematical calculations by stating that the total amount claimed for demurrage, including another ten days from the date of the order, was in the region of US dollars 272,000, whereas that was the amount up to the date of hearing of the application, but I need not really, be concerned with that aspect, as the figure given was approximate and only indicative of the extent of the applicant-defendant's alleged claim, as emanating from the material placed before me.

* Vide p. 143 in this Part *ante*.

After the filing of the present summons, on the 2nd March, there was also an application *ex-parte*, for a stay of the same order, which was filed on the 5th March, 1977, that is to say, a day after the furnishing of the security by the respondents-plaintiffs. (See letter of the Bank of Cyprus, dated 3rd March, 1977). The order applied for by the said application, similar in effect to the one before me today was granted, but, of course, with a limitation to remain in force pending the determination of the present application.

Learned counsel for the applicant-defendant ship and without prejudice to their case, as set out in the notice of appeal, has confined the issue, to the sufficiency of the amount ordered by way of security.

As it appears from the order, subject of these proceedings, in arriving at the amount of US dollars 220,000 I took into consideration the fact that in accordance with the additional clause A of the Bills of Lading issued in respect of the goods in question, and without deciding on the submission of counsel for the respondents-plaintiffs that no demurrage was agreed to be paid by them to the ship "the demurrage in respect of each parcel shall not exceed its freight", which was stated to be in the region of US dollars 150,000. I further took into consideration the undisputed fact that the ship left the port of Latakia and when it arrived at Limassol, was arrested on the 30th December, 1976 and since then its release has not been secured, though the amount of security was not a substantial one, and, therefore, she was unable to perform her obligations, namely the delivery of the cargo at its destination.

No doubt, an application for the stay of an order or an interlocutory order is a matter within the powers of a trial Court, even if it has delivered its own judgment on the issue. This appears clearly from the case of *Erinford Properties Ltd. v. Cheshire County Council* [1974] 2 All E.R. p. 448 where Meggary, J. also stated at p. 454:

> "On the trial, the question is whether the plaintiff has sufficiently proved his case. On the other hand where the application is for an injunction pending an appeal, the question is whether the judgment that has been given is one on which the successful party

ought to be free to act despite the pendency of an appeal. One of the important factors in making such a decision, of course, is the possibility that the judgment may be reversed or varied. Judges must decide cases even if they are hesitant in their conclusions; and at the other extreme a judge may be very clear in his conclusions and yet on appeal be held to be wrong. No human being is infallible, and for none are there more public and authoritative explanations of their errors than for judges. A judge who feels no doubt in dismissing a claim to an interlocutory injunction may, perfectly consistently with his decision, recognise that his decision might be reversed, and that the comparative effects of granting or refusing an injunction pending an appeal are such that it would be right to preserve the *status quo* pending the appeal".

And further down,

"There may, of course, be many cases where it would be wrong to grant an injunction pending appeal, as where any appeal would be frivolous, or to grant the injunction would inflict greater hardship than it would avoid, and so on. But subject to that, the principle is to be found in the leading judgment of Cotton L. J. in *Wilson v. Church (No. 2)* [1962] 3 All E.R. 466, where, speaking of an appeal from the Court of Appeal to the House of Lords, he said, 'when a party is appealing, exercising his undoubted right of appeal, this Court ought to see that the appeal, if successful, is not nugatory'."

This was a case where the judge dismissed an interlocutory motion for an injunction and it was found that he had jurisdiction to grant the unsuccessful applicant an injunction pending an appeal against the dismissal, there being no inconsistency in granting such an injunction after dismissing the motion.

In our case, the application was granted, and the very essence of it, was to preserve, being a matter of urgency, the goods in question, which were of a perishable nature. A stay, is a matter of a discretion, and I would have had no difficulty in granting the stay sought, until an increas-

ed amount of security was given, had I been persuaded that this was a just case, irrespective of the views that I previously expressed in granting the order, but I have not been so persuaded. If I do not grant the stay, a possible reversal of my judgment would not be rendered nugatory, as the amount ordered to be given as security is, on the material before me, more than sufficient to satisfy any possible claim of the applicant-defendant ship. The allegation that under the Greek Law different principles govern questions of lien for demurrage, being a matter of foreign law, has not been established in the proper way.

For all the above reasons, the present application is dismissed with costs. By so doing the order made on the *ex-parte* application on the 5th March, 1977, is also discharged.

Application dismissed with costs.