

1980 September 19

[TRIANTAFYLIDES, P., L. LOIZOU, HADJIANASTASSIOU, JJ.]

DEMETRIOS ANASTASSIOU,

Appellant-Defendant.

v.

ELENI THEODOTOU DEMETRIOU AND ANOTHER,

Respondents-Plaintiffs.

(Application in Civil Appeal No. 5806).

Civil Procedure—Appeal—Want of Prosecution—Dismissal—Reinstatement—Discretion of the Court—Principles governing exercise of—Reinstatement ordered in view of the exceptional facts of this case—Rules 6, 21 and 22 of Order 35 of the Civil Procedure Rules.

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This was an application for the reinstatement of the above appeal which stood dismissed by operation of rule 22 of Order 35 of the Civil Procedure Rules because the appellant has failed to take within three months after the filing of the appeal all the steps mentioned in rule 21 of the said Order 35.

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Counsel for the appellants failed to take the said steps because, when pressing for the fixing of the appeal for hearing, he was told by the Registrar to wait until the record would be ready and that he would then be informed what deposit he would have to lodge under the relevant provisions of rules 6 and 21 of Order 35. In fact he was, eventually so informed and he lodged the required deposit. But this was done after the expiry of the period of three months.

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Held, that the facts in this case are so exceptional that it is warranted for this Court to exercise its judicial discretion in favour of the appellants and order that this appeal should be reinstated.

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Application granted.

Cases referred to:

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Harakis v. Feghali (1979) 1 C.L.R. 293;
Stylianou v. Nicola (1969) 1 C.L.R. 369;

Thomas v. Gavrielides (1969) 1 C.L.R. 371;
Kyriacou v. Georghiadou (1970) 1 C.L.R. 145;
Ibrahim v. Kasab (1972) 1 C.L.R. 16;
Hji Panayi v. Hji Panayi (1974) 1 C.L.R. 60.

Application.

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Application for reinstatement of an appeal which was dismissed for want of prosecution under the provisions of Order 35 rule 22 of the Civil Procedure Rules.

A. Eftychiou, for the appellant.

A. Andreou, for the respondents.

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TRIANTAFYLLIDES P. gave the following judgment of the Court. This is an application for the reinstatement of Civil Appeal No. 5806 which by operation of rule 22 of Order 35 of the Civil Procedure Rules stands dismissed because counsel for the appellant has failed to take within three months after the filing of the appeal on February 15, 1978, all the steps mentioned in rule 21 of Order 35 (see, in this respect, *inter alia*, *Harakis v. Feghali*, (1979) 1 C.L.R. 293).

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We have been asked by counsel for the appellant, who is the applicant in this application, to exercise our discretion under rule 22, above, and to reinstate the appeal. How this discretion has to be exercised can be seen from a series of cases among which are *Stylianou v. Nicola*, (1969) 1 C.L.R. 369, *Thomas v. Gavrielides*, (1969) 1 C.L.R. 371, *Kyriacou v. Georghiadou*, (1970) 1 C.L.R. 145, *Ibrahim v. Kasab*, (1972) 1 C.L.R. 16 and *Hji Panayi v. Hji Panayi*, (1974) 1 C.L.R. 60.

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It is correct that this Court has not been inclined to reinstate appeals which stand dismissed by operation of the aforesaid rule 22 because it attributes a lot of weight to the principle that there must be finality in litigation; but it cannot, of course, be said that the discretion under rule 22 will not be exercised in favour of an applicant-appellant in a proper case.

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We do consider that this is one of those cases in which the facts are so exceptional that it is warranted to exercise our discretion in favour of the appellant and to reinstate his appeal: We have before us an affidavit by counsel for the appellant—the veracity of whom we have no reason at all to doubt—stating that he was pressing for the fixing of the appeal for hearing

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and that he was told by one of the Registrars to wait until the record would be ready and that he would then be informed what deposit he would have to lodge under the relevant provisions of rules 6 and 21 of Order 35. In fact he was, eventually, 5 so informed by a letter of the Registry of this Court dated July 14, 1978, and he subsequently lodged the required deposit. But this was done after the expiry of the aforementioned period of three months.

10 As already stated we regard the circumstances of the present case as rendering it necessary for us to exercise our judicial discretion in favour of the appellant and, therefore, it is ordered that this appeal should be reinstated. It will be fixed in due course.

15 We order that the costs of the respondents in respect of the present application should be borne by the appellant in any event.

*Application granted. Order
for costs as above.*