

1981 October 22

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

ANDREAS CHRYSOSTOMOU,

Appellant,

v.

PHILIPPOS ATHANASSIOU,

Respondent.

(Civil Appeal No. 6208).

Civil Procedure—Execution—Instalment Order—Part IX of the Civil Procedure Law, Cap. 6—Judgment debtor entitled to be allowed to provide for the essential needs of himself and his family—Smoking not among the necessities of life—Amount spent on smoking could properly be taken into account in deciding whether to make or not an instalment order.

The trial Court dismissed an application made by the appellant, under Part IX of the Civil Procedure Law, Cap. 6, for an order that the respondent should pay a judgment debt of C£1,398.610 mils, plus £105.250 mils costs by instalments, having held that the financial situation of the judgment debtor was very bad.

At the hearing of the application in question it was established before the trial Judge that the respondent, notwithstanding his financial difficulties, spent about C£15.—a month on cigarettes and the trial Judge appeared to have thought that he was not entitled to treat this amount of C£15.—as an unnecessary expense which would justify making an order for payment of the judgment debt by means of monthly instalments commensurate to what the respondent spent, approximately, on cigarettes every month.

Upon appeal by the judgment-creditor:

Held, that what a judgment debtor is entitled to be allowed to provide for are the essential needs of himself and of his family (see *Kokoni v. Ioannides* (1963) 2 C.L.R. 468 at p. 473); that thus, it is clear, by implication, that no order for the payment

of a debt, by monthly instalments, should, or can properly, be made when it would interfere with the capability of the judgment debtor to meet the essential needs of himself and of his family; that the smoking of cigarettes is not to be treated as being among the necessities of life (see *Rolandis Louca & Soteriades Ltd. v. Koutsiou* (1970) 1 C.L.R. 25 at p. 28); that, therefore, it was proper to take into account that the respondent was spending, approximately, C£15 monthly on cigarettes and that this was an expense, which, in the light especially of the modern approach to the smoking of cigarettes, was devoted to the satisfaction of a harmful addiction; that the respondent had to try to get rid of such addiction, or to limit it to the minimum so that he could be enabled to pay to the appellant a commensurate amount in respect of the judgment debt in question; accordingly an order that the respondent should pay C£12 per month to the appellant by way of monthly instalments is hereby made.

Appeal allowed.

Cases referred to:

Kokoni v. Ioannides (1963) 2 C.L.R. 468 at p. 473; 20
Rolandis, Louca & Soteriades Ltd. v. Koutsiou (1970) 1 C.L.R. 25 at p. 28.

Appeal.

Appeal by applicant against the judgment of the District Court of Nicosia (Artemides, S.D.J.) dated the 23rd December, 1980 (Action No. 5331/77) dismissing his application for an order that the respondent should pay a judgment debt by monthly instalments. 25

N. Zomenis, for the appellant.

G. Michaelides, for the respondent. 30

Cur. adv. vult.

TRIANTAFYLIDIS P. read the following judgment of the Court. This is an appeal against the judgment of the District Court of Nicosia dismissing an application made by the appellant, under Part IX of the Civil Procedure Law, Cap. 6, for an order that the respondent should pay a judgment debt by monthly instalments. 35

The judgment debt came into existence on March 14, 1979, and consists of C£1, 398.610 mils, plus £105.250 mils costs.

5 The trial Judge found that the financial situation of the respondent, who is the judgment debtor, is very bad and refused to make against him any order for the payment by him of the said judgment debt by monthly instalments.

This is indeed a very unfortunate case because both the appellant, who is the judgment creditor, and the respondent are refugees and are facing grave financial difficulties.

10 There is one point in respect of which we cannot agree with the trial Judge:

15 It was established before him, at the hearing of the application in question, that the respondent, notwithstanding his financial difficulties, spends about C£15 a month on cigarettes and the trial Judge appears to have thought that he was not entitled to treat this amount of C£15 as an unnecessary expense which would justify making an order for payment of the judgment debt by means of monthly instalments commensurate to what the respondent spends, approximately, on cigarettes every
20 month.

25 In the case of *Kokoni v. Ioannides*, (1963) 2 C.L.R. 468, while dealing with a matter of the payment of a debt by monthly instalments, it was pointed out (at p. 473) that what a judgment debtor is entitled to be allowed to provide for are the essential needs of himself and of his family; thus it is clear, by implication, that no order for the payment of a debt, by monthly instalments, should, or can properly, be made when it would interfere with the capability of the judgment debtor to meet the essential needs of himself and of his family.

30 In the case of *Rolandis, Louca & Soteriades Ltd. v. Koutsiou*, (1970) 1 C.L.R. 25, it was quite rightly observed (at p. 28) that the smoking of cigarettes is not to be treated as being among the necessities of life.

35 In the light of all the circumstances of this case and of the above judicial pronouncements we are of the opinion that it was proper to take into account that the respondent is spending, approximately, C£15 monthly on cigarettes and that this is

an expense, which, in the light especially of the modern approach to the smoking of cigarettes, is devoted to the satisfaction of a harmful addiction. We think that the respondent has to try to get rid of such addiction, or to limit it to the minimum, so that he can be enabled to pay to the appellant a commensurate amount in respect of the judgment debt in question. 5

We, therefore, make an order that the respondent should pay C£12 per month, as from December 1, 1981,—with ten days' grace on each occasion—to the appellant, by way of monthly instalments for the satisfaction of the judgment debt concerned. 10

In the result this appeal is allowed with costs.

Appeal allowed with costs.