

1982 May 14

[SAVVIDES, J.]

ARMANDO NASSAR,

Plaintiff,

v.

1. COMPANHIA DE NAVEGACAO LLOYD BRASILIERO,
2. THE SHIP "BUARQUE",

Defendants.

(Admiralty Action No. 110/82).

Admiralty—Practice—Service—Substituted service—Action in rem and in personam—Defendants outside the jurisdiction—No leave to serve defendants out of the jurisdiction applied for—Therefore application for substituted service cannot proceed—Dismissed —Rule 23 of the Cyprus Admiralty Jurisdiction Order, 1893 —Rule 22 not applicable. 5

After filing an action in personam against defendant 1, a Shipping Company of Brazil, and in rem against the ship "Buarque", defendant 2, for C£814 as damages for breach of contract for the carriage of a consignment of coffee, the plaintiff applied for an order that service of the writ of summons on the defendants be effected through their agents in Cyprus. The application was based on rule 22* of the Cyprus Admiralty Jurisdiction Order, 1893. 10

Held, that rule 22 applies only where the person to be served is in Cyprus and for certain reasons personal service cannot be effected on him; that since both defendants in this action are outside the jurisdiction of the Court, this rule has no application; that what is applicable is rule 23**; that since there was no application for leave to serve the defendants out of the juris- 20

* Rule 22 is quoted at p. 398 *post*.

** Rule 23 of the Cyprus Admiralty Jurisdiction, 1893 provides as follows:

"23. Where the person to be served is out of Cyprus application shall be made to the Court or Judge for an order for leave to serve the writ of summons or notice of the writ".

diction under rule 23, which is a prerequisite before applying for substituted service on defendants who are outside the jurisdiction, the present application cannot proceed and has to be dismissed.

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Application dismissed.

Per curiam: That though substituted service may be ordered against the defendant in an action in personam, no such service can be allowed against a ship which is not within the jurisdiction of the Court in an action in rem against such ship.

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Cases referred to:

Nigerian Produce v. Sonora Shipping (1979) 1 C.L.R. 395 at pp. 419, 420;

Churair & Sons v. Snatiren Shipping (1980) 1 C.L.R. 183;

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The Berny [1979] 1 Q.B.D. 80.

Application.

Application by plaintiff for an order that the service of the writ of summons on the defendants be effected through their agents in Cyprus.

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L. Papaphilippou, for the applicant.

SAVVIDES J. gave the following judgment. By this application the plaintiff applies for an order that service of the writ of summons on the defendants be effected through their agents in Cyprus.

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Plaintiff's action is an action in personam against defendant 1, a Shipping Company of Brazil and in rem against the ship "BUARQUE" as defendant 2. The claim is for C£814.— as damages for breach of contract for the carriage of a consignment of Brazilian coffee.

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Under the Admiralty Rules of the Supreme Court of Cyprus and in particular rule 5, in contrast to the Civil Procedure Rules and the Admiralty Rules of the Supreme Court in England, no leave is required to issue a writ of summons for service out of the jurisdiction as it happens in the present case where both defendants are outside the jurisdiction of the Court. Therefore, the writ was issued on the 12th May, 1982.

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The application is based on the Admiralty Rules of the

Supreme Court of Cyprus and in particular, rules 22, 203 et seq. and 237. Rules 203 et seq. refer to the mode that an application may be made in admiralty proceedings and, therefore, do not touch the substance of this application. Rule 237 is the general rule providing that in cases where no provision is made by the Admiralty 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. What remains to be considered is rule 22. Rule 22, reads as follows:

“Where the person to be served is in Cyprus but is under disability, or where for any cause personal service cannot, or cannot promptly, be effected, or where in any action, whether in rem or in personam, there is any doubt or difficulty as to the person to be served, or as to the mode of service, the Court of Judge may order upon whom, or in what manner service is to be made, or may order notice to be given in lieu of service”.

It is clear from the contents of such rule that such rule applies only where the person to be served is in Cyprus and for certain reasons personal service cannot be effected on him. In view of the fact that both defendants in this action are outside the jurisdiction of the Court, this rule has no application. What is applicable in this case is rule 23 which provides as follows:

“Where the person to be served is out of Cyprus application shall be made to the Court or Judge for an order for leave to serve the writ of summons or notice of the writ”.

In the present case there was no application for leave to serve the defendants out of jurisdiction under rule 23 which is a prerequisite before applying for substituted service on defendants who are outside the jurisdiction. Therefore, once no leave to serve the defendants out of the jurisdiction has been applied for, the present application cannot proceed and has to be dismissed.

Before, however, concluding on the matter, I wish to observe that though substituted service may be ordered against the defendant in an action in personam, no such service can be allowed against a ship which is not within the jurisdiction of the Court in an action in rem against such ship.

Under rule 16 of the Admiralty Rules of the Supreme Court of Cyprus in an action in rem the writ of summons has to be served in the manner provided therein. Rule 16 provides as follows:

- 5 “16. In an action in rem, the writ of summons shall be served—
- (a) Upon ship, or upon cargo, freight, or other property, if the cargo or other property is on board a ship, by attaching an office copy of the writ to a mast, or
- 10 to some other conspicuous part of the ship;
- (b) Upon cargo, freight, or other property, if the cargo or other property is not on board a ship, by attaching an office copy of the writ to some portion of such cargo or property;
- 15 (c) Upon freight in the hands of any person, by leaving with him an office copy of the writ;
- (d) Upon proceeds in Court, by leaving an office copy of the writ with the Registrar of the Court”.

20 In the case of *Nigerian Produce v. Sonora Shipping* (1979) 1 C.L.R. 395, in dealing with an application for renewal of a writ of summons in rem against the defendant ship, I had this to say at pp. 419, 420 regarding service of the writ of summons in actions in rem:—

25 “It is correct that the action is one in rem and service could not have been effected once the said ship has not called at any port within the jurisdiction of the Court so that service could be effected as provided by Order 16 of the Rules of the Supreme Court of Cyprus in its admiralty jurisdiction. On the question of service in an action in rem,

30 we read the following in the *British Shipping Laws*, Vol. 1, Admiralty Practice, p. 28:

35 ‘A consideration which may lead a plaintiff to sue in personam is that service of a writ in rem can only be effected within the jurisdiction. This means that although a writ in rem and a warrant of arrest may issued even if the res is not within the jurisdiction,

in order for either to be effective the res to be proceeded against must be, or come, within the jurisdiction unless service is accepted by a solicitor, whereas service of a writ in personam can often be effected abroad provided that the conditions laid down in the Rules of the Supreme Court are satisfied'." 5

(This case was followed in *Churair & Sons v. Snatiren Shipping* (1980) 1 C.L.R. 183 in which reference is also made to the *Berny* [1979] 1 Q.B.D. 80 which deals with the question of renewal of a writ of summons on the ground that service could not be effected in an action in rem as the "res" was not within the jurisdiction). 10

In view of the above, this application cannot be granted and is hereby dismissed with no order for costs.

Application dismissed. No order as to costs. 15