1982 June 23

[A. LOIZOU, SAVVIDES AND STYLIANIDES, JJ.]

COSTAS CHRISTYS,

Appellant,

v.

EVE GEORGHALLI,

Respondent.

(*Civil Appeal No.* 6241).

Debtors Relief (Temporary Provisions) Law, 1979 (*Law* 24/79)—*"Stricken debtor" under section* 2 *of the Law—Meaning—Husband and wife jointly engaged in construction works—Husband offering his specialized knowledge and wife financing the projects through borrowing money by mortgaging her immovable property—She could properly be found in law to have been a stricken debtor.*

Costs—Proceedings under the Debtors Relief (Temporary Provisions) Law, 1979 (*Law* 24/79)—*Costs against respondent because of applications for adjournment made on her behalf—Were final in themselves and could not have been cancelled at the conclusion of the proceedings.*

In 1964 the respondent set up and registered together with her husband a private company of limited liability in which she owned 90% of the shares. Since then either through the aforesaid company or in conjunction with her husband, who was a real estate valuer and building contractor but owned no property, they jointly engaged in construction works and real estate development. The respondent was contributing by providing the necessary capital through borrowing money on the security of mortgages on her immovable property and the husband was offering his specialized knowledge and services. The activities of the couple extended also at Kyrenia and Karmi village which since 1974 are under Turkish occupation. In 1973 when their cash was exhausted the respondent borrowed

the sum of C£16,000 with 9% interest thereon from the appellant and as a security they mortgaged her house at Strovolos.

On December 20, 1974 judgment was given in favour of the appellant in respect of the above sum and the interest accrued together with an order of sale of the mortgaged property. In proceedings instituted by the respondent under the Debtors Relief (Temporary Provisions) Law, 1979 (Law 24/1979) the trial Judge having come to the conclusion that there was a joint business activity of the respondent and her husband, declared the respondent as a stricken debtor and, inter alia, stayed execution of the judgment against the respondent. The trial Judge, further, made no order as to costs but he cancelled all previous orders as to costs given against the respondent, which were made by the Judges who dealt with the application at earlier stages, and were occasioned by applications for adjournment made on her behalf.

Upon appeal by the judgment-creditor it was contended that the trial Judge should not have found that the borrowing of the respondent was interwoven with the business activities of her husband, which admittedly were affected by the situation created by the Turkish invasion and as such he could only himself be found to be a stricken debtor under the law. It was also argued that the learned trial Judge erred in law in annulling the previous orders as to costs.

Held, (1) that a stricken debtor is defined by s.2 of Law 24/79 as a debtor whose financial position was, as a result of the anomalous situation resulting from the Turkish invasion, prejudiced to an extent that renders him unable to respond to the financial obligations arising from his debt; that a debt in this context is one created prior to 14.8.1974 (see *Evangelou and Another v. Ambizas and Another* (1982) 1 C.L.R. 41 at p. 54); that since the respondent and her husband were acting in concert himself contributing his know-how and herself financing the projects through borrowing money by mortgaging her immovable property, she could properly be found in law to have been a stricken debtor inasmuch as the losses incurred from the joint ventures fell on her as well as on her husband, if not solely on her as it appears from the facts of the present case, and she has been definitely prejudiced to an extent that

renders her unable to respond to her financial obligations arising from her debt which was created prior to the 14th August, 1974; accordingly the appeal should fail.

(2) That the orders as to costs by which the respondent was adjudged to pay because of the applications for adjournment made on her behalf were final in themselves and could not have been annulled or cancelled by the trial Judge; accordingly the appeal will be allowed with regard to the order as to previous costs and dismissed on the remaining issues.

Appeal partly allowed.

Cases referred to:

Evangelou and Another v. Ambiza and Another (1982) 1 C.L.R. 41 at p. 54.

Appeal.

Appeal by respondent-judgment creditor against the judgment of the District Court of Nicosia (HjiConstantinou, S.D.J.) dated the 7th March, 1981 (Appl. No. 106/79) whereby the applicant judgment-debtor was declared a stricken debtor under the provisions of the Debtors Relief (Temporary Provisions) Law, 1979 (Law No. 24 of 1979).

Ch. Velaris, for the appellant.

P. Ioannides, for the respondent.

A. Loizou J. gave the following of the Court. The appellant -judgment creditor, appealed against the judgment and order of a Judge of the District Court of Nicosia, by which the respondent-judgment debtor, (a) was declared to be a stricken debtor under the provisions of the Debtors Relief (Temporary Provisions) Law 1979, (Law No. 24 of 1979), (b) stayed during the anomalous situation and/or until 31st December 1980 the right of collection by the appellant of the debt of the respondent due under judgment of the Court dated 20th December 1974, issued in Action No. 2189/74, (c) ordered the stay of execution of the aforesaid judgment pending the anomalous situation and/or until the 31st December, 1980 and (d) further ordered and declared that the respondent-judgment debtor did not owe any interest on the aforesaid judgment-debt as from 15th August, 1974, pending the anomalous situation and/or until the 31st December, 1980.

The facts as found by the trial Judge are as follows:

The appellant on the 29th January, 1973, lent to the respondent the sum of C£16,000.- with 9% interest thereon and as a security thereof she mortgaged her house at Strovolos where she resides with her husband and two children.

The appellant instituted in the District Court of Nicosia proceedings for the recovery of the aforesaid sum and interest accrued and for an order of sale of the mortgaged property and on the 20th December 1974, judgment and order was given in his favour.

The husband of the respondent was a real estate valuer and building contractor but he owned neither movable nor immovable property. In March 1964 the two spouses set up and registered a private company with limited liability under the name Kokos M. Yiorgalis Ltd., in which the respondent owns 90% of the shares. Since then either through the aforesaid company or in conjunction with her husband they jointly engaged in construction works and real estate development. She was contributing by providing the necessary capital, borrowing money on the security of mortgages on her immovable property and the husband was offering his specialized knowledge and services. In the year 1972 they started the construction of a block of flats in Strovolos on the immovable property of the wife. In 1973 when their cash was exhausted, she borrowed the aforesaid money from the appellant and continued the building of the block of flats which at the time of the Turkish invasion had not been completed. In the meantime and whilst the building of these flats was in progress, the respondent sold certain flats and collected sums of money on account which the respondent utilized for the continuation of the building of the said block of flats and for other similar activities carried out either by the company or by herself and her husband jointly.

Their activities extended also in such areas as Kyrenia and Karmi village, which since 1974 are under Turkish occupation. Also by virtue of a contract dated the 1st June 1973, entered into between the husband of the respondent and C. Frangeskides (Properties) Ltd., the building of a block of flats on property owned by the aforesaid company at Ayios Dhometios, was

undertaken and the financing of the project would have been made on a fifty-fifty basis between the contracting parties. An amount of C£4,045.- was paid by the husband of the respondent up to the time of the Turkish invasion for the aforesaid project. After the Turkish invasion the husband of the respondent left Cyprus, the project, however, was completed and he was debited with the sum of C£17,693.- as balance of his contribution for the completion of the building. The said sum of C£4,045.- was paid to Frangeskides with cheques drawn on Grindlays Bank and this amount came out of C£5,000.- borrowed from the said Bank by the respondent mortgaging as a security her house at Strovolos. There was another joint venture between Frangeskides and the husband of the respondent for the building of a block of flats in an area which also after the Turkish invasion became inaccessible to them.

On the totality of the circumstances, the learned trial Judge came to the conclusion that there was a joint business activity of the respondent and her husband, declared the respondent as a stricken debtor under the provisions of the aforesaid Law and granted the remedies set out earlier in the judgment.

With regard to the costs of the present proceedings, he made no order as to them but he cancelled all previous orders as to costs given against the respondent which were made by the Judges who dealt with the application at earlier stages.

It has been argued on behalf of the appellant that the learned trial Judge misdirected himself on the facts and that his findings were contrary to the evidence adduced. In particular it was said that he should not have found that the borrowing of the respondent was interwoven with the business activities of her husband, which admittedly were affected by the situation created by the Turkish invasion and as such he could only himself be found to be a stricken debtor under the law. It was also argued that the learned trial Judge erred in law in annulling the previous orders as to costs.

We have considered the findings of fact made by the learned trial Judge in the light of the totality of the evidence adduced and we have come to the conclusion that no sufficient reasons

have been shown by the appellant entitling us to interfere with those findings and conclusions based thereon.

Who is a stricken debtor under the law has been summed up very aptly by Pikis J., in delivering the judgment of the Court in *Evangelou & Another* v. *Ambizas & Another* (1982) 1 C.L.R., p. 41, at p. 54:

> "A stricken debtor is defined by s.2 of Law 24/79 as a debtor whose financial position was, as a result of the anomalous situation resulting from the Turkish invasion, prejudiced to an extent that renders him unable to respond to the financial obligations arising from his debt. A debt in this context is one created prior to 14.8.1974.
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> In *Lorris Tryfonos & Another* v. *Famagusta Shipping Co.* (1957) *Ltd.*, (1981) 1 C.L.R. 137, it was held that the inquiry must be solely restricted to the ability of the debtor to respond to his particular obligation and not to his financial obligations, generally. The law postulates as a first prerequisite for relief, adverse financial repercussions emanating from the Turkish invasion. Therefore, the Court must, to start with, weigh the magnitude of the loss sustained as a result of the Turkish invasion. Then, it must evaluate the financial position of the debtor, as shaped by the events of 1974, in juxtaposition to the debt, and decide whether he is in a position to respond to his obligations".

No doubt the respondent and her husband were acting in concert himself contributing his know-how and herself financing the projects through borrowing money by mortgaging her immovable property. She could, therefore, properly be found in law to have been a stricken debtor inasmuch as the losses incurred from the joint ventures fell on her as well as on her husband, if not solely on her as it appears from the facts of the present case, and she has been definitely prejudiced to an extent that renders her unable to respond to her financial obligations arising from her debt which was created prior to the 14th August, 1974. The appeal, therefore, should fail on this ground.

We find, however, valid the complaint of the appellant regar-

ding the annulment or cancellation of the orders as to costs by which the respondent was adjudged to pay because of the applications for adjournment made in her behalf as such orders were final in themselves and could not have been annulled or cancelled by him.

The appeal is, therefore, allowed with regard to this part, namely, this order as to previous costs and dismissed on the remaining issues. In the circumstances, however, we make no order as to the costs of this appeal.

Appeal party allowed. No order as to costs.