

1982 November 20

[HADJIANASTASSIOU, A. LOIZOU AND DEMETRIADES, JJ.]

ANDREAS STYLIANIDES,

*Appellant-Defendant,*

v.

EKATERINI CHARLY SKOT TRADING UNDER THE  
BUSINESS NAME FLAIR FASHION AND ANOTHER,

*Respondents-Plaintiffs.*

(Civil Appeal No. 6076).

*Civil Procedure—Practice—Writ of summons—Not served within 12 months—Renewal of writ and enlargement of time for its service may be pursued in the same application—Civil Procedure Rules, Order 4 and Order 57, rule 2.*

The following two issues arose for consideration in this appeal:

(a) Whether the trial Judge exercised properly his discretion to enlarge the time for the service of the writ after the expiration of the period of 12 months set down by Order 4 of the Civil Procedure Rules.

(b) Whether the application for enlargement should be made separately from the application for renewal itself.

*Held*, that the time provisions of Order 4 of the Civil Procedure Rules are amenable to extension under Order 57, r.2; that there is no reason in principle why two remedial proceedings such as the enlargement of time and renewal should not be pursued in the same application; that, further, nothing set before this Court warrants its interference with the exercise of the discretion of the trial Court though had discretion vested in it in the first place, it might require more stringent standard before excusing the delay of the respondents.

*Appeal dismissed.*

Cases referred to:

*Nigerian Produce v. Sonora Shipping* (1979) 1 C.L.R. 395.

**Appeal.**

Appeal by defendant 1 against the order of the District Court of Nicosia (G. Nicolaou, D.J.) dated the 27th February, 1980, (Action No. 5401/77) enlarging the time for the service of the writ of summons after the expiration of the 12 months' period set down in the Civil Procedure Rules for effecting service on the defendant.

*L. Papaphilippou*, for the appellant.

*E. Efstathiou*, for the respondent.

*Cur. adv. vult.*

HADJIANASTASSIOU J. read the following judgment of the Court. We are required in this appeal to review the decision of the trial Judge enlarging time for the service of the writ after the expiration of 12 months, the period set down by the Civil Procedure Rules for effecting service upon the defendant: (see Order 4).

Before the trial Court it was argued that the Judge has no discretion on the matter and that the provisions of Order 57, r. 2 are inapplicable and cannot be relied upon to extend retrospectively the period within which the writ ought to be served.

The trial Judge decided otherwise and applying his mind to the facts of the case granted enlargement of time and extended in the same proceedings the period within which would be effected.

Before us it was argued while conceding the trial Judge had discretion to enlarge the time, that the discretion was wrongly exercised and that in any event the application for enlargement should be made separately from the application for renewal itself.

It is well settled that the time provisions of Order 4 of the Civil Procedure Rules are amenable to extension under Order 57, r. 2.

The Case Law on the subject is reviewed in detail in *Nigerian Produce v. Sonora Shipping* (1979) 1 C.L.R. p. 395. (See also the Annual Practice 1958 p. 91 on the interpretation of the English provisions corresponding to our Order 4, notably R.S.C. Order 8, r. 1 - the old rules).

We see no reason in principle why two remedial proceedings such as the enlargement of time and renewal should not be pursued in the same application. Further nothing set before us warrants our interference with the exercise of the discretion of the trial Court though had discretion vested in us in the first place, we might require more stringent standard before excusing the delay of the respondents. 5

The appeal is dismissed with costs.

*Appeal dismissed with costs.*