

1984 March 24

[TRIANTAFYLIDIS, P.]

KORINA FOTIOU AND ANOTHER,

Appellants-Defendants,

v.

PETROLINA LTD.,

Respondents-Plaintiffs.

(Application in Civil Appeal No. 6702).

Civil Procedure—Appeal—Stay of execution pending appeal—Rule 18 of Order 35 of the Civil Procedure Rules—Appeal against dismissal of preliminary objections—And dismissal of application for staying further proceedings in the action pending determination of the appeal—No appeal against latter dismissal—A Judge of this Court has no jurisdiction, under the above rule, to stay the further trial of the action pending the determination of the appeal, in the absence of an appeal against the dismissal of the application for stay of the proceedings. 5

Civil Procedure—Appeal—Piecemeal appeals—Have to be discouraged—Appeal against dismissal of preliminary objection in the course of the trial—Court of appeal will not, in general, stay the trial of the issues of fact pending the appeal. 10

On the 21st March, 1984, the trial Court dismissed certain legal objections which were raised by the appellants and fixed the further hearing of the action for the 24th March, 1984. As against the dismissal an appeal was filed on the 21st March, 1984; and on the following day there was, also, filed an application for an order staying further proceedings in the action pending the determination of the appeal. Following the dismissal of this latter application, the appellant filed the present application* seeking an order staying the proceedings in the action until the delivery of the judgment of the Supreme Court in this appeal. 15 20

* The application was based on rule 18 of Order 35 of the Civil Procedure Rules which is quoted at p. 710 post.

5 *Held*, that in view of the fact that rule 18 of Order 35 of the Civil Procedure Rules appears to relate only to "stay of execution or of proceedings under the decision appealed from" and as by this application it is not being sought by the appellant to stay the execution of, or any proceedings under, the decision of the trial Court, on the 17th March 1984, dismissing the preliminary objections which were raised by counsel for the appellant, but there is only being sought to stay further proceedings in the action pending the determination of the appeal against the
10 the aforesaid decision of the trial Court on the 17th March 1984, this Court does not possess jurisdiction under rule 18 of Order 35, above, to stay the further trial of the action pending the determination of this appeal.

15 *Held*, further, that even if this Court had jurisdiction to grant a stay of further proceedings in the action, on the strength of the present application under rule 18 of Order 35, it would, in the exercise of its discretion, have refused to order such a stay not only because piecemeal appeals have to be discouraged (see, inter alia, *Christofidou v. Nemitsas* (1963) 2 C.L.R. 269)
20 but, also, because when a question of law has been decided on a demurrer, or on a preliminary objection, and an appeal has been filed the Court of Appeal will not, in general, stay the trial of the issues of fact pending the appeal.

Application dismissed.

25 Cases referred to:

Christofidou v. Nemitsas (1963) 2 C.L.R. 269;

In re J.B. Palmer's Application [1883] 22 Ch. D. 88.

Application.

30 Application by appellant for an order staying the proceedings in Action No. 1425/82 before the District Court of Larnaca (Papadopoulos, P.D.C.) until the delivery of the judgment of the Supreme Court in this appeal.

Chr. Theodoulou, for appellant (defendant 1).

Chr. Triantafyllides, for the respondents.

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Cur. adv. vult.

TRIANTAFYLIDIS P. read the following decision. During the hearing of civil action No. 1425/82 before the District Court of Larnaca, on the 17th March 1984, counsel appearing for the first defendant—now the appellant—raised as preliminary issues certain legal objections. They were dismissed by the trial Court and against its decision the present appeal has been filed on the 21st March 1984. 5

When the trial Court dismissed the preliminary objections it fixed the further hearing of the action for today; and it refused, also, on the 22nd March 1984, an application of the appellant for an order staying further proceedings in the action pending the determination of her appeal. 10

The appellant filed the present application on the 22nd March 1984 and she seeks an order staying the proceedings in the action until the delivery of the judgment of the Supreme Court in this appeal which, of course, could not have been fixed for hearing by today. 15

This application seems to be based on rule 18 of Order 35 of the Civil Procedure Rules which reads as follows:

“18. An appeal shall not operate as a stay of execution or of proceedings under the decision appealed from except so far as the Court appealed from or the Court of Appeal, or a Judge of either Court, may order; and no intermediate act or proceeding shall be invalidated, except so far as the Court appealed from may direct. Before any order staying execution is entered, the person obtaining the order shall furnish such security (if any) as may have been directed. If the security is to be given by means of a bond, the bond shall be made to the party in whose favour the decision under appeal was given”. 20
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In view of the fact that the above rule appears to relate only to “stay of execution or of proceedings under the decision appealed from” and as by this application it is not being sought by the appellant to stay the execution of, or any proceedings under, the decision of the trial Court, on the 17th March 1984, dismissing the preliminary objections which were raised by counsel for the appellant, but there is only being sought to stay further proceedings in the action pending the determination 35

of the appeal against the aforesaid decision of the trial Court on the 17th March 1984, I am of the opinion that I do not possess jurisdiction under rule 18 of Order 35, above, to stay the further trial of the action in question pending the determination
5 of this appeal.

I would add that perhaps the proper course might be for the appellant to appeal against the decision of the trial Court, of the 22nd March 1984, to proceed with the hearing of the action and then seek a stay of proceedings pending the outcome
10 of her appeal; but the appellant has not as yet appealed against that decision.

In any case, even if I have jurisdiction to grant a stay of further proceedings in the action, on the strength of the present application under rule 18 of Order 35, I would, in the exercise
15 of my discretion, have refused to order such a stay not only because piecemeal appeals have to be discouraged (see, inter alia, *Christofidou v. Nemitsas*, (1963) 2 C.L.R. 269) but, also, in the light of case-law such as *In re J.B. Palmer's Application*, [1883] 22 Ch. D. 88, where there was expounded the principle
20 that when a question of law has been decided on a demurrer, or on a preliminary objection, and an appeal has been filed the Court of Appeal will not, in general, stay the trial of the issues of fact pending the appeal; and though the *Re Palmer's Application* case, supra, was decided long ago it appears that
25 the principle stated then still applies (see, inter alia, the Supreme Court Practice, 1982, vol. 1, Order 59/13/1, p. 955).

I have, therefore, decided to dismiss this application; but with no order as to its costs as counsel for the respondents has not claimed any costs.

30 *Application dismissed. No order as to costs.*