

1985 November 23

[PIKIS, J.]

IN THE MATTER OF ARTICLE 155.4 OF THE CONSTITUTION AND SECTION 3 OF THE ADMINISTRATION OF JUSTICE (MISCELLANEOUS PROVISIONS) LAW, 1964,

AND

IN THE MATTER OF AN APPLICATION BY—
MANOLIS CHRISTOPHI AND OTHERS,
FOR AN ORDER OF CERTIORARI AND PROHIBITION,

Applicants,

AND

NINA P. IACOVIDOU,

Respondent-Owner.

(Applications Nos. 58/85, 59/85 and 60/85).

5 *Stay of execution pending appeal—Order 35, rules 18 and 19 of the Civil Procedure Rules—The discretion of the Court is exercised on two equally important considerations for the sound administration of Justice, namely the need to*
10 *uphold the finality of judgments on the one part and the need to sustain the effectiveness of the right to appeal on the other part—Order 35, rule 18 is confined to judgments or orders questioned on appeal—As in the present case the applicants seek stay of execution of an order not*
15 *under appeal pending the determination of an appeal against the judgment dismissing the applicants' applications for certiorari to quash such order and for prohibition to prohibit its execution, the application would be dismissed.*

15 The applicants seek stay of execution of the Order of 12.1.85 until the determination of an appeal taken against the judgment of the Court, whereby the Court refused to quash by an Order of Certiorari the said Order of 12.1.85 or prohibit its execution by an Order of prohibition.*

* See *In re Christophi* (1985) 1 C.L.R. 573.

The applications are based on Order 35 rules 18 and 19 of the Civil Procedure Rules and on Article 155 of the Constitution.

Held, dismissing the applications:

(1) One of the three applications was made by a non-party to the proceedings, that is *Nearchos Vassiliou*, and, therefore, it must be dismissed. 5

(2) The discretion of the Court is exercised upon a consideration of two equally important considerations for the sound administration of Justice. The need to uphold finality of judgments, on the one hand and the sustenance of the effectiveness of the right to appeal, on the other. 10

(3) In this case, however, Order 35, rule 18, can have no application as it is confined to orders or judgments the correctness of which is questioned on appeal, whereas the order of the Rent Control Court of the 12.1.85 is not under appeal. The subject of the appeal is the judgment of this Court dismissing the applications for certiorari and prohibition and, therefore, the suspension of such judgment can have no effect on the enforceability of the order of 12.1.1985. 15 20

(4) Even if the Court had power to grant the stay applied for it would decline to do so for such a stay would merely provide the applicants with further excuse of flouting the eviction orders made by the District Court of Limassol in 1975, one year after their confirmation on appeal. 25

Application dismissed with costs

Cases referred to:

In re Christophi (1985) 1 C.L.R. 573; 30

Katarina Shipping v. Ship "Poly" (1978) 1 C.L.R 355.

Applications.

Applications for the stay of execution of the writ for recovery of possession issued on 12.1.85 by the Rent Control Court of Limassol until the final determination of the appeal against the judgment of a Judge of the Supreme Court of Cyprus (Pikis, J.) whereby applicants' applications for orders of certiorari and prohibition were dismissed.

Chr. Pavlou with P. Pavlou, for the applicants.

10 *Ph. Pitsillides*, for the respondents.

Cur. adv. vult.

15 PİKIS J. read the following judgment. Following the judgment of the Court dismissing applications for certiorari and prohibition, made in the three proceedings, the present applications were filed for stay of execution of the order of 12.1.85, that the Court refused to quash by order of certiorari or prohibit its execution by order of prohibition. Stay is sought until the determination of an appeal taken against the dismissal of the applications for certiorari and prohibition.

20 To begin, one of the three applications is made by a non party to the proceedings¹, that is, Nearchos Vassiliou, and as such it must be dismissed. This puts an end to one of the three applications, that is Application No. 59/85 which is, in consequence, dismissed.

30 Applications in the other two cases raise identical issues; they were heard together and will likewise be dealt with in the same breath. The applications are founded on the provisions of Ord. 35 rules 18 and 19 of the Civil Procedure Rules, and Article 155 of the Constitution safeguarding a right of appeal from decisions of the Supreme Court in the exercise of its original jurisdiction. In this respect, the provisions of Article 155 differ from English practice and procedure. In England no right of appeal lies from an order of a single Judge refusing certiorari or

¹ See the judgment of this Court, dated 9.10.85, published in (1985), 1 C.L.R. 573.

prohibition, except on matters of practice and procedure¹. The only means of reviewing the order is by motion to the Divisional Court of the Queens Bench Division for a discharge of the order.

Premising his arguments on the provisions of Ord. 35, r. 18, and the principles underlying its application², counsel submitted that stay is granted as a rule in order to safeguard the effectiveness of the right to appeal. The discretion of the Court is exercised upon a consideration of two equally important considerations for the sound administration of justice. The need to uphold finality of judgments, on the one hand, and the sustenance of the effectiveness of the right to appeal, on the other. I shall not, however, dwell further on the principles governing the exercise of the discretion of the Court in this area for, Ord. 35 r. 18 can have no application to the proceedings in hand.

The application of Ord. 35, r. 18 is confined to orders or judgments the correctness of which is questioned on appeal. The order of the Rent Control Court, the enforcement of which applicants seek to sustain, is not under appeal. The subject of the appeal is the refusal of this Court to quash by way of certiorari the aforesaid order of the Rent Control Court. Suspension of the enforcement of the judgment of this Court as such, dismissing applications for certiorari and prohibition, can have no effect on the enforceability of the orders of the Rent Control Court.

When I drew the attention of counsel to the implications of their motion and the inapplicability of Ord. 35, r. 18 for the reasons stated above, he invited me to invoke inherent powers of the Court and direct stay. If inherent power vests in the Court to stay a judgment on an application for certiorari and prohibition, a subject on which I am offering no concluded opinion, it would, at most, extend to staying the judgment given by the Court. It could not conceivably extend to the order of another Court.

Counsel reminded that the order of the Rent Control

¹ Section 31(3)—Supreme Court of Judicature (Consolidation) Act 1925.

² Counsel cited, inter alia, the case in *Katarina Shipping v. Ship «Poly»*, (1978) 1 C.L.R. 355.

5 Court was suspended pending consideration of application for leave to apply for certiorari and prohibition, and then, until the determination of the substantive application. In the first place, leave to apply for certiorari and prohibition operates as stay of the proceedings under review.¹ Stay prior thereto, until proper consideration of the application for leave to apply for certiorari or prohibition, is interwoven with the implications of leave and is a power incidental thereto.

10 Finally, even if it was in my power to direct stay of execution of the order of the Rent Control Court of 12.1.1985, I would, under any circumstances decline to do so for it would merely provide applicants with further excuse for flouting the order of the District Court of Limassol
15 made in 1975, one year after its confirmation on appeal². Quite independently of the validity of the order of 12.1.85, the palpable fact is that applicants continue to be in disobedience of the order of the Court. The order of 12.1.85 merely aimed to provide machinery for overcoming their
20 disobedience. It did not in any way affect or have any bearing on their duty to obey the order of the District Court of Limassol, an order they have evinced, as indicated in my judgment of 14.11.85 every intention of disobeying under one guise or another. Revelatory of this intention is
25 the answer of counsel for the applicants to my query in argument whether in the event of the Court having discretion to suspend the order of 12.1.85, they would be ready to vacate the premises upon an undertaking of the owner to restore them in possession if their appeal is successful.
30 The answer was in the negative for the reason that their appeal against my ruling on prohibition would be rendered nugatory. The owner was, it may be noted, willing to give such undertaking if required by the Court, as counsel informed me. Of course I have, as explained above, no such
35 discretion and no question arises of considering terms upon which stay could be ordered.

The applications are dismissed with costs.

Applications dismissed with costs.

¹ Halsbury's Laws of England—4th ed.—Vol. II—§154.9.

² The Appeal was dismissed on 19.12.84.