

1986 April 2

[MALACHTOS, DEMETRIADES, LORIS, JJ.]

CHRISTODOULOS ARISTIDOU,

Appellant-Defendant,

v.

YIANNOPLAST LTD.,

Respondent-Plaintiff.

(Civil Appeal No. 6811).

Civil Procedure—Adjournment of hearing of action—A matter within the discretion of the trial Court—Exercise of discretion—Depends on the facts of each case.

On the day when the action of the respondent against the appellant was fixed for hearing, counsel for the appellant (defendant in the action) applied for an adjournment of the hearing on the ground that his client, though notified both in writing and orally of the date of the hearing, was unable to attend the Court as something unexpected happened to him. To a question by the Court as to what was this unexpected, counsel replied: "Something must have happened to him".

Counsel for the plaintiff objected to the adjournment. The Court refused to grant the application and, as a result, the plaintiff proceeded and proved his case and judgment was entered in his favour. Hence the present appeal.

Held, dismissing the appeal: (1) The question of whether an adjournment will be granted or not is within the discretionary powers of the trial Court and depends on the facts of each particular case. It is upon the appellant to persuade this Court that such discretion was wrongly exercised.

(2) In this case the appellant failed to persuade this Court that the trial Court was wrong to refuse the ad-

jourment as he had been notified of the date of the hearing and failed to appear without giving any reasons.

Appeal dismissed with costs.

Cases referred to:

- 5 *Maxwell v. Keyn and Others* [1928] 1 K. B. 645:
Kier (Cyprus) Ltd., v. Trencos Constructions Ltd. (1981)
1 C.L.R. 30.

Appeal.

10 Appeal by defendant against the judgment of the District Court of Limassol (Eleftheriou, D. J.) dated the 18th September, 1984 (Action No. 5076/83) whereby his application for the adjournment of the hearing of the action was refused and judgment as per claim was issued against him.

15 *C. Melas*, for the appellant.

E. Kollatsi (Mrs.), for the respondent.

20 MALACHTOS J. gave the following judgment of the Court. This is an appeal against the judgment of a District Judge in Action No. 5076/83 of the District Court of Limassol where an application for adjournment of the hearing of the action by the defendant was refused and judgment was issued against him as per claim, with costs.

The relevant facts are the following:

25 The respondent company in this appeal instituted on 6.12.83, as plaintiff in the court below, the above action claiming against the defendant, the present appellant, £217.975 mils as balance of his account for various plastic goods sold and delivered to him between 19.3.80 and 19.10.81.

30 On 12.3.84, when the action came on before the Court for first appearance, the defendant disputed the claim and the action was fixed for hearing on 18.9.84, and the defendant was ordered to file and deliver, in the meantime, his defence within 30 days.

On 18.9.84. counsel appearing for the defendant, who was not the one appearing for him before us today, in applying for an adjournment of the action made the following statement:

“I apply for an adjournment as although we notified our client by letter and yesterday by personal contact, today something unexpected happened to him and he has been unable to appear before the Court”.

To a question by the Court as to what was this unexpected, counsel for the defendant said: “Something must have happened to him”, (tha tou etihe kati).

Counsel for the plaintiff, on the other hand, in objecting to the adjournment said:

“I am bound to object to the application of my colleague. In the first place, because I have not received in my file the defence which as I have been informed was filed on 15.9.84, whereas it ought to have been filed within 30 days, in compliance with the order of the Court, and because it happens to be present the Director of the plaintiff company and because in the past I was asked by my colleague to deliver all the particulars and all the invoices and I have done that and because I have reasons to believe that the defendant is simply applying delaying tactics for payment of his debt. for this, I object to the application”.

The trial Judge then in rejecting the application for adjournment said:

“The adjournment of cases falls within the discretionary power of the Court, which, as it was many times stressed by the Supreme Court, must be exercised judicially. In the present case the defendant was ordered on 12.3.84 to file and deliver his defence within 30 days. Since then, a period of more than six months has elapsed, and the defendant filed the defence (if this can be considered as a defence), after the lapse of time and so he could not do so unless he applied to the Court for extension of time

in accordance with the Rules of Court. In any case, the defendant is not present before the Court today for reasons unknown to the Court and his advocate. I have heard carefully the learned counsel of both sides and I find that there are no reasons justifying the Court to grant the adjournment applied for and I call Mrs. Kollatsi to prove her case".

In support of the case of the plaintiff company, its Director then gave evidence and the trial Judge delivered judgment against the defendant as per claim with £68.- costs of the action.

As against this judgment the defendant filed the present appeal.

Counsel for the appellant in his effort to persuade us that the trial Judge wrongly exercised his discretion by not granting the adjournment, submitted that the trial Judge was not justified in doing so and that a miscarriage of justice has been occasioned, since the defendant had the right to be heard. It was further submitted that the trial Judge did not take into consideration the principle laid down in the case of *Maxwell v. Keun and Others* (1928) 1 K. B. 645, that where the refusal of an adjournment would result in a serious injustice to the party requesting the adjournment, the adjournment should be refused only if that is the only way that justice can be done to the other party. In our case, he submitted, by granting the adjournment, no injustice could be done to the plaintiff, whereas by not granting it, great injustice has been done to the defendant.

In the case of *Kier (Cyprus) Ltd., v. Trencu Constructions Ltd.* (1981) 1 C.L.R. 30 at page 38, the following is stated:

"The principles that should govern the exercise of a Court's discretion in granting or refusing an adjournment have been reviewed recently and at length by Savvides, J., in the cases of *International Bonded Stores Ltd. v. Minerva Insurance Co. Ltd.* (1979) 1 C.L.R. p. 557, and reiterated in the case of *Manolis Kranidiotis v. Ship "AMOR"* (1980) 1 C.L.R. p.

297, where the position is summed up as follows (pp. 299 - 300):

“ It has been repeatedly stressed by our Supreme Court in a number of cases that delays in the hearing of a case are highly undesirable and that adjournments should be avoided as far as possible and that only in unusual circumstances they must be granted. The reason for this, is that it is in the public interest that there should be some end to litigation and, furthermore, the right of a citizen to a fair trial within a reasonable time according to the Constitution and the Courts should comply with these constitutional provisions with meticulous care. The discretion of the Court in granting an adjournment should be exercised in a proper judicial manner and an order for an adjournment should not be made if there is danger that the rights of a party before the Court will be prejudicially affected by such adjournment”.

It is clear from the above that the question whether an adjournment will be granted or not, is within the discretionary powers of the trial Judge and depends on the facts of the particular case. It is also upon the appellant to persuade this Court that the trial Judge wrongly exercised this discretion.

In the present case we have not been persuaded that the trial Judge was wrong to refuse the adjournment applied for as the appellant was notified both verbally and in writing about the date of trial and failed to appear without giving any reasons.

Therefore, this appeal is dismissed with costs.

Appeal dismissed with costs.