

1987 March 9

[A LOIZOU MALACHTOS, DEMETRIADES, JJ]

IN THE MATTER OF THE FOREIGN JUDGMENTS
(RECIPROCAL ENFORCEMENT) LAW, CAP 10,
AND

IN THE MATTER OF A JUDGMENT DATED 14TH MAY, 1982 OF THE
COMMERCIAL COURT OF THE QUEEN'S BENCH DIVISION IN THE
HIGH COURT OF JUSTICE OF ENGLAND OBTAINED IN ACTION NO
1982-W-N 691 BETWEEN WILLIAMS AND GLYN'S BANK PLC,
PLAINTIFFS AND LAERTIS SHIPPING ENTERPRISES SPECIAL
SHIPPING S A , DEFENDANTS, ETC

(Civil Appeal No 7040)

5 *Foreign judgments — Service of notice of registration of on judgment debtor out
of Cyprus — Rules 16(2) and 8(1)(b) of the Foreign Judgments (Reciprocal
Enforcement) Rules — The Civil Procedure Rules Order 6 applicable —
Mode of Service — Subject to rule 7 of Order 6 and in the absence of any
specific direction by the Court and any agreement in the contract between the
parties the mode of service is regulated by the law of the country where it is
effected — No obligation on the part of the Court to specify mode of service
where there is no special request in the application before it — Service through
official channels — Obligatory only in case of service in a country with which
10 a convention has been extended to Cyprus*

*Civil procedure — Service out of the jurisdiction — Mode of — See Foreign
judgments, ante*

15 *Civil procedure — Irregularity — Opposition to an interlocutory application — Order
48, r 4 of the Civil Procedure Rules — Non-compliance with its provisions by
failing to state rule on which the opposition is based — An irregularity that can
be remedied — Order 64 of the same rules*

20 *Foreign judgments — Registration of in Cyprus — Application for setting it aside —
Period limited by the order allowing the registration — Whether jurisdiction to
extend such time upon application filed after its expiration — The Foreign
Judgments (Reciprocal Enforcement) Rules - Rule 6(4) — Restricts right of
debtor to apply for such an extension "while it remains competent for any
party to have the registration set aside" — Rule 16(2) of the same rules making
applicable the Civil Procedure Rules — Order 57, r 2 of the Civil Procedure
Rules — Must be read subject to the said rule 6(4)*

Upon application by Williams and Glyn's Bank Plc (respondents) the District Court of Limassol made on the 22 6 86 an order for the registration of a judgment, which had been issued by the High Court of Justice in England in favour of the respondents and against Laertis Shipping Enterprises Special Shipping S A. (appellant). The order provided that execution should not issue until after expiration of 21 days from service of the notice of registration upon appellants in Greece by double registered post. During that period the appellants would have the right to apply for setting aside the registration. 5

As the respondents were unable to effect service in the manner aforesaid, they obtained a further order that service of the notice be effected in London on «N. and J. Vlassopoulos Ltd». upon which company, in accordance with the contract of guarantee, on which the judgment had been obtained, any document, notice or legal process could be served on the appellants. 10

On 20.7.82 the respondents effected service on «Vlassopoulos» by private process server. On the same day the High Court in England granted stay of execution of the said judgment. The stay continued in force until 1.2.85. On 27.3 85 the respondents obtained from the D.C. Limassol a writ of attachment in execution of the said judgment. Upon ex parte application dated 20 4.85 the appellants obtained an order extending the time within which to file an application to set aside the registration of the judgment. Upon application by the respondents the Full District Court of Limassol set aside the order granting the said extension of time. Hence the present appeal. 15 20

Counsel for the appellants argued that the period of 21 days did not begin to run, because there had not been proper service of the registration of the foreign judgment upon the appellants, that the trial Court wrongly held that appellants were not entitled to question the validity of the service, having failed to invoke rule 9 of the Foreign Judgments (Reciprocal Enforcement) Rules (and by extension Ord. 6, rule 7 of the Civil Procedure Rules) in their opposition to the respondents' application for setting aside the order for extension of time and, also, having failed to include Ord. 57, rule 2 in their application for extension of time, with the result, in accordance with the decision of the trial Court, not to be entitled in the light of Ord. 48, r.4 of the Civil Procedure Rules to rely on such Order, that the trial Court wrongly held that it did not possess inherent jurisdiction to enlarge the time after the period specified had expired and, finally, that the trial Court wrongly held that, if it had discretion, it would have exercised it against the appellants by reason of their excessive delay in applying for extension of time. 25 30 35

Held, dismissing the appeal: (1) (a) Rule 16(2) of the Foreign Judgments Rules provides that the Civil Procedure Rules are applicable «subject to the

provisions of these rules» And rule 8(1)(b) provides that «notice in writing of registration of a judgment must be served on the judgment debtor (b) If out of Cyprus, in accordance with the rules applicable to the service of a writ of summons out of Cyprus save that special leave to serve out of Cyprus shall not be required» The Civil Procedure Rule applicable to such service is Order 6 which, save as it is provided in rule 2 thereof (service in accordance with an agreement by the parties to a contract) and as it is provided in rule 7 (foreign country with which a convention relating to such service has been or shall be extended to Cyprus) makes no provision as to the mode of service Order 6 makes provision for service of a writ of summons or notice thereof through official channels only in any foreign country with which a convention has been extended to Cyprus

(b) The Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (The Hague 15 11 65) ratified by Law 40/82 cannot have a bearing in this case as it came into force on 1 6 83 that is after the service on «Vlassopoulos»

(c) There is no provision either in Order 6 or in Order 5 as regards any obligation on the part of the Court to specify the mode of service where there is no specific request in the application before it

(d) It follows that subject to rule 7 of Ord 6 the mode of service to be followed in the absence of any specific direction by the Court and in the absence of any specific agreement in the contract between the parties, should be in accordance with the Law of the Country where such service was effected

(e) In the light of the above the trial Court correctly concluded that service as effected was proper and that consequently the time had begun to run as from the date of service on "Vlassopoulos"

(2) Failure to invoke the rules is not fatal Non compliance with the provisions of Ord 48 r 4 of the Civil Procedure Rules does not render the proceedings a nullity but constitutes a mere irregularity that can be remedied (Ord 64, r 1) This outcome, however, of the relevant grounds of appeal does not change the final outcome of the appeal

(3) As correctly stated by the trial Court an extension of time on the basis of any inherent jurisdiction of the Court could not be granted because rule 6(4) of the Foreign Judgments (Reciprocal Enforcement) Rules expressly limits the capacity of the debtor to apply for an extension of time and restricts his right to do so "while it remains competent for any party to have the registration set aside" In the light of rule 16(2) of the said Rules, the provisions of Ord 57,

r 2 of the Civil Procedure Rules must be read and applied in this case subject to the said rule 6(4). Similar provisions appear as regards judgment creditors in section 4(2) of the Foreign Judgments (Reciprocal Enforcement) Law, Cap 10

(4) The stay in England does not constitute a justification for the delay in applying for extension of time. Once service was effected on "Vlassopoulos", it really became irrelevant in the circumstances whether the appellants were informed of it or, at best, the burden was on the appellants to explain, in so far as relevant, why they only found out about the registration on the 18/4/85, as alleged in their affidavits. This they have entirely failed to do

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Appeal dismissed with costs

Cases referred to

- Spyropoulos v Transavia Holland N.V. Amsterdam* (1979) 1 C.L.R. 421;
- Re HadjiSotenou and Another* (1986) 1 C.L.R. 429,
- The Ship «Glonana» v Breidi* (1982) 1 C.L.R. 409 ,

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Appeal.

Appeal by respondent against the judgment of the District Court of Limassol (Hadjitsangaris, P.D.C. and Hadjihambis D.J.) dated the 26th July, 1985 (Gen. Appl. No. 50/82) whereby the order of a single judge of the trial Court extending the period for applying to set aside the registration of a foreign judgment was set aside.

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M. Eliades with A. Scordis, for the appellants.

E. Montanios, for the respondents.

Cur. adv. vult.

A. LOIZOU, J. read the following judgment of the Court. This is an appeal from the ruling of the Full District Court of Limassol, given on the application of the respondents in this appeal, setting aside an Order of a single judge of the trial Court, by which on the application of the present appellants, the period for applying to set aside the registration of a foreign judgment against them had been extended.

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On the 22nd June, 1982 the District Court of Limassol, upon an

application of Williams and Glyn's Bank Plc, dated the 19th June, 1982, made an order for the registration of a judgment for US\$7,537,529 97 obtained on 14th May, 1982 by the Bank against Laertis Shipping Enterprises Special Shipping SA in
5 Action No 1982-W-No 691 in the Commercial Court of the Queen's Bench Division in the High Court of Justice in England

The Order specified that execution should not issue until after the expiration of 21 days from the service of notice of the registration upon Laertis in Greece by double registered letter, during which time Laertis would have the right to apply for the setting aside of the registration. As the Bank was unable to so serve Laertis, the letter having been returned marked «UNKNOWN» on the 14th July, 1982, it obtained an order that notice of the registration be served on Laertis at the registered office in London
15 of «N & J Vlassopoulos Limited» upon which company, in accordance with the terms of the Contract of Guarantee, on which the judgment had been obtained, any document, notice or legal process could be served on Laertis. On the 20th July, 1982 the Bank served notice of the registration on Laertis, c/o Vlassopoulos
20 at its registered office in London by private process server. On the same day the High Court in England granted a stay of execution of the judgment, which was eventually removed by that Court on 1st February, 1985, whereupon the Bank by an application in the District Court of Limassol on the 27th March 1985, obtained a writ of attachment of the proceeds of sale of a ship of Laertis,
25 deposited in the Supreme Court, in execution of the registered judgment. This writ Laertis sought to set aside by an application dated the 22nd April, 1985, and by another application of even date Laertis applied for the setting aside of the registration of the
30 judgment, having obtained through an application dated the 20th April, 1985, an Order extending for five days from the date of the application, the period during which an application could be made to have the registration of the judgment set aside

This Order of the Court dated the 20th April 1985, extending for
35 five days as from the date the period during which the application to set aside the registration of the judgment in question might be made, was subsequently set aside by the ruling of the Full District Court, which is the subject matter of this appeal

It was decided therein that since proper service of the registration had been effected, no special procedure being provided for as to the mode of service of the notice on Vlassopoulos in the Order of the 14th July 1982, time had began to run on 20th July 1982 and the application for extension of time had been made at a time when Laertis was not competent to apply to have the registration set aside, time having already expired by those dates, namely by 20th April 1982 and 22nd April 1985. 5

It was further decided that the general provisions of Order 57 rule 2 of the Civil Procedure Rules to the effect that, "a Court shall have power to enlarge the time although the application is not made until after the expiration of the time appointed or allowed," could not be invoked, as the application for extension of time had not been based on such Order 57 rule 2 and that in any case such period has been appointed not by the rules but by the Court. 10 15

Finally, it was held that though there may exist an inherent jurisdiction of the Court to grant an extension after time had elapsed, nonetheless in the present case an extension of the time could not be granted on the basis of such jurisdiction because Rule 6(4) of the Foreign Judgments (Reciprocal Enforcement) Rules expressly limits the capacity of the debtor to apply for an extension of time and restricts and defines his right to do so «while it remains competent for any party to have the registration set aside»; and consequently there does not exist «in the Court any inherent jurisdiction to extend the time in direct contradiction to the express provisions of Rule 6(4) which specifically deals with and limits the powers of the Court in this respect. Since the debtor's right to apply to have the registration set aside stems primarily from section 4(2), it would not seem possible for the Court to grant an extension outside the limits of the right as specified by the Law and the Rules. After the expiration of the period fixed by the Order the creditor effectively acquires a vested right in the registered judgment which cannot be affected by any subsequent action on behalf of the debtor.» 20 25 30 35

The main argument by counsel for the appellants was that there had not been proper service of the registration of the foreign

judgment and consequently that the period of 21 days for applying to have the registration set aside had not began to run and therefore such application to set the registration aside could be entertained. Otherwise, even if there has been proper service in
5 which case the period of 21 days had expired, the Court had inherent jurisdiction to grant such extension.

It was argued that there had not been proper service because there was noncompliance with the rules regarding service, as there had been no direction by the Court in the Order as to the mode of
10 service, rendering thus the proceedings a nullity, not merely irregular. It was submitted that the Court should have made specific directions as to the mode of service which should have been effected through official channels and in accordance with our Civil Procedure Rules, in particular Order 5 which is
15 applicable by virtue of Rule 8(b) of the Foreign Judgments (Reciprocal Enforcement) Rules and not by way of a private process server, who had been instructed to that effect by the judgment creditor.

As correctly argued by the appellants, the Civil Procedure Rules
20 are applicable by virtue of Rule 16(2) of the Foreign Judgments Rules which provides that:

«The Rules of Court governing civil proceedings shall have effect subject to the provisions of these rules.»

And Rule 8(1)b provides:

25 «8. (1) Notice in writing of the registration of a judgment must be served on the judgment debtor-
(b) if out of Cyprus, in accordance with the rules applicable to the service of a writ of summons out of Cyprus, save that special leave to serve out of Cyprus shall not be required.»

30 The Civil Procedure rule which applies to the service of a writ of summons out of Cyprus is Order 6.

Therein there is no provision as to the mode of service of a writ of summons outside the jurisdiction save in rule 2 to the effect that:

«The parties to any contract may agree that service of any writ

of summons in any action brought in respect of such contract may be effected at any place in or out of Cyprus on any party or any person on behalf of any party or in any manner specified or indicated in such contract. Service of any writ of summons at the place (if any) or on the party or on the person (if any) or in the manner (if any) specified or indicated in the contract shall be deemed to be good and effective service whenever the parties are resident, and if no place or mode or person be so specified or indicated, service out of Cyprus of such writ may be ordered.»

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Also in rule 7 thereof the following is provided, where service of a writ of summons or notice of such writ is to be effected:

«in any foreign country with which a convention relating to such service has been or shall be extended to Cyprus the following procedure shall, subject to any special terms in the convention, be adopted:-»

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And in rule 8 it is provided that:

«The certificate of any British Consul shall, provided that it certifies the writ of summons or notice of the writ to have been personally served or to have been duly served upon the defendant in accordance with the law of such foreign country be deemed to be sufficient proof of such services.»

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Useful reference may be made to the corresponding English rules.

Rule 8(1)b of the Foreign Judgments (Reciprocal Enforcement) Rules corresponds to the English Order 41B rule 7. In the note thereto, in the Annual Practice 1956, at p. 726, it refers to the general provisions of Order 11 on service out of the jurisdiction.

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Our Order 6 rule 2 corresponds to the old English Order 11 rule 2A (Annual Practice 1956) replaced by Order 10 rule 3 R.S.C. (Revision) 1962. In the Annual Practice (1964) it is stated at p. 95 in relation thereto:

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«Parties have a right to agree a special mode of service in place of that provided by the Rules.»

Order 6, rule 8, corresponds to the old English Order 11 rule 3(3) (Replaced by the R.S.C. (Revision) 1962 by Order 11 rules 5, 6 and 8 - (see Annual Practice 1964).

Rule 5(3) (a) provides:

- 5 «(3) A writ, or notice of a writ, in respect of which leave for service out of the jurisdiction has been granted -

(a) need not be served personally on the person required to be served so long as it is served on him in accordance with the law of the country in which service is effected;»

- 10 In the note to rule 5, it is stated as regards its effect at p. 114:

«Effect of the rule. - The rule consists of two parts: Paras (1) to (3) are mainly concerned with the method of service out of the jurisdiction generally where there is no provision for alternative methods, and proof of such service.»

- 15 English Order 11, rule 6, is headed:

«Service of writ or notice of writ abroad through foreign governments, judicial authorities and British consuls.»

and it, inter alia, provides:

- 20 «(1) This Rule does not apply to service in-
- (a) Scotland, Northern Ireland, the Isle of Man or the Channel Islands;
- (b) any Commonwealth country mentioned in subsection (3) of section 1 of the British Nationality Act, 1948;
- (c)

- 25 The following appears in the note thereto in the Annual Practice 1965 at p. 116:

30 «This para. in effect excepts from the ambit of r.6 countries which are part of the Commonwealth, British colonies, protectorates or trust territories, and Eire. Section 1 (3) of the British Nationality Act, 1948 has been frequently amended and now embraces Canada, Australia, New Zealand, India, Pakistan, Southern Rhodesia, Ceylon, Ghana, Malaysia, Cyprus, Kenya and Zanzibar. See previously, the High Court Writs (Service Abroad) Order, 1943. In these countries service

cannot be effected through official channels (that is, through the government or judicial authorities or a British consular authority) and is therefore made by the plaintiff or his agent direct (see r.5 (3)(b))»

In the Annual Practice 1982 at pp. 106-107 the aforesaid Order 11 rule 6, appears with the following qualification: 5

«6. - (1) Save where a writ is to be served pursuant to paragraph (2A), this Rule does not apply to service in -
(a) Scotland, Northern Ireland, the Isle of Man or the Channel Islands; 10
(b) any independent Commonwealth country;
.....»

And rule 2A provides:

«(2A) Where in accordance with these Rules, a writ is to be served on a defendant in any country which is a party to the Hague Convention, the writ may be served - 15
(a) through the authority designated under the Convention in respect of that country; or
(b) if the law of that country permits - 20
(i) through the judicial authorities of that country, or
(ii) through a British consular authority in that country.»

In the note following it it is, inter alia, stated (see Annual Practice 1982 p. 108).

«There is some variety in the methods of service permitted and prohibited by the various conventions, but two methods are permitted by each of them, namely (1) service through the judicial authorities of the country where the service is to take place, and (2) service through a British consular authority in that country. In regard to method (2), however, there is some variety in the provisions of the conventions as to the nationality of the persons who may be so served. 25
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The other important method of service is through an agent appointed by the plaintiff (in Czechoslovakia a local solicitor or notary), but this is not permitted in some countries, and in 35

others is not permitted on subjects of those countries. Therefore, for simplicity, rule 6(2) expressly permits service in convention countries by one of the above two numbered methods, and subject to the qualification in sub-para (b),
 5 though it does not exclude other methods which may be available.»

Finally it may be pertinent to dwell shortly on Order 68 (Annual Practice 1964) on service of foreign process in England.

Order 68, rule 2 provides:

10 «2. - (1) This rule applies in relation to the service of any process required in connection with civil or commercial proceedings pending before a court or other tribunal of a foreign country where a letter of request from such a tribunal requesting service on a person in England or Wales of any
 15 such process sent with the letter is received by Her Majesty's Secretary of State for Foreign Affairs and is sent by him to the Supreme Court with an intimation that it is desirable that effect should be given to the request.»

20 And further down at p. 1854, the following is stated as regards the scope of the rule:

«This rule applies only where a letter of request is sent from the foreign court or tribunal through official channels to the Supreme Court for service here. Where process is sent from non-convention countries abroad to be served here by means
 25 other than official channels, there is no rule which enables an English court to grant a certificate that service has been effected in accordance with the requirements of English Law.»

30 So to sum up our Order 6 makes provision for service of a writ of summons or notice of such writ through official channels only in any foreign country with which a convention has been extended to Cyprus.

Though Cyprus acceded to the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (The Hague, 15 November 1965), which was

ratified by Law No. 40 of 1982 on the 2nd July 1982, as rightly submitted by counsel for the respondents, in view of the periods provided in its Articles 27 and 28, the Convention could not have come into force in respect of Cyprus on the 18th July 1982, when service on Vlassopoulos was effected – In fact according to a letter dated 19th April 1986, by the Ministry of Foreign Affairs which was produced during the course of the hearing the Convention entered into force in respect of Cyprus on the 1st June 1983. So, even if there was specific evidence before the Court that the Hague Convention was applicable in England, as we have no judicial notice of English Foreign Law, in which case Order 6, rule 7 of the Civil Procedure Rules would have been applicable, its provisions being mandatory – «shall be adopted» –, for all intents and purposes, in Cyprus on the relevant dates, that is on the date of the registration of the judgment in Cyprus, which is prior to the ratification of the Convention, and on the dates of issue of the Order for service on Leartis/Vlassopoulos and on the date of service on Vlassopoulos, there was no Convention in force. Consequently, as rightly found by the trial Court there was no requirement for service through official channels.

As regards the appellants' argument that the Court ought to specify the mode of service either on an applicant's application or on its own motion and the Court's power under Order 5 to direct substituted service, we find that in the Civil Procedure Rules though it is specified that the Court «shall appoint the time within which the defendant shall enter his appearance to the writ» (Order 5 rule 10), or under Order 6, rule 5, «Any order shall limit a time after such service within which such defendant is to enter an appearance», nevertheless no provision appears as regards any obligation/requirement of the Court to specify the mode of service where there is no specific request in the application before it. And the provisions of Order 5, rule 9 regarding substituted or other service by letter etc., are not mandatory but empowering:

«... the Court may make such order ...»

The mode of service therefore to be followed in the absence of specific direction by the Court and in the absence of specific agreement in the contract between the parties, should be in

accordance with the Law of the country where such service is to be effected. See: Halsbury's Laws of England (4th Edition) Vol. 37, para. 194 at p. 146. Also Order 11 rule 5(3)(a) (Annual Practice 1964).

5 We can therefore find no foundation in the arguments of the appellants that the service of the notice of registration was made irregularly or contrary to any Law or Rules. We hold therefore that the trial Court correctly concluded that service as effected was proper and that consequently the time had begun to run.

10 Grounds of appeal 2 and 6 were argued together to the effect that the trial Court wrongly held that the respondents were not entitled to question the validity of the service, having failed to invoke Rule 9 of the Foreign Judgments (Reciprocal Enforcement) Rules and by extension Order 6 rule 7, of the Civil Procedure
15 Rules, by failing to include them in their notice of opposition to the Bank's application by setting aside the order for extension of time during which an application for setting aside the registration may be made. And also that they failed to include Order 57 rule 2 in their application for extension of time and therefore, in
20 accordance with order 48 rule 4 of the Civil Procedure Rules such order could not be relied upon.

It was contended by the appellants that since they had been allowed by the trial Court to argue such points before it, and as such rules had formed the basis of the proceedings they could not
25 therefore have relied upon them.

From the facts and documents before us it transpires that Rule 8 and by extension Order 6, rule 7, was referred to in the application of the respondent Bank to set aside the Order of the Court for extension of time but not by the present appellants in their
30 opposition thereto.

On the other hand Order 57 rule 2 was referred to in such opposition though not in the original application of Laertis for extension of time.

Order 48 rule 4 inter alia provides:

35 «Such notice shall refer to the specific section of the Law or to the specific Rules of Court upon which the opposition is

founded.»

We do not, however, agree with the trial Court that failure to invoke the rules is fatal. Noncompliance with rule 4 is an irregularity that can be remedied and not a nullity. Order 64, rule 1, of the Civil Procedure Rules provides:

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«Non-compliance with any of these rules, or with any rule of practice for the time being in force, shall not render any proceedings void unless the Court or Judge shall so direct, but such proceedings may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the Court or Judge shall think fit.»

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In the present instance we do not consider, as regards Rule 8, that failure to refer to it in the opposition was a material irregularity to preclude the appellants from invoking such order in their arguments before the Court, especially in view of the fact that the application of the Bank has been based on such rule. See *Spyropoulos v. Transavia Holland N.V. Amsterdam* (1979) 1 C.L.R. 421 at pp. 431-2; *In re Julia HadjiSoteriou and Another* (1986) (unreported, judgment delivered on 17th October 1986)* *The Ship «Gloriana v. Eddy Breidi* (1982) 1 C.L.R. 409 at pp. 416-420.

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The outcome of these grounds of appeal, however, cannot change the final outcome of this appeal as the appellants joined in the proceedings before the District Court despite the fact that, as they presently allege, they were improperly served, they applied for an extension of time during which an application to set aside the registration may be made and generally they did not apply to have the proceedings or the service set aside within a reasonable time.

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It was next argued that the trial Court wrongly held the view that it did not possess inherent jurisdiction to enlarge the time after the period had expired on the ground that the appellants were no longer «competent» within the meaning of Rule 6(4) as such envisages an extension of time to run from the expiration of the original period specified by the Order.

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*Reported in (1986) 1 C.L.R. 429.

It was contended that since the period of 21 days had in fact been fixed by the Court and not by the Rules, the Court had inherent jurisdiction to enlarge it.

5 We find such argument to be without substance. As correctly stated by the trial Court, rule 6(4) clearly provides that an extension may be given while it remains competent for any party to apply to have the registration set aside.

10 Order 57 rule 2 does indeed provide that it may be enlarged notwithstanding that time has expired but as stated in Rule 16(2) of the Foreign Judgment Rules, the Civil Procedure Rules apply subject to the Foreign Judgments Rules and therefore Order 57 rule 2, must be read and applied in the light and subject to the provisions of any rule on time. Consequently, since Rule 6(4) expressly provides that a party must be competent and thus limits
15 the time within which such application may be made, Order 57 rule 2 must be read subject to such provisions. Similar provisions also appear as regards a judgment creditor in section 4(2) of the Foreign Judgments (Reciprocal Enforcement) Law, Cap. 10, where in the proviso thereto the following is stated:

20 ~~Provided that execution shall not issue on the judgment so long as, under this Part of this Law and the Rules of Court made thereunder, it is competent for any party to make an application to have the registration of the judgment set aside, or, where such an application is made, until after the
25 application has been finally determined.~~

The final grounds of appeal, grounds 8 and 9 are that the trial Court wrongly decided that it could not exercise any discretion to extend the time and, further, decided that if they had a discretion at all they would exercise it against the debtors, mainly because
30 there was excessive delay in applying for extension of time.

It was contended by the appellants that the delay was justified as they were informed of the registration at a very late stage. Moreover a stay of execution has been granted in England in respect of the English judgment which lasted until February 1985,
35 about two months before the appellants applied for an extension of time.

Relevant to this ground is what we have already said above, suffice it to say that any stay of execution granted in England does not constitute any justification for the delay in applying for the extension of time especially in view of the fact that, as found, the appellants had properly been served of the proceedings against them, which as correctly stated by the trial Court to the effect that the notice was served on Vlassopoulos in accordance with the order of the 14th July, 1982 and the Contract of Guarantee, quite apart from being sufficient notice in itself as regards Laertis, at least it raised a presumption that Laertis were thereby sufficiently informed of it from the persons whom they elected for the very purpose of service. Thus, though once service was properly effected on Vlassopoulos it really became irrelevant whether Laertis were informed of it, at best the burden was placed on Laertis to explain, in so far as that might be relevant, why, as alleged in their affidavits, they only found out about the registration on the 18th April, 1985. This they have entirely failed to do.

For all the above we have come to the conclusion that this appeal should fail and is hereby dismissed with costs.

Appeal dismissed with costs.