

1988 December 28

(KOURRIS, J.)

IN THE MATTER OF ART. 155.4 OF THE CONSTITUTION  
AND SECTION 9 OF THE COURTS OF JUSTICE  
(MISCELLANEOUS PROVISIONS) LAW 1964

AND

IN THE MATTER OF AN APPLICATION BY THEOCHARIS  
CHARALAMBIDES FOR AN ORDER OF CERTIORARI  
AND FOR AN ORDER OF PROHIBITION.

(Application No. 207/88).

---

*Prerogative Orders — Certiorari — Leave to apply for — Principles applicable.*

*Civil Procedure — Execution — Order for payment of judgment debt by instalments — Default in paying an instalment — Application for debtor's imprisonment — The Civil Procedure Law, Cap. 6, s.82 — Allegation by debtor that trial Judge committed him to prison without first hearing the application, (which had been opposed by the debtor) and examining the debtor — On basis of such allegation debtor established a prima facie case justifying leave to apply for certiorari.* 5  
10

The facts for this case appear sufficiently in the judgment of the Court.

*Leave to apply for certiorari granted.*

*Cases referred to:*

*Attorney-General v. Christou*, 1962 C.L.R. 129; 15  
*Ex Parte Costas Papadopoulos* (1968) 1 C.L.R. 66;  
*Re Kakos* (1985) 1 C.L.R. 250.

**Application.**

Application for leave to apply for an order of certiorari for the purpose of quashing the decision of the District Court of Nicosia committing the debtor to prison on the application of the creditor. 20

A. Eftychiou, for the applicant.

Cur. adv. vult.

5 KOURRIS J. read the following decision. This is an application for leave to apply for an order of certiorari for the purpose of quashing the decision of the District Court of Nicosia committing the debtor to prison on the application of the creditor under Part VIII of the Civil Procedure Law, Cap. 6, in Case No. 184/83.

The facts of the case as they appear from the affidavit sworn in support of the application are as follows:-

10 On 13.6.1983 Popular Bank Ltd. obtained judgment in Case No. 184/83 against Galatia Anastasiadou as principal debtor and against the applicant as guarantor for the sum of £550.- plus interest at 9% from 3.5.1982 and £104.25c costs.

15 The judgment debtors failed to pay the judgment debt and on 26.2.85 the judgment creditors filed an application for monthly instalments whereupon the District Court of Nicosia on 26.2.1985 ordered them to pay the judgment debt and costs by monthly instalments of £35.- each commencing on 1.4.1985 until final payment plus £40.15c costs.

20 On 14.2.1987 the judgment creditor filed an application under Section 82 of the Civil Procedure Law, Cap. 6, praying for an order of imprisonment of the judgment debtors on the ground that they failed to pay the monthly instalments. On 23.3.1987 applicant filed a notice opposing the said application and in support he swore an affidavit dated 23.3.1987 and a supplementary affidavit sworn on 29.4.1987.

25 According to the affidavit in support of the application the learned trial judge instead of hearing the application and examining the judgment debtor in accordance with Section 82 of the Civil Procedure Law, Cap. 6, proceeded to issue an order for committing to prison the applicant (see Exhibits 2 and 3).

30 The question which falls for determination by me at this stage is whether there is a prima facie arguable case made out sufficiently to justify the granting of leave to the applicant to move the Court in due course to issue an order of certiorari.

35 It is not necessary for me to go into the matter thoroughly, but it is sufficient if on the basis of applicant's statement and the affidavit

in support, the Court is satisfied that such leave should be granted (see *A. G. v. Panayiotis Christou*, 1962 C.L.R. 129 at page 134, *Ex Parte Costas Papadonoullos* (1968) 1 C.L.R. 66, *In Re Kakos*, (1985) 1 C.L.R. 250).

In view of the contents of the affidavit I am satisfied that the delay of the applicant to file this application was justified. 5

At this stage it would appear that the applicant has a prima facie arguable case, that the trial Judge acted in excess of jurisdiction and that there has been an error of law on the face of the record and in the circumstances, I grant leave to the applicant to file an application for an order of certiorari within 15 days from today and all proceedings for committal to prison of the applicant in respect of the order dated 29.4.1987 in Case No. 184/83 to be stayed. 10

*Application granted.*