[ZEKIA, P., TRIANTAFYLLIDES, JOSEPHIDES, JJ.]

GREGORIS C. ASHIOTIS,
Appellant-Plaintiff,

v.

CYPRUS BROADCASTING CORPORATION,
Respondents-Defendants.

(*Civil Appeal No.* 4517)

Civil Procedure—Appeal—Costs—Pleadings—Extension order to file statement of defence granted on an ex-parte *application—Application for judgment by default owing to ignorance about such order—Trial Court's order as to costs of the application—The Civil Procedure Rules, Order* 48, *rule* 12.

On the hearing of an application by the appellant-plaintiff for a judgment by default it was discovered that he could not proceed with the application because an order enlarging the time for filing the statement of defence had already been granted to the respondents-defendants on an *ex-parte* application. Then the appellant-plaintiff claimed the costs of his application. It was disputed and, eventually, instead of receiving, he was ordered to pay £5 costs to the other side. Appellant-plaintiff appealed against such order.

The ground of appeal was that the discretion of the trial Court with regard to costs was wrongly exercised against the appellant-plaintiff because the trial Court erred in holding that O. 48 r. 12 of the Civil Procedure Rules was not applicable in this case and that the respondents-defendants did not have to comply with it.

Held, (1) the rule applicable to this case is Order 48, rule 12. Appellant-plaintiff was improperly deprived of his costs in this case and he was entitled to his costs upto the time when he came to know of the extension order, either when he appeared before the Court or served with a copy of the order.

(2) Appeal, therefore, is allowed, with costs which are fixed at £12, including costs of the application for judgment by default, as well as of all appearances in the Court below and here.

Appeal allowed. Order as to costs as aforesaid.

Cases referred to :

Church v. *March* (1845) 2 Ha., p. 652.

1965
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GREGORIS C. ASHIOTIS
v.
CYPRUS BROADCASTING CORPORATION

Appeal.

Appeal against the order made by the District Court of Nicosia (Emin, D.J.) dated the 20th January, 1965 (Action No. 1854/64) whereby the plaintiff was deprived of his costs in an application to obtain judgment by default.

Char. Loizou, for the appellant.

S. Ambizas, for the respondents.

The judgment of the Court was delivered by :

ZEKIA, P. : In this case, respondents applied, by an *ex-parte* application for extension of time to file the statement of the defence. The enlargement was granted but, owing to ignorance of such an order having been given in favour of the respondents, the appellant-plaintiff proceeded by application to obtain judgment by default. It was then discovered that he could not proceed with his application, because an order enlarging the time for filing the statement of the defence had already been granted.

Then, the appellant, in the present case, claimed the costs for his application. It was disputed and, eventually, instead of receiving, he was ordered to pay costs to the other side.

In our view, the learned trial Judge misdirected himself ; the rule applicable to this case is Order 48, rule 12, which reads :

> " 12. Every order shall from the date thereof be binding on the person on whose application the same was made and on all parties to the action on whom notice of the application was duly served. Where any party to the action has not been duly served with notice of the application, such order shall be binding on him from the date of the service of an office copy thereof upon him."

The last lines leave no doubt in our mind that, unless an office copy of the order granted is served on the absent party, that order is not binding on such party and it follows that the order for extension of time, not having been served on the appellant-plaintiff, was not, until he was informed, binding on him and he was not barred from taking proceedings in default of pleading as he did. Therefore, he was improperly deprived of his costs in this case and he was entitled to his costs up to the time when he

came to know of the extension order, either when he appeared before the Court or served with a copy of the order. This view is, in some way, supported by an English case, *Church* v. *Marsh* (1845) 2 Ha., p. 652 which lays down that—

> " An order of course should be served as soon as possible, otherwise it will not be allowed to interfere with any step taken regularly by the opposite party before service."

Appeal, therefore, is allowed, with costs which are fixed at £12, including costs of the application for judgment by default, as well as of all appearances in the Court below and here.

Appeal allowed. Order as to costs as aforesaid.