

1965
Oct. 15

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CYPRUS
ASBESTOS
MINES LTD.,
v.
PINGOS & Co.,

[VASSILIADES, TRIANTAFYLLIDES AND MUNIR, JJ.]

CYPRUS ASBESTOS MINES LTD.,

Appellants-Defendants,

v.

PINGOS & CO.,

Respondents-Plaintiffs.

(Civil Appeal No. 4530)

Civil Procedure—Pleadings—Appeal against dismissal of an application for further and better particulars of the statement of claim in a civil action at the stage of the summons for directions—Trial Judge adopted the right approach in dismissing application and properly applied the relevant rules of procedure to the particular situation in the proceedings before him—Rules of procedure intended to enable preparation for trial, not to be resorted to only for the sake of doing so.

The appellants-defendants appealed against a ruling given by the Court in dealing with an application, for further and better particulars of certain parts of the statement of claim, which was made by them at the stage of the summons for directions.

Held, per TRIANTAFYLLIDES, J., VASSILIADES AND MUNIR, J., concurring: I am of the opinion that the learned District Judge has adopted the right approach in dealing with the matter as he did and that he has properly applied the relevant rules of procedure to the particular situation in the proceedings before him. In particular I agree with him that the statement of claim as drafted does not set out, at this stage, the case which defendants have to meet at the trial.

Per curiam: It must not be lost sight of that rules of procedure are intended only to enable proper preparation of a case for trial, in the interests of justice, and they are not to be resorted to merely for the sake of doing so.

Appeal dismissed with costs.

Appeal.

Appeal against a ruling made by the District Court of Limassol (Malachtos, D.J.) on the 9.6.65 (Action No. 1642/64) dismissing defendants application for further and better particulars of certain parts of the statement of claim.

St. G. McBride, for the appellants.

G. Cacoyiannis, for the respondents.

VASSILIADES, J.: Mr. Justice Triantafyllides will give the first judgment.

TRIANAFYLLIDES, J.: In this case the appellants appeal against a ruling given by a Judge of the District Court of Limassol on the 9th June, 1965, in dealing with an application for further and better particulars of certain parts of the statement of claim which was made by the appellants-defendants in civil action D.C., Limassol 1642/64, at the stage of the summons for directions.

The learned District Judge dismissed the said application for particulars for the reasons given in the Ruling under appeal, which need not be repeated in this judgment.

I have had the opportunity of perusing the record of this appeal and I have followed the arguments put forward by counsel for appellant. Counsel for respondents-plaintiffs has been called upon to address the Court only on a particular point on which it was thought that it was necessary to hear him.

I am of the opinion that the learned District Judge has adopted the right approach in dealing with the matter as he did and that he has properly applied the relevant rules of procedure to the particular situation in the proceedings before him. In particular I agree with him that the statement of claim as drafted does set out, at this stage, the case which defendants have to meet at the trial.

It must not be lost sight of that rules of procedure are intended only to enable proper preparation of a case for trial, in the interests of justice, and they are not to be resorted to merely for the sake of doing so.

I am, therefore, of the opinion that this appeal should fail. Of course, after plaintiffs have presented their case, at the trial, in detail, there may arise the eventuality of defendants being taken by surprise in a certain respect, in a manner which, however, cannot be anticipated at this stage. It is a possibility which, in view of the nature of the circumstances of the case, cannot be excluded, and it will be then open to the defendants to apply to be given time to meet the plaintiffs' case. But at this stage this Court cannot act on the mere assumption that the defendants will be taken by surprise at the trial.

VASSILIADES, J.: I agree and there is nothing that I can usefully add to the judgment.

MUNIR, J.: I also agree and have nothing to add.

VASSILIADES, J.: In the result the appeal is dismissed with costs.

Appeal dismissed with costs.