

1965
March 5

[VASSILIADES, TRIANTAFYLLIDES, JOSEPHIDES, JJ.]

EMILIOS E.
ELIADES
v.
THEODOSSIS
ANTONIOU

EMILIOS E. ELIADES,

Appellant-Plaintiff,

v.

THEODOSSIS ANTONIOU,

Respondent-Defendant.

(Civil Appeal No. 4492)

Practice—Costs—Order for costs—Appeal—Judicial discretion—No bill of costs or anything on record showing how trial Judge exercised his judicial discretion in awarding costs—Insufficient material for Appellate Court to deal with Appeal.

This appeal against the order for costs made in civil action No. 4707/63 of the District Court of Nicosia, is taken on the ground that the trial Judge awarded costs on a lower scale than that applicable to the claim in the action.

Held, (1) having heard counsel for the appellant, we are of the opinion that the appeal should be allowed ; the order for costs be set aside ; and the case be returned to the District Court for counsel to present the Judge who will be dealing with the matter—not necessarily the same Judge who gave the judgment in the action—with a bill of his client's costs so that the Judge may then duly consider the claim for costs, and exercising the powers which he has in this connection, may make the appropriate order as he may think fit in the circumstances.

(2) We need hardly add that we make no indication as to the scale upon which the costs, if any, are to be measured, as this is a matter for the Judge to consider. In dealing with the matter on its merits, the Judge need not feel bound to exercise his discretion upon either of the scales to which we were referred, by learned counsel for the appellant.

(3) In view of the fact that the respondent was not present when the order for costs (now set aside) was originally made, and he did not appear in the appeal ; and moreover, considering that no bill of costs was then presented, as, in our opinion, should have been, we do not think that the respondent should be saddled with the full costs of this appeal. We allow to the appellant his out-of-pocket costs only.

(4) Order made remitting the case to the District Court for the question of costs in the action, to be reconsidered.

(5) Costs in the appeal as directed above.

Appeal allowed. Order for costs of the Court below set aside. Case remitted to the trial Court to be dealt with accordingly. Out-of-pocket costs in the appeal awarded to Appellant.

1965
March 5
—
EMILIOS E.
ELIADES
v.
THEODOSSIS
ANTONIOU

Appeal.

Appeal against the order with regard to costs made by the District Court of Nicosia (Demetriou, D.J.) on the ground that the successful plaintiff was awarded costs on a lower scale than that applicable to the claim in the action (No. 4707/63).

C. J. Myrianthis, for the appellant.

Respondent absent. Not represented.

The facts sufficiently appear in the judgment of the Court which was delivered by :

VASSILIADES, J. : This is an appeal from the order for costs made in this action. The appeal is made on the ground that the trial Judge awarded costs on a lower scale than that applicable to the claim in the action.

There is no bill of costs on the record ; and there is nothing in his note to show how the learned trial Judge exercised his judicial discretion in awarding costs. These are matters which, in our opinion, must clearly appear on the record. Without them this Court does not have the necessary material on which to deal with an appeal such as the one now before us.

Having heard counsel for the appellant, we are of the opinion that the appeal should be allowed ; the order for costs be set aside ; and the case be returned to the District Court for counsel to present the Judge who will be dealing with the matter—not necessarily the same Judge who gave the judgment in the action—with a bill of his client's costs so that the Judge may then duly con-

1965
March 5
—
EMILIOS E.
ELIADES
v.
THEODOSSIS
ANTONIOU

sider the claim for costs, and exercising the powers which he has in this connection, may make the appropriate order as he may think fit in the circumstances.

We need hardly add that we make no indication as to the scale upon which the costs, if any, are to be measured, as this is a matter for the Judge to consider. In dealing with the matter on its merits, the Judge need not feel bound to exercise his discretion upon either of the scales to which we were referred, by learned counsel for the appellant.

In view of the fact that the respondent was not present when the order for costs (now set aside) was originally made, and he did not appear in the appeal; and moreover, considering that no bill of costs was then presented as, in our opinion, should have been, we do not think that the respondent should be saddled with the full costs of this appeal. We allow to the appellant his out-of-pocket costs only.

Order made remitting the case to the District Court for the question of costs in the action, to be reconsidered. Costs in the appeal as directed above.

Appeal allowed. Order for costs of the Court below set aside. Case remitted to the trial Court to be dealt with accordingly. Out-of-pocket costs in the appeal awarded to appellant.