

1978 November 22

[TRIANTAFYLIDIS, P., A. LOIZOU, MALACHTOS, JJ.]

ELECTROFABRIC CO. LTD.,

Appellants-Respondents,

v.

RENA PH. NICOLAIDOU,

Respondent-Applicant.

(Civil Appeal No. 5773).

Landlord and tenant—Statutory tenancy—Rent—Determination of—Section 7 of the Rent Control Law, 1975 (Law 36/75)—Operative, also, in cases of tenants and landlords coming within the ambit of section 15 of the Law—Sections 7 and 15 independent from each other provisions of one and the same Law, entailing no repugnancy between them—Consent order of eviction, in previous proceedings, and stay thereof on payment of specified amount per month as mesne profits—Not treated as the determination of the proper rent under the said section 7.

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The appellants in this appeal, as tenants of premises belonging to the respondent, have challenged the decision of the trial Court to fix, under section 7 of the Rent Control Law, 1975 (Law 36/75) the rent of the premises at C£148 per month, that is at C£185 per month minus 20%, in view of the provisions of section 15 of the same Law.

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In previous proceedings between the same parties, the District Court of Nicosia made by consent an order for the eviction of the appellants but the execution of that order was stayed for so long as there would be paid, by way of mesne profits, the amount of C£112 per month. This amount was the rent which was then currently payable for the premises, reduced by 20% under section 15 of Law 36/75. By a subsequent consent order in the said previous proceedings the order for eviction was set aside and, at the same time, it was agreed by the parties that in future they would be at liberty to apply for the variation

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the monthly rent in accordance with the provisions of Part III of Law 36/75, in which section 7 is to be found.

Counsel for the appellants contended:

- 5 (a) That once the rent was fixed by virtue of the consent order there was, in effect, a determination of the payable rent for the purposes of Law 36/75 and there could not take place a decrease or increase of that rent without having resort to the provisions of section 5 of Law 36/75, for the purpose of varying the consent order.
- 10 (b) That it was not open in these proceedings to the trial Judge to act under section 7, because the appellants are tenants who come within the ambit of section 15 of Law 36/75 and that section is a special provision, the application of which cannot, in any way, be interfered with by means of the application of section 7 of the same Law.
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20 *Held*, (1) that the fixing of the amount of mesne profits, specified in the said order, on payment of which the execution of the order of eviction would, by consent, be stayed, cannot be treated as the determination of the proper rent of the premises under section 7 of Law 36/75; and that such determination would have entailed a different procedure and the taking into account of different considerations.

25 (2) That sections 7 and 15 are independent of each other provisions of one and the same Law, entailing no repugnancy between them; that either or both can be applied depending on the circumstances of the particular case; that the acceptance of the above contention (b) of counsel for the appellants would have, in effect, rendered section 7 inoperative in relation to all those tenants and landlords who come within the ambit of section 15; that this Court is definitely of opinion that this cannot have been the intention of the Legislature; and that, accordingly, the appeal must be dismissed.

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Appeal dismissed.

Cases referred to:

35 *Kasoulides & Son Ltd. v. HadjiPavlou Estate Ltd.*, (1978) 1 C.L.R. 340.

Appeal.

Appeal by the tenants against the judgment of the District Court of Nicosia (Boyiadjis, S.D.J.) dated the 30th November, 1977 (Rent Control Application No. 197/76) whereby the rent of premises situated at Nicosia along Archbishop Makarios III Avenue was fixed, under section 7 of the Rent Control Law, 1975 (Law 36/75), at C£148.—per month, that is C£185.—per month minus 20% in view of the provisions of section 15 of the same Law.

G. Ladas, for the appellant.

L. Papaphilippou, for the respondent.

TRIANTAFYLLIDES P. gave the following judgment of the Court. In this appeal the appellants, who are the tenants of premises belonging to the respondent, have challenged the decision of the trial Court to fix, under section 7 of the Rent Control Law, 1975 (Law 36/75), the rent of the premises at C£148 per month; that is at C£185 per month minus 20%, in view of the provisions of section 15 of the same Law.

This appeal was argued on two main issues:

First, that it was not possible for the rent of the premises in question to be fixed under section 7 of the said Law, in view of the fact that in previous proceedings, namely in civil action No. 1433/75, in the District Court of Nicosia, between the same parties, an agreement was reached, on August 21, 1975—after Law 36/75 had been enacted on July 11, 1975—by virtue of which the “rent” was fixed at C£112 per month.

By means of that agreement an order for the eviction of the appellants was made by consent, but the execution of that order was stayed for so long as there would be paid, by way of mesne profits, the amount of C£112 per month. As has been correctly pointed out by the trial Judge in the present case the said amount was the rent which was then currently payable for the premises, reduced by 20% under section 15 of Law 36/75.

It has been submitted by learned counsel for the appellants that once the rent was fixed by virtue of the consent order of August 21, 1975, there was, in effect, a determination of the payable rent for the purposes of Law 36/75 and there could not take place a decrease or increase of that rent without having

resort to the provisions of section 5 of Law 36/75, for the purpose of varying the consent order of August 21, 1975.

5 After perusing carefully the said order we have reached the conclusion that the fixing of the amount of mesne profits specified therein, on payment of which the execution of the order of eviction would, by consent, be stayed, cannot be treated as the determination of the proper rent of the premises under section 7 of Law 36/75. Such determination would have entailed a different procedure and the taking into account of different
10 considerations; and it is quite significant, in this respect, that by a subsequent consent order, made in the aforesaid action No. 1433/75, on June 7, 1976, the order for eviction was set aside and, at the same time, it was agreed by the parties that in future they would be at liberty to apply for the variation of the
15 monthly rent in accordance with the provisions of Part III of Law 36/75, in which section 7 is to be found.

The second contention of counsel for the appellants was that it was not open in the present proceedings to the trial Judge to act under section 7, because the appellants are tenants who come
20 within the ambit of section 15 of Law 36/75 and that such section is a special provision, the application of which cannot, in any way, be interfered with by means of the application of section 7 of the same Law.

We are unable to agree with counsel for the appellants in
25 this connection: We regard sections 7 and 15 as independent of each other provisions of one and the same Law, entailing no repugnancy between them; either or both can be applied depending on the circumstances of the particular case. The acceptance as correct of the above contention of counsel for the appellants
30 would have, in effect, rendered section 7 inoperative in relation to all those tenants and landlords who come within the ambit of section 15, and we are definitely of the opinion that this cannot have been the intention of the Legislature.

We find support for our view, in this respect, in *Kasoulides & Son Ltd. v. HadjiPavlou Estate Ltd.*, (1978) 1 C.L.R. 340,
35 where sections 7 and 10 of Law 36/75, were treated as being independent of each other, as regards their application; we do think that the reasoning regarding the independence from each other of sections 7 and 10, as was expounded by Mr. Justice A.

Loizou (at p. 344) is quite relevant to the separability of the application of sections 7 and 15 of the same Law.

For the foregoing reasons this appeal is dismissed; and, as it has been stated by counsel for the respondents that in case the appeal is dismissed the cross-appeal will not be proceeded with, the cross-appeal is, consequently, also, dismissed. 5

As regards costs, we do not propose to make an order about the costs of this appeal or of the cross-appeal.

Appeal and cross-appeal dismissed. No order as to costs. 10