

1963
June 4

[JOSEPHIDES, J.]

—
GEORGE D.
COUNNAS
AND SONS LTD.,
v.
ZIM ISRAEL
NAVIGATION
CO. LTD.,
AND ANOTHER

GEORGE D. COUNNAS & SONS LTD.,
Plaintiffs,

v.

ZIM ISRAEL NAVIGATION CO. LTD., AND ANOTHER,
Defendants.

(Admiralty Action No. 8/63).

Admiralty—Procedure—Application for leave to serve notice of the writ of summons—Prerequisites of rule 24 of the “Cyprus Admiralty Jurisdiction Order 1893” not satisfied—Application refused—Discretion of the Court.

The plaintiffs made an *ex parte* application to the Admiralty Court requesting leave to serve notice of the Writ of Summons on the intended defendant No. 1 at Haifa, Israel. The Admiralty Court in refusing the application—

Held, (1) (a) rule 24 of Admiralty Jurisdiction Order, 1893, reads as follows :—

“The Court or Judge before giving leave to serve such writ or notice of the writ shall require evidence that the plaintiff has a good cause of action, that the action is a proper one to be tried in Cyprus, and evidence of the place or country where the defendant is or may probably be found and of his nationality.”

(b) It will thus be seen that there are four prerequisites which have to be proved by evidence by the plaintiff before the Court will grant leave for the service of the writ or notice of the writ outside the jurisdiction —

- (a) that the plaintiff has a good cause of action ;
- (b) that the action is a proper one to be tried in Cyprus ;
- (c) evidence of the place or country where the defendant is or may probably be found ; and
- (d) of his nationality.

(2) As regards (a) there is no evidence to show whether there is a good cause of action. In order to enable the Court to decide whether there is a good cause of action or not the plaintiff had to state in the affidavit or affidavits in support of his application the entire set of facts founding the enforceable right.

(3) In this case counsel for the applicants states that he has perused the documents and correspondence and that to the best of his knowledge and belief the plaintiffs have a good cause of action against the defendant. I am afraid that that is no evidence at all but the opinion of counsel which is insufficient to support the application. Furthermore, I see nothing in the affidavit as to the place or country where the defendant is to be found, although there is reference to Israel in the title ; and there is no mention of the nationality of the intended defendant.

(4) There is some information which may be evidence as to the question whether the action is a proper one to be tried in Cyprus, to the effect that most of the witnesses are available in Cyprus. But on the whole there is no sufficient evidence to satisfy the Court that this is a proper case in which to exercise its discretion to grant leave for service of the notice of the writ outside the jurisdiction.

Application refused.

Ex parte application.

Ex parte application by plaintiffs for an order of this Court for leave to serve notice of the writ of summons on intended defendant 1 at Haifa, Israel.

Y. C. Chrysostomis for the plaintiffs.

On the 4th June, 1963, the following ruling was delivered by :—

JOSEPHIDES, J. : This is an application by the plaintiffs for an order of this Court for leave to serve notice of the writ of summons on the intended defendant No. 1—Zim Israel Navigation Co. Ltd. at Haifa, Israel. The application is based on the Cyprus Admiralty Jurisdiction Order 1893, rules 23 to 28. The material rule with which we are concerned is rule 24. That rule is as follows :—

“ The Court or Judge before giving leave to serve such writ or notice of the writ shall require evidence that the plaintiff has a good cause of action, that the action is a proper one to be tried in Cyprus, and evidence of the place or country where the defendant is or may probably be found and of his nationality ”.

It will thus be seen that there are four prerequisites which have to be proved by evidence by the plaintiff before the Court will grant leave for the service of the writ or notice of the writ outside the jurisdiction :—

- (a) that the plaintiff has a good cause of action ;
- (b) that the action is a proper one to be tried in Cyprus ;
- (c) evidence of the place or country where the defendant is or may probably be found ; and
- (d) of his nationality.

1963
June 4
—
GEORGE D.
COUNNAS
AND SONS LTD.,
v.
ZIM ISRAEL
NAVIGATION
CO. LTD.,
AND ANOTHER

As regards (a) there is no evidence to show whether there is a good cause of action. In order to enable the Court to decide whether there is a good cause of action or not the plaintiff has to state in the affidavit or affidavits in support of his application the entire set of facts founding the enforceable right.

In this case counsel for the applicants states that he has perused the documents and correspondence and that to the best of his knowledge and belief the plaintiffs have a good cause of action against the defendant. I am afraid that that is no evidence at all but the opinion of counsel which is insufficient to support the application. Furthermore, I see nothing in the affidavit as to the place or country where the defendant is to be found, although there is in the title reference to Israel; and there is no mention of the nationality of the intended defendant.

There is some information which may be evidence as to the question whether the action is a proper one to be tried in Cyprus, to the effect that most of the witnesses are available in Cyprus. But on the whole there is no sufficient evidence to satisfy the Court that this is a proper case in which to exercise its discretion to grant leave for service of the notice of the writ outside the jurisdiction.

For these reasons the application is refused.

Application refused.