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v.  
CARMELLOS  
BOSCOVITS

[VASSILIADES, TRIANTAFYLIDIS, MUNIR, JJ.]

SAVVAS SAVVIDES,

*Appellant,*

v.

CARMELLOS BOSCOVITS,

*Respondent.*

(Civil Appeal No. 4496)

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*Rent Control (Business Premises) Law, 1961 (Law 17 of 1961)—Sections 4 (2), 5 and 6 thereof do not exclude competence of Supreme Court as an appellate Court as laid down in section 25 of the Courts of Justice Law, 1960 (Law 14 of 1960).*

*Rent Control (Business Premises) Law (supra)—Appeal against order dismissing application under section 7 (1) (2) of the Law for reducing the monthly rent of tenant—Adjudication under section 7 defective because trial Court omitted to take into account the effects of the anomalous situation prevailing in Cyprus since December, 1963—Order made as a result of such adjudication set aside—New trial ordered.*

The appellant, who is a merchant, is the statutory tenant of premises of respondent at 75 Saint Lazaros St., Larnaca. The rent of such premises, last fixed by contract signed between the appellant and respondent in 1959—which has since come to an end—is £18 monthly. On the 24th April, 1964, the appellant applied to the District Court of Larnaca under section 7 (1) (2) of Law 17/61, for an order reducing the monthly rent of the premises to £10. This application was dismissed on the 4th July, 1964, and it is the order dismissing this application which is the subject of this appeal.

At the commencement of the hearing of this appeal counsel for respondent took preliminary objections to the effect that appellant was not entitled to appeal in this case, both because no appeal lies against an order made under section 7 of the said Law and, in any case, because appellant had failed to proceed first under the provisions of section 5 of such Law ; counsel for respondent submitted that taking such a course was an essential prerequisite to the exercise of any right of appeal that might have existed.

In support of his preliminary objections it was argued by counsel for respondent that the provisions of sections 4 (2), 5 and 6 of the Law indicate an intention to take a matter, such as

an order under section 7, out of the application of the general provision for civil appeals contained in section 25 of the Courts of Justice Law, 1960 (Law 14/60) and that such matter can be brought before the Supreme Court only in accordance with the procedure laid down in section 6, by way of a point of Law reserved, as provided for in the said section ; also, possibly by way of *certiorari*.

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It was argued, further, by counsel for respondent, that, even, if an appeal in the ordinary course was open to appellant in this case, he could not have appealed before applying first to the trial Court, for the setting aside or variation of the order in question, under section 5 of the Law, which empowers a District Court to set aside or vary an order made under section 7 of such Law in a case, *inter alia*, where such order has been made because of any fraud, misconception or material mistake (see paragraph (b) of section 5).

It was argued in reply by counsel for appellant that Articles 30 and 155 (1) of the Constitution safeguard a right of appeal in all civil proceedings, as provided for by section 25 of the Courts of Justice Law, 1960 ; he contended that sections 5 and 6 of Law 17/61 could not be construed so as to take away such right of appeal and in any case they were not intended to do so. He submitted that section 5 is intended to enable the setting aside or variation in future of an order made under section 7 and it does not lay down a procedural prerequisite in case of appeal against such order ; section 6 provides for the possibility of a case to be stated on a point of law for the opinion of the Supreme Court, in addition to the general right of appeal.

During the hearing of the appeal the Court indicated that it was not inclined to sustain the preliminary objections raised, as above, by counsel for respondent and proceeded to hear the appeal on its merits.

The main ground on which the judgment of the trial Court has been challenged is that the learned trial Judge, of the District Court of Larnaca, failed to take into account the relevant effects of the conditions prevailing since the commencement of the anomalous situation in December, 1963. That there have been such effects on the business of appellant has been accepted by the trial Court as a correct fact.

*Held, (I) on the preliminary objections :*

(1) In our opinion sections 4 (2), 5 and 6 of the Law, which were relied upon by counsel for respondent, were never in-

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tended to exclude the general competence of this Court as an appellate Court, as such competence is laid down in section 25 of the Courts of Justice Law, 1960, by way of legislative implementation of Article 155 (1) of the Constitution.

(2) It may be noted in this respect that such section 25 provides that “ every decision of a Court exercising civil jurisdiction shall be subject to appeal ” and “ civil proceeding ” is defined by section 2 of the Law as including “ any proceeding other than criminal proceeding ”.

(3) Section 4 (2) of Law 17/61 is not really relevant to the matter under consideration. It merely provides, in view of the nature of the particular proceedings, for a relaxation of the rules of evidence applicable in civil proceedings.

(4) Section 5 of Law 17/61 was clearly enacted for the purpose of enabling a District Court, which has made an order under section 7 of the Law, to set aside or vary it, subsequently, in certain eventualities defined therein ; this provision is in line with the nature of the competence created under section 7, which is regulatory of the rights of the parties in the light of developments and not determinative, once and for all, on their rights as existing at a given time.

(5) Section 5, therefore, when construed in the light of its true nature and object, cannot be taken as laying down any procedural prerequisite which has to be complied with before an appeal is to be made to this Court.

(6) Section 5 provides for four instances in which an application may be made to the District Court for variation or setting aside of an order made under section 7. Among these is the case where the relevant facts or circumstances have materially changed since the making of the order (see paragraph (a)). No doubt such contention could never be, in view of its very nature, a proper ground of appeal and it is only a proper ground for variation or setting aside.

(7) Thus, it is not possible to hold that section 5 was intended to lay down a procedural prerequisite, to be complied with in case of appeal, when at least one of the four instances in which it may be resorted to is not in itself a ground of appeal. On the contrary, the provisions of the said paragraph (a) of section 5 bear out clearly the purpose of such section, as already explained in this judgment.

(8) Coming now to section 6, the Court is of the opinion that it is aimed at providing an expeditious procedure for determination of points of law, arising in the course of proceedings

before the District Court, independently of the general right of appeal. In the absence of express provision to that effect such section 6 cannot be construed as excluding the ordinary right of an appeal under section 25 of Law 14/60 ; there is, also, nothing in this section 6 leading to such exclusion by necessary implication.

(9) It is useful to compare the said section 6 with the provisions of section 43 of the Income Tax Law, Cap. 323, as it stood when in force. Under sub-section (10) thereof provision was made for the statement of a case on a question of law for the opinion of the Supreme Court and it was provided that such case stated should be heard and determined by way of appeal and that otherwise the decision of a District Court in the matter was to be final, thus excluding the general right of appeal, as it existed then under the Courts of Justice Law, Cap. 8 (section 27).

(10) In the present case, however, there is no provision to be found in section 6, or anywhere else in Law 17/61, excluding the general right of appeal under section 25 of Law 14/60 directly, or even by necessary implication.

*(II) on the merits of the appeal :*

(1) The trial Court had in this case to pay due regard also to the relevant effects of the conditions prevailing due to the anomalous situation which has supervened since December, 1963. As it has expressly declined to do so it necessarily follows that its adjudication under section 7 is defective because it has omitted to take into account material circumstances and, therefore, the order made as a result of such adjudication in a defective manner has to be set aside:

(2) Regarding the other complaints of counsel for appellant to the effect that the learned trial Judge failed to take into consideration the appellant's family responsibilities and that he erred in not taking properly into consideration, in favour of appellant, his debts, we have reached the conclusion that all these matters were before the said Judge, it is clear from his judgment that he went carefully into all relevant issues arising in relation therewith, and we are satisfied that no such defect exists in the adjudication by the learned trial Judge in relation to such matters as would justify any interference, on these grounds, with the order made by him in this case.

(3) Thus the order under appeal is set aside only to the extent to which it is defective in that the trial Court has not paid due regard to the relevant effects of conditions prevailing due to the anomalous situation since December, 1963.

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(4) We feel that an application under section 7 is a matter primarily to be adjudicated upon on its merits by courts of first instance employing the wide powers granted to them under such provisions as sections 4 (2) and 7 (2). We have, therefore, reached the conclusion that it would be best if this case was not determined by us here but was sent back to the trial Court for final adjudication.

(5) It is ordered, therefore, under section 25 (3) of Law 14/60 and Order 35, rule 9 of the Civil Procedure Rules that there should be held a new trial in this case before the same trial Court to the extent necessary for due regard to be paid to the relevant effects of conditions prevailing due to the recent and current anomalous situation in the Republic.

(III), *as to costs* :

(1) Regarding costs, the order for costs made by the trial Court is set aside and the costs of the trial till now, the costs of this appeal and the further costs of the retrial shall be costs in cause.

*Observation* : To avoid any possible misconception in this matter let it be stressed that in the opinion of this Court the said effects, though relevant, are not necessarily to be deemed to be the most weighty factor in this Case. They are to be paid due regard by the trial Court, together with all other relevant factors, as they have already been bound to exist by such Court, and on the basis of such comprehensive consideration the trial Court will have to determine whether it is proper to reach the same result as it has been already reached by it in this Case, by its order under appeal, or whether it has to come to any different conclusion.

*Appeal allowed. Case re-  
mitted to the trial Court to  
be dealt with accordingly.*

#### **Appeal.**

Appeal against the judgment of the District Court of Larnaca (Orphanides, D.J.) dated the 4th July, 1964 (Application No. 1/64) dismissing an application for the determination of the rent of certain business premises, under section 7 (1) (2) of the Rent Control (Business Premises) Law 17/61.

*G. Ladas* with *C. Shakallis*, for appellant.

*Chr. Mitsides* with *L. Santamas* for respondent.

*Cur. adv. vult.*

VASSILIADES, J. : The judgment of the Court will be delivered by Mr. Justice Triantafyllides.

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TRIANTAFYLLIDES, J. : This is an appeal from the decision of the District Court of Larnaca in civil application No. 1/64, which was made under section 7 of the Rent Control (Business Premises) Law, 1961, (Law 17/61).

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At the commencement of the hearing of this appeal counsel for respondent took preliminary objections to the effect that appellant was not entitled to appeal in this case, both because no appeal lies against an order made under section 7 of the said Law and, in any case, because appellant had failed to proceed first under the provisions of section 5 of such Law ; counsel for respondent submitted that taking such a course was an essential prerequisite to the exercise of any right of appeal that might have existed.

In support of his preliminary objections it was argued by counsel for respondent that the provisions of sections 4 (2), 5 and 6 of the Law indicate an intention to take a matter, such as an order under section 7, out of the application of the general provision for civil appeals contained in section 25 of the Courts of Justice Law, 1960 (Law 14/60) and that such matter can be brought before the Supreme Court only in accordance with the procedure laid down in section 6, by way of a point of law reserved, as provided for in the said section ; also, possibly, by way of *certiorari*.

It was argued, further, by counsel for respondent, that, even if an appeal in the ordinary course was open to appellant in this case, he could not have appealed before applying first to the trial court, for the setting aside or variation of the order in question, under section 5 of the Law, which empowers a District Court to set aside or vary an order made under section 7 of such Law in a case, *inter alia*, where such order has been made because of any fraud, misconception or material mistake (see paragraph (b) of section 5).

It was argued in reply by counsel for appellant that articles 30 and 155(1) of the constitution safeguard a right of appeal in all civil proceedings, as provided for by section 25 of the Courts of Justice Law, 1960 ; he contended that sections 5 and 6 of Law 17/61 could not be construed so as to take away such right of appeal and in any case they were not intended to do so. He submitted that section 5 is intended to enable the setting aside or variation in future of an order made under section 7 and it does not

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lay down a procedural prerequisite in case of appeal against such order ; section 6 provides for the possibility of a case to be stated on a point of law for the opinion of the Supreme Court, in addition to the general right of appeal.

During the hearing of the appeal the Court indicated that it was not inclined to sustain the preliminary objections raised, as above, by counsel for respondent and proceeded to hear the appeal on its merits.

Having considered the matter fully we are still of the view that the said preliminary objections must be rejected.

In our opinion sections 4 (2), 5 and 6 of the Law, which were relied upon by counsel for respondent, were never intended to exclude the general competence of this Court as an appellate Court, as such competence is laid down in section 25 of the Courts of Justice Law, 1960, by way of legislative implementation of Article 155 (1) of the Constitution.

It may be noted in this respect that such section 25 provides that " every decision of a court exercising civil jurisdiction shall be subject to appeal " and " civil proceeding " is defined by section 2 of the Law as including " any proceeding other than criminal proceeding ".

Section 4 (2) of Law 17/61 is not really relevant to the matter under consideration. It merely provides, in view of the nature of the particular proceedings, for a relaxation of the rules of evidence applicable in civil proceedings.

Section 5 of Law 17/61 was clearly enacted for the purpose of enabling a District Court, which has made an order under section 7 of the Law, to set aside or vary it, subsequently, in certain eventualities defined therein ; this provision is in line with the nature of the competence created under section 7, which is regulatory of the rights of the parties in the light of developments and not determinative, once and for all, on their rights as existing at a given time.

Section 5, therefore, when construed in the light of its true nature and object, cannot be taken as laying down any procedural prerequisite which has to be complied with before an appeal is to be made to this Court.

Section 5 provides for four instances in which an application may be made to the District Court for variation or setting aside of an order made under section 7. Among these

is the case where the relevant facts or circumstances have materially changed since the making of the order (see para. (a)). No doubt such contention could never be, in view of its very nature, a proper ground of appeal and it is only a proper ground for variation or setting aside. Thus, it is not possible to hold that section 5 was intended to lay down a procedural prerequisite, to be complied with in case of appeal, when at least one of the four instances in which it may be resorted to is not in itself a ground of appeal. On the contrary, the provisions of the said para. (a) of section 5 bear out clearly the purpose of such section, as already explained in this judgment.

Coming now to section 6, the Court is of the opinion that it is aimed at providing an expeditious procedure for determination of points of law, arising in the course of proceedings before the District Court, independently of the general right of appeal. In the absence of express provision to that effect such section 6 cannot be construed as excluding the ordinary right of an appeal under section 25 of Law 14/60; there is, also, nothing in this section 6 leading to such exclusion by necessary implication.

It is useful to compare the said section 6 with the provisions of section 43 of the Income Tax Law, Cap. 323, as it stood when in force. Under sub-section (10) thereof provision was made for the statement of a case on a question of law for the opinion of the Supreme Court and it was provided that such case stated should be heard and determined by way of appeal and that otherwise the decision of a District Court in the matter was to be final, thus excluding the general right of appeal, as it existed then under the Courts of Justice Law, Cap. 8 (section 27).

In the present case, however, there is no provision to be found in section 6, or anywhere else in Law 17/61, excluding the general right of appeal under section 25 of Law 14/60 directly, or even by necessary implication.

Coming now to the merits of this appeal :

The appellant, who is a merchant, is the statutory tenant of premises of respondent at 75 Saint Lazaros St., Larnaca. The rent of such premises, last fixed by contract signed between the appellant and respondent in 1959—which has since come to an end—is £18 monthly. On the 24th April, 1964, the appellant applied to the District Court of Larnaca under section 7 (1) (2) of Law 17/61, for an order reducing



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the monthly rent of the premises to £10. This application was dismissed on the 4th July, 1964, and it is the order dismissing this application which is the subject of this appeal.

The main ground on which the judgment of the trial Court has been challenged is that the learned trial Judge, of the District Court of Larnaca, failed to take into account the relevant effects of the conditions prevailing since the commencement of the anomalous situation in December, 1963. That there have been such effects on the business of appellant has been accepted by the trial Court as a correct fact (see p. 20 of the record of appeal).

At pp. 19–20 of his judgment, the learned Judge states the following concerning the case for applicant :—

“ His real ground for applying for relief is the decline and decrease of his business owing to the abnormal conditions prevailing in the island nowadays. He gave me also the impression that had his business continued in the same satisfactory manner as during the period preceding the present abnormal conditions, he would had never applied to the Court for relief.”

Then after a reference to the provisions of sub-sections (1) and (2) of section 7 of Law 17/61, the trial Court states in its judgment (p. 20) :

“ Whether extraneous circumstances have adversely affected the business of the applicant are in my opinion immaterial unless it is proved that the circumstances so affecting his trade or business have been brought about wholly or partially by some act or omission on the part of the respondent which of course is not the case before me.”

We are of the opinion that there is nothing in section 7 to justify the narrow view taken, as above, by the trial Court.

Section 7 (1) provides that either the tenant or the landlord of business premises may apply to the Court to fix the rent that should be paid in respect thereof «ἐὰν θεωρῆ ἑαυτὸν ἡδίκημένον». By section 7 (2) it is provided that the Court after due inquiry decides as to the proper rent for the premises, according to what it may deem to be reasonable in all the circumstances.

What is provided under section 7 is clearly an equitable remedy intended to afford relief in view, *inter alia*, of changing circumstances in a statutory tenancy. The expression «ἡδίκημένον» in section 7 (1) has really the meaning of

“ aggrieved ” in the sense of suffering hardship unduly. It would be defeating the purpose of such section if we were to import the notion that the grievance must flow from something done or omitted to be done by the other party. On the other hand it also goes without saying that no party can claim such remedy if his grievance flows from his own wrong.

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Of great help for the construction of section 7 is the above-referred to para. (a) of section 5, providing for the setting aside or variation of an order made under section 7 in case of material change in relevant circumstances. There is nothing in such para. (a) limiting such change to a change attributable to the fault of the other party.

It would be, thus, absurd to hold that, though an order once made may be subsequently set aside or varied through a material change in circumstances which has supervened through no fault of either party, nevertheless the making of such order, in the first instance, has to be based only on circumstances attributable to the fault of the respondent, tenant or landlord as the case may be.

Thus, in our opinion, the trial Court had in this case to pay due regard also to the relevant effects of the conditions prevailing due to the anomalous situation which has supervened since December, 1963. As it has expressly declined to do so it necessarily follows that its adjudication under section 7 is defective because it has omitted to take into account material circumstances and, therefore, the order made as a result of such adjudication in a defective manner has to be set aside.

Regarding the other complaints of counsel for appellant to the effect that the learned trial Judge failed to take into consideration the appellant's family responsibilities and that he erred in not taking properly into consideration, in favour of appellant, his debts, we have reached the conclusion that all these matters were before the said Judge, it is clear from his judgment that he went carefully into all relevant issues arising in relation therewith, and we are satisfied that no such defect exists in the adjudication by the learned trial Judge in relation to such matters as would justify any interference, on these grounds, with the order made by him in this case. Thus the order under appeal is set aside only to the extent to which it is defective in that the trial Court has not paid due regard to the relevant effects of conditions prevailing due to the anomalous situation since December, 1963. We have next to consider what is the best course to follow in this appeal in view of our above conclusions.

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We feel that an application under section 7 is a matter primarily to be adjudicated upon on its merits by courts of first instance employing the wide powers granted to them under such provisions as sections 4 (2) and 7(2). We have, therefore, reached the conclusion that it would be best if this case was not determined by us here but was sent back to the trial Court for final adjudication. It is ordered, therefore, under section 25 (3) of Law 14/60 and Order 35 rule 9 of the Civil Procedure Rules that there should be held a new trial in this case before the same trial Court to the extent necessary for due regard to be paid to the relevant effects of conditions prevailing due to the recent and current anomalous situation in the Republic.

To avoid any possible misconception in this matter let it be stressed that in the opinion of this Court the said effects, though relevant, are not necessarily to be deemed to be the most weighty factor in this case. They are to be paid due regard by the trial Court, together with all other relevant factors, as they have already been bound to exist by such Court, and on the basis of such comprehensive consideration the trial Court will have to determine whether it is proper to reach the same result as it has been already reached by it in this case, by its order under appeal, or whether it has to come to any different conclusion.

Regarding costs, the order for costs made by the trial Court is set aside and the costs of the trial till now, the costs of this appeal and the further costs of the retrial shall be costs in cause.

*Appeal allowed. Case re-mitted to the trial Court to be dealt with accordingly. Order as to costs as aforesaid.*