

1969
Nov. 13
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FRIXOS
MICHAEL
v.
BREVINOS
LIMITED

[VASSILIADES, P., TRIANTAFYLLIDES AND JOSEPHIDES, JJ.]

FRIXOS MICHAEL,

Appellant-Defendant,

v.

BREVINOS LIMITED,

Respondents-Plaintiffs.

(Civil Appeal No. 4845).

Injunction—Interlocutory injunction—Preservation of the status quo and the property involved—Trial Judge in granting the order appealed against disposed in effect in these interlocutory proceedings, of one of the main issues in the action—Namely by ordering delivery to the plaintiffs (respondents) of the machinery in dispute pending determination of the action—The plaintiffs—respondents having been thus enabled to operate the said machinery for their benefit to the exclusion of the defendant-appellant—Trial Judge exceeded his powers—Order discharged—The Courts of Justice Law 1960 (Law of the Republic No. 14 of 1960) section 32 and The Civil Procedure Law, Cap. 6, section 4—The Supreme Court on appeal making another order (in substitution for the one discharged as aforesaid) in the exercise of its powers under the Courts of Justice Law, 1960 (supra) section 25(3) and Order 35, rule 8 of the Civil Procedure Rules.

Interim order or interim injunction—See above.

Interlocutory injunction—Section 32 of the Courts of Justice Law, 1960—Object of interlocutory order made thereunder.

Appeal—Court of Appeal—Powers to make any appropriate order in disposing of the appeal—Section 25(3) of the Courts of Justice Law, 1960 (supra) and Order 35, rule 8 of the Civil Procedure Rules.

This is an appeal against an interlocutory order made in the District Court of Nicosia in an action where, *inter alia*, the subject matter of the claim is the possession and use of the main machinery of a shoe factory. The plaintiffs in the action (respondents herein) applied for an interim order directing the defendant (appellant) to deliver to the plaintiffs the said

machinery which was practically the machinery on which the factory was operating. The application was made under section 4 of the Civil Procedure Law, Cap. 6 and section 32 of the Courts of Justice Law, 1960 (Law of the Republic No. 14 of 1960). The trial Judge granting the application made the interlocutory (interim) order directing the defendant to deliver to the plaintiffs the aforesaid machinery on certain conditions. The plaintiffs purporting to act under the said order, removed the machinery to other premises under their control where it was installed and where it is now being used for their benefit to the exclusion of the appellant (defendant).

Allowing the appeal, the Court:—

Held, (1). The order appealed against was mainly based on section 32 of the Courts of Justice Law, 1960. (Note: section 32 is set out in full *post* in the judgment of the Court). The object of an interlocutory injunction (or order) under that section is, as a rule, to preserve the position under which the dispute arose; and to preserve the property involved, pending the hearing and determination of the action; or until further order. Provision may also have to be made for incidental matters as circumstances in each case may require, to minimise damage.

(2)(a) In this case the trial Judge made an order enabling the plaintiffs (respondents) to take possession of the machinery to the exclusion of the defendant (appellant). The trial Judge in effect disposed in these interlocutory proceedings, of one of the main issues in the action: the possession of the machinery in question; and made an order enabling one of the parties viz. the plaintiffs (respondents) to take possession of the machinery in dispute so that in consequence of that order that party is now actually operating for their exclusive benefit, the machinery in dispute.

(b) In the circumstances we have no hesitation in coming to the conclusion that the trial Judge exceeded his powers; and made an order which cannot be justified either on section 4 of the Civil Procedure Law, Cap. 6 or on section 32 of the Courts of Justice Law, 1960. (See text of section 32 *post* in the judgment).

(3) We allow, therefore, the appeal and discharge the order; and exercising our powers under section 25(3) of the Courts of Justice Law, 1960 and Order 35, rule 8 of the Civil Procedure

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Rules, we proceed to make the following order for the preservation of the property and the status quo, pending determination of the action, including provision for a speedy trial: See this order *post* in the judgment.

(4) As to costs we discharge the order made by the trial Judge; and in the place thereof we direct that the costs in the application in the District Court be costs in cause; and that the costs of this appeal be against the respondents. Order accordingly.

Appeal allowed; order for costs as above.

Appeal.

Appeal by defendants against an interlocutory order made by the District Court of Nicosia (Vakis D.J.) on the 22nd September 1969 (Action No. 3951/69) whereby they were ordered to deliver to the plaintiffs certain factory machinery which was practically the machinery on which the factory was operating.

L. Clerides with E. Efstathiou, for the appellant.

L. Papaphilippou, for the respondents.

The judgment of the Court was delivered by:

VASSILIADES, P.: This is an appeal against an interlocutory order made in the District Court of Nicosia in an action between the appellant (defendant in the action) and the respondents (plaintiffs) where, *inter alia*, the subject matter of the claim is the possession and use of the main machinery of a shoe factory.

The plaintiffs in the action, (respondents herein) applied for an order directing the defendant to deliver to the plaintiffs all machinery described in the schedule attached to the application, which was practically the machinery on which the factory was operating. The application was made under section 4 of the Civil Procedure Law, Cap. 6, and section 32 of the Courts of Justice Law 14 of 1960.

The trial Judge, on the material before him, (consisting of a number of lengthy argumentative affidavits and of oral evidence before the Court) granted the application and made the interlocutory order now before us on appeal, containing certain conditions as stated in the order.

After hearing counsel on both sides, we think that the order was mainly based on section 32 of the Courts of Justice Law. The object of an order under that section is, as a rule, to preserve the position under which the dispute arose; and to preserve the property involved, pending the hearing and determination of the action; or until further order. Provision may also have to be made for incidental matters as circumstances in each case may require, to minimise damage.

The material part of the section reads:

“ 32. (1) Subject to any Rules of Court every Court, in the exercise of its civil jurisdiction, may, by order, grant an injunction (interlocutory, perpetual or mandatory) or appoint a receiver in all cases in which it appears to the Court just or convenient so to do, notwithstanding that no compensation or other relief is claimed or granted together therewith:

Provided that an interlocutory injunction shall not be granted unless the Court is satisfied that there is a serious question to be tried at the hearing, that there is a probability that the plaintiff is entitled to relief and that unless an interlocutory injunction is granted it shall be difficult or impossible to do complete justice at a later stage.

(2) Any interlocutory order made under sub-section (1) may be made under such terms and conditions as the Court thinks just, and the Court may at any time, on reasonable cause shown, discharge or vary any such order.”

.....
In the case before us, the application was for the possession of the machinery in dispute. In granting the application the learned trial Judge made an order enabling one of the parties (the plaintiffs) to take possession of the machinery; and, we now know that in fact the plaintiffs (respondents herein) purporting to act under the order, removed the machinery to other premises under their control where it was installed and where it is now being used for the benefit of the respondents to the exclusion of the appellant. We have also been told that part of the machinery is now found in some other premises, under the control of other persons.

In the circumstances, we have no hesitation in coming to the conclusion that the trial Judge in making the order challenged by this appeal, exceeded his powers; and made an order which cannot be justified either on section 4 of the Civil Procedure Law, Cap. 6, or on section 32 of the Courts of Justice Law 14 of 1960. The trial Judge in effect disposed in this interlocutory proceedings, of one of the main issues in the action: The possession of the machinery in question; and made an order enabling one of the parties to take the machinery in dispute in their possession so that in consequence of the order that party is now actually operating for their exclusive benefit, the machinery in dispute.

Without any hesitation, we allow the appeal and discharge the order; and exercising our powers under section 25(3) of the Courts of Justice Law (No. 14 of 1960) and Order 35, rule 8 of the Civil Procedure Rules, we proceed to make the following order for the preservation of the property and the *status quo*, pending determination of the dispute in the action:

The Order.

- (1) The machinery in dispute to be placed under the custody and control of the appropriate civil authority (which, in this case, is the Mukhtar of the quarter of Engomi), pending hearing and final determination of the action or until further order therein.
- (2) Subject to any such further order, the property in question is not to be put into any use whatsoever, either by the parties or by any other person.
- (3) The statement of claim having already been filed on the 29th October, 1969, the statement of defence to be filed within seven days from the date hereof; and the District Court to give as early a date of trial as possible.
- (4) The respondents having already been ordered to file a security under the original order and the appellant having also offered to give similar security, we direct that each party should file a security bond in the sum of £5,000, to the satisfaction of the Registrar, answerable in damages and costs, as may be ordered by the Court, if it appears on determination of the action that there was no proper ground for the claim or no good defence thereto, as the case may be.

As to costs, we discharge the order made by the District Court; and in the place thereof we direct that the costs in the application in the District Court be costs in cause; and that the costs of this appeal be against the respondent.

Order accordingly.

*Appeal allowed; order
for costs as above.*

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