

COSTAS KYRIACOU,
Appellant-Defendant,

v.

YIANNOULLA GEORGHIADOU,
Respondent-Plaintiff.

(Application in Civil Appeal No. 4860).

Appeal—Dismissed for want of prosecution—Civil Procedure Rules, Order 35 rules 21 and 22—Application for reinstatement—Delay—Must be fully justified on the record in the form of an affidavit—Court’s discretion—No cause shown for the exercise of such discretion in appellant’s favour—Principles applicable—Application refused.

Civil Procedure—Appeal—Dismissal of appeal for want of prosecution—Application for reinstatement refused—The Civil Procedure Rules, Order 35 rules 6, 21 and 22—Cf. rule 4 of same Order—See also supra.

Reinstatement of Appeal—Application for—Refused—See supra.

Finality of litigation—Need for—Therefore applications of this nature—for reinstatement of appeal—cannot succeed, unless justice clearly indicates that the relevant procedural stipulations should be relaxed.

Refusing this application by the appellant to have his appeal—dismissed for want of prosecution—reinstated, the Court :—

Held, (1). It is in the public interest that there should be some end to litigation, and the stipulations as to time in procedural matters laid down in the Rules of Court are to be observed unless justice clearly indicates that they should be relaxed : Cf. *Loizou v. Konteatis* (1968) 1 C.L.R. 291 ; *Georghiou v. The Republic* (1968) 1 C.L.R. 411 ; *Edwards v. Edwards* [1968] 1 W.L.R. 149.

(2) In the present case no reason has been given for a delay exceeding three months. This Court has stated time and again that for applications of this nature there must be a full justification on the record, in the form of an affidavit.

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In the result the application is dismissed with costs.

*Application dismissed with
costs.*

Cases referred to :

Edwards v. Edwards [1968] 1 W.L.R. 149 ;

Loizou v. Konteatis (1968) 1 C.L.R. 291 at p. 294 ;

Georghiou v. The Republic (1968) 1 C.L.R. 411.

Application.

Application to reinstate an appeal which was dismissed for want of prosecution under the provisions of Order 35, rule 22 of the Civil Procedure Rules.

X. Syllouris, for the applicant.

X. Clerides, for the respondent.

VASSILIADES, P. : The Court finds it unnecessary to call on the other side.

The judgment of the Court will be delivered by Mr. Justice Josephides.

JOSEPHIDES, J. : This is an application by the appellant-defendant requesting this Court to reinstate his appeal which was dismissed under the provisions of Order 35, rule 22, of the Civil Procedure Rules.

That rule provides that if the appellant does not, within three months of lodging his notice of appeal, take the steps mentioned in rule 21, namely, for the preparation of the record, the appeal shall stand dismissed ; but " it may, if the Court of Appeal so deems fit, be reinstated upon such terms as may be just ". Counsel has today urged on this Court that it is just that this appeal should be reinstated. We are sorry to observe that the affidavit filed in support of the present application contains practically nothing in support of it. This is an affidavit sworn by the client and it simply says that the reason for the delay is that there was an application for stay of execution of the judgment pending before the District Court of Nicosia, and nothing more.

The relevant facts and dates are as follows : The plaintiff's claim was for damages for negligence and judgment was delivered by the District Court of Nicosia on the 15th

November, 1969, for the sum of £3,553 damages. The appeal was lodged by the defendant (appellant) on the 23rd December, 1969, who, on the previous day, had filed with the District Court an application for stay of execution. As the appellant did not comply with rule 21 of Order 35, that is to say, he failed, within one month of the lodging of his notice of appeal, to apply for copies and make a deposit as provided in rule 6, the Chief Registrar addressed to him a notice, dated the 16th February, 1970, referring to the provisions of Order 35, rules 6, 21 and 22, of the Civil Procedure Rules, and requesting him to comply with the provisions of these rules and lodge the sum of three pounds for the preparation of the record of proceedings consisting of 11,900 words, if he wished to have the appeal fixed for hearing. The appellant did nothing for more than a month and eventually a notice, under the provisions of Order 35, rule 22, was served on him by the Chief Registrar, on the 26th March, 1970, informing him that his appeal stood dismissed under the provisions of the rules. The present application was filed on the 8th April, 1970.

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This Court has stated time and again that for applications of this nature there must be a full justification on the record, in the form of an affidavit, for the delay. In the present case, as already stated, no reason has been given for a delay exceeding three months. Furthermore, as was pointed out to appellant's counsel in the course of the argument, he failed to set forth fully in his notice of appeal the reasons relied upon for the grounds of appeal stated in the notice, as expressly provided in rule 4 of Order 35. In fact, no reasons at all are given in the notice of appeal. In these circumstances, we are of the view that the appellant has failed to show any cause why the discretion of this Court should be exercised in his favour to have his appeal reinstated.

It is in the public interest that there should be some end to litigation, and the stipulations as to time in procedural matters laid down in the Rules of Court are to be observed unless justice clearly indicates that they should be relaxed : cf. *Loizou v. Konteatis* (1968) 1 C.L.R. 291, at page 294 ; *Georgiou v. Republic (Minister of Interior and Another)* (1968) 1 C.L.R. 411 ; and *Edwards v. Edwards* [1968] 1 W.L.R. 149.

In the result the application is dismissed with costs.

Application dismissed with costs.