

ROLANDIS, LOUCA & SOTERIADES LTD.,
Appellants-Plaintiffs,
v.
ANDREAS KOUTSIU,
Respondent-Defendant.

ROLANDIS
LOUCA &
SOTERIADES
LTD.
v.
ANDREAS
KOUTSIU

(Civil Appeal No. 4850).

Civil Procedure—Execution—Execution by imprisonment—Committal order—Section 82 of the Civil Procedure Law, Cap. 6—Debtor with sufficient means to pay, neglected to pay according to the instalment order—See also infra.

Civil Procedure—Execution—Instalment order under Part IX sections 86–91 of the Civil Procedure Law, Cap. 6—Disobedience of the order by the debtor—It is for the Court to say whether in the circumstances it was legally justified—See also infra.

Civil Procedure—Execution—Instalment order (supra)—Once made it should be complied with unless the respondent-debtor can show sufficient legal justification for his failure to comply with.

Instalment Order—Supra.

Committal Order—Supra.

Execution—Instalment order—Committal order—Supra.

Per curiam : The enforcement of legal rights and obligations judicially declared touches, the root of public confidence in the administration of justice according to law ; and must be treated accordingly in the courts. To condemn a judgment-creditor for seeking to enforce obedience to a judicial order still in force, is not conducive to confidence in the law. On the other hand, if the judgment-debtor is made to appreciate correctly the effect and consequences of an instalment order, he will either comply with it, or take such steps as may be necessary to have it varied ; or to have it completely discharged.

The facts of the case sufficiently appear in the judgment of the Court.

Cases referred to :

Anestos Adamou Kokoni v. Xenophon Ioannides (1963) 2
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Appeal.

Appeal by plaintiffs—judgment creditors against the judgment of the District Court of Limassol (Vassiliades, D.J.) dated the 21st October, 1969 (Action No. 2792/63) dismissing their application for a committal order under section 82 of the Civil Procedure Law, Cap. 6.

Chr. Chrysanthou, for the appellants.

The respondent, in person.

The judgment of the Court was delivered by :—

VASSILIADES, P.: This is an appeal by the judgment-creditors from a decision of the District Court of Limassol, dismissing appellants' application for a committal order under section 82 of the Civil Procedure Law, Cap. 6, for default on the part of the judgment—debtor in the payment of monthly instalments payable under an instalments order, made in execution of appellants' judgment against the respondent-debtor.

The appellants (a limited liability company) sued the respondent (their selling agent) in the District Court of Limassol for a substantial sum of money, claimed under the contract between the parties dated December 4, 1963. The action was filed some three weeks after the contract, on December 23, 1963, with a claim exceeding £900 in various items for cash, goods, damages, etc., as shown in the statement of claim filed on March 11, 1964.

By a long defence, running into several pages, filed some two years later (30.3.66) the respondent denied the claim and made a counter-claim consisting of several items amounting to well over £1,000.

Claim and counter-claim were settled before the Full District Court on January 4, 1967, under a consent-judgment for the payment of £240 (including £40 costs) by the defendant (respondent herein) to the plaintiffs, payable by monthly instalments of £4, commencing on February 1, 1967. The certified copy of the judgment attached to the record before us, contains the provision that regular payment of instalments, amounting to a total of £190, would entitle the respondent to a full discharge of the judgment debt ; while on the other hand default in the payment of any one instalment would render the whole amount of the judgment payable forthwith. That judgment settled all the differences between the parties until that date, as expressly stated therein.

No instalment or other payment against his debt having been made by the judgment-debtor for several months, the judgment-creditors took steps in execution of the judgment by an application under the Civil Procedure Law (Cap. 6) for the examination of the debtor's means with a view to an order for the payment of the judgment-debt by instalments, measured on the debtor's means and earnings. That application is not on the record before us. All that there is of that proceeding, is a certified copy of the Judge's note at the hearing of the application on October 26, 1967, showing that the judgment debtor, in the examination as to his means, stated on oath that he was then "earning about £60 per month;" and that being a married man with a family consisting of a wife and three children he could only pay £4 per month. An order was then made by the Judge for the payment of the judgment-debt by instalments of £4 per month, commencing on November 1, 1967; with costs against the respondent.

Some two months later, on January 12, 1968, the respondent paid the sum of £8 against the judgment; apparently the first two instalments under the order made in October, 1967. Nothing more was paid, however, for the next ten months; and in November, 1968, the judgment-creditors applied for a committal order. This does not appear on the record before us; but it appears in the affidavit filed in support of the present application, where it is also stated that the application for committal was dismissed on December 2, 1968.

We do not know the reason for which that application was dismissed. We are told that the reason was that the respondent was then unemployed. We cannot enter into that matter now, as no appeal was taken against that decision. But be that as it may, some seven months later, in June, 1969, the judgment-creditors filed a fresh application for committal, supported by an affidavit stating, *inter alia*, that during the three months preceding the application, the judgment-debtor was employed as a sales inspector by the Carlsberg Beer Factory in Cyprus, earning more than £50 per month.

No opposition to that application appears to have been filed by the respondent; nor does he seem to have filed any affidavit as to his earnings; or as to the reasons for his failure to comply with the instalments order. The matter came before the Court on September 17, 1969, when it had to be adjourned till the following month, as the respondent had not yet been served.

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At the next hearing, on October 21, the respondent appeared with his advocate who, in due course, called the respondent to the witness box. He stated on oath that until February 24, 1969, he was in employment earning about £40 per month, including commission. From February 24 to March 7, he was unemployed. On March 7, he took employment for the sale of Carlsberg beer at a salary of £50 per month. He lost that employment, he said, on July 24, and remained unemployed until next October when he took employment with Mr. Pan. Malas at a salary of £28 per month. When his earnings were £55 per month he could not pay anything, he said, against his debt, as he had to maintain his family consisting of a wife and three children, between the ages of 9 and 15, all attending school. The family lived in a house, owned by the wife, which, however, is subject to a mortgage, it was alleged, for £1,000.

The respondent seems to have been able to manage his family's requirements and provide for necessities upon earnings varying from £28 per month (his present salary), £40 per month during a period early in 1969, £55 per month before that, and £60 per month in October, 1967. And yet he was not able, he said, to make any payments under the instalments order, excepting for the £8 in January, 1968. He did not say whether he kept any notes or records of what he spent for his family's necessities ; or what he and his family required for non-necessaries such as cigarettes and drinks, if any, for entertainment, pocket money, etc. Nor did the respondent state how he managed to pay the two instalments in January, 1968 ; and whether he made any attempt after that, to pay any money against his instalments. He did not explain why he took no steps to inform his creditors as to the reasons of his default ; and no steps to have the order varied or discharged, if he could persuade the Court that he was really unable to comply with the instalments order. Nothing appears on the record regarding any of these relevant matters.

On the evidence before him the trial Judge was "satisfied that the judgment-debtor has not had the means to pay any amount towards the judgment-debt for the period covered by the application," notwithstanding the fact that the debtor was earning a salary and a commission. Moreover, the Judge went further and expressed disapproval "at the practice of persistently bringing to Court judgment-debtors when judgment-creditors know well, or ought to know well, that they have no chance to succeed." The judgment-creditors must have known—the Judge says in his considered judgment—at the time they swore the affidavit in

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support of their application, "that they had no chance to succeed in view of the allegations stated therein concerning the earnings of the judgment-debtor in comparison with his earnings at the time the order for payment by instalments was made". And, he dismissed the application with costs against the judgment-creditors. From this decision the latter took the present appeal.

With all respect to the trial Judge, the affidavit filed in support of the creditors' application, stated as a fact that during the material period the judgment-debtor was earning "more than £50 per month". And the respondent admitted on oath that between March and July, 1969, his salary was £55 per month. This establishes beyond all doubt that the debtor "since the making of the judgment or order has had sufficient means to pay the money directed to be paid by him or some part thereof", as provided in section 82 (a) of the statute which the learned trial Judge cited fully in his judgment; and that the debtor neglected to pay it according to the order.

We cannot see how the judgment-creditors "ought to know the circumstances" which could amount to a legal justification for the debtor's failure to use sufficient part (less than one-tenth each month) of the money in his hands to comply with the order.

The debtor contended at the hearing of the application that he failed to comply with the order because he used the money which he had been earning for the maintenance of his family. But it is for the Court to say—and not the interested party—whether the disobedience of the order by the debtor was, in the circumstances, legally justified.

In a proceeding for the examination of the debtor regarding his means, for the purposes of an instalments order in satisfaction of the judgment-debt, all the necessary material must be placed before the Court to enable the Judge dealing with the matter, to decide whether an instalments order should be made at all; and if yes, in what amount. It is at that stage that the Court, taking all necessary matters into consideration, will determine the judgment-creditor's application for such an order. Once made, the order must be complied with unless the respondent can show sufficient legal justification for his failure to comply.

The matter was discussed in *Anestos Adamou Kokoni v. Xenophon Ioannides* (1963) 2 C.L.R. 468 to which the attention of the trial Judge does not seem to have been

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drawn. In that case a pharmacist in the employment of the Government, earning a monthly salary of £44.115 mils and having to support a family of a wife and four children of school-age, agreed to an instalments order against him for the payment of £2 per month in payment of a judgment-debt. He fell in arrears and the judgment-creditor applied for a committal order. The trial Judge refused the application mainly on the ground that after the order, the debtor's son went to the University which cost the debtor £25 per month. On appeal this Court held that the debtor's increased family commitments could not constitute a valid legal justification for the disobedience of the instalments order. The creditor's appeal was allowed and a committal order was made against the debtor, under section 82 of the Civil Procedure Law, Cap. 6.

The enforcement of legal rights and obligations judicially declared, touches the root of public confidence in the administration of justice according to law ; and must be treated accordingly in the courts. To condemn a judgment-creditor for seeking to enforce obedience to a judicial order still in force, is not conducive to confidence in the law. On the other hand, if the judgment-debtor is made to appreciate correctly the effect and consequences of an instalments order, he will either comply with it, or take such steps as may be necessary to have it varied ; or to have it completely discharged. He will take it seriously. Good business and trade depend considerably on the enforcement of contractual rights and obligations.

In the case before us, we think that the judgment-creditor has a justified complaint ; and he is entitled to succeed in his appeal and in his application for a committal order. However, in view of the facts of this case as they stand before us at this stage, we propose making the order conditional on certain terms intended to facilitate the judgment-debtor to comply with the order in his present circumstances. We propose making the following order :—

1. For his default in complying with the instalments order made on October 26, 1967, the respondent judgment-debtor is committed to prison for two months, provided :

- (a) that no warrant shall issue for the arrest and imprisonment of the respondent until February 1st, 1970 ; and
- (b) if the respondent will supply appellants' advocate (Mr. Chrysanthou) by the 1st February, with an

undertaking by respondent's employer to deduct £2 per month from respondent's salary, commencing with the salary for February 1970, for payment to the appellants in reduction of the judgment-debt herein, the order for imprisonment to be kept in suspense for a further period of three months, i.e. until the end of April, 1970 ; and

- (c) if by the end of the said period of three months the said deductions of £2 per month are made regularly to the appellants or their advocate, the order for committal as above to be discharged.

2. The instalments order made on October 26, 1967, to be discharged and to be substituted by an order for the payment of the judgment-debt by instalments of £2 per calendar month, commencing from February 1970 (as per paragraph 1 above) until further order or full payment of the judgment-debt.

Mr. Chrysanthou : My clients, the appellants, agree to the proposed order.

Court : Appeal allowed. Order as above with £4 costs in the appeal. No costs in the District Court where the application was not properly presented.

Case remitted to the District Court for such proceedings as may be necessary in the execution of the judgment herein, or the orders made today.

Appeal allowed ; order for costs as above.

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