

1980 February 23 -

[A. LOIZOU, J.]

FARAH HASSAN ASHOUR,

Plaintiff,

v.

CLAUDIA MARITIME CO. LTD.,

Defendants

(Admiralty Action No. 407/77).

Admiralty—Practice—Costs—Security for costs—Rule 185 of the Cyprus Admiralty Jurisdiction Order, 1893—Foreign national suing for special and general damages for personal injuries sustained whilst in the employment of defendants—Fact that part of claim relates to loss of earnings does not bring case within the exception to said rule—Security for costs in the sum of C£350 ordered. 5

The plaintiff, a foreign national and resident abroad, filed an action against the defendants for special and general damages for the personal injuries and other consequential loss and damage sustained by him whilst in the employment of the defendants and in the course of his duties as such employee on board the ship “Valle De Pecadura”. The defendants applied for an order directing the plaintiff to give security for costs under r. 185* of the Cyprus Admiralty Jurisdiction Order, 1893. The plaintiff opposed the application on the ground that his claim should be treated as one coming within the exception provided by the said r. 185 with regard to a seaman suing for wages. 10 15

Held, that the fact that in an action for personal injuries part of the amounts claimed relate to the loss of earnings does not bring a case within the exception to rule 185, nor can by itself 20

* Rule 185 provides as follows:

“If any plaintiff (other than a seaman suing for his wages or for the loss of his clothes and effects in a collision) or any defendant making a counterclaim is not resident in Cyprus, the Court or Judge may, on the application of the adverse party, order him to give such security for the costs of such adverse party as to the Court or Judge shall seem fit; and may order that all proceedings in the action be stayed until such security be given”.

5 affect the exercise of the Court's discretion so that an application for security for costs should be refused; that considering the totality of the circumstances, including the nature of the claim, its probable duration and the expenses to be incurred in this connection, this Court has come to the conclusion that an order should be made that the respondent should give security for costs in the sum of C£350.—and that in the meantime all proceedings in the action should be stayed until the security is given.

Application granted.

10 Cases referred to:

Hesham Enterprises v. Ship Rami (1978) 1 C.L.R. 195;

Aeronave SPA and Another v. Westland Charters Ltd. and Others
[1971] 3 All E.R. 531;

Crozat v. Brogden [1894] 2 Q.B. 30.

15 Application.

Application by defendants for an order directing the plaintiffs to give security for defendants' costs and for a stay of proceedings until such security is given.

20 *G. Michaelides with P. Panayi (Miss) for E. Montanios*
for applicants-defendants.

C. Myrianthis with M. Vassiliou, for respondent-plaintiff.

25 A. Loizou J. gave the following judgment. This is an application by the defendants for an order directing the plaintiff to give security for their costs in the action in the sum of C£750.—or such other amount as the Court shall deem fit, and for a stay of these proceedings until such security as ordered is given.

30 The plaintiff is a foreign national and resident abroad. As alleged in the petition, he is a Somali, domiciled in Aden, and now staying temporarily in Athens for the purpose of receiving medical treatment. He has instituted the present proceedings in the Admiralty Jurisdiction of this Court claiming hereby special and general damages for the personal injuries and other consequential loss and damage sustained by him whilst he was in the employment of the defendants and in the course of his
35 duties as such employee aboard the defendants' ship "VALLE DE PECADURA" on or about the 14th September, 1974, whilst the said vessel was berthed at the Port of Genoa in Italy.

The defendants, a Company registered in Cyprus with limited

liability have asserted in the affidavit filed in support of the application, that the plaintiff filed on or about the 19th October, 1978, an action before the Court of First Instance at Piraeus, Greece (Monomeles Protodikion Pireos) against 1. Valeska Maritime Co. Ltd., of Limassol, owners of the vessel 5
 "ARAGON" ex "VALLE DE PICADURA" and 2. Maritime Enterprises—ANADEPA Ltd., of Piraeus, claiming Greek Drachmas 7,767.780 as compensation for personal injuries sustained on or about the 14.9.1974 whilst employed as a seaman on board the said vessel which was lying at the Port of Genoa, 10
 and that the said action before the Court of Piraeus is in respect of the same cause of action as the one here.

These facts have not been denied in the affidavit filed on behalf of the respondent.

The application is based on rule 185 of the Cyprus Admiralty Jurisdiction Order, 1893, which reads as follows:- 15

" If any plaintiff (other than a seaman suing for his wages or for the loss of his clothes and effects in a collision) or any defendant making a counterclaim is not resident in Cyprus, the Court or Judge may, on the application of the adverse party, order him to give such security for the costs of such adverse party as to the Court or Judge shall seem fit; and may order that all proceedings in the action be stayed until such security be given". 20

As rightly pointed out in the case of *Hesham Enterprises v. Ship Rami* (1978) 1 C.L.R., p. 195, the above rule is comparable to rule 1 of Order 60 of the Civil Procedure Rules. 25

The corresponding English rule is now rule 1 of Order 23 of the Rules of the Supreme Court of England which though differently worded from our aforementioned rule 185, is, as pointed out by Triantafyllides P. in *Hesham* case (*supra* at p. 198) sufficiently similar with our rule in material respects so that the cases that turn on its construction, such as the *Aeronave SPA and Another v. Westland Charters Ltd. and Others* [1971] 3 All E.R. 531, can be of guidance for the purposes of applications for security for costs under our rule 185. He further quoted a passage from the judgment of Lord Denning M.R. from page 533 of the *Aeronave* case (*supra*) in which he dealt with the position of foreign plaintiffs and in which passage it is 30
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pointed out that there is no longer any inflexible rule or practice that a foreigner plaintiff resident abroad will be ordered to give security for costs, but that the power to make such order is entirely discretionary, reversing thereby what was stated in
5 *Crozat v. Brogden* [1894] 2 Q.B., 30.

I cannot resist, however, the temptation of quoting a small passage from that judgment which reads:

10 “ It is the usual practice of the Courts to make a foreign plaintiff give security for costs. But it does so, as a matter of discretion, because it is just to do so. After all, if the defendant succeeds and gets an order for his costs, it is not right that he should have to go to a foreign country to enforce the order”.

15 No doubt a Court has to exercise a discretion with regard to the making of an order for security for costs under rule 185.

20 It has been argued on behalf of the respondent that in the exercise of my said discretion, I should, on the one hand, ignore the fact that the present plaintiff has instituted also proceedings before another jurisdiction as that was a matter to be considered on an application turning on the rule of *lis alibi pendens* and on the other hand it should be seriously taken into consideration the fact that the plaintiff's claim should be treated as one coming within the exception provided under rule 185 with regard to a seaman suing for wages.

25 With regard to the first part of the argument, I need not really be concerned, especially in view of the fact that the defendants in the proceedings before the Court of First Instance at Piraeus appear to be other than the present defendants.

30 With regard to the second part of the argument, the short answer is that the fact that in an action for personal injuries part of the amounts claimed relate to the loss of earnings does not bring a case within the exception to the rule, nor can by itself affect the exercise of the Court's discretion so that an application for security for costs should be refused.

35 Considering the totality of the circumstances, including the nature of the claim, its probable duration and the expenses to be incurred in this connection, I have come to the conclusion

that an order should be made that the respondent should give security for costs in the sum of C£350.—and that in the meantime all proceedings in the action should be stayed until the security is given; further, in the event of the security not being given within three months from to-day, defendants to be at liberty to apply to have the case dismissed, unless otherwise ordered in the meantime. 5

Costs of this application to be costs in cause, but in any event not against the applicants-defendants.

Application granted. Order for costs as above. 10