

1981 February 28

[DEMETRIADES, J.]

EDDY BREIDI AND ANOTHER,

Plaintiffs,

v.

THE SHIP "GLORIANA" AND OTHERS,

Defendants.

(Admiralty Action No. 13/80).

Admiralty—Practice—Costs—Security for costs—Plaintiffs residing abroad and having no property in Cyprus—Claim for breach of contract—Discretion of the Court to order security for costs—Rule 185 of the Cyprus Admiralty Jurisdiction Order, 1893—
5 *Whether security furnished for arrest of ship can be considered as payment into Court for purposes of security for costs.*

Admiralty—Practice—Costs—Interlocutory proceedings—Whether costs to be paid at the end of the trial.

10 This was an application by defendants 1 in the action under rule 185* of the Cyprus Admiralty Jurisdiction Order, 1893, for an order directing the plaintiffs to furnish security of costs, for an order staying the proceedings until the security is given and for an order that the costs which have already been awarded
15 in favour of the defendants in any interlocutory or other matter be paid to them. The plaintiffs were residing abroad and they had no property in Cyprus. Their claim was for U.S. Dollars 1,000,000.00 as damages for loss for non-delivery of cargo.

* Rule 185 reads 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".

The plaintiffs opposed the application on the ground that they have deposited in Court a bank guarantee in the sum of C£75,000 and that if any costs are awarded against them, the defendants can recover same from that guarantee.

Held, (1) that the bank guarantee, was furnished in compliance with an order made by the Court on an application by the plaintiffs for the arrest of the ship and her cargo and it only covers damage which may be caused to them as a result of the arrest, but it does not provide for the payment of any costs which may be awarded to the defendants in the event the plaintiffs fail in their action against them; and that, therefore, it cannot be considered as a payment into Court for the purposes of this application. 5 10

(2) That the word "may" in rule 185 of the Cyprus Admiralty Jurisdiction Order, 1893, gives the Court a discretion whether to order security for costs which should be exercised in all the circumstances of this case; that considering all the circumstances of the case, including the nature of the claim, this is a proper case in which to order the plaintiffs to give security for costs; accordingly plaintiffs are ordered to give security for costs in the sum of £750. 15 20

(3) That this Court has not been persuaded why it should make an order that the costs which have already been awarded in favour of the defendants in any interlocutory or other matter, or which may be awarded in the future in these proceedings, be paid at the end of the trial. 25

Order accordingly.

Cases referred to:

Ashour v. Claudia Maritime Co. Ltd. (1980) 1 C.L.R. 64;
Hesham Enterprises v. Ship Rami (1978) 1 C.L.R. 195; 30
Sir Lindsay Parkinson & Co. v. Triplan Ltd. [1973] 2 All E.R. 273.

Applications.

Applications by defendants for security of costs.

Cur. adv. vult. 35

C. Hadjiloannou, for applicants-defendants.

D. Demetriades, for respondents-plaintiffs.

DEMETRIADES J. read the following ruling. The defendants in their applications pray for:

- 5 "A. An Order of the Court ordering the payment by the plaintiffs to defendants No. 1 advocate the costs already adjudged in their favour and against the plaintiffs and the costs of this application to be assessed by the Registrar.
- 10 B. An Order of the Court ordering the plaintiffs to furnish security for the costs of defendants No. 1 in the sum of C£2,000.-.
- C. An Order of the Court ordering the stay of the proceedings until the above orders are satisfied and if they are not satisfied within 15 days the action to stand dismissed.
- 15 D. Further or other relief.
- E. Costs."

The application is based on rules 185 and 203-212 of the Cyprus Admiralty Jurisdiction Order 1893 and the inherent jurisdiction and power of the Court.

20 The plaintiffs oppose the application.

The plaintiffs are residents abroad and their claim is:

- 25 "A. The equivalent amount in Cyprus Pounds of the sum of U.S. Dollars 1,000,000.00 as damages for loss for non-delivery of cargo, and/or for breach of contract of affreightment and/or for negligence and/or for breach of contract of carriage and/or breach of contract for the sale of goods now loaded on Defendant ship and/or otherwise on or about 14/1/1980.
- 30 B. Interest at 9% per annum as from 4/1/1980 to final payment.
- C. The costs and expenses of this action and of all proceedings herein."

35 The application of the defendants-applicants is relied upon facts that are, as they say in their application, apparent on the face of the record and are that the plaintiffs are not residents in Cyprus and they have no property here.

The fact that the respondents do not reside in Cyprus and have no property here is not denied by them. In fact both plaintiffs are described on the writ of summons as coming from Beirut. In the affidavit filed on their behalf in support of their opposition, the respondents claim that the defendants are not entitled to to an order for security for costs on a number of grounds, all of which—except one—have not been argued during the hearing of this application and I, therefore, consider that they have been abandoned.

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As I have earlier said, the application is based on rule 185 of the Cyprus Admiralty Jurisdiction Order 1893, which reads:

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"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".

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Turning now to the words of the Rule, the important word is "may". In my view, this word gives the Judge a discretion whether to order security for costs which should be exercised in all circumstances of the case. This view of mine is shared by a number of my brother Admiralty Court Judges (see (1) *Farah Hassan ASHOUR v. CLAUDIA MARITIME Co. Ltd.* (1980) 1 C.L.R. 64; (2) *Hesham Enterprises v. Ship Rami*, (1978) 1 C.L.R. 195) and is supported by English authorities interpreting Order 23 rule 1 of the Rules of the Supreme Court of England, a provision which, as Triantafyllides P. said at p. 198 in the case of *Hesham (supra)*, though differently worded from our rule 185, is sufficiently similar with our rule in material respects.

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The argument put forward by the plaintiffs why the order should not be made is that they have deposited in Court a bank guarantee in the sum of C£75,000.— and that if any costs are awarded against them, the defendants can recover same from that guarantee.

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This bank guarantee is, in the submission of counsel for the plaintiffs, a substantial payment by them into Court and

being so and in the light of the judgment in *Sir Lindsay Parkinson & Co. v. Triplan Ltd.*, [1973] 2 All E.R. 273, the Court should not accede to the application of the defendants.

5 The bank guarantee, however, was furnished in compliance with an order made by the Court on an application by the plaintiffs for the arrest of the ship and her cargo and it only covers damage which may be caused to them as a result of the arrest, but it does not provide for the payment of any costs which may be awarded to the defendants in the event the plain-
10 tiffs fail in their action against them. It cannot, therefore, in my opinion, be considered as a payment into Court for the purposes of this application.

15 Considering now all circumstances of the case, including the nature of the claim, I have reached the conclusion that this is a proper case in which to order the plaintiffs to give security for costs.

20 The second point that falls for decision is what should be the amount of the security. Defendants No. 1 claim that this should be £2,000.— but they have not explained why the amount of the security should be so high.

Having made a rough estimate of what the costs might eventually be, I have come to the conclusion that the security for costs which the plaintiffs—respondents should give in favour of defendants No. 1 must be for the sum of £750.—.

25 The last point to be decided is whether I should make an order that costs which have already been awarded in favour of the defendants in any interlocutory or other matter, or which may be awarded in the future in these proceedings, be paid at the end of the trial. I have not been persuaded why I should
30 make such an order.

35 In the result, I make an order that the respondents should give security for costs in the sum of £750.—and that in the meantime all proceedings in the action should be stayed until the security is given. If the security is not given within two months from today, the defendants shall be at liberty to apply to have the case dismissed unless otherwise ordered in the meantime.

Application granted.