

1984 September 25

[PIKIS, J.]

HOTHI MEHANGA SINGH,

*Plaintiff.*

v.

F/B ALISUR BLANCO,

*Defendants.*

(Admiralty Action No. 156/84).

*Admiralty—Arrest of ship—Discharge of—Discretion of the Court—Principles on which it is exercised—Terms of release of ship—Amount of security given for the release excessive and unjustified in the circumstances of this case—Reduced—Rule 60 of the Cyprus Admiralty Jurisdiction Order, 1893.*

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In an action against the defendant ship for wages due and damages for breach of contract of employment the Court, on the application of the plaintiff, made an order for the arrest of the ship, accompanied by directions for her release upon security being given for an amount of US dollars 8,000. Subsequently the defendants moved the Court to discharge the order of arrest of the ship and the security given to bail it out, or to reduce the amount lodged as security.

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The motion was mainly based on the ground that the contract of employment proffered by plaintiff as evidence of terms and other conditions of employment was not genuine.

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*Held*, (1) that the discretion of the Court to discharge an order of arrest must be exercised judicially by reference to the principle of law underlying the power to direct arrest, on the one hand, and the realities of the case, on the other; that the terms for the release of a boat must not be oppressive and the amount fixed must be directly referable to the amount likely to be recovered in the event of success; that if the disputed contract was the sole evidence tending to establish a relationship of master and servant, this Court would incline to discharge the order of arrest for failure on the part of the plaintiff to ground a serious case; that, however, there is other evidence tending

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to establish the existence of the relationship of master and servant between defendants and plaintiff, a relationship that came to an end in disputed circumstances; and that, therefore, this Court is not prepared to discharge the order of arrest in its entirety and set it aside.

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(2) That on examination of the material before this Court in its totality, contained in the affidavits of the parties, the amount fixed as security for the release of the boat, appears to be excessive and, in the circumstances of the case, unjustified; that an amount in the region of US \$2,000:—, or its equivalent in Cyprus pounds, is more in accord with the realities of the case bearing in mind the nature of the claim and the amount likely to be recovered in the event of success; and that in the exercise of its discretion this Court directs its reduction accordingly.

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*Application partly granted.*

Cases referred to:

*The Andria, Weekly Law Reports, 1984 p. 570.*

**Application.**

Application by defendants for an order discharging the order of arrest of the defendant ship and freeing the amount lodged pursuant to the above order.

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*D. Socratous (Miss) for A. Theofilou, for the plaintiff.*

*L. Papaphilippou, for the defendants.*

PIKIS J. gave the following judgment. This is an admiralty action in rem, instituted by a seaman for wages due and damages for breach of his contract of employment. On the application of the plaintiff, following initiation of proceedings, an order was made for the arrest of the boat, accompanied by directions for her release, upon security being given for an amount of US \$8,000, or its equivalent in Cyprus Pounds. Appropriate security was given, by the lodgment with the office of the Marshal, of the amount specified in the order of the Court, plus an additional amount to meet another claim raised against the ship in Action No. 165/84; in all, an amount of C£6,500.— was deposited with the Marshal, whereupon the boat was released.

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The defendants moved the Court to discharge the order of

arrest and consequential directions, and, free the amount lodged pursuant to the order of the Court. The motion is twofold: It aims at the discharge of the order for the arrest of the boat and security given to bail it out, or the reduction of the amount lodged as security for the claim of plaintiff. In affidavits filed in support of the motion, reference is made to the relationship of the parties, the circumstances of its severance, as well as to the complexion of the case of the parties. Notwithstanding acknowledgment by defendants of the existence, at some time, of the relationship of master and servant, they disputed the genuineness of the contract of employment proffered by plaintiff as evidence of terms and other conditions of employment. In their contention, the signature on the document attributed to the master, is not his own, casting doubts thereby on the circumstances of its execution, as well as its authenticity. In the contention of defendants the document is forged. Plaintiff failed to counter these allegations despite the opportunity he was given to do so, neutralising by his conduct, for the purposes of this motion, the evidential value of the written contract relied upon in support of his case. On the other hand, there is other evidence apart from the disputed document, supporting the existence of a relationship of master and servant, between the parties. Jurisdiction to order the arrest of a boat is an incident of the admiralty jurisdiction in rem and aims to provide security for satisfaction of the claim of the plaintiff, if successful. Arrest is ordinarily ordered on an ex parte application because of the mobility of the affected ship. Rule 60 of the Cyprus Admiralty Jurisdiction Rules confers jurisdiction on the Court, on a subsequent motion of the defendant, to discharge the order of arrest or direct the modification of its provisions in any manner judged appropriate. The discretion of the Court is certainly wide enough, on consideration of the provisions of r. 60, to direct reduction of the security in a proper case.

The discretion of the Court under r. 60 must, no doubt, be exercised judicially by reference to the principle of law underlying the power to direct arrest, on the one hand, and the realities of the case, on the other. The power to arrest a ship and, generally, order security for the claim of the plaintiff, is an especially necessary remedy for the effective exercise of the admiralty jurisdiction in rem, considering that the presence of the defendant in the jurisdiction is normally temporary. However, the terms for the release of a boat must not be oppressive and the amount

fixed must be directly referable to the amount likely to be recovered in the event of success. Mr. Papaphilippou invited the Court to discharge the order for arrest and security given thereunder for the release of the boat, because of the reliance placed by the plaintiff on a document of highly doubtful provenance. And relying on the decision of the English Court of Appeal in *The Andria*, *The Weekly Law Reports*, 13th April, 1984, p. 570, he invited the Court to discharge the order for failure to make a candid disclosure of the facts. In *The Andria*, the Court discharged an order of arrest for the reason that the jurisdiction of the Court had been invoked for an impermissible purpose, that is, a purpose not incidental to the exercise of the admiralty jurisdiction in rem. The applicant had failed to disclose to the Court that the claim was being pursued by arbitration. In the instant case, there is no suggestion that the order of arrest was sought but as an ancillary measure to the exercise of the admiralty jurisdiction in rem of this Court; consequently, it cannot be said, as was the case in *The Andria*, that invocation of the jurisdiction of the Court was an abuse of the jurisdiction. If the disputed contract was the sole evidence tending to establish a relationship of master and servant, I would incline to discharge the order of arrest for failure on the part of the plaintiff to ground a serious case. But, as already mentioned, there is other evidence tending to establish the existence of the relationship of master and servant between defendants and plaintiff, a relationship that came to an end in disputed circumstances. Therefore, I am not prepared to discharge the order of arrest in its entirety and set it aside.

On the other hand, on examination of the material before me in its totality, contained in the affidavits of the parties, the amount fixed as security for the release of the boat, appears to be excessive and, in the circumstances of the case, unjustified. An amount in the region of US \$2,000, or its equivalent in Cyprus Pounds, is more in accord with the realities of the case bearing in mind the nature of the claim and the amount likely to be recovered in the event of success. In the exercise of my discretion, I direct its reduction accordingly. The amount thus furnished as security for bailing out the ship, will stand as security for the satisfaction of any judgment that plaintiff may recover, and costs. Order accordingly. Costs in cause

*Order accordingly.*