

1984 February 21

[TRIANTAYLLIDES, P.]

ANTONIS MAVROCHANNA AND ANOTHER,

Appellants-Defendants

XENIS D MICHAEL,

Respondent-Plaintiff

(Application in Civil Appeal No 6655)

Civil Procedure—Appeal—Stay of execution pending appeal—Discretion of the Court—Principles applicable—Rule 18 of Order 35 of the Civil Procedure Rules—Judgment prescribing how a nuisance may be abated—Stayed subject to conditions including the furnishing of security

5

The trial Court found that in the way in which there was being operated by the appellants a discotheque, which was in the same building as the residence of the respondent there was caused to him nuisance in the sense of section 46 of the Civil Wrongs Law, Cap 148 and it proceeded to make an order for the abatement of the nuisance and prescribed how the discotheque should be operated by the appellants in order to avoid causing a nuisance to the respondent. An appeal was filed against the above judgment and, also, an application* for an order staying the execution of the judgment pending the determination of the appeal.

10

15

On the application for stay

Held, that rule 18 of Order 35 of the Civil Procedure Rules is drafted so widely, especially by the use therein of the term "decision", that it is applicable to an order such as the one against which the present appeal was made, and that any narrower construction of rule 18 would not be reasonable or proper, that though the respondent, as a successful plaintiff, should not be deprived of the fruits of the litigation which till now has

20

* The application was based on rule 18 of Order 35 of the Civil Procedure Rules.

evolved in his favour and has culminated in the judgment of the trial Court care should be taken, in so far as this is compatible with a proper exercise of the discretion under rule 18 of Order 35, not to render the present appeal nugatory to the detriment of the appellants; that an order staying execution may be made on certain conditions, including the furnishing of security; and that, therefore, an order staying execution of the part of the judgment of the trial Court which relates to the mode of operation of the discotheque in question by the appellants will be granted subject to conditions, one of them being the furnishing of security in the sum of C£3,000 (vide p. 763 *post* as to the conditions).

Application granted

Cases referred to:

- 15 *Scheepswerf Bodewes-Gruno v. The Ship "Algazera"* (1980) 1 C.L.R. 595;
- Essex Overseas Trade Services Ltd. v. The Legent Shipping Co. Ltd.* (1981) 1 C.L.R. 263;
- 20 "*Phoenix*" *Greek General Insurance Co. S.A. v. Al Khalaf Exhibition* (1981) 1 C.L.R. 573;
- Sewing Machines Rentals Ltd. v. Wilson* [1975] 3 All E.R. 553.

Application.

Application for an order staying the execution of the judgment given by the District Court of Larnaca in an action for nuisance.

- 25 *Chr. Triantafyllides*, for the appellants.
A. Poetis, for the respondent.

Cur. adv. vult.

30 TRIANTAFYLLIDES P. read the following decision. By means of this application there is being sought an order staying the execution of the judgment given by the District Court of Larnaca in an action for nuisance on the 18th November 1983.

The trial Court found that in the way in which there was being operated by the appellants a discotheque, which is in the same building as the residence of the respondent, there was

caused to him nuisance, in the sense of section 46 of the Civil Wrongs Law, Cap. 148, and it proceeded to make an order for the abatement of the nuisance and prescribed how the dis-cotheque should be operated by the appellants in order to avoid causing a nuisance to the respondent.

5

I am dealing with this application pursuant to rule 18 of Order 35 of the Civil Procedure Rules; and I take notice that an application for stay of execution has already been made to the trial Court, as envisaged by rule 19 of Order 35, but it has been refused.

10

Counsel for the respondent has submitted that, in view of its nature, the execution of the order made by the trial Court in this case for the abatement of the nuisance cannot be stayed under rule 18 of Order 35. I am, however, of the opinion that the said rule 18 is drafted so widely, especially by the use therein of the term "decision", that it is applicable to an order such as the one against which the present appeal was made. Any narrower construction of rule 18 would not be reasonable or proper.

15

The principles which should guide this Court in granting or refusing an order for stay of execution pending an appeal have already been stated in cases such as *Scheepswerf Bodeves-Gruno v. The Ship "Algazera"*, (1980) 1 C.L.R. 595, *Essex Overseas Trade Services Ltd. v. The Legent Shipping Co. Ltd.*, (1981) 1 C.L.R. 263 and "*Phoenix*" *Greek General Insurance Co. S.A. v. Al Khalaf Exhibition*, (1981) 1 C.L.R. 673.

20

25

It is settled that the respondent, as a successful plaintiff, should not be deprived of the fruits of the litigation which till now has evolved in his favour and has culminated in the judgment of the trial Court. On the other hand, care should be taken, in so far as this is compatible with a proper exercise of the discretion under rule 18 of Order 35, not to render the present appeal nugatory to the detriment of the appellants.

30

It is clear from the wording of rule 18, above, that an order staying execution may be made on certain conditions, including the furnishing of security (see, in this respect, *Sewing Machines Rentals Ltd. v. Wilson*, [1975] 3 All E.R. 553).

35

In the light of all relevant considerations I have decided to grant an order staying execution of the part of the judgment of the trial Court which relates to the mode of operation of the discotheque in question by the appellants, but on the following
5 conditions:

First, that during the period when the order for stay of execution is in force the discotheque will not be operated in such a manner as to cause a nuisance to the respondent and that if the respondent can establish that the appellants do operate
10 the discotheque in a manner constituting a nuisance he will be entitled to apply to this Court seeking the review or rescission of this order for stay of execution.

Secondly, that the appellants will furnish satisfactory security in the sum of C£3,000 in respect of their liability to pay such
15 damages as may be found to be payable to the respondent if, in breach of the order made today, they operate their discotheque in a manner which constitutes a nuisance.

Of course, the order for stay of execution which I have just made is subject to appeal and may, also, be varied or set aside
20 by the Appeal Bench of the Supreme Court which will eventually hear this appeal.

As the record of this case required for the purposes of this appeal will be ready in about a month's time this appeal is fixed, with the consent of both sides, on the 28th March 1984 and on
25 that date an Appeal Bench will either hear it or make such order as it may deem fit in this respect.

Order accordingly.