

1988 April 4

(A. LOIZOU P., SAVVIDES, KOURRIS, JJ)

NICOS ANTONIOU,

Appellant-Applicant,

v.

ANNA ANTONIOU,

Respondent.

(Civil Appeal No. 7391).

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5. *Appeal — Fresh evidence — Principles applicable — Appeal from a judgment dismissing an application for variation of a maintenance order by reducing the amount payable by appellant thereunder — Allegation that appellant's condition worsened after judgment — As in maintenance proceedings changed circumstances can be relied upon by either party in support of a fresh application, the present application has to be dismissed.*

The facts of this case sufficiently appear from the judgment of the Court.

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Application dismissed.

No orders as to costs.

Cases referred to:

Tziannaros v. Kamilaris (1988) 1 C.L.R. 188.

Application.

- 15 Application by appellant-applicant for leave to adduce fresh and further evidence.

A. Eftychiou, for the applicant.

G. Triantafyllides, for the respondent:

- 20 A. LOIZOU P. gave the following judgment of the Court. This is an application for leave to adduce fresh and further evidence which it is claimed came into existence after judgment was delivered by the District Court in the application of the applicant, now the appellant, by which he had prayed to have the maintenance order made against him varied.

The variation sought was that the amount adjudged to be paid by him should have been reduced in order to be proportionate to his new financial position. That application was in fact dismissed with costs against him. As against that judgment the applicant filed the present appeal.

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In the affidavit filed in support of this application it is claimed that the District Court did not accept the contention of the applicant at the trial that the business of the shop «Violetera» at Themistoklis Dervis Street owned by Era Fashions Ltd., from which the appellant was earning a considerable amount and on the basis of such income the trial Court assessed the amount of maintenance of the wife and his infant child at £180 was not getting on well. After the issue of the judgment of the trial Court on the 9th May, 1987, the financial condition of the said shop, which started going bad earlier, not only continued to worsen but finally led to its closing down on account of insolvency, with net loss of £5,400. It was therefore relevant and necessary for the good administration of justice that the said piece of fresh and further evidence that was ensued after the delivery of the judgment of the trial Court, that this Court could grant the necessary leave to be adduced before it on appeal.

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We had recently the occasion to refer to the relevant case law of this Court in the case of *Petros Tziannaros v. Savvas Constantinou Kamilaris* Civil Appeal No. 6771, judgment delivered on the 31st March, 1988, as yet unreported* and we need not repeat them here. Suffice it to say that a number of conditions must be fulfilled in order to justify the reception of fresh evidence. Basically but not exhaustively that the evidence could not have been obtained with reasonable diligence for production at the trial, that it is of such a nature that had it been adduced it would probably have an important bearing on the result of the case, and that it must be apparently credible though it need not be incontrovertible.

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On the totality of the circumstances we find no merit in this application. In maintenance proceedings changed circumstances in a party's financial condition can be relied upon by either side in support of a fresh application for the variation of such maintenance order, therefore this is not one of the instances where fresh evidence need be adduced in this Court.

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* Reported in this Part at p.188 ante.

For all the above reasons the application is dismissed. There will be, however, no order as to costs as none have been claimed.

Application dismissed.

No order as to costs.