Aberdeen Asset Management Asia Ltd and Another v Fraser & Neave Ltd and Others [2001] SGCA 65

Case Number : CA 600057/200, NM 600053/2001, 600098/2001

Decision Date : 11 October 2001

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ

Counsel Name(s) : Davinder Singh SC and Hri Kumar (Drew & Napier) for the Applicants in NM 600053/2001 and respondents in NM 600098/2001; Chelva Rajah SC, Imran Hamid Khwaja, Chew Kei-Jin and Moiz Haider Sithawalla (Tan Rajah & Cheah) for the applicants in NM 600098/2001 and respondents in NM 600053/2001

Parties : Aberdeen Asset Management Asia Ltd; Another — Fraser & Neave Ltd

Civil Procedure – Appeals – Appeal from decision of judge-in-chambers – Notice of appeal – When time for filing notice begins to run – O 56 r 2(2) & O 57 r 4(a) Rules of Court

Civil Procedure – Appeals – Notice of appeal – Extension of time to file notice of appeal – Whether extension should be granted – Factors to be taken into account

Civil Procedure – Appeals – Request for further arguments – Rationale – When time begins to run if judge decides to hear further arguments – s 34(1)(c) Supreme Court of Judicature Act (Cap 322, 1999 Ed)

Civil Procedure – Appeals – Merits – Test to determine whether appeal has merit – Prejudice – Whether prejudice caused if appeal continues due to extension of time

Civil Procedure – Judgments and orders – Nature of order – Final or interlocutory – Bozson test

(delivering the judgment of the court): Before us are two related notices of motion filed in CA 600057/2001. The first (No 600053/2001) seeks to strike out the notice of appeal on the ground that it was filed out of time. The second (No 600098/2001) seeks an extension of time so that the notice of appeal already filed, even if out of time, would remain valid.

The background

On 20 October 2000, Fraser & Neave Ltd and three others (the respondents in the civil appeal and hereinafter referred to as `F&N and others`) filed a civil suit against Aberdeen Asset Management Asia Ltd and Hugh Young (the appellants in the civil appeal and hereinafter referred to as `Aberdeen & Young`) for defamation on account of a letter published by Aberdeen & Young in the 24 August 2000 issue of the Business Times.

Aberdeen & Young duly filed their defence and pleaded, inter alia, that the publication was not defamatory of F&N and others.

On 27 November 2000, F&N and others filed an application under O 14 r 12 for a determination of the natural and ordinary meaning of certain statements in the letter (`the words`). On 12 January 2001, the assistant registrar ruled that the words in question generally bore the defamatory meaning alleged in the statement of claim.

Aberdeen & Young were dissatisfied with the decision of the assistant registrar and appealed to the High Court. On 21 March 2001, Tan Lee Meng J, after hearing arguments, found the words to be defamatory but he slightly modified that defamatory meaning from that determined by the assistant

registrar. He further held that the meaning he determined related only to F&N. He found it inappropriate to determine the meaning of the words vis-.-vis the other plaintiffs, as there are no specific references to the other plaintiffs in the letter. Evidence would be required to show a sufficient nexus between these other plaintiffs and the words. This would have to be determined at the trial.

The order of Tan J, however, has not been extracted as there were and are differences of views between the parties on how the order should be drawn up. The differences do not relate to the meaning of the words as determined by the judge. Because of the differences, the solicitors for F&N and others wrote to the Registrar, Supreme Court (`the Registrar`), requesting that the matter be referred to the judge so that parties could attend before him to settle the order. To-date, there has been no response to that request.

On 27 March 2001, the solicitors for Aberdeen & Young wrote to the Registrar and requested for further arguments on the basis that the order made by the judge was an interlocutory order and cited, in particular, s 34(1)(c) of the Supreme Court of Judicature Act (Cap 322, 1999 Ed) (`the SCJA`). It was only on 18 April 2001 that the Registrar informed the solicitors of Aberdeen & Young that the judge did not require further arguments.

On 8 May 2001, the appellants filed their notice of appeal against the decision of Tan J made on 21 March 2001. This is the notice of appeal which is the subject of the two notices of motion.

Issues

Under O 57 r 4(a) of the Rules of Court, the period for the filing of a notice of appeal against an order of a judge made in chambers is one month from the date on which the order was pronounced. On this reckoning, the order of Tan J having been made on 21 March 2001, the last day for filing the notice of appeal would ordinarily be 21 April 2001. That is the stand taken by F&N and others.

However, the position taken by Aberdeen & Young is that, as the order of 21 March 2001 is an interlocutory order made in chambers, following s 34(1)(c) of the SCJA, the appellant had no right to appeal against that order unless the judge has certified, pursuant to a request for further arguments made within seven days of the order, that he did not require further arguments. In the present case, the request for further arguments was made on 27 March 2001, which was within the prescribed time. Under O 56 r 2(2) of the Rules of Court, unless the Registrar informs the requesting party within 14 days that the judge requires further arguments, it will be deemed that the judge has certified that he requires no further arguments. It follows from this rule that by 9 April 2001, the judge would be deemed to have certified that he required no further arguments. Aberdeen & Young took the view that they had one month from 9 April 2001 to file their notice of appeal. Accordingly, the notice of appeal, having been filed on 8 May 2001, is therefore within time.

Thus the two notices of motion raised the following three issues for the consideration of this court:

(1) Is the order of 21 March 2001 an interlocutory order or a final order?

(2) If the order of 21 March 2001 is an interlocutory order, should the notice of appeal be filed within one month of 21 March 2001 or 9 April 2001?

(3) If the notice of appeal should have been filed by 21 April 2001 (within one month from 21 March 2001) should the court in this instance exercise its discretion and extend time so as to validate the

notice already filed by Aberdeen & Young on 8 May 2001?

Interlocutory or final order

Counsel for F&N and others, Mr Davinder Singh, submitted that the order of 21 March 2001 had finally determined the substantive issue as to the meaning of the words. This issue can no longer be re-opened at the trial. It is a final order. Order 14 r 12 empowers the court to make such a determination which is final even though it does not dispose of the entire action. Counsel also relied upon a Privy Council decision from New Zealand, **Strathmore Group v Fraser** [1992] 2 AC 172, where the Privy Council held that a decision on a preliminary issue was a final order.

As early as in 1967, this court had the occasion to consider the question as to the proper test to be applied in determining whether an order was interlocutory or final. That was the case of **Tee Than Song Construction Co v Kwong Kum Sun Glass Merchant** [1965-1968] SLR 230 [1967] 2 MLJ 205 . There, the court noted that there were two prevailing tests. One was enunciated in **Salaman v Warner** [1891] 1 QB 734 and the other in **Bozson v Altrincham Urban District Council** [1903] 1 KB 547.

The ***Salaman*** test, which is also known as the application test, was formulated as follows by Fry LJ (supra at 736):

> *... an order is `final` only where it is made upon an application or other proceeding which must, whether such application or other proceeding fail or succeed, determine the action. Conversely ... an order is `interlocutory` where it cannot be affirmed that in either event the action will be determined.*

The ***Bozson*** test, which is also known as the order test, is, in the words of Lord Alverstone, in these terms:

> *Does the judgment or order, as made, finally dispose of the rights of the parties? If it does, then ... it ought to be treated as a final order; but if it does not, it is then ... an interlocutory order.*

The court in ***Tee Than Song Construction*** expressed its preference for the ***Bozson*** test as being the correct test to adopt in determining the question whether an order was interlocutory or final in the context of s 68(2) of the Courts of Judicature Act 1964 (the predecessor provision of the present s 34(1)(c)).

Later in 1992 in **Rank Xerox (Singapore) v Ultra Marketing** [1992] 1 SLR 73 , which was a case concerning an order granting conditional leave to defend, this court revisited the case law on the subject and reaffirmed the view that the ***Bozson*** test was the correct test to apply. It held that `the rights of the parties` in that test referred to `the substantive rights in dispute in the particular action`. Accordingly, an order granting conditional leave to defend was an interlocutory order.

This view was again reaffirmed by this court in the subsequent case **Ling Kee Ling v Leow Leng Siong** [1996] 2 SLR 438 .

It seems to us that it must be a rather exceptional sort of a case where, applying the ***Salaman*** test,

the order obtained would be held to be final. This is because that test requires that whatever order made on the application must determine the action, irrespective of whether the application succeeds or fails. We can understand that where an application succeeds that that could determine an action. It is more difficult to envisage a situation where the application fails and yet the action is determined. As we see it, under the ***Salaman*** test, few orders obtained would be held to be final. In most instances, the orders would be interlocutory in nature.

In our view, the ***Bozson*** test seems more logical. We will illustrate it by a simple O 14 application for summary judgment. In accordance with the ***Salaman*** test, a summary judgment obtained on such an application would not be a final order because the test requires that even if the application fails, it should also have determined the action. This will not be so in an O 14 application. If the application for summary judgment fails, the action would certainly not be determined. But, if the application should succeed, it will be a final order, applying the ***Bozson*** test. This accords with reality and common sense. But under the ***Salaman*** test, this is only an interlocutory order.

We now turn to examine ***Strathmore Group v Fraser*** (supra) which is relied upon by F&N and others. There, the petitioner sued its former directors for, inter alia, breach of fiduciary duty. In defence the respondents contended that there had been a compromise between them whereby the petitioner had agreed to abandon those claims. In reply, the petitioner alleged that there was no compromise, or alternatively, that it had been cancelled. The compromise issue was tried as a preliminary issue. Evidence and arguments were also tendered as to the cancellation issue. The first instance judge held that there was no binding compromise. The Court of Appeal of New Zealand reversed that decision and held that the compromise had not been cancelled and dismissed the petitioner`s action. The Court of Appeal also dismissed the petitioner`s application for leave to appeal to the Privy Council, holding that the judgment was interlocutory and that the petitioner was not entitled as of right to appeal further. The petitioner then sought special leave to appeal from the Privy Council, which held that the decision of the New Zealand Court of Appeal was a final judgment. In the following passages the Privy Council analysed the situation and stated why justice demanded that the petitioner should have a right of appeal (at p 178):

> *If no preliminary issue had been ordered, the trial judge would have tried the whole action and decided the compromise issue, the cancellation issue and the misconduct issue. If the judge awarded damages to the petitioner on the grounds that there was no compromise or that the compromise had been cancelled and on the grounds that the respondents had been guilty of misconduct in the Clearwater transaction, then the respondents could have appealed to the Court of Appeal and either party, losing before the Court of Appeal, could have appealed to the Privy Council as of right and on that appeal all three issues, the compromise issue, the cancellation issue and the misconduct issue could have been argued. If the trial judge dismissed the petitioner`s action either on the compromise issue or on the misconduct issue, then the petitioner could have appealed to the Court of Appeal and either party, losing before the Court of Appeal, could have appealed to the Privy Council as of right and on that appeal all three issues, the compromise issue, the cancellation issue and the misconduct issue could have been argued. The judgment of the Court of Appeal would have been final if the action by the petitioner were dismissed and final if the petitioner were awarded damages. All three issues, the compromise issue, the cancellation issue and the misconduct issue would be in play on the hearing of any appeal to the Privy Council.*
>
> *If the judgment of the Court of Appeal on 4 October 1991, finally deciding the compromise issue and the cancellation issue, was not a final judgment for the purposes of rule 2 of the Order of 1910, then the petitioner has been deprived of an appeal to the Privy Council as of right, an unintended consequence of the*

> *decision of Wylie J that, in the interest of justice and for the possible saving of time and expense, the compromise issue should be tried as a preliminary issue ...*
>
> *It seems to their Lordships that the petitioner cannot be deprived of a right of appeal solely because the trial was divided into two parts, the first part dealing with the compromise issue and the cancellation issue and the second part, so far as necessary, dealing with the misconduct issue.*

The Privy Council did not refer to the ***Bozson*** test. But it referred to the English Court of Appeal decision in **White v Brunton** [1984] QB 570[1984] 2 All ER 606 where it was held that a decision on a preliminary issue of documentary construction was a final order. The following exposition of Sir John Donaldson MR ([1984] QB 570 at 573; [1984] 2 All ER 606 at 608) was wholly adopted by the Privy Council:

> *It is plainly in the interests of the more efficient administration of justice that there should be split trials in appropriate cases, as even where the decision on the first part of a split trial is such that there will have to be a second part, it may be desirable that the decision shall be appealed before incurring the possibly unnecessary expense of the second part. If we were to hold that the division of a final hearing into parts deprived the parties of an unfettered right of appeal, we should be placing an indirect fetter upon the ability of the court to order split trials. I would therefore hold that where there is a split trial or more accurately, in relation to a non-jury case, a split hearing, any party may appeal without leave against an order made at the end of one part if he could have appealed against such an order without leave if both parts had been heard together and the order had been made at the end of the complete hearing.*

Admittedly, the reasoning in ***White v Brunton*** seems quite persuasive. One could almost say that it should also apply to a case like the present because what had occurred here is also a split trial. But there is one very significant difference. In ***White v Brunton*** (like that in ***Strathmore Group v Fraser***), there was no right of appeal except with leave. However, in a case where s 34(1)(c) applies, the parties` right of appeal is not taken away. All that the statutory provision superimposes is that the party intending to appeal should first write to the judge requesting for further arguments. The process is basically to give the judge another opportunity to review his decision and once the judge decides to affirm his decision, the requesting party would have his undoubted right to appeal. Viewed in this light, the reasoning expressed in ***White v Brunton*** is naturally less compelling; similarly for the views expounded in ***Strathmore Group v Fraser*** . There is nothing unjust about requiring a party who wishes to appeal against a decision of a judge made in chambers, and which does not dispose of the entire action, to request for further arguments before he may file his notice of appeal.

We agree that the question of whether an order is interlocutory or final is sometimes not an easy one to decide: see Lord Denning MR in **Salter Rex & Co v Ghosh** [1971] 2 QB 597[1971] 2 All ER 865 at 866. We also recognise that a decision on a preliminary issue could arguably be viewed, as contended by Mr Davinder Singh, as a final order in the sense that it is binding upon the parties, unless it is reversed on appeal. But the question is, does that order finally dispose of the rights of the parties under the action. The word `finally` must be given its ordinary meaning. The approach contended by F&N and others would mean that where a trial is split, there would be many final decisions which disposes of the rights of the parties. Conceptually, we find that somewhat difficult to accept when we are dealing only with one action.

Reverting to the case in hand, we acknowledge that unless the determination as to the meaning of the words is reversed on appeal, Aberdeen & Young would not be able to re-open that issue and canvas afresh the meaning of the words in question. But it does not necessarily follow from this that the rights envisaged in the action have been disposed of. It is even doubtful whether the determination here of the meaning of the words has in fact disposed of any rights of the parties. While the determination has pronounced that the words are defamatory of F&N, it is far from established that the rights of Aberdeen & Young have been disposed of. That is only the first step. There are still the other defences to be considered, namely, justification and fair comment. If Aberdeen & Young are able to show that either of these two defences are available to them, then they would not be held liable in defamation.

In the circumstances, we have no hesitation in holding that the order of Tan J is an interlocutory order. The answer would also have been the same if we had applied the ***Salaman*** test. We would add that the decision in ***Strathmore Group v Fraser*** (supra) is really quite consistent with the ***Bozson*** test if one bears in mind that there the New Zealand Court of Appeal had, in fact, dismissed the petitioner`s claim. That was a final order disposing of all the petitioner`s rights under the action. Indeed, the case of ***Strathmore Group*** would not have satisfied the ***Salaman*** test. On the latter test, the order obtained there would clearly be interlocutory.

Appeal within one month

We now turn to the second issue, which concerns the date from which the one-month period to file the notice of appeal should have been reckoned.

Under O 57 r 4(a), in the case of an appeal from an order of a judge made in chambers, the notice of appeal must be filed and served within one month `from the date when the order was pronounced or when the appellant first had notice thereof`.

In **Seow Teck Ming v Tan Ah Yeo** [1991] SLR 169 [1991] 2 MLJ 489 , this court had the occasion to consider s 34(2) of the SCJA, the predecessor provision to the present s 34(1)(c), and that provision reads:

> *No appeal shall lie from an interlocutory order made by a Judge in chambers unless the Judge has certified, after application, within 4 days after the making of the order by any party for further argument in court, that he requires no further argument, or unless leave is obtained from the Court of Appeal or from the Judge who heard the application.*

There the court held (obiter) that time began to run for filing the notice of appeal when the appellant was informed of the judge`s notification that the latter did not wish to hear further arguments. For this proposition the court relied upon **Bank of America National Trust and Savings Association v Chai Yen** [1980] 1 MLJ 198 , a decision of the Privy Council from Malaysia. It is, however, important to bear in mind the essential facts in that case. The request for further arguments was made on 8 September 1976. It was only on 14 October 1976, some 35 days later, that the judge certified that he did not want to hear further arguments. On 1 November 1976, the applicant filed his notice of appeal. The Malaysian provision (r 13(a)) requiring that the notice of appeal must be filed within one month of the order made in chambers is in pari materia with our O 57 r 4(a). The Privy Council held that the one-month period should be reckoned from the date of the certification of the judge that he

required no further arguments. A very important consideration which the Privy Council took into account was the absence of any time limit within which the judge should make his certification. Lord Lane, delivering the judgment of the Privy Council, asked pointedly `If [the judge] takes more than a month to make up his mind, what is the applicant to do?` He concluded (at p 199):

> *The essence of any rule of procedure must be fairness, and to apply stringently the provisions of rule 13(a) would in circumstances such as the present work manifest injustice to the respondent. She might be forced, in short, to abandon a perfectly proper and relatively inexpensive application to the judge to hear further argument for a costly and possibly unnecessary appeal to the Federal Court. Nor are their Lordships impressed by the suggestion that the respondent could have put matters right by applying for special leave under rule 13(a). She should not have that burden thrust upon her.*

He also said that once an application for further arguments was made, the whole matter `entered a state of suspended animation` until the judge ruled on the application. In the circumstances, the time for appealing ran from the date when the judge`s decision not to require further arguments was communicated to the applicant and not from the date of his original order.

At a glance, one would be tempted to say that that position must similarly prevail under our s 34(1)(c). That would have been so if the relevant rules of court had remained the same. But there is a very significant amendment introduced into the rules which was absent in the Malaysian rules when the Privy Council considered ***Bank of America v Chai Yen*** (supra). It was also absent in our rules when ***Seow Teck Ming v Tan Ah Yeo*** was considered by this court. The new rule (O 56 r 2(2)) reads:

> *Unless the Registrar informs the party making the application within 14 days of the receipt of the application that the Judge requires further arguments, the Judge shall be deemed to have certified that he requires no further arguments.*

The insertion of this new rule swept away the difficulties which a party who applied for further arguments faced when the judge took time to consider the application. It would be recalled that in ***Bank of America v Chai Yen*** (supra), when the judge`s decision on further arguments was communicated to the applicant, the one-month period for filing the notice of appeal had already expired. This was a critical factor in the Privy Council`s decision.

It seems to us that the draftsman of the new rule must have in mind the difficulties adumbrated by Lord Lane when they introduced the deeming provision in that rule. Following from this rule, by the latest 21 days after the judge made his decision in chambers (allowing seven days to make the application and 14 days for the deeming provision to set in) the applicant would have known whether he could file his notice of appeal and he has at least seven to ten days left (depending on the relevant month) to do the simple act of filing the notice with the registry. Of course, if the judge decides to hear further arguments, then the order already made is to be put on hold or suspended until the hearing of further argument. In such an event, time only begins to run from the date the judge makes his decision after hearing further arguments: see **Thomson Plaza v Liquidators of Yaohan Department Store** [2001] 3 SLR 248 .

In the result, we hold that the rationale which led the Privy Council to decide the way it did in ***Bank of America*** (supra) can no longer apply in the light of the deeming provision. In our opinion, Aberdeen & Young were wrong to think that the one-month period was to be reckoned from the date the judge

was deemed to have decided not to hear further arguments. Order 57 r 4(a) is very clear. The one-month period runs from the date the order was pronounced. Therefore, the notice of appeal filed on 8 May 2001 is out of time.

We would add that if it were intended by the rules that time to appeal would only begin to run as from the date the judge gives his certification that he requires no further arguments, or from the date it is deemed that the judge has so certified, the rules would have expressly so provided. An instance of this is found in O 56 r 3 which reads:

> *(1) A party applying for leave under section 34 of the Supreme Court of Judicature Act (Chapter 322) to appeal against an order made, or a judgment given, by a Judge must file his application -*
>
> *(a) to a Judge within 7 days of the order or judgment; and*
>
> *(b) in the event leave is refused by the Judge, to the Court of Appeal within 7 days of the refusal.*
>
> *(2) A party who has obtained leave to appeal under this Rule shall file and serve the notice of appeal within one month from the date on which such leave was given.*

It will be seen that where leave to appeal was obtained, the one-month period to file the notice of appeal is reckoned from the date of obtaining leave. It seems to us clear that this rule has so provided because it recognises the fact that leave could very well have only been obtained after the one-month period from the date of the order has expired. This is to overcome the same sort of problems that were encountered in ***Bank of America v Chai Yen*** (supra).

Extension of time

We now move to the third issue. It is settled law that there are four factors which the court should take into consideration in determining whether it should exercise its discretion to extend time to enable an applicant to file a notice of appeal out of time, namely, the length of the delay, the reason for the delay, the merits of the appeal and the degree of prejudice: see **Pearson v Chen Chien Wen Edwin** [1991] SLR 212 [1991] 3 MLJ 208 and **Vettath v Vettath** [1992] 1 SLR 1 .

In the present case the delay was some 18 days. The reason for the delay was that the solicitors thought that time only began to run from the date the judge was deemed to have certified that he did not require further arguments. This is a case of the solicitors misconstruing the rules. So the question is: would such a misconstruction constitute a sufficient ground to grant an extension of time to file a notice of appeal?

In **Nomura Regionalisation Venture Fund v Ethical Investments** [2000] 4 SLR 46 this court had the occasion to consider the question whether a mistake made by a solicitor or his staff could constitute a sufficient ground for the court to exercise its discretion to extend time to file a notice of appeal. In that case some of the earlier English (pre-1909) and Malaysian (pre-1980) authorities were reviewed but those were cases in relation to rules which required `special leave` before an appeal could be brought out of time. A leading English case on the post-1909 position, where only simple

leave was needed, is **Gatti v Shoosmith** [1939] Ch 841[1939] 3 All ER 916. There, because of a misreading of the rule by the applicant`s solicitors, the applicant was a few days late in entering an appeal. But in that case, before the time for appeal had expired, the respondent`s solicitors were notified of the applicant`s intention to appeal. The English Court of Appeal held that such a mistake might be a sufficient ground to justify the court in exercising its discretion. But the court must nevertheless examine the overall circumstances to decide whether the discretion should, in fact, be exercised in favour of the applicant. On the facts there, the discretion was exercised and an extension granted.

This flexible approach was followed in the later cases of **Palata Investments v Burt & Sinfield** [1985] 2 All ER 517. In Malaysia too, the change in the rules also had its impact on judicial attitudes: see **Sinnathamby v Lee Chooi Ying** [1987] 1 MLJ 110 .

In Singapore, the current position is encapsulated in the case ***Pearson v Chen Chien Wen Edwin*** (supra), where the delay in filing the notice of appeal was due to a misreading of the relevant rules of court by the applicant`s solicitors. Though the mistake was bona fide, the court did not think that the `misreading` arose out of any difficulty or complexity in the rules. Furthermore, the court did not think that the applicant`s prospects for success in the appeal were good. Accordingly, the court refused to exercise its discretion to extend time because, overall, the applicant had not shown `grounds sufficient to persuade the court to show sympathy to him`.

Reverting to the present case, this would appear to be the first case where the courts here have to construe O 57 r 4(a) in the light of O 56 r 2(2). The authority which seems to be applicable is ***Seow Teck Ming v Tan Ah Yeo*** (supra), and as we have said, this case in turn relied upon ***Bank of America v Chai Yen*** (supra). While we have for the reasons given above ruled that in view of the deeming provision in O 56 r 2(2), the position enunciated in ***Bank of America v Chai Yen*** is no longer applicable, we nevertheless cannot truly say that the position which we have advanced above is patently clear, leaving no room for argument. The mistake is certainly not gross.

As to the question of merits, it is not for the court at this stage to go into a full-scale examination of the issues involved. Neither is it necessary for the applicant to show that he will succeed in the appeal. The threshold is lower: the test is, is the appeal hopeless? (see ***Nomura Regionalisation Venture*** (supra at p 55)). Unless one can say that there are no prospects of the applicant succeeding on the appeal, this is a factor which ought to be considered to be neutral rather than against him. In relation to the appeal of Aberdeen & Young, there is certainly room for argument as to the correct meaning of the words. The appeal is not hopeless. We have not set out the contents of the letter as we do not think it is necessary. F&N and others do not seriously contend that the appeal is hopeless.

Lastly, as to the question of prejudice, we cannot see any real prejudice to F&N and others if the appeal is allowed to continue. The `prejudice` cannot possibly refer to the fact that the appeal would thereby be continued, if the extension is granted. Otherwise, it would mean that in every case where the court considers the question of an extension of time to file notice of appeal, there is prejudice. We endorse the views expressed in this regard by Woo Bih Li JC in ***S3 Building Services v Sky Technology*** (judgment of 8 May 2001 in Suit 1001/2000). The `prejudice` here must refer to some other factors, eg change of position on the part of the respondent pursuant to judgment.

Having considered all the circumstances of the present case, we are of the view that they justify the grant of an extension of time. We would accordingly allow the motion of Aberdeen & Young.

Costs

Finally, there is the question of costs. On the motion of F&N and others, we note that of the two issues which arise out of the motion, they have failed on one (whether the order was interlocutory or final) but succeeded on the other (whether the one-month period was to be reckoned from 21 March 2001). F&N and others are therefore only granted half costs on their motion.

As for the motion of Aberdeen & Young, as they are requesting the court for indulgence, they should bear the costs of the motion notwithstanding the fact that F&N and others oppose it and they have failed in their opposition.

Outcome:

Appellants` motion allowed.