Lee Hsien Loong v Singapore Democratic Party and Others and Another Suit [2007] SGCA 51

Case Number : Suit 261/2006, 262/2006, SUM 1997/2007, 1998/2007

Decision Date : 06 November 2007

Tribunal/Court : Court of Appeal

Coram : Andrew Phang Boon Leong JA; V K Rajah JA; Woo Bih Li J

Counsel Name(s) : Davinder Singh SC, Tan Gim Hai Adrian and Tan Ijin (Drew and Napier LLC) for the plaintiffs; The third defendant in person

Parties : Lee Hsien Loong — Singapore Democratic Party; Chee Siok Chin; Chee Soon Juan; Ling How Doong; Mohamed Isa Abdul Aziz; Christopher Neo Ting Wei; Sng Choon Guan Gerald; Wong Hong Toy; Yong Chu Leong Francis

Civil Procedure – Appeals – Notice – Leave to file notice of appeal out of time – Delay of seven months – No good reasons given to delay – Applicable principles – Order 3 r 4, O 57 rr 4, 17 Rules of Court (Cap 322, R 5, 2006 Rev Ed)

Civil Procedure – Appeals – Security deposit – Waiver of deposit sought – Whether security deposit mandatory – Order 57 rr 3(3), 3(4) Rules of Court (Cap 322, R 5, 2006 Rev Ed)

6 November 2007

Andrew Phang Boon Leong JA (delivering the grounds of decision of the court):

Introduction

1 In Suit No 261 of 2006, Mr Lee Hsien Loong, the Prime Minister of Singapore, sued the defendants for defamation. The same defendants were also sued for defamation arising out of the same facts by Mr Lee Kuan Yew, the Minister Mentor of Singapore, in Suit No 262 of 2006. The first defendant, the Singapore Democratic Party ("SDP"), is a political party. The second defendant, Ms Chee Siok Chin ("Ms Chee"), is a member of the Central Executive Committee of the SDP and the third defendant, Dr Chee Soon Juan ("Dr Chee"), is its secretary-general. In these grounds of decision, the phrase "the defendants" refers to Ms Chee and Dr Chee only.

2 The plaintiffs in these two suits successfully obtained, on 12 September 2006, summary judgment against the defendants in Summonses Nos 2839 and 2838 of 2006 ("the summary judgment applications"), respectively.

3 In the present proceedings, Dr Chee ("the applicant") applied under Summonses Nos 1998 and 1997 of 2007 (both filed on 8 May 2007) in respect of the summary judgment awards for (a) an extension of time to file appeals against the decisions and (b) a waiver of the security deposit for the intended appeals. After hearing arguments from the applicant, who appeared in person, and counsel for the plaintiffs, Mr Davinder Singh SC ("Mr Singh"), we dismissed both applications. We now give the detailed grounds for our decision, which will apply to both summonses in the present proceedings.

Background

4 Soon after the plaintiffs filed the summary judgment applications, the defendants, *via* Originating Summons No 1203 of 2006 ("OS 1203/2006"), sought a declaration that the deletion or repeal of O 14 r 1(2) of the Rules of the Supreme Court 1970 (GN No S 274/1970) was a breach of

the principles of natural justice and was therefore unconstitutional. Previously, O 14 r 1(2) did not allow plaintiffs to seek summary judgment for causes of action such as fraud and defamation. This rule was abrogated on 1 August 1991. The hearing of OS 1203/2006 and the summary judgment applications was fixed for 3 August 2006. Mr M Ravi ("Mr Ravi"), who was acting for the defendants in those proceedings, asked the learned judge to recuse himself on the ground of there being a suspicion or likelihood of bias towards him (and not his clients). This allegedly arose because of some previous exchanges between Mr Ravi and the learned judge in an unrelated case in September 2003. The learned judge readily agreed to recuse himself and the applications were adjourned: see *Chee Siok Chin v AG* [2006] 4 SLR 92.

5 The adjourned applications were then heard by the trial judge ("the Judge") on 16 August 2006: see *Chee Siok Chin v AG* [2006] 4 SLR 541. Before dealing with the substantive applications before her, the Judge had to deal with some housekeeping matters. On 11 August 2006, Mr Ravi had written to the Registrar to refix the hearing date of the summary judgment applications to a date in late September. On 15 August 2006, the Registrar replied to Mr Ravi informing him that the hearing date of 16 August 2006 was to stand and that he could make the appropriate application before the Judge at the hearing itself. Before the hearing on 16 August 2006, Mr Ravi filed a notice of appeal in OS 1203/2006 against the Registrar's decision that OS 1203/2006 be heard together with the summary judgment applications. At the 16 August 2006 hearing, Mr Ravi applied to the Judge for OS 1203/2006 and the summary judgment applications to be adjourned on account of the notice of appeal.

6 While the matter of the adjournment was being dealt with, Mr Ravi made an application for the Judge to recuse herself on the ground of actual bias. This accusation arose out of the manner in which the Judge had conducted the hearing up to that point in time. The Judge dismissed the recusal application. She then ordered that the summary judgment applications be adjourned pending the outcome of the appeal in OS 1203/2006 to a date coinciding with the hearing of that appeal. (However, it later transpired that the defendants did not proceed with the appeal.) Mr Ravi also applied for a stay of OS 1203/2006 pending an appeal against the Judge's decision not to recuse herself. This application was dismissed. Mr Ravi then applied for OS 1203/2006 to be heard in open court. This, too, was dismissed; the Judge declined to hear the proceedings in such a manner as it was not the normal procedure for originating summonses to be heard in open court (see *Chee Siok Chin v AG* ([5] *supra*) at [15]). Mr Ravi conferred briefly with the defendants, and notified the court that they vehemently objected to OS 1203/2006 being heard in chambers and did not wish to "legitimise" (*id* at [16]) the proceedings. Mr Ravi and the defendants then walked out. The Judge dismissed OS 1203/2006 after considering Mr Ravi's written submissions and hearing submissions by counsel for the Attorney-General.

7 The summary judgment applications were then fixed to be heard on the morning of 11 September 2006 before the Judge. Mr Singh represented the plaintiffs in these proceedings. The applicant's then counsel, Mr Ravi, was absent from this hearing, although the applicant himself was present. The applicant informed the court that Mr Ravi was suffering from "physical and mental exhaustion" (see *Lee Hsien Loong v Singapore Democratic Party* [2007] 1 SLR 675 ("GD") at [5]) and could not attend court, and, thus, the defendants were seeking an adjournment. As no medical certificate was produced in support of Mr Ravi's condition, the Judge stood down the hearing till the afternoon so that a medical certificate could be procured.

8 When the hearing resumed at 2.40pm, the applicant produced a note and a medical certificate from a dentist saying that Mr Ravi was unfit for duty on 11 September 2006 due to pericoronitis caused by poor oral hygiene in the area around the lower right wisdom tooth. This was not quite the reason which the applicant had given earlier (which centred on physical and mental

exhaustion). Mr Singh pointed out that there were some discrepancies between the medical certificate and the note, and also that they were not in compliance with the requirements of para 13, Part II of the *Supreme Court Practice Directions* (2006 Ed). The hearing was adjourned to the morning of 12 September 2006 and the Judge directed that Mr Ravi was to attend that hearing. Mr Singh was directed to write to Mr Ravi to inform him of the adjourned hearing and the court's direction.

9 On 12 September 2006, the applicant again appeared alone at the hearing without Mr Ravi. Ms Chee joined the proceedings later. The applicant informed the court that Mr Ravi would not be attending the hearing as he was still unwell. However, the applicant did not produce a medical certificate to substantiate this claim. Mr Singh confirmed that he had written to Mr Ravi as directed by the court and that the letter had been hand-delivered to Mr Ravi's office.

10 The applicant initially asked for an adjournment on the basis that Mr Ravi was unable to attend court. He later said that as he had already discharged Mr Ravi, he needed an adjournment in order to look for a new lawyer. After hearing this, the Judge informed him that she had to hear Mr Singh's response to the application for an adjournment ("the adjournment application") before deciding whether to grant it. The applicant objected to this on the basis that he was without legal counsel. After a brief conference with Ms Chee outside the chambers, the applicant and Ms Chee announced that they did not wish to take any further part in the proceedings without legal counsel and walked out. The Judge then heard Mr Singh's objections in the absence of the defendants and dismissed the adjournment application. She proceeded to hear Mr Singh's substantive submissions on the summary judgment applications. Interlocutory judgment with damages to be assessed was granted to the plaintiffs for both applications at the end of the hearing. The Judge's written grounds for her decision on both the adjournment application and the summary judgment applications were delivered on 1 December 2006: see GD ([7] *supra*).

11 On 27 September 2006, the applicant wrote to the Chief Justice of Singapore. He described the events at the 12 September 2006 hearing and noted that the Judge had ruled in the plaintiffs' favour. The letter is an important one, and is therefore set out in full, as follows:

> 27 September 2006
>
> Mr Chan Sek Keong
> Chief Justice
> Supreme Court
> Republic of Singapore
>
> Dear Sir,
>
> In the recent summary judgment hearing presided by Judge Belinda Ang on 12 September 2006 in the matter of Lee Kuan Yew and Lee Hsieng Loong v. Chee Siok Chin and Chee Soon Juan (Suit Nos. 261 and 262 of 2006), Ms Chee and I were not represented by counsel.
>
> Before the proceedings began, we had informed Judge Ang that our counsel, Mr M Ravi, was not well and that we needed time for him to recover. The Plaintiffs lawyer, Mr Davinder Singh, insisted that our application was nothing but a ploy to delay the hearing. Judge Ang sided with Mr Singh and rejected our application.
>
> This being the case, we then asked to discharge Mr Ravi as our lawyer as he could not continue arguing our matter and to have a two-week adjournment for us to find another lawyer.

Again, Mr Singh objected and again Ms Belinda Ang sided with him. The summary judgement hearing thus proceeded without us having legal representation. Ms Ang ruled in the Lees' favour. All this was done in her chambers away from the media and public.

Mr Ravi has now been hospitalized. A medical certificate from the hospital has already been produced in court. Given his illness, Mr Ravi was also unable to represent his other clients in three other cases.

It is clear that Judge Ang was wrong not to allow our counsel time to recover or to give us time to try to find another lawyer.

I do not have to tell you that to have a hearing in chambers with one party not having legal representation is a grave breach of the principles of justice.

The defendants would like to appeal Judge Ang's decision to proceed with the hearing despite the absence of our lawyer. However, we have to pay the security cost [sic] *of $10,000 which we cannot afford. We would like to ask that the cost be waived given the nature of the case and the circumstances surrounding it. This will enable us to proceed with the appeal and have justice not only done, but also manifestly seen to be done.*

I look forward to hearing from you.

Sincerely,
[signed]
Chee Soon Juan
Secretary-General
Fax: 6459-8120

[emphasis added]

The reply from the Supreme Court dated 28 September 2006 addressed the issue of security for costs as this was the only substantive issue raised for consideration by the applicant in the above letter. In particular, the court's letter of reply stated as follows:

3 The purpose of the security is for payment towards the costs of the Respondent to the appeal, in the event that the appeal is not successful and costs are payable the Respondent. However, if the appeal is successful and no costs are payable to the Respondent, any deposit paid is refundable. Further, the deposit is also refundable if the appeal is withdrawn before it is heard.

4 This is a requirement which is applicable to all Appellants and cannot be waived.

12 Pursuant to O 57 r 4 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("the Rules of Court"), the deadline for filing notices of appeal against the Judge's decisions on the summary judgment applications was 12 October 2006 (*ie*, one month from 12 September 2006, when the orders for summary judgment were made). However, the defendants did not file any notice of appeal by that time.

13 Some five months later, on 8 March 2007, the applicant wrote to the Chief Justice again and revisited his grievances with regard to the conduct and outcome of the 12 September 2006 hearing as well as posed a series of rhetorical questions. The applicant also mentioned that he had received a

copy of the Judge's minute sheet of that hearing ("the 12 September 2006 minute sheet"), and took issue with what he perceived as a shocking exchange between the Judge and Mr Singh which took place after he (the applicant) and Ms Chee had left the chambers. (In his affidavit in support of the present applications, the applicant said that Mr Ravi had provided him with the 12 September 2006 minute sheet (as well as the minute sheet of the previous day's hearing (on 11 September 2006)) sometime in January 2007.) The applicant's letter of 8 March 2007 also contained the following statement:

> We note that an appeal was open to us, the deadline for which is already long past. More importantly, however, we are unable to afford the $10,000 security cost [*sic*] required for us to file the appeal.

Significantly, too, the applicant concluded by asking the Chief Justice "to order that the Order 14 hearing be *re-opened*" [emphasis added]. Even allowing for the fact that the applicant is not legally trained, it is clear that the word "re-opened" was not a mere oversight. The applicant was clearly familiar with the concept of an appeal, as evidenced by his letter of 27 September 2006 and his actions in two prior cases (see below at [47]). This was another indication of the seriousness – or, rather lack thereof – with which he treated his right of appeal (but, more of this later). The following reply by the Supreme Court in its letter dated 14 March 2007 is also germane and is set out in full, as follows:

> **REQUEST TO RE-OPEN SUMMARY JUDGMENT APPLICATIONS IN SUIT 261/2006 AND SUIT 262/2006 (SUM 2838/3006 AND SUM 2839/2006)**
>
> We refer to your letter dated 8 March 2007, addressed to the Chief Justice concerning the above-mentioned cases in which you were a party.
>
> 2 You may wish to note that [the Judge] has given full reasons for her decision. We refer you to her judgment, reported at [2006] SGHC 220.
>
> 3 *We note that you are also aware of your right to appeal against her decision*.
>
> [emphasis added]

14 The present applications for extension of time for filing the notices of appeal were filed on 8 May 2007, almost seven months after the deadline for the filing of such notices (see [12] above) had passed.

Extension of time for filing notice of appeal

15 Order 57 r 4(*a*) of the Rules of Court states that in an appeal from an order in chambers, a notice of appeal must be filed within one month from the date when the order was pronounced or when the appellant first had notice thereof. Such deadlines serve the purpose of providing finality to successful litigants. We shall elaborate upon this in more detail later (at [33]–[34]).

16 However, the courts also recognise that there may be legitimate reasons why unsuccessful litigants might not be able to meet this deadline, and that such litigants ought not to be denied their right of appeal. As such, the deadline may be extended. Order 57 r 17, which governs the power of the High Court to extend the time for filing and serving a notice of appeal, states:

> Without prejudice to the power of the Court of Appeal under Order 3, Rule 4, to extend the time

prescribed by any provision of this Order, the period for filing and serving the notice of appeal under Rule 4 or for making [an] application ex parte under Rule 16(3) may extended by the Court below on [an] application made before the expiration of that period.

17 However, since the applicant was applying for an extension of time *after* the deadline for filing a notice of appeal had passed, his application was rightly made to the Court of Appeal. This court's power to grant extensions of time is governed by O 3 r 4, which states in its material parts as follows:

Extension, etc., of time (O. 3, r. 4)

4. —(1) The Court may, on such terms as it thinks just, by order extend or abridge the period within which a person is required or authorised by these Rules or by any judgment, order or direction, to do any act in any proceedings.

(2) The Court may extend any such period as is referred to in paragraph (1) although the application for extension is not made until after the expiration of that period.

…

(4) In this Rule, references to the Court shall be construed as including references to the Court of Appeal.

…

The law

18 The general legal principles applicable to an application for extension of time to file a notice of appeal were recently set out by this court in *Lai Swee Lin Linda v AG* [2006] 2 SLR 565 ("*Lai Swee Lin Linda*") at [45], as follows:

The applicable principles governing the jurisdiction of the court to extend the time for filing and/or serving a Notice of Appeal were laid down, most notably perhaps, by the decision of this court in *Pearson v Chen Chien Wen Edwin* ("*Pearson*") [1991] SLR 212. The court there held (at 219, [20]) that "the application … for an extension of time … should be on grounds sufficient to persuade the court to show sympathy to him". In this regard, four factors have been utilised by the courts to ascertain whether or not the court should be so persuaded. These include the length of delay; the reasons for the delay; the chances of the appeal succeeding if time for appealing were extended; and the prejudice caused to the would-be respondent if an extension of time was in fact granted: see *Pearson* at 217, [15]; *Hau Khee Wee v Chua Kian Tong* [1986] SLR 484 at 488, [14]; *Stansfield Business International Pte Ltd v Vithya Sri Sumathis* [1999] 3 SLR 239 at [24]; *Tan Chiang Brother's Marble (S) Pte Ltd v Permasteelisa Pacific Holdings Ltd* [2002] 2 SLR 225 at [27]; *AD v AE* [2004] 2 SLR 505 at [10]; as well as *Ong Cheng Aik v Dayco Products Singapore Pte Ltd* [2005] 2 SLR 561 at [8] and [11]. When applying these factors, the overriding consideration is that the Rules of Court must *prima facie* be obeyed, with reasonable diligence being exercised: see the Privy Council decision of *Thamboo Ratnam v Thamboo Cumarasamy and Cumarasamy Ariamany d/o Kumarasa* [1965] 1 WLR 8 ("*Ratnam v Cumarasamy*") at 12 and the Singapore High Court decision of *Tan Chai Heng v Yeo Seng Choon* [1980-1981] SLR 381 at 382, [5]. This court has also pointed out, in *The Melati* [2004] 4 SLR 7 at [37] that the "paramount consideration" is the need for finality. It should be borne in mind, in this regard, that the would-be appellant has already "had a trial and lost": see *Ratnam v Cumarasamy*, *supra* at 12. Hence,

if no appeal is filed and served within the prescribed period (here, of one month), the successful party is justly entitled to assume that the judgment concerned is final: see *Ong Cheng Aik v Dayco Products Singapore Pte Ltd*, *supra* at [8].

19 The four factors set out above were first enunciated by Chan Sek Keong JC (as he then was) in the seminal High Court decision of *Hau Khee Wee v Chua Kian Tong* [1986] SLR 484 ("*Hau Khee Wee*"). In our view, it is significant that of the four factors, the emphasis, in the first instance at least, is invariably on the first two, *viz*, the length of delay and the reasons for the delay. This is not surprising because the third factor (*viz*, the chances of the appeal succeeding if time for appealing were extended), whilst of equal importance relative to the other three factors, is set at a very low threshold in fairness to the applicant – namely, whether the appeal is "hopeless" (see the decision of this court in *Nomura Regionalisation Venture Fund Ltd v Ethical Investments Ltd* [2000] 4 SLR 46 ("*Nomura*") at [32]). Indeed, as this court put it in *Aberdeen Asset Management Asia Ltd v Fraser & Neave Ltd* [2001] 4 SLR 441 ("*Aberdeen Asset Management Asia Ltd*") (at [43]):

> 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* ([19] *supra*)]). 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.

20 This third factor nevertheless becomes of signal importance where the appeal is a truly hopeless one. In such a situation, notwithstanding even a very short delay, an extension of time will generally not be granted by the court simply because to do so would be an exercise in futility, resulting in a waste of time as well as resources for all concerned. As Yong Pung How CJ put it in this court's decision in *Pearson v Chen Chien Wen Edwin* [1991] SLR 212 ("*Pearson*") at 218, [17]:

> [T]he chances of the appeal succeeding should be considered, as it would be a waste of time for all concerned if time is extended when the appeal is utterly hopeless.

21 In so far as the first two factors are concerned, it would generally be the case that an extremely short delay might be excused without the need for the court to inquire at length into the reasons for that delay. If the delay is *de minimis*, the court may not need to conduct such an inquiry at all. However, as each case generally differs on its facts from other cases, there may be exceptions to the general statement of principle just enunciated.

22 If the delay is not merely *de minimis*, the court must examine the reasons for such delay. A mere assertion that there has been an oversight is obviously insufficient and, indeed, could lead to an abuse of process. In the decision of this court in *Denko-HLB Sdn Bhd v Fagerdala Singapore Pte Ltd* [2002] 3 SLR 357 ("*Denko*"), for example, Chao Hick Tin JA (as he then was), who delivered the grounds of decision of the court, observed thus (at [18]):

> Not only was the length of the delay quite substantial (bearing in mind [that] the prescribed period of time within which a party must apply to the judge for further arguments was only seven days), there were no extenuating circumstances offered for the 'oversight' of the solicitor. Some explanation should have been offered to mitigate or excuse the oversight. *If, in every case, 'oversight' is per se a satisfactory ground, we run the risk of turning the rules prescribing time into dead letters. It would be observed in breach. It would be all too simple for a party to run to a judge to ask for indulgence because of oversight. The need for finality must be borne in mind.* [emphasis added]

23 In our view, what would amount to a satisfactory explanation for the delay in question would depend very much on the precise factual matrix concerned. As we have already noted above (at [21]), the facts of each case will invariably be different. However, underlying the assessment of any explanation must surely be the need to ensure that justice and fairness are ultimately achieved in the context of the need to ensure that there is finality in litigation. This overarching consideration is considered in more detail below (at [33]–[35]).

24 The fourth factor (*viz*, the prejudice caused to the would-be respondent if an extension of time was in fact granted) would also depend very much on the precise facts before the court. However, we view it as being of some significance. As Woo Bih Li J put it in the decision of this court in *Wee Soon Kim Anthony v UBS AG* [2005] SGCA 3 ("*Wee Soon Kim Anthony*") at [53]–[54]:

> 53 We would say at the outset that the prejudice referred to in the four factors is the prejudice to the would-be respondent if an extension of time were granted and not the prejudice to the would-be appellant if the extension were not granted. This is clear from *Hau Khee Wee* [[19] *supra*] and *Pearson* [[20] *supra*]. After all, the application for an extension of time arises out of the would-be appellant's default and not the default of the would-be respondent.
>
> 54 Furthermore, the prejudice cannot possibly refer to the fact that the would-be appellant would be deprived of his right of appeal if the extension were not granted. Otherwise, it would mean that in every case where an extension of time is sought by a would-be appellant, there would inevitably be prejudice to him.

25 However, as is the case with the second factor, the prejudice alleged must be tangibly proven. As this court observed in *Aberdeen Asset Management Asia Ltd* ([19] *supra*) at [44]:

> *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) [[2001] SGHC 87]. *The 'prejudice' here must refer to some other factors, eg change of position on the part of the respondent pursuant to judgment*. [emphasis added]

See also *Wee Soon Kim Anthony* ([24] *supra*) at [55].

26 Nor can the respondent argue that there has been prejudice by virtue of the fact that it would be unable to obtain the benefits of the judgment until the disposal of the appeal. As has been observed by this court in *Ong Cheng Aik v Dayco Products Singapore Pte Ltd* [2005] 2 SLR 561 ("*Ong Cheng Aik*") at [19], "[i]n any event, post-judgment interest should take care of that".

27 Further, in the High Court decision of *S3 Building Services Pte Ltd v Sky Technology Pte Ltd* [2001] SGHC 87 (affirmed by the Court of Appeal in *S3 Building Services Pte Ltd v Sky Technology Pte Ltd* [2001] 4 SLR 241, but without any specific comment on this particular point), Woo Bih Li JC (as he then was) observed at [69] that "the prejudice must be one that cannot be compensated by an appropriate order as to costs".

28 All this having been said, we should reiterate that all four factors are of equal importance, and must be taken into account. They are to be balanced amongst one another, having regard to all the facts and circumstances of the case concerned (see, for example, this court's decision in *AD v AE* [2004] 2 SLR 505 ("*AD*") at [15]). Indeed, it is important to emphasise, once again, that the precise

facts and circumstances of each case are all-important (see, for example, *Hau Khee Wee* ([19] *supra*) at 487, [11]), and that prior precedents are helpful only in so far as they enunciate general principles. There could, of course, be a prior decision that is truly "on all fours" with the case at hand, but this is likely to be extremely rare.

29 The courts also look to substance as opposed to merely form. Hence, in this court's decision in *AD* ([28] *supra*), it was held at [9] that

> [A]n application to extend time to serve a notice of appeal filed within time is no different in nature from that to extend time to file a notice of appeal out of time as an appeal would only come into being where the notice is both filed and served. Accordingly, an application for an extension of time to serve a notice of appeal out of time should be treated on the same basis as an application to extend time to file a notice of appeal out of time ...

30 It should also be noted that the aforementioned principles apply to applications to extend the time for appealing (which was the situation in the present applications), and, to that extent, apply equally to applications for an extension of time to *file* a notice of appeal as well as to applications for an extension of time to *serve* the notice of appeal. On this point, we endorse the High Court decision of *Nomura Regionalisation Venture Fund Ltd v Ethical Investments Ltd* [2000] 2 SLR 686 at [16] (affirmed on appeal in *Nomura* ([19] *supra*, but without any comment on this particular point). However, these principles generally do not apply to other situations, such as an application to set aside a default judgment. As Lord Guest, delivering the judgment of Privy Council in *Ratnam v Cumarasamy* [1965] MLJ 228 ("*Ratnam*"), observed (at 230):

> In the one case the litigant has had no trial at all: in the other he has had a trial and lost.

31 It has, in a similar vein, been held by this court in *Ong Cheng Aik* ([26] *supra*) at [14] and [16] that:

> [T]here is clearly a difference between an application for an extension of time to file a notice of appeal out of time and that for an extension of time to file or serve the record of appeal out of time. In the former situation, there is no appeal; in the latter there is already an appeal, only that the appellant has failed to take a required step in time. ...
>
> …
>
> While the four factors may be applicable to both types of applications for extension of time to do an act in that they assist the court in determining whether there is "some material" for the court to exercise its discretion in favour of the applicant,*it must follow as a matter of logic and justice that the "material" required for an application for extension of time to file a notice of appeal out of time should be weightier or more compelling than that required for other applications for extension of time.* At the end of the day, the court must, after weighing all the circumstances, come to the conclusion that the application deserves sympathy: see *Pearson* [[20] *supra*] at 219, [20].
>
> [emphasis added]

32 Another illustration is the distinction which the courts draw between an application for an extension of time to file a notice of appeal out of time and an application for an extension of time to file affidavits of evidence-in-chief out of time in relation to a pending action. The leading decision in this regard is that of this court in *The Tokai Maru* [1998] 3 SLR 105. Tan Lee Meng J, who delivered

the grounds of judgment of the court, observed thus (at [20]):

> It would therefore appear that the court adopts a more stringent approach with respect to applications to appeal out of time as compared to other applications to extend time. The instant case does not involve an application to appeal out of time. It concerns an application by the appellant to file an affidavit out of time, coupled with an application by the respondents to strike out the appellants' defence.

A similar approach is adopted with respect to an application for an extension of time to file and serve a statement of claim (see the decision of this court in *The Melati* [2004] 4 SLR 7 at [37]).

33 It is clear, therefore, from the above cases, that the courts will adopt a far stricter approach towards applications for extension of time for the filing and/or serving of a notice of appeal relative to other situations. This is not without good reason. The overriding concern in the context of *appeals* is that there be *finality*. Indeed, the one-month deadline for the filing of a notice of appeal is not an arbitrary one. Underlying the concern with finality is the fundamental rationale of *justice and fairness*. The decision concerned has, *ex hypothesi*, gone against the losing party (*ie*, the would-be appellant), and the onus is therefore on it to file an appeal if it feels that the decision is wrong. Correspondingly, the other party (the would-be respondent), having had the decision handed down in its favour, should not be kept waiting – at least, not indefinitely – on tenterhooks to receive the fruits of its judgment. For better or for worse, the applicant must decide whether or not it wishes to appeal. As this court observed in *Ong Cheng Aik* ([26] *supra*) at [8]:

> In respect of such an application for extension of time [to file or serve a notice of appeal out of time], the court takes a rather strict view of things and sufficient grounds must be shown before the court will exercise its discretion. This is because if no appeal is filed and served within the prescribed time of one month, the successful party is justly entitled to assume and act as if the judgment is final.

34 In a similar vein, this court observed in *The Melati* ([32] *supra*) at [37] that:

> Where a notice of appeal is involved, there is already an adjudication by the court and if a losing party is dissatisfied, he should file his notice of appeal within the prescribed time. The paramount consideration there is the need for finality.

35 The present system is eminently just and fair. Indeed, if the losing party is unsure whether or not to appeal against the decision, it can always file its notice of appeal first. Such notice can later be withdrawn if it is so desired. Alternatively, the appeal can be allowed to lapse. This being the case, it is clear that if the losing party drags its heels or is otherwise lackadaisical about its right to appeal, then it cannot legitimately ask the court for an extension of time to appeal. This is logical, commonsensical as well as (above all) just and fair. In the oft-cited words of Lord Guest in *Ratnam* ([30] *supra*) at 229:

> The Rules of Court must *prima facie* be obeyed, and in order to justify a court in extending the time during which some step in procedure requires to be taken there must be some material upon which the court can exercise its discretion. ***If the law were otherwise, a party in breach would have an unqualified right to an extension of time which would defeat the purpose of the rules which is to provide a [timetable] for the conduct of litigation.*** [emphasis added in bold italics]

36 Enough has been said to illustrate a broader – albeit related – point. The rules of procedure –

such as the one presently considered – are intended to ensure that one of the two twin pillars of justice is achieved, *viz*, *procedural* justice. The other pillar is that of *substantive* justice. As was observed in the High Court decision of *United Overseas Bank Ltd v Ng Huat Foundations Pte Ltd* [2005] 2 SLR 425 at [4]–[9]:

> It is axiomatic that every party ought to have its day in court. This is the very embodiment of *procedural* justice. The appellation "procedural" is important. Procedural justice is just one aspect of the holistic ideal and concept of justice itself. In the final analysis, the achievement of a substantively just result or decision is the desideratum. It is more than that, however. It is not merely an ideal. It must be a practical outcome – at least as far as the court can aid in its attainment.
>
> However, the court must be extremely wary of falling into the flawed approach to the effect that "the ends justify the means". This ought never to be the case. The obsession with achieving a substantively fair and just outcome does not justify the utilisation of any and every means to achieve that objective. There must be fairness in the *procedure or manner* in which the final outcome is achieved.
>
> Indeed, if the procedure is unjust, that will itself taint the outcome.
>
> On the other hand, a just and fair procedure does *not*, in and of itself, ensure a just outcome. In other words, procedural fairness is a necessary but not sufficient condition for a fair and just result.
>
> The quest for justice, therefore, entails a continuous need to balance the procedural with the substantive. More than that, it is a continuous attempt to ensure that both are *integrated*, as far as that is humanly possible. Both *interact* with each other. One cannot survive without the other. There must, therefore, be – as far as is possible – a fair and just procedure that leads to a fair and just result. This is not merely abstract theorising. It is the *very basis* of what the courts do – and ought to do. When in doubt, the courts would do well to keep these bedrock principles in mind. This is especially significant because, in many ways, this is how, I believe, laypersons perceive the administration of justice to be. The legitimacy of the law in their eyes must never be compromised. On the contrary, it should, as far as is possible, be enhanced.
>
> It is true, however, that in the sphere of practical reality, there is often a *tension* between the need for procedural justice on the one hand and substantive justice on the other. The task of the court is to attempt, as I have pointed out in the preceding paragraph, to *resolve* this tension. There is a *further* task: it is to actually attempt, simultaneously, to *integrate* these two conceptions of justice in order that justice in its fullest orb may shine forth.
>
> [emphasis in original]

Significantly, the observations just quoted were reproduced in their entirety in one of the leading local commentaries on civil procedure: see Jeffrey Pinsler (gen ed), *Singapore Court Practice 2006* (LexisNexis, 2006) at para 1/1/10. These observations were also similarly reproduced in Jeffrey Pinsler and Cavinder Bull, "Civil Procedure" (2005) 6 SAL Ann Rev 97 at para 6.88.

37 And in a decision of this court in *Lee Chee Wei v Tan Hor Peow Victor* [2007] SGCA 22, it was observed (in a similar vein) thus (at [82]):

> The rules of court practice and procedure exist to provide a convenient framework to facilitate

dispute resolution and to serve the ultimate and overriding objective of justice. Such an objective must never be eclipsed by blind or pretended fealty to rules of procedure. On the other hand, a pragmatic approach governed by justice as its overarching aim should not be viewed as a charter to ignore procedural requirements. In the ultimate analysis, each case involving procedural lapses or mishaps must be assessed in its proper factual matrix and calibrated by reference to the paramount rationale of dispensing even handed justice.

38 Further, in the recent High Court decision of *Tan Sia Boo v Ong Chiang Kwong* [2007] SGHC 131, Choo Han Teck J made the following pertinent observations (at [4]) which, although relating to the somewhat different context of the adduction of further evidence, are of general significance and merit quotation:

> Rules and procedure are designed to facilitate the fair disposal of legal proceedings and every litigant is expected to comply with the rules. Finality is the specific aspect of fairness in issue. It is sometimes said that rules should not be followed "blindly". I think it equally important that this aphorism is not cited "blindly", that is to say, that the phrase is not cited merely to make a disregard of rules sound correct. It will be useful to remind ourselves why rules need to be obeyed. Procedural rules are designed to produce a fair result in litigation by making clear what the process is in legal proceedings. If rules are disregarded whenever one party says it is unfair or unjust to follow them, then, in effect, there will be no rules because anyone can make such a claim whenever a rule or result does not suit his purpose. Rules provide finality in the legal process. The public as well as the parties concerned will expect a point when proceedings must end. They will expect that when the rules have been complied with, the court will hand down its decision; and, subject to the rules relating to an appeal to a higher court, the proceedings end and will not be permitted to linger or be revived. No one ought to be allowed to re-argue his case save in accordance with the rules relating to the right of appeal.

39 The various observations quoted above take on even more significance in the light of the applicant's constant refrain in the present applications that the rules and principles relating to an extension of time for filing an appeal are mere legal technicalities. We would only pause to observe that it is necessary to have some legal structure which furnishes the appropriate guidance. Even the applicant's own arguments presuppose a legal structure; indeed, the *very attempt* to make any arguments would *necessarily* presuppose some sort of legal structure. Unfortunately, however, we shall see that the applicant proposed nothing by way of a legal framework. His legal structure, as it turned out, was a "non-structure"; it was, in effect, a call to the court to decide *arbitrarily* – and, not surprisingly – in his favour. Arbitrariness and unjustified preference – in both process as well as result – are the *very antithesis* of the rule of law. As was observed in the High Court decision of *Chee Siok Chin v AG* [2006] 3 SLR 735 (at [116]):

> [A]dherence to the law is the essence of the rule of law, which centres on objectivity as opposed to arbitrary subjective feelings (in this particular instance, of misguided sympathy). And respect for the law is not merely a practical necessity; it is an ideal without which arbitrariness will rear its ugly head. Merely dressing such arbitrariness up in various labels without more is to be eschewed, for labels without substance constitute not only empty rhetoric but also exceedingly dangerous things indeed – and all the more so when they have a superficial attractiveness, and nothing more. The exercise, as well as the ideal, of freedom are legitimate and real only when they are effected in accordance with the legal rules concerned.

40 We now need, in fact, to turn to evaluate the applicant's own arguments as to why he did not file his notices of appeal within the stipulated time of one month. In order to do so, we will commence by setting out his arguments. We will then set out the plaintiffs' arguments, before setting

out the reasons why we dismissed the present applications.

The applicant's arguments

41 The applicant's arguments fell under two basic categories.

42 The first centred on the merits of his case (*viz*, the third factor set out in *Lai Swee Lin Linda* ([18] *supra*)). The applicant, by reference to the minute sheets of the proceedings on 11 and 12 September 2006, sought to argue that the Judge had been biased in favour of the plaintiffs. According to the applicant, Mr Ravi had been ill and had been certified as medically unfit to attend court on those two days. The applicant argued that in these circumstances, it was inappropriate for the Judge to have heard the summary judgment applications alone in chambers with Mr Singh. Also, the defendants' request for a two-week adjournment ought to have been granted as it was not unreasonable. The applicant also took issue with the Judge allegedly attributing actions to him when he was not present. She also allegedly made remarks which showed her bias towards the plaintiffs. The applicant emphasised that this was not a "normal case" because of the respective parties' status as political figures.

43 The second argument proffered by the applicant sought to address the second factor set out above (at [18]), *viz*, the reasons for the delay. It is interesting to note that at no point did the applicant argue that his close to seven months' delay (the first factor set out above) was not lengthy. He argued, instead, that he had been embroiled in two criminal proceedings that had been brought against him. He also argued that he was not a trained lawyer and lacked the resources to handle the various legal proceedings which he was involved in.

The plaintiffs' arguments

44 Mr Singh referred to the four factors set out above (at [18]) and proceeded to apply them to the facts in the present applications.

45 Commencing with the *first* factor, *viz*, the length of delay, Mr Singh referred to *Lai Swee Lin Linda* ([18] *supra*), where there had been a delay of three months and 19 days. He pointed out that the delay here was almost twice as long as it was in excess of six months, and that, in his knowledge, there had been no reported case in Singapore where a delay of six months had been held to be acceptable.

46 In so far as the second factor was concerned, *viz*, the reasons for the delay, Mr Singh argued that the dates of the applicant's involvement in other proceedings (see above at [43]) did not explain why he (the applicant) had not taken steps earlier to file the requisite notices of appeal in September and October 2006, by which time he had already been aware of his right of appeal.

47 Mr Singh then proceeded to refer in some detail to the applicant's letter of 27 September 2006 (which has been reproduced in full above at [11]). He pointed out that this letter demonstrated that the applicant was aware of his right of appeal. The only reason given in the letter as to why the applicant could not lodge his appeals was that the defendants could not pay the security deposit of $10,000. Mr Singh argued that from the date of that letter to the present, nothing had happened to change the situation. Thus, there was no acceptable explanation as to why nothing had been done by the applicant in the interim period. Mr Singh also argued that the applicant was no stranger to making applications to the court, having done so in 2003 (with respect to Suits Nos 1459 of 2001 and 1460 of 2001), where he had applied for an extension of time to file and serve notices of appeal (indeed, the relevant documents show that the applicant had also requested a partial waiver of the

security deposit). Being familiar with the necessary procedure, there was no reason why the applicant could not have done the same *this* time around if he felt that he was unable to raise the necessary funds for the security deposit.

48 In so far as the issue relating to the waiver of deposit was concerned, Mr Singh, relying on *Lai Swee Lin Linda* ([18] *supra* at [48]), argued that financial difficulties *per se* were not sufficient to justify an extension of time. He also argued that the requirement for a security deposit was a mandatory requirement which, therefore, could not be waived. In any event, Mr Singh argued, the applicant had not furnished the court with any details of his financial situation and, if the applicant was granted leave to file his notices of appeal out of time, the plaintiffs would, in law, be entitled not only to security for costs, but also to fortification of such security.

49 Turning to the *third* factor, *viz*, the chances of the appeal succeeding if the time for appealing were extended, Mr Singh argued that the letter tendered by the applicant to this court *vis-à-vis* Mr Ravi's medical condition (considered at [103]–[106] below) should not be taken into account as the doctor who wrote it had been certifying a state of affairs on a day when he had not in fact reviewed the patient concerned (*viz*, Mr Ravi). He further argued that, in any event, the Judge's conduct of the proceedings could not be criticised.

50 In so far as the *fourth* factor was concerned, *viz*, the prejudice caused to the would-be respondent if an extension of time was in fact granted, Mr Singh argued that the proceedings with regard to the assessment of damages had already been subject to numerous adjournments at the applicant's request, with the applicant allowing the resultant costs to be incurred knowing that, as he was a bankrupt, these costs could not be recovered against him.

Our decision

51 We turn, now, to apply each of the abovementioned four factors (in [18] above) to the facts in the present applications.

The length of delay

52 The length of delay involved in the present applications bordered on *seven* months. This appears to be unprecedented in local case law. Looking merely at the factor of the length of delay, the respective delays in prior cases run the gamut – ranging from nine days (*Tan Chiang Brother's Marble (S) Pte Ltd v Permasteelisa Pacific Holdings Ltd* [2002] 2 SLR 225), 12 days (*Pearson* ([20] *supra*)), 14 days (*Denko* ([22] *supra*)) and 18 days (*Aberdeen Asset Management Asia Ltd* ([19] *supra*)) to 24 days (*Hau Khee Wee* ([19] *supra*)), 49 days (*AD* ([28] *supra*)) and three months and 19 days (*Lai Swee Lin Linda* ([18] *supra*)). In *AD*, the court correctly observed (at [11]) that the delay of 49 days was "[b]y any standard … a very substantial delay". (In that particular case, the party seeking an extension of time also took another 12 days to serve the application on the other party's solicitors). However, as mentioned above, the facts in each of these cases were different.

53 What is crucial in the context of the present proceedings is the fact that the delay here – bordering on *seven* months – was *nothing short of extraordinary*. In the circumstances, and in accordance with the general principles set out above (at [22]–[23]), the onus was on the applicant to provide the court with good reasons for the delay – which is, in fact, the second factor, to which we now turn.

The reasons for the delay

54 The first main plank in the applicant's argument, it will be recalled, was premised on the merits of his case – in particular, the alleged bias exhibited by the Judge during the hearings in chambers on 11 and 12 September 2006 (see [42] above).

55 However, this issue of bias is, in substance and effect, no different from that which the applicant had already covered in his letter of 27 September 2006 (which has been reproduced in full above at [11]). More significantly, this particular letter (written slightly under two weeks after the actual hearing before the Judge and prior to the expiry of the time within which the applicant had to file his notices of appeal) clearly evinced an intention on the part of the applicant to appeal against the Judge's decision on the summary judgment applications. *Crucially, that very letter contained, in substance, the same grounds that are before us, thus indicating in no uncertain terms that the defendants had already conceived of the grounds on which their intended appeals would be based by that date,* viz*, 27 September 2006. Put simply, the position as at 27 September 2006 was, in substance and effect, the same as that which presently exists. If so, how then can the applicant claim that there were satisfactory reasons for the delay of almost seven months – particularly as, during this period, he had done nothing but maintain the* status quo *as at 27 September 2006?*

56 Indeed, the applicant himself, whilst emphasising (as well as relying on) the minute sheets of the hearings before the Judge on 11 and 12 September 2006, respectively, did not controvert the indisputable fact embodied within his letter of 27 September 2006 to the effect that he had (as noted above) *already decided, as at that date, to appeal* against the decision of the Judge. The applicant himself had, in fact, stated in oral submissions before this court that when the 12 September 2006 minute sheet was made available to the defendants, it "made it even more important" that an appeal against the Judge's decision was lodged because of what had transpired in chambers in the applicant's absence.

57 In other words, the applicant had already decided to appeal (as a matter of principle and importance) as at 27 September 2006, but – in his own words – the receipt of the 12 September 2006 minute sheet "made it even more important" that he file an appeal. We pause here to note that it seemed to us rather strange that the applicant would have received the minute sheet only in January 2007 from Mr Ravi (see [13] above). However, as Mr Singh did not see fit to pursue this particular point, we need say no more about it.

58 A key consideration in so far as the application of the second factor to the facts of the present proceedings is concerned is, in fact, that of diligence. In *Ong Cheng Aik* ([26] *supra*), for example, which concerned an application for an extension of time to file the record of appeal out of time, the court noted that the applicant there had made the application *before* the prescribed time to file the record of appeal had expired. As we have also seen above (at [31]), that was a situation where that applicant had, *ex hypothesi*, already filed and served its notice of appeal (which was *not* the case in the present proceedings). Of importance, in our view, are the court's observations in that case with respect to the *attitude* of the applicant, whom it found "had wanted to comply with the rules" and who "did not take things for granted" (see *Ong Cheng Aik* at [17]). As we have just noted above, however, the applicant's attitude in the present proceedings was quite different.

59 We also note that the applicant, despite his protestations that he was not a trained lawyer, was nevertheless no legal babe-in-the-woods. Mr Singh drew our attention (which, significantly, the applicant did not do) to the fact that the applicant had, with regard to two previous actions, actually filed an application for extension of time to appeal as well as for partial waiver of the security deposit (see above at [47]). Significantly, that application had been effected (*via* Notice of Motion No 48 of 2003) prior to the deadline for filing a notice of appeal in those two cases. Given the applicant's intention, as evinced in his letter of 27 September 2006, to appeal against the Judge's decision, could

he not, at the very least, have filed an application for extension of time to appeal *prior to the deadline for filing the requisite notices of appeal*, rather than *almost seven months later*? The applicant offered no reason for this inexcusable lapse. More significantly, at that particular point in time (*ie*, when he wrote the letter of 27 September 2006), and even on the applicant's own stated timeframe, the applicant had not been embroiled yet in the criminal proceedings which he claimed had distracted him from filing his notices of appeal in the present suits (see [43] above).

60 We note, further, that the filing of either an application for an extension of time to appeal or even a notice of appeal itself is a relatively simple procedure, and the applicant's excuse that he was embroiled in other legal proceedings is therefore unpersuasive.

61 It is clear, in our view, that the length of delay was an inordinate – perhaps, even an unprecedented – one. Further, no satisfactory reasons were given by the applicant for such a delay.

Whether or not the appeal is hopeless

(a) Introduction

62 The third factor, *viz*, the chances of the appeal succeeding if time for appealing was extended, centres on the question of whether or not the intended appeal itself is hopeless.

63 In this regard, an important observation has to be made at the outset: Before this court, the applicant did not address the main reasons why the Judge did not grant the adjournment application. This was, *ipso facto*, fatal to the present applications – at least in relation to the present factor. As we shall see, the applicant raised issues before this court that were at best peripheral and at worst irrelevant in a bid to extend the time for appealing. In fairness, we will consider these issues, but we must necessarily commence with the main reasons why the Judge did not grant the adjournment application.

(b) The attempt to drag out the proceedings and to coerce the court into granting an adjournment by walking out on the proceedings

64 The above heading summarises the main reasons why the Judge did not grant the adjournment application. These reasons are, in fact, embodied in the following paragraphs of the GD ([7] *supra*) at [15]–[16]:

> In view of the pattern of the defendants' conduct which I have recounted in my written judgment for OS 1203/2006 (see *Chee Siok Chin v Attorney-General* [2006] 4 SLR 541), I agreed with Mr Singh. I found it difficult to explain the defendants' conduct in instituting OS 1203/2006, which was patently unmeritorious, on any plausible basis, save on the ground that the defendants were attempting to drag out the proceedings in the present actions.
>
> Above all, factually and more importantly, the defendants walked out even before the court had had an opportunity to rule on their application for an adjournment. In my view, their absence was a deliberate attempt to coerce the court into granting them an adjournment. This was decidedly material to the exercise of my discretion in refusing an adjournment. It superseded any need to consider whether the defendants would be able to proceed with the O 14 summons if the adjournment was refused … A court has to be astute and alert to stratagems such as the staged exit devised by the defendants. Otherwise, the court would be playing into the hands of a litigant who deliberately walks out of proceedings in a fit of pique and yet manages to secure an adjournment by simply not being there. If that happens, the court will be seen to be rewarding

defiant, disdainful, unruly, and disruptive behaviour. Any conduct that attempts to thwart the court's process, as was the case here, cannot be countenanced as it seeks to undermine the court's authority and brings the court into disrepute. Similar sentiments were expressed in no uncertain terms by Yong Pung How CJ in *Re Tan Khee Eng John* [1997] 3 SLR 382 at [14]:

> There are many things which a lawyer or a litigant can do which do not necessarily hinder or delay court proceedings, but which nevertheless interfere with the effective administration of justice by evincing a contemptuous disregard for the judicial process and by scandalising or otherwise lowering the authority of the courts. We are inviting anarchy in our legal system if we allow lawyers or litigants to pick and choose which orders of court they will comply with, or to dictate to the court how and when proceedings should be conducted.

65 It was clear, in the Judge's view, that the earlier proceedings referred to above were a mere attempt "to drag out the proceedings in the present action".

66 More importantly, the applicant *walked out* on the proceedings even before the Judge had ruled on the adjournment application. As we shall see below (at [68]), there was clearly no justification for such an action. We agree with the Judge that the applicant was seeking to coerce the court into granting the defendants an adjournment. This was not the first time that this had happened. In *Chee Siok Chin v AG* ([5] *supra*), the plaintiffs (the defendants in the present proceedings) and their counsel (Mr Ravi) walked out of the chambers hearing, although there, they did so after the court turned down the plaintiffs' oral application to hear the originating summons ("OS") in that case in open court. As the court in that case observed (*id* at [16]):

> After I declined to hear the OS in open court, Mr Ravi promptly informed me of his instructions not to participate in a hearing in chambers as CSC [Ms Chee] and CSJ [the applicant] did not wish to legitimise the process. Yet, curiously, Mr Ravi invited the court to consider his written submissions which were already before the court. I should mention that I indicated to Mr Ravi that it was not necessary for his clients to make a decision straightaway, as I was prepared to give them until the next day to decide. After conferring with his clients outside Chamber 5A, Mr Ravi again informed me that the plaintiffs vehemently registered their objections to my decision that the proceedings were not to be heard in open court and that they did not want to legitimise the proceedings, presumably because the proceedings were to remain in chambers. *The plaintiffs and their counsel walked out. The seriousness of a potential constitutional challenge in the OS and its ostensible merits paled swiftly into insignificance as soon as the publicity of an open court hearing was denied to them. The plaintiffs' decision to walk out of the chambers hearing was not surprising. Foremost in their minds was the publicity of an open court hearing since the media was expected to be present.* [emphasis added]

67 *There is a clear pattern on the part of the defendants to walk out on proceedings whenever it suits their purpose*. This is a serious abuse of process which cannot be lightly papered over. This would not be acceptable conduct even in a non-legal context, where (amongst other things) basic rules of courtesy would apply. Not surprisingly, the applicant did not at any point in the proceedings before this court even refer to the fact that he and Ms Chee had walked out on the proceedings in OS 1203/2006 and likewise in the present suits where the hearing on 12 September 2006 was concerned – still less, even begin to justify such conduct. The applicant sought, instead, to argue, first, that there had been bias on the part of the Judge and, second, that Mr Ravi had in fact been ill that day (*ie*, 12 September 2006). Even though we shall demonstrate below that neither of these grounds stand up to scrutiny, we should observe, at this juncture, that these reasons are wholly irrelevant inasmuch as they did not constitute the basis upon which the Judge refused the adjournment application. Let us elaborate.

68 As a close reading of the 12 September 2006 minute sheet will reveal, the main point of contention before the Judge was that the defendants wanted a lawyer to represent them, and they walked out on the proceedings when the Judge wanted Mr Singh to respond to the adjournment application first before deciding whether to grant the adjournment. How this constitutes rational and/or reasonable conduct on the part of the defendants completely eludes us. In any event, it was clear that no issue of bias was alleged at that time.

69 In so far as Mr Ravi's alleged incapacity was concerned, the applicant had to obtain a medical certificate which complied with the *Supreme Court Practice Directions*. He did not do so on 11 September 2006. Nevertheless, the defendants were granted an adjournment of one day, during which time they could have procured a proper medical certificate. This was still not forthcoming on 12 September 2006. There ensued a lengthy exchange between the applicant and the Judge over the issue of the discharge of Mr Ravi as the defendants' lawyer. A close perusal of the 12 September 2006 minute sheet demonstrates that the defendants were wholly unclear about whether Mr Ravi had been discharged or whether they were going to discharge him (this was also noted by the Judge (see GD ([7] *supra*) at [11])). Be that as it may, what *is* clear is that the defendants at no point raised Mr Ravi's alleged incapacity as a substantive ground for adjournment. The adjournment application turned, instead, on the fact that Mr Ravi was no longer (or would no longer be) their lawyer. The *reason* why this was so was *not central* to the application. Whether or not the reason for the adjournment application would have resulted in the grant of an adjournment by the Judge will, of course, never be known because, as already stated, upon the Judge asking Mr Singh to respond to the application, the defendants, without any modicum of courtesy, simply walked out on the proceedings without more. That Mr Ravi's medical condition was not the pivotal consideration in the Judge's decision not to grant an adjournment is evident from the following observations (see GD at [9]):

> ***In the absence of medical evidence that Mr Ravi was medically unfit to conduct the case in court on 12 September 2006,*** and bearing in mind the requirements of the *Supreme Court Practice Directions* which had already been highlighted the previous day (a copy of the relevant provisions was even sent to Mr Ravi under cover of Mr Singh's letter dated 11 September 2006), I was of the view that Mr Ravi's absence *per se* was certainly not a ground for an adjournment. The question was then whether there was nonetheless ***some other*** good or valid reason for granting a further adjournment of the O 14 summonses. [emphasis added in bold italics]

70 It is clear, in our view, that the Judge was entirely justified in holding that an adjournment could not be granted not only because the defendants were apparently seeking to drag out the proceedings but also (and, more importantly, in our view) because they had walked out on the proceedings in an attempt to coerce the Judge into granting them an adjournment (see above at [64]). In the circumstances, the present applications for extending the time for appealing against the Judge's decision in the summary judgment applications were wholly without merit. In short, they did not meet the very low threshold criteria laid down by the factor presently considered inasmuch as the applicant's intended appeals were indeed hopeless.

(c) The merits of the summary judgment applications

71 However, this is not the end to the matter. Whilst the applicant focused in the present applications on the issue of the adjournment, this was but one part of an integral set of proceedings. Put simply, the applicant also had to demonstrate why his case based on the merits *vis-à-vis* the summary judgment applications was not a hopeless one. After all, these applications were the very pith and marrow of the proceedings before the Judge on 11 and 12 September 2006.

72 Unfortunately, the applicant did *not* address this issue *at all*. The Judge's reasons for entering summary judgment for the plaintiffs are set out *in extenso* in her judgment. We have looked at them carefully and find them hard to fault. Perhaps, this is why the applicant has chosen not to take issue with them. This is yet another reason why the present applications must fail.

73 There is, in the circumstances, no need to address the issues which the applicant raised before us. As already pointed out above, they were also in fact irrelevant as they did not address the Judge's reasons for dismissing the adjournment application. However, we will nevertheless proceed to consider the applicant's arguments so as to assess their underlying substance or lack thereof.

74 We turn, first, to the applicant's allegation that the Judge had exhibited bias towards the defendants.

(d) The issue of alleged bias

75 Whilst the applicant had argued – based principally on the minute sheets of the hearings before the Judge – that the Judge was biased, it did not appear to us that that was the case. At no point did the Judge even appear to say anything that could have constituted bias on her part. The passages from the minute sheets which the applicant quoted were rather selective and (more importantly) were taken out of context. Most importantly, the Judge delivered detailed grounds for her decision (see GD ([7] *supra*)). This particular judgment dealt both with the issue of the refusal to grant the defendants an adjournment as well as the substantive issue with respect to the grant of summary judgment in favour of the plaintiffs. The applicant's complaints on the merits, as already noted, focused only on the former (*viz*, the issue of the Judge's refusal to grant the defendants an adjournment). In fairness to the applicant, we will now examine the specific portions of the minute sheets which he alleged demonstrated bias on the part of the Judge. Before proceeding to do so, however, it is important to note that the applicant had been present throughout the hearing on 11 September 2006 and for most of the hearing on 12 September 2006. In so far as the latter hearing was concerned, this is reflected by the fact that the applicant (and Ms Chee) were noted (in the 12 September 2006 minute sheet) to have walked out at p 15 of the 19-page certified transcript of the 12 September 2006 minute sheet ("the Certified Transcript").

76 Turning to the specific allegations of bias on the part of the Judge, the applicant referred, first, to p 17 of the Certified Transcript. Indeed, as noted in the preceding paragraph, this recorded that part of the hearing in chambers which took place after the defendants walked out on the proceedings. The applicant pointed, in particular, to the following observations by the Judge as follows:

> CSJ [the applicant] hedging bets. If MR [Mr Ravi] is well enough, MR will be back. If MR is not well, he will look for another lawyer.

77 The above observations must, however, be interpreted *in their proper context*. This is both logical as well as commonsensical, not to mention just and fair. In this regard, it is clear that the Judge had made these observations by way of an attempted summary of the essence of the submissions made by Mr Singh (that are recorded at pp 15–17 of the Certified Transcript) in order to ensure that she had correctly understood the points he was making. Indeed, the response by Mr Singh was in the affirmative, as evidenced by his statement which followed immediately after the aforementioned observations by the Judge (see p 17 of the Certified Transcript):

> Absolutely. 2nd D [Ms Chee] did not say MR is discharged. So asking for application for adjournment to be dismissed. Asking that we proceed with O14.

78 The applicant next referred to the Judge's observations at the top of p 18 of the Certified Transcript, which are as follows:

> He [the applicant] will say this is not a case under O32 that parties not here. He was here but left.

79 The applicant questioned how the Judge would have begun to know what he would or would not have done. In the circumstances, the Judge's statement as quoted in the preceding paragraph demonstrated, according to the applicant, a mindset of partiality towards the plaintiffs. The applicant objected to what he perceived as Mr Singh "cheering" the Judge on with remarks like "Absolutely", as well as to Mr Singh's reference to natural justice (see [81] below). He deplored what he called a "tea session" in chambers between the Judge and Mr Singh.

80 Before we deal with the applicant's argument on this particular point, it is important, once again, to place the Judge's observations (at [78] above) *in context*.

81 These were, in fact, the observations made by the Judge, followed by the response from Mr Singh, as recorded at pp 17–18 of the Certified Transcript (with the observations complained of by the applicant set out in bold italics):

> C t : *Proceeding in absence of defendant. Before I rule on this to clarify this. What is position. Not a case of no show completely but they left. Decision to leave is his*. Put on record that CSJ [the applicant] was here and they left. He will have to accept ruling on adjournment in his absence.

***He will say this is not a case under O32 that parties not here. He was here but left*.**

> DS:[Mr Singh] ***O32 r5. So long as Natural Justice achieved.*** *Partyaware of matter before the ct. but elects nevertheless to walk out. He can't complain if matter proceeds. Indeed he can't be in a better position than a person who does not turn up. [Your Honour] cautioned him of the consequences and he knows my instructions are to proceed.* Part of modus. Knowing that and the consequences he chooses/elects to walk out. He will find it hard to set aside based on his conduct.

If we allow adjournment, it will secure for such litigants a privilege [sic] *position. Is it that litigants in such a situation walk out and can secure an adjournment?*

Ordinary litigants do not behave like this. He chose to walk out. He chose not to bring his lawyer to Court. His lawyer chose not to turn up knowing what the consequences [were] going to be. I urge [Your Honour] not to hesitate to proceed against people who walk out to improve chances of adjournment. I'm worried about the precedent this will set of walking out and achieve [*sic*] adjournment. 'Anarchy'. Lawyers and laymen don't do that in respect of the court. We would be rewarding rowdy behaviour.

[emphasis added in italics and bold italics]

82 When the relevant part of the Certified Transcript as set out in the preceding paragraph is closely scrutinised in its proper context, it is clear that the applicant has wrenched the statements complained of completely out of their context in order to buttress his allegations that the Judge had been biased. Let us elaborate.

83 It is clear that the Judge had – as her own words attest – wanted to *clarify the situation*. In particular, she had wanted to clarify whether the situation was one that fell within the purview of O 32 r 5 of the Rules of Court, the relevant part of which reads as follows:

> **Proceeding in absence of party failing to attend (O. 32, r. 5)**
> **5.** —(1) Where any party to a summons *fails to attend* on the first or any resumed hearing thereof, the Court may proceed in his *absence* if, having regard to the nature of the application, it thinks it expedient to do so.
>
> (2) Before proceeding in the absence of any party, the Court may require to be satisfied that the summons or, as the case may be, notice of the time appointed for the resumed hearing was duly served on that party.
>
> …
>
> [emphasis added]

84 If O 32 r 5 applies, the court can, of course, proceed in the applicant's absence "if it thinks it expedient to do so". However, in the present case, the applicant did in fact attend the proceedings, but subsequently walked out. It was clear, in our view, that the Judge was merely wondering whether it was open to the applicant to argue (if the court proceeded with the hearing in the applicant's absence) that the court could not do so pursuant to O 32 r 5 on the basis that this provision dealt only with a situation where a party to the proceedings did not even attend in the first instance. In any case, the Judge made it clear that, given the fact that the applicant had made a conscious and deliberate choice to walk out on the proceedings, he would have to accept the ruling made in his absence pursuant to O 32 r 5 on the adjournment application. Far from there being any bias on the part of the Judge, it is clear that the Judge was ensuring that the legal basis upon which she would proceed to hear as well as rule on the adjournment application was clearly spelt out. She had, in this regard, referred to O 32 generally, and all Mr Singh did (in the passage at [81] above, which constituted part of the complaint levelled by the applicant in the present applications) was to indicate as well as confirm for the record the precise rule under that particular order (*viz*, r 5) which was applicable. How Mr Singh's (relevant) response constitutes "cheering [the Judge] on", as the applicant contended before us, eludes us entirely. Further, Mr Singh's reference to natural justice was both appropriate and fair.

85 One must not lose sight of the precise situation. Put simply, the applicant had applied for an adjournment of the summary judgment applications. He subsequently walked out on the proceedings with Ms Chee. The Judge still had to rule on the *applicant's* application for an adjournment. However, in the light of the fact that the applicant had earlier stated his reasons for seeking an adjournment and (more importantly) had made a conscious and deliberate choice to walk out on the proceedings, the Judge was satisfied that the principles of natural justice had been accorded to the applicant, and that there had been no breach of due process *vis-à-vis* the applicant whether in form or substance. How this translates to bias on the part of the Judge in relation to the applicant escapes us completely. Indeed, the situation would appear to be *the exact opposite* of what the applicant would have us believe. It was not, as the applicant put it, "a tea session" between the Judge and Mr Singh. On the contrary, the Judge was most concerned to ensure that, given the applicant's decision to walk out on the proceedings, justice was not only done, but also seen to be done.

86 We note that the applicant also referred to other portions of the 12 September 2006 minute sheet. However, those portions record the situation while the applicant was still present at the hearing. The initial references by the applicant were, presumably, merely to set the backdrop as to

why the adjournment application was not, as Mr Singh argued, a ploy, but a *bona fide* request. We shall come to this in a moment. However, before proceeding to do so, we should deal the applicant's argument before us that the Judge had evinced bias by speaking up for Mr Singh during the hearing. More accurately, the court was seeking to let Mr Singh speak. However, the applicant objected on the basis that if *Mr Singh* was making an application, the applicant ought to be allowed to seek legal advice before Mr Singh proceeded. Before us, the applicant alleged that the Judge had evinced bias when she said that Mr Singh was not making an application, but was merely responding to the applicant's application. In particular, he referred to the following statement by the Judge to him (see p 5 of the Certified Transcript):

> No, he [Mr Singh] is not making an application.

87 As the *context* is of crucial importance in so far as this particular argument is concerned, we set out the relevant parts of the 12 September 2006 minute sheet in full (including the statement referred to by the applicant in the preceding paragraph), as follows (see pp 2–3 and 14–15 of the Certified Transcript):

> CSJ:[The applicant] I think the only option left for me/us since Ravi is not well is to apply to discharge MR [Mr Ravi] and look for another lawyer. I will do the necessary to bring this into effect and look for another lawyer.
>
> DS:[Mr Singh] Applying to proceed notwithstanding new ploy which we anticipated as a result of what CSJ said yesterday. Knowing this card would be played, we prepared brief submissions [tenders submissions]
>
> Sets out the history leading up to this predictable discharge stratagem.
>
> Defendants have no defence.
>
> CSJ: I am without counsel. I need time.
>
> Ct: He is responding to your application.
>
> CSJ: I informed the Court I discharged counsel and am without counsel.
>
> DS: *I'm responding to your application.*
>
> Ct: Let me hear what DS has to say.
>
> CSJ: If that is the case, I don't want to be on record to say I'm here. I'm on record, as saying I want to have a lawyer present to advise me. People have told me in the past cases since no lawyer was present certain things happened that should not have happened if I had a lawyer.
>
> Ct: DS is simply responding to your application. ...
>
> …
>
> [After the defendants return from a brief adjournment outside chambers]
>
> ...

DS: May I start?

CSJ: If DS wants to start, should there not at least be *time for me* to go through all this, seek legal advice, as I understand it *he* is *making an application*.

C t : ***No, he is not making an application. He is responding to your application for an adjournment. I can give you time to read written submissions.*** DS is recounting the facts.

CSJ: If it is that simple, there would be no need for lawyers in Singapore. If you could, let me excuse myself from the proceedings.

Ct: You are making an application. I need to hear all parties.

CSJ: Please excuse me. May I be excused. I think you've made yourself very clear and so have I. Thank you.

Ct It is not for me to excuse you. It is your choice.

[11.05am CSJ and CSC [Ms Chee] walk out.]

[emphasis added in italics and bold italics]

88 It can be clearly seen from the exchange set out above that the Judge was responding to the applicant's request for more time to go through the plaintiffs' submissions on the basis that Mr Singh was, as the applicant understood it, "making an application". This was, of course, *inaccurate* as Mr Singh was responding to *the applicant's application for an adjournment.* This is, in fact, *precisely what the Judge stated in response to the applicant's request*. Mr Singh had initially stated that he was "[a]pplying to proceed" (see p 2 of the Certified Transcript). Of course, this is not legally correct for the reason we have just given, and Mr Singh subsequently corrected himself and confirmed that he was merely responding to the applicant's application (see p 3 of the Certified Transcript). However, the applicant has simply wrenched this exchange (in particular, the sentence quoted at [86] above) out of its context in order to embellish his case.

89 We observe, in fact, that a close perusal of the minute sheets of the hearings on 11 and 12 September 2006 (in particular, the 12 September 2006 minute sheet) will reveal that the Judge repeatedly emphasised that in order to decide on the applicant's request for an adjournment, it was imperative that she hear Mr Singh's response to the application before arriving at a decision. This was the invocation and application of the *basic principles of natural justice*. That the Judge was unwilling to grant the adjournment application *without first hearing the other side* (here, represented by Mr Singh) represented her application of one of the twin pillars of natural justice embodied within the well-known Latin maxim, "*audi alteram partem*" – in other words, "hear the other side". What the applicant in fact desired, on the other hand, was for a decision in favour of his application for an adjournment to be made *without more and, more importantly, without giving the other side an opportunity of being heard*. In the circumstances, this was not only the *very antithesis* of justice and fairness but also constituted an attempt by the applicant *to circumvent or bypass a central principle of natural justice in order to arrive at his desired end*.

90 When it was obvious that he could not achieve his objective of obtaining an adjournment through his chosen means, the applicant and Ms Chee simply walked out on the proceedings in a last-ditch attempt to achieve their desired end. This was, of course (and as the Judge held), wholly

unacceptable for the reasons which we have already canvassed above (at [67]–[70]). Be that as it may, it is clear that the applicant's argument to the effect that the Judge had been biased towards the defendants was wholly without merit for the reasons which we have just set out above.

91 However, this is not the end to the matter. The applicant also sought to argue before us that the adjournment application was not (as Mr Singh argued on behalf of the plaintiffs) a ploy, but was in fact justified by the fact that Mr Ravi was clearly unable to continue to represent the defendants at that time owing to medical reasons. Again, we need to reiterate that this was not a crucial ground in the Judge's decision not to grant the defendants an adjournment and, hence, was irrelevant. Even so, this particular argument is also without merit. Let us elaborate.

(e) Mr Ravi's medical condition

92 It is important to note, at the outset, that the only documentary evidence available before the Judge in so far as Mr Ravi's medical condition was concerned was the medical certificate from a dentist (see [8] above). This was not considered satisfactory, but this point was not raised as an issue before us.

93 Before this court, however, the applicant introduced *two further (and completely new) documents*. Although this was an unusual procedure which required legal justification (even, as here, where the party seeking to do so was a layperson), no objection was taken by Mr Singh.

94 The first was a copy of a medical certificate dated 23 September 2006 ("the Medical Certificate"), which stated that Mr Ravi was unfit to attend court and that he was in hospital. It also stated that Mr Ravi had been hospitalised on 20 September 2006.

95 It should, however, be noted that the material dates of the hearings before the Judge were 11 and 12 September 2006. This was more than a week *prior* to the date when Mr Ravi was said to have been hospitalised pursuant to the Medical Certificate. This certificate was therefore of no direct relevance to the medical condition of Mr Ravi on 11 and 12 September 2006 – if nothing else, because the doctor concerned would not have had an opportunity to examine Mr Ravi on (or prior to) 12 September 2006. The Medical Certificate was, at best, evidence of Mr Ravi's medical condition as at 20 September 2006, the date of his admission to hospital. Most importantly, this medical certificate was not before the Judge. How then could this court now consider it in ascertaining whether the Judge had arrived at a correct decision with regard to the adjournment application? Nor did the Medical Certificate satisfy the conditions laid down in the seminal decision of *Ladd v Marshall* [1954] 1 WLR 1489, where Denning LJ (as he then was) set out (at 1491) the following three cumulative conditions, which have been adopted and applied by Singapore courts on many occasions:

> To justify the reception of fresh evidence or a new trial, three conditions must be fulfilled: first, it must be shown that the evidence could not have been obtained with reasonable diligence for use in the trial; secondly, the evidence must be such that, if given, it would probably have an important influence on the result of the case, although it need not be decisive; thirdly, the evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, although it need not be incontrovertible.

96 Before proceeding to elaborate on why the Medical Certificate did not satisfy the criteria laid down in *Ladd v Marshall* ([95] *supra*), it is important to note that the Judge did not, in point of fact, premise her decision on the defendants' inability to furnish a valid medical certificate (see GD ([7] *supra*) at [9]). The Judge relied, instead, on two main grounds. The first related to the pattern of the defendants' conduct (see GD at [15]), and the second related to the deliberate attempt by the

defendants to coerce the court into granting them an adjournment by walking out on the proceedings (see GD at [16], as well as the Judge's observations quoted above at [64]).

97 But, *even if* this court was prepared to entertain the argument that the Medical Certificate was at least *some* evidence of Mr Ravi's medical condition as at 11 and 12 September 2006 (which, as explained in the preceding paragraph, we in fact *cannot*), insurmountable difficulties remain. These difficulties, as already alluded to above, also explain why the conditions in *Ladd v Marshall* ([95] *supra*) have *not* been satisfied.

98 The first is this: Why did the applicant not produce a similar medical certificate *earlier*? After all, the Judge had adjourned the hearing on the morning of 11 September 2006 in order to provide the applicant with time to procure the requisite medical certificate by that afternoon; in a nutshell, it was clear that a medical certificate was required. If there had, in fact, been problems procuring such a medical certificate, the applicant could also have informed the Judge accordingly. If Mr Ravi had truly been ill, such a medical certificate could have been obtained as a matter of course. The procurement of a medical certificate is a simple procedure. Indeed, to say that it is a routine one is truly an understatement.

99 Secondly, the Medical Certificate itself is short on details. This was not a typical medical certificate with both a start-date as well as an end-date; it was, in short, a medical certificate of indefinite duration. It did state that Mr Ravi was "unfit to attend court – in hospital". However, there were no other details; nor was there any follow-up document.

100 Thirdly, and perhaps most importantly, the Medical Certificate was apparently issued in relation to *radically different proceedings altogether* which did not involve either of the defendants – namely, Criminal Motion No 24 of 2006, which was an application to this court for a stay of a criminal trial in the Subordinate Courts – and where, in the light of this particular medical certificate, an adjournment was granted on 25 September 2006. (The criminal motion was ultimately heard on 18 October 2006 and the decision of the court is to be found in *Ng Chye Huey v PP* [2007] 2 SLR 106). On 25 September 2006 itself, the court adjourned the hearing at 10.40am. Hearing resumed at 12.00 noon, at which time the Medical Certificate was produced for the first time before the court. After hearing further submissions from all parties, the court granted a final adjournment of the criminal motion to the week commencing 16 October 2006 and left it to the applicants to decide whether they wanted Mr Ravi or another lawyer to represent them, or whether they wished to represent themselves in person. It is clear, therefore, that the Medical Certificate was obtained for the purposes of the above criminal motion. Indeed, whilst the Medical Certificate is dated 23 September 2006 and states that Mr Ravi had been hospitalised on 20 September 2006, it is clear that the copy tendered to the court was a faxed copy and was, as it clearly indicates, faxed on 25 September 2006, the very date of the hearing of that criminal motion.

101 The important question that arises is this: If the applicants in that particular case could procure a medical certificate on the same day as the hearing there, why could not the applicant in the present suits have done likewise? Why was he now relying on a medical certificate relating to *different* proceedings (*ie*, Criminal Motion No 24 of 2006) when he could easily have procured a medical certificate with respect to his *own* proceedings? We cannot help but conclude that the applicant's reliance on a medical certificate which related to a different set of proceedings altogether was another misguided attempt by the applicant to paper over the very serious deficiencies in his case, which was based on the argument that Mr Ravi was unfit to attend court on 11 and 12 September 2006.

102 Fourthly, bearing in mind that the onus was on the applicant to satisfy the court that there

were good reasons for the delay, why did he not produce, in the context of the present applications, the Medical Certificate earlier together with these applications if, indeed, this particular medical certificate was relevant to his applications?

103 The second document comprised a letter from the same doctor who issued the Medical Certificate ("the Letter"). The Letter itself is dated 30 July 2007. It is entitled "Re: *Supplementary* Medical Report of Mr Ravi S/O Mandasamy …" [emphasis added]. The material parts read as follows:

> 1. The above named (hereafter referred to as Mr. Ravi) was assessed at the hospital on 20th September 2006 and thereafter admitted until 5th October 2006. He had been brought to the hospital by his immediate family and close friends.
>
> 4. [*sic*] Judging from my assessment made *at the time of admission and over the period of his stay* at [the hospital], *together with the information obtained from his relatives and friends*, I am convinced that Mr. Ravi had been unwell since the beginning of September.
>
> 5. He did not attend court on September 11th and 12th 2006 and at this time he was already unwell. He was medically unfit to attend court and had he done so, it would probably have resulted in adverse consequences for [himself] as well as those he would have been in contact with.
>
> 6. Kindly excuse his absence from court during these dates (September 11th and 12th 2006) as he was medically unwell and unfit to attend court.
>
> [emphasis added]

104 A reasonable analysis of the above paragraphs of the Letter supports Mr Singh's argument that the Letter itself was an historical document which did not add anything to the applicant's case before this court. Indeed, it is clear that the Letter does not add anything whatsoever to what was contained in the Medical Certificate. First, the Letter refers to the doctor's assessment of Mr Ravi "made at the time of admission and over the period of his stay" at the hospital. Yet, according to the Medical Certificate, we have already seen (above at [94]) that the date of admission was 20 September 2006. As we have already emphasised above (at [95]), the doctor concerned would not have had an opportunity to examine Mr Ravi on 11 or 12 September 2006 – which was more than a week prior to the earliest date on which the doctor could have examined and ascertained Mr Ravi's medical condition. More importantly, the Medical Certificate was not relevant, and, in any event, we have seen that even if the benefit of the doubt is given to the applicant, there were nevertheless numerous difficulties with this medical certificate (see above at [95]–[102]).

105 The only other relevant information in the Letter is the reference to "the information obtained from his [Mr Ravi's] relatives and friends". This is but a mere assertion and, more importantly, does not refer to the state of knowledge of Mr Ravi's relatives and friends as at 11 and 12 September 2006.

106 In the circumstances, the Letter itself does not support the applicant's arguments with respect to Mr Ravi's medical condition on 11 and 12 September 2006.

107 In any event, as noted above (at [69]), the Judge had arrived at her decision not to grant the defendants an adjournment based on grounds other than the failure to furnish a valid medical certificate.

(f) Conclusion

108 Having regard to our analysis of both the applicant's arguments on bias as well as the documents which he tendered to us, the inexorable conclusion is that the case which the applicant advocated was a *hopeless* one. In the premises, the *third* factor set out in *Lai Swee Lin Linda* ([18] *supra*) was *clearly not satisfied*.

Whether prejudice would be caused to the would-be respondent if an extension of time was granted

109 The general principles with regard to the fourth factor mentioned at [18] have already been set out above (at [24]–[27]). In so far as the present applications are concerned, the plaintiffs argued (as noted above at [50]) that the defendants had already proceeded substantively down the legal route towards the assessment of damages, and had thereby incurred costs which they knew could not be recovered against the applicant as he was a bankrupt.

110 It should be noted that if, as the plaintiffs have argued and we have found, the applicant's intended appeals were hopeless, the parties would have had to proceed to the assessment of damages stage in any event. Regardless of whether or not there was in fact an appeal, the costs of the assessment of damages would have had to be borne by the plaintiffs because of the applicant's bankruptcy. Thus, prejudice to the would-be respondents in the instant case cannot lie in the mere fact that steps have already been taken in the assessment of damages proceedings.

111 In our view, if it could be said that prejudice would be caused to the plaintiffs by granting an extension of time, this would lie in the manner in which the assessment of damages proceedings have taken place thus far. The first pre-trial conference ("PTC") was held on 26 September 2006. At that time, the applicant told the court that he needed time to confirm whether Mr Ravi was well enough to be his counsel. The next PTC was fixed for 31 October 2006. On 29 October 2006, the applicant wrote to the Registrar to ask for a postponement of the 31 October 2006 PTC, explaining that Ms Chee was "away" till 2 November 2006 while he himself was involved in a trial. The next PTC was thus heard on 14 November 2006 instead, where the applicant, Ms Chee and the ninth defendant were present. The court directed that the parties were to file their respective lists of documents by 18 December 2006 and to inspect the documents by 29 December 2006. On 12 December 2006, Ms Chee wrote to the assistant registrar asking for an extension of the deadline for filing the defendants' list of documents by one month as the applicant had been incarcerated on 23 November 2006. The deadline was hence extended to 18 January 2007. However, on 8 January 2007, the applicant wrote to the Registrar asking for another extension of the deadline for filing the list of documents. He explained that he had been released from prison on 16 December 2006 and needed time to recover. He was also facing a trial in the Subordinate Courts which was to be heard on 3 January 2007. Also on 8 January 2007, the Registrar notified the parties that a PTC would be scheduled on 9 January 2007. The applicant wrote back on the same day (*ie*, 8 January 2007) asking for the following day's PTC to be postponed because of the trial mentioned earlier. The PTC was thus refixed to 30 January 2007. On 26 January 2007, the applicant wrote to the Registrar asking for a postponement of the PTC to March 2007 as his trial had been rescheduled to 29–31 January 2007. The Registrar wrote to the applicant on 29 January 2007 suggesting that he make a request to the district judge hearing the trial to start the hearing a little later in the afternoon on 30 January 2007 so as to enable the applicant to attend the PTC. The applicant wrote back on the same day (*ie*, 29 January 2007) stating that he was unable to attend the PTC because he was unable to handle two matters at the same time. He said that he also had another PTC to attend to. The PTC was thus adjourned to 13 February 2007. At the hearing on 13 February 2007, the court extended the deadline for filing the lists of documents to 20 March 2007 and fixed a further PTC on 27 March 2007. At the

hearing on 27 March 2007, the applicant indicated that he needed time to decide on which course of legal action he should take. The court fixed the next PTC on 10 April 2007. As the defendants were absent from that hearing, the PTC was rescheduled to 17 April 2007. On 11 April 2007, Ms Chee wrote to the Registrar to explain that the defendants had been absent from the 10 April 2007 hearing because they had been under the impression that the hearing was to be on 20 April 2007 instead. At the 17 April 2007 PTC, the applicant told the court that he had filed the present summonses. A further PTC was fixed on 21 May 2007 (which was later refixed to 22 May 2007).

112 Each of the many adjournments recounted in the preceding paragraph necessitated the attendance and efforts of the plaintiffs' counsel. This translated into costs. With the exception of the first PTC on 26 September 2006, the work done in relation to the above proceedings would probably have been avoided if the applicant had filed his notices of appeal within time. If the assessment of damages proceedings had been stayed at an earlier point in time until a date after the outcome of the intended appeals, the exchange of the lists of documents with respect to the assessment of damages (if the appeals were unsuccessful) would, in all probability, have proceeded more smoothly and with fewer adjournments. The costs occasioned by the above adjournments (which could have been avoided) cannot be claimed from the applicant as he is a bankrupt and, thus, must be borne by the plaintiffs. However, there was not really sufficient argument from the plaintiffs on this point and we therefore made no finding on the issue of prejudice where costs were concerned. In any case, such a finding was not necessary in the present applications in order for us to arrive at our conclusion, given what we had decided in so far as the first three factors mentioned at [18] above were concerned.

Whether the court has a discretion to waive the security deposit

113 Given our decision that the applicant has failed in his applications for an extension of time for filing the notices of appeal, it is unnecessary to consider whether or not this court is in a position to waive the security deposit.

114 However, given the fact that all the parties to the present proceedings have addressed us on this particular issue, it would be appropriate to comment briefly on it.

115 Order 57 rr 3(3) and 3(4) of the Rules of Court constitute the starting point, and read as follows:

> (3) The appellant *must* at the time of filing the notice of appeal provide security for the respondent's costs of the appeal in the sum of $10,000 or such other sum as may be fixed from time to time by the Chief Justice by —
>
> (*a*) depositing the sum in the Registry or with the Accountant-General and obtaining a certificate in Form 115; or
>
> (*b*) procuring an undertaking in Form 116 from his solicitor and filing a certificate in Form 117.
>
> (4) The Court of Appeal may at any time, in any case where it thinks fit, order further security for costs to be given.
>
> [emphasis added]

116 The above rule is a mandatory provision and therefore cannot be waived by the court (see *Singapore Court Practice 2006* ([36] *supra*) at para 57/3/5). Indeed, as O 57 r 3(4) stipulates, the

Court of Appeal may even order *further* security for costs to be given in an appropriate case. There is good reason why this is so. As Prof Pinsler put it (*id* at para 23/1/1):

> A person against whom a claim is brought may be entitled to security for his costs. The basis of this principle is that he may not recover his costs from the claimant in the event that the latter fails in his action. The provision of security for costs ensures that a successful defendant will have a fund available within the jurisdiction against which he can enforce the judgment for costs.

117 The observations just quoted were in relation to O 23 r 1 of the Rules of Court, which applies to first instance proceedings, where it is not mandatory for the court to make an order for security for costs. Nevertheless, the basic rationale as embodied in these observations is applicable, *a fortiori*, in the case of appeals (where, it should also be noted, the would-be appellant has already had its day in court). Indeed, the sum of $10,000 stipulated in O 57 r 3(3) is not an exorbitant one, as the legal costs involved in a typical appeal are usually far in excess of that sum. This particular rule balances the need to avoid constraining the right of appeal unnecessarily with the contrasting (albeit no less important) need to deter frivolous appeals that constitute an abuse of process.

118 We acknowledge that the applicant in this case is a bankrupt. However, this factor constitutes a double-edged sword. Whilst the applicant argues that, as a bankrupt, it is extremely difficult for him to raise the necessary funds for the security deposit, it is equally true that if the security deposit is waived, the applicant would effectively have obtained a right of appeal free from any need to compensate the plaintiffs if his appeals fail. As we have already observed (at [116] above), the requirement of a security deposit under O 57 r 3(3) is mandatory. Further, it does not necessarily follow that because the applicant is a bankrupt, he cannot raise the necessary funds. Indeed, there are many litigants, also bankrupts, who are not exempt from this particular requirement. As we shall emphasise in more detail below (at [123]), every right almost invariably entails a corresponding obligation. As was pointed out to the applicant during oral submissions before this court, he was not the only litigant who faced difficulties raising the requisite funds for the security deposit. His allegation that he was a politician subject to immense pressures did not mean that he was therefore entitled to special treatment. As this court observed in *Lai Swee Lin Linda* ([18] *supra* at [48]), in a proposition that applies to *all* litigants:

> [T]he appellant did refer to her financial difficulties as a reason for her tardiness in filing and serving her Notice of Appeal – in particular, to her difficulties in furnishing the $10,000 security for costs as required under O 57 r 3(3). Whilst we sympathise with the appellant, financial difficulties *per se* are not, in our view, sufficient to justify an extension of time. The various rules centring around the provision of security for costs and the need to be prompt in filing and serving one's Notice of Appeal would otherwise be set at naught.

119 This is not to say that, in extreme and meritorious cases, there might not be a solution to the problem (for example, an extension of time for provision of the security deposit). In any event, this was not a meritorious case at all. The applicant neither disclosed the efforts made (if any) to raise the security deposit nor asserted that he needed more time to do so. Indeed, as we have already emphasised, the issue relating to the provision of the security deposit was academic since we have found that the applicant could not even satisfy the court why he should be allowed an extension of time to file his notices of appeal in the first place.

Conclusion

120 The applicant failed to satisfactorily explain why he did absolutely nothing for close to seven months, although the objective evidence clearly shows that he had already decided to appeal against

the Judge's decision on the summary judgment applications *prior* to the expiration of the period within which the notices of appeal had to be filed. Further, the filing of a notice of appeal or an application to extend the time for filing such a notice is a relatively simple procedure. Indeed, the applicant had himself filed a similar application in *previous proceedings* for both an extension of time as well as a waiver of the security deposit (see [47] above).

121 The applicant also failed completely to address the main reasons why the Judge did not grant the defendants an adjournment on 12 September 2006. In particular, he failed to explain why he and Ms Chee had simply walked out on the proceedings that day. He also failed to explain why the defendants' case with regard to the summary judgment applications was not hopeless; indeed, this particular issue was not addressed at all. His arguments, which were premised on alleged bias on the part of the Judge as well as on a medical certificate and a letter wholly unrelated to the proceedings concerned (see [100] above), were not only irrelevant and misconceived but also lacked any merit.

122 All rules and principles, whether procedural or substantive, must be observed. They provide the structure without which decisions cannot be arrived at in a just, fair and objective manner. They apply to *all* litigants concerned, regardless of their socio-economic or even political status. Indeed, arbitrariness and "palm tree justice" would result if such rules and principles are not observed; worse still, if they are abused.

123 In this last-mentioned regard, as we have noted above (at [89]), the applicant had actually attempted to obtain a decision (on an adjournment) in his favour *without giving the other side the right to respond to his application*. This was the *very antithesis* of justice and fairness inasmuch as *the applicant had sought to circumvent or bypass a central principle of natural justice*. As was observed in *Chee Siok Chin v AG* ([39] *supra*) at [117]:

> It is also axiomatic, commonsensical as well as just and fair that there cannot be a claim by a party for the vindication of legal rights without that party simultaneously fulfilling his or her legal responsibilities. In other words, one cannot claim one's legal rights without fulfilling one's legal responsibilities. The rhetoric of rights is not a licence for the unilateral appropriation of advantages without legitimate reciprocation; indeed, such conduct would be *the very antithesis* of the ideal underlying the very concept of rights as legitimately conceived. [emphasis in original]

124 Finally, as we have already noted, although it therefore became unnecessary to consider the issue of the waiver of the security deposit, we hold (for the reasons set out above) that this court does not have the power to waive the requirement set out in O 57 r 3(3) of the Rules of Court. However, as we have also pointed out above, there are other ways of dealing with a would-be appellant's predicament if the circumstances warrant it. Nevertheless, if (as is the case here) the would-be appellant cannot even satisfy the court that he has satisfactory reasons that permit the court to grant him an extension of time to file a notice of appeal to begin with, the issue centring on the security deposit becomes moot.

125 In the premises, we found the present applications to be totally devoid of any merit whatsoever, and therefore dismissed them with costs.