SRS Commerce Ltd & Another *v* Yuji Imabeppu & Others
[2014] SGHC 209

Case Number	: Suit No 147 of 2014 (Registrar's Appeal No 270 of 2014)
Decision Date	: 23 October 2014
Tribunal/Court	: High Court
Coram	: Choo Han Teck J
Counsel Name(s)	: Salem Bin Mohamed Ibrahim and Melissa Kor (Salem Ibrahim LLC) for the plaintiffs; Khoo Ching Shin Shem and Huang Haogen (JLC Advisors LLP) for the 1st, 2nd and 4th defendants.
Parties	: SRS Commerce Ltd & Another — Yuji Imabeppu & Others

Civil Procedure – Service

23 October 2014 Judgment reserved.

Choo Han Teck J:

1 The plaintiffs filed a writ action on 4 February 2014 against the defendants for misappropriation of money. The defendants are resident in Japan. The plaintiffs then filed an application in Summons No 561 of 2014 for a freezing order to prevent the defendants from accessing or moving money in various bank accounts, and to allow the plaintiffs to serve the writ on the first to fourth defendants in Japan, "by post or courier and/or by service through the Ministry of Foreign Affairs, Japan".

2 On 10 February 2014, Belinda Ang Saw Ean J granted leave to plaintiffs for service out of jurisdiction. The writ, but not the statement of claim and the seven affidavits (which were filed in support of the writ) accompanying the writ, was translated in Japanese and sent by registered post to the first, second and fourth defendants. For ease of reference, I refer to the first, second and fourth defendants as 'the defendants' collectively in this judgment. There is no dispute that the defendants received these documents.

3 On 29 April 2014 the defendants filed Summons No 2246 of 2014 and on 23 July 2014 the Assistant Registrar ("AR") set aside the service of action on the defendants. The AR was of the view that the service was improper, and further, that the defendants were prejudiced because they had no knowledge of the Singapore proceedings and had no means of knowing that their assets in Singapore had been frozen by a freezing order. The plaintiffs appealed against that decision before me.

4 Order 11, r 4 of the Rules of Court (Cap 322, R5, 2006 Rev Ed) governs the service of originating processes to defendants outside of Singapore. It distinguishes between countries that have a "Civil Procedure Convention" with Singapore (O 11, r 4(1)) and those that do not (O 11, r 4(2)). As it is not disputed that there is no "Civil Procedure Convention" between Singapore and Japan, I need not concern myself with O 11, r 4(1). Order 11, r 4(2) is applicable, and reads:

> **Service of originating process abroad through foreign governments, judicial authorities and Singapore consuls or by any other method of service (O. 11, r. 4)**
>
> **4.** –…

(2) Where in accordance with these Rules an originating process is to be served on a defendant in any country with respect to which there does not subsist a Civil Procedure Convention providing for service in that country of process of the High Court, the originating process may be served –

(*a*) through the government of that country, where that government is willing to effect service;

(*b*) through a Singapore consular authority in that country, except where service through such an authority is contrary to the law of that country; or

(*c*) by method of service authorised by the law of that country for service of any originating process issued by that country.

5 Order 11, rr 4(2)(a) and (b) are not applicable. The originating process was not served through the Japanese government, nor is there is any evidence that it is willing to effect service on behalf of the plaintiffs. The originating process was not served through a Singapore consular authority either. Order 11, r 4(2)(c) applies to present case. It requires the plaintiffs to comply with the method of service authorised by the domestic law of the foreign jurisdiction (in this case, Japan).

6 There is little doubt that the service was not properly effected. Under Japanese law, the writ (and accompanying documents) must be served through Japan's Ministry of Foreign Affairs and then through court clerks authorised by the Japanese courts. The writ (and its accompanying documents) in the present case was not served by a court clerk authorised by the Japanese court.

7 Mr Salem, counsel for the plaintiff, relied on both Article 118(ii) of Japan's Code of Civil Procedure ("CCP") and the decision of the Supreme Court of Japan in *Kishinchando Narindas Sadhwani, Sadhwanis Japan v Sadhwani, Gobindram Sadhwani* (Case No 1838(O) of 1994 dated 28 April 1998) ("*Sadhwani*") for the proposition that if a defendant appears in foreign proceedings, service is validly effected. I do not think that these aid Mr Salem's submission. Article 118 of the CCP reads:

Article 118 A final and binding judgment rendered by a foreign court shall be effective only where it meets all of the following requirements:

(i) The jurisdiction of the foreign court is recognised under laws or regulations or conventions or treaties.

(ii) The defeated defendant has received a service (excluding a service by publication or any other service similar thereto) of a summons or order necessary for the commencement of the suit, or has appeared without receiving such service.

(iii) The content of the judgment and the court proceedings are not contrary to public policy in Japan.

(iv) A mutual guarantee exists.

I think that Mr Salem has relied on Article 118(ii) out of context. First, Article 118 should be read in its entirety. It sets out four conditions that have to be satisfied for a "final and binding judgment rendered by a foreign court" to be effective in Japan and not just one condition. Second, Article 118 applies only to "final and binding" judgments, which is not the case here. There is no final and binding

judgment issued by the Singapore courts. The matter is only at the interlocutory hearing stage and has not proceeded to trial yet.

8 *Sadhwani* concerned the enforcement of an order for costs obtained in the Hong Kong court following a contested hearing attended by the defendants who were based in Japan. Service on the defendants in Japan was irregular but they nonetheless entered an appearance and contested the action. The defendants lost. In the course of the enforcement hearing in Japan for the Hong Kong judgment on costs, the defendants argued that the service was irregular and that therefore they should not be made to pay costs. The court rejected this argument as the defendants had actual knowledge of the commencement of the action and were not hindered in the exercise of their right to defend the action. This decision may suggest that, as a general proposition, defendants who contest proceedings with actual knowledge of the commencement of actions cannot raise arguments on irregular service. But I do not think so. The case does not stand for such a broad general proposition. The defendants in that case had participated fully in the proceedings in Hong Kong. It was at the very late stage of enforcement of judgment that they raised an argument on irregular service. *Sadhwani* is relevant insofar as it recognises specific instances in which irregular service could be challenged.

9 Mr Salem's alternative ground is that even if there was failure on the plaintiffs' part in effecting proper service, the court ought not to have set aside the service of process because the defendants were not at all prejudiced by the irregularity. The High Court in *ITC Global Holdings Pte Ltd (in liquidation) v ITC Ltd and Others* [2011] SGHC 150 considered this point and Lee Seiu Kin J held that where a defendant, such as the one before him, is apprised of the proceedings, it should be regarded as an important factor against an application to set aside service of process. I agree entirely. The rule is not designed as a technical obstacle but as a rule to prevent foreign parties from orders made against them without their knowledge. They must be aware of the process instituted against them to decide whether they should resist.

10 Thus I turn to Mr Salem's submission's submission as to the absence of prejudice in this case. Mr Salem submitted that the plaintiffs' Japanese lawyer's letter accompanying the writ gave sufficient notice of the Singapore proceedings. It is written in Japanese, a language understood by the defendants, and provides, *inter alia*, that:

(a) the defendants were sued in Singapore for misappropriation of monies;

(b) a freezing order was obtained against the defendants;

(c) strict timelines in the Rules of Court have to be observed;

(d) if the defendants intended to defend the action, they should respond;

(e) the defendants had the right to challenge the freezing order; and

(f) the defendants should seek legal advice from a Singapore law firm or law firm familiar with Singapore's legal process.

11 Furthermore, Mr Salem said that the defendants were aware of the proceedings in Singapore and that they took steps to defend them. This can be seen from the conduct of the defendants in the Singapore proceedings. The defendants entered appearance on 14 March 2014. The first defendant also filed an affidavit to say that after the defendants instructed their (previous) solicitors FocusLaw Corporation, they 'started to understand' what was happening in Singapore. In compliance

with the freezing order, the defendants also filed a list of their assets on 21 March 2014. Sums of money ranging from $30,000 to $45,000 were withdrawn by the defendants for payment of their legal fees in this action. Notice of these withdrawals was also given to the plaintiffs.

12 The defendants' previous lawyers who had written on 19 February 2013 to the plaintiffs' solicitors to say that they had just been instructed then wrote to the Registrar of the Supreme Court on 25 March 2014 in which it is clear that the Statement of Claim had been 'translated into Japanese'. At the same time, the defendants' previous solicitors wrote to the plaintiffs' solicitors to say that they wished to adjourn the pre-trial conference scheduled to take place the next day, 26 March 2014.

13 On 15 July 2014 the plaintiffs' solicitors enquired if the defendants' solicitors had instructions to accept service on behalf of their clients. The defendants' solicitors replied to say that they will seek their clients' instructions. On 16 July 2014 the solicitors for both parties appeared before the AR on the defendants' application to set aside the writ. Judgement was reserved till 23 July 2014. In the interim, the defendants' previous solicitors wrote to the plaintiffs' solicitors and for the first time, complained that the statement of claim had not been translated into English. On 23 July 2014 the AR allowed the defendants' application and set aside the writ and statement of claim.

14 On 4 August 2014 the defendants' appointed their present solicitors (JLC Advisors LLP) to take over from their previous solicitors (FocusLaw Corporation). Although the defendants changed solicitors, the lawyer who acted for them in FocusLaw Corporation remains the lawyer advising them in JLC Advisors LLP, namely, Mr Shem Khoo. Reviewing the exchange of correspondence written by Mr Shem Khoo on behalf of the defendants to the plaintiffs' solicitors, and the documented narrative of the events, I am satisfied that the defendants have not been prejudiced by the irregularity in service of process. They not only knew that process had been instituted against them in Singapore, but they were constantly advised by Singapore lawyers and cannot now say that the irregularity in service justified their application to set aside the process. From the documents, the defendants were given substantive advice not only in respect of the claim, but also on the freezing order – and what they could and could not do under that order.

15 Mr Shem Khoo, the defendants' lawyer, argued that the defendants were prejudiced as they could not understand English and therefore could not understand the court documents served on them, let alone know of and defend the case against them. There is no merit in this argument. The mere fact that the defendants themselves did not understand English is immaterial. As mentioned, the defendants were apprised of the proceedings in Singapore, took active steps in them, and had instructed their Singapore solicitors (who in turn advised the defendants on the proceedings in Singapore). Furthermore, the content of the Statement of Claim and affidavits accompanying the writ was already explained to the defendants in Japanese. The defendants' previous solicitors (FocusLaw Corporation) explained these documents to them using interpreters.

16 For the reasons above I allow the plaintiffs' appeal with costs here and below to the plaintiffs to be taxed if not agreed.

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