Bayerische Landesbank Girozentrale v Dato Azlan bin Hashim
[2002] SGHC 207

Case Number : Suit 1322/2001/C, RA 150/2002

Decision Date : 09 September 2002

Tribunal/Court : High Court

Coram : MPH Rubin J

Counsel Name(s) : Fan Kin Ning (William Lai & Alan Wong) for the plaintiffs/appellants; Alfred Tan (Alfred Tan & Co) for the defendant/respondent

Parties : Bayerische Landesbank Girozentrale — Dato Azlan bin Hashim

Civil Procedure – Judgments and orders – Entering of summary judgment for sum greater than that due – Application to amend judgment to reflect correct amount – Whether court has jurisdiction to amend judgment – O 20 r 11 Rules of Court – Sch 1 para 14 Supreme Court of Judicature Act (Cap 322, 1999 Ed)

Civil Procedure – Judgments and orders – Amendment – Judgment entered for sum greater than what was due – Jurisdiction of court to amend judgment – Whether jurisdiction existed – Rules of Court O 20, r 11 – Supreme Court of Judicature Act (Cap 322), First Schedule, para 14.

Facts

The plaintiff bankers applied for and obtained summary judgment against the defendant for a sum of US$416,049.11 and interest owing to them. It was later discovered that the defendants had remitted to the plaintiffs a sum of US$50,000 before the hearing for summary judgment, but due to an oversight on the part of the plaintiffs' loan recovery department, this receipt was not communicated to the plaintiffs' solicitors when he appeared in court to argue the summary judgment application. The defendant's counsel, who was also present at the hearing, did not inform the court of the payment. The plaintiffs applied to amend the judgment, contending that the judgment was signed for a sum in excess of what was due or owing to them. The deputy registrar disallowed the plaintiff's application on the basis that O 20, r 11 of the Rules of Court was inapplicable. The plaintiffs appealed.

Held

, allowing the appeal

(1) The court is empowered under O 20 r 11 to amend a judgment entered, when it is established that the slip or omission was accidental and that such an amendment was not to the disadvantage of the other party. Here the amendment was not to the disadvantage of the defendant/ respondent and he did not oppose the plaintiffs/ appellants' application (see 14).

(2) Paragraph 14 to the First Schedule to the Supreme Court of Judicature Act provides that the High Court shall have the 'powers to grant all reliefs and remedies at law and in equity'. These additional powers conferred on the High Court are a useful adjunct which the court may draw upon as necessary where it is just or equitable to do so (see 15).

(3) The plaintiffs/ appellants' explanation that the error was occasioned by an accidental lapse in communication, not at the time the claim was presented, but later when the application was in train, appeared to have considerable merit (see 15).

Case(s) referred to

Armitage v Parsons

[1908] 2 KB 410 (refd)

Law Ming Hing Richard v Bank Pembangunan Malaysia Bhd

[1994] 2 MLJ 323 (refd)

Navimprex Centrala Navala v George Moundreas & Co SA

[1983] 127 Sol J 392 (folld)

Philip Securities (Pte) v Yong Tet Miaw

[1988] 3 MLJ 61 (folld)

Legislation referred to

Rules of Court O 19 r 9, O 20 r 11

Rules of the Supreme Court [UK] O 20 r 11

Supreme Court of Judicature Act (Cap 322) First Schedule, para 14

Judgment

GROUNDS OF DECISION

The issue

1 The issue for determination in this registrar's appeal was whether the court has the jurisdiction to amend a judgment entered in favour of the plaintiffs, for an amount in excess of what was in fact due, upon the application of the plaintiffs themselves, owing to an admitted accidental error on their part.

Brief facts

2 The circumstances which gave rise to this appeal were as follows. The plaintiff bankers brought an action against the defendant for a sum of US$416,049.11 and interest owing to them, upon recall of facilities granted to the defendant. After appearance had been entered, the plaintiffs applied to the court for summary judgment on the ground that the defendant had no defence to the plaintiffs' claim. The application was heard by the assistant registrar on 15 February 2002; judgment was entered for the amount claimed and there was no appeal against that decision.

3 The matter did not, however, end there. It would seem that after the plaintiffs had applied to the court on 8 January 2002 for summary judgment but before it was heard on 15 February 2002, the defendant remitted to the plaintiffs a sum of US$50,000. Due to an oversight on the part of the plaintiffs' loan recovery department, this latest receipt was not communicated to the plaintiffs' solicitors when the latter appeared in court to argue the summary judgment application. The defendant's counsel, who was also present at the hearing, did not bring to the attention of the court of the latest payment. The upshot was that judgment entered on 15 February 2002 in favour of the plaintiffs was in excess of US$50,000 actually due and owing as of 15 February 2002. It must be presently observed, however, that on the date when the plaintiffs applied to the court ie on 8 January 2002 for summary judgment, the claimed amount was correct.

4 Admitting their oversight, the plaintiffs applied to the court to amend the judgment to reflect the correct amount due and owing as of

15 February 2002 from the defendant. The plaintiffs' assistant vice president and head of the loan recovery department averred in his supporting affidavit that the slip was due to an oversight on the part of his department; the present application for an amendment was to reflect the actual amount due from the defendant currently; and that the proposed amendment was to the benefit and advantage rather than to the detriment or prejudice of the defendant.

5 It is perhaps relevant at this stage to mention that, in the meantime, the defendant also applied to the court to set aside the judgment so entered and to stay the action, not on account of the irregularity based on the excess sum, but on other grounds which need not be particularised here. The deputy registrar, having heard arguments on 14 June 2002, found the application of the defendant to be unmeritorious and dismissed it. There was no further appeal on this matter from the defendant. The deputy registrar also, on the same date, disallowed the plaintiffs' application to amend the judgment. His minutes read: 'O 20, r 11 is inapplicable.'

Appeal: Arguments and conclusion

6 On appeal, it was contended on behalf of the plaintiff-appellants that the judgment entered was overstated by US$50,000 due to a clerical error and the court had the requisite powers and jurisdiction to amend it under O 20 r 11 of the Rules of Court which provides: 'Clerical mistakes in judgment or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the court by summons without an appeal.' Reliance was also based by counsel on a Singapore High Court decision (per Thean J) in ***Philip Securities (Pte) v Yong Tet Miaw*** [1988] 3 MLJ 61 which was followed in Malaysia in ***Lau Ming Hing Richard v Bank Pembangunan Malaysia Bhd*** [1994] 2 MLJ 323.

7 In ***Philip Securities***, the defendant applied to court to set aside a judgment in default of defence obtained by the plaintiffs contending that the judgment was signed for a sum greater than what was due to the plaintiffs. The plaintiffs, being alerted of the irregularity in the judgment entered, applied for an amendment to the judgment sum. Both applications were heard by the registrar, who, after disallowing the defendant's application to set aside the judgment, allowed the plaintiffs' application to amend the judgment. The defendant appealed to the High Court against the decision of the registrar.

8 In upholding the decision of the registrar, Thean J said at page 62:

> In my opinion, the learned registrar was plainly right in his decision. Where a judgment has been entered in default of defence for an amount in excess of that which is due, the court has jurisdiction to amend the judgment instead of setting it aside. Order 19 r 9 empowers the court to set aside or vary a judgment entered in default of pleadings, such as the judgment here, on such terms as the court thinks fit. In this case, the plaintiffs had inadvertently entered judgment for the whole amount claimed without giving credit for the sum of $6,328.44 representing the net proceeds from the sale of the shares received by the plaintiffs for the account of the defendant. In these circumstances, the learned registrar was entitled under this rule to amend the judgment by reducing the amount to $292,450.81.

9 Thean J further commented at page 62:

> It was argued on behalf of the plaintiffs, and I fully agreed that the amendment made by the learned registrar could also be supported and justified under O 20 r 11, and counsel cited in support *Armitage* v *Parsons*. In that case, a judgment was signed in default of appearance and due to an error the amount included in the judgment for costs exceeded by a few shillings the amount properly allowable for costs. The defendant applied to set aside the judgment on the ground of irregularity. On hearing the application, the district registrar refused to set it aside but amended it by reducing the amount accordingly. On appeal, the judge affirmed his order. On further appeal, the Court of Appeal dismissed it. In his judgment, Sir Gorell Barnes, President, said at p 415:

> In my opinion, O XXVIII r 11, which provided that 'clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the court or a judge on motion or summons without an appeal' enables us to deal with this case so as to do substantial justice.

Later, in conclusion, he said, at p 417:

> To my mind it is clear, as a matter of good sense and justice, that this was an accidental slip which under O XXVIII r 1 ought to be corrected, and that the whole judgment should not be set aside because of a mistake to the insignificant amount of 12s. I do not think that by so amending the judgment any of the rules or any principle of law is infringed. For these reasons I think that the appeal should be dismissed.

Very recently, the Court of Appeal in England in the case of *Navimprex Centrala Navala* v *George Moundreas & Co SA* held that under O 20 r 11 of the Rules of Supreme Court (which is in pari materia with O 20 r 11 here), the court had jurisdiction to correct mistake in the judgment which had arisen out of an accidental slip or omission made by the plaintiffs or their advisers. In that case, judgment in default entered against the defendants contained an error caused by the failure of the plaintiffs or their solicitors to inform the court of the two items of the claim totalling $63,400, which should have been excluded, and in consequence, the judgment sum exceeded the amount to which the plaintiffs were entitled. The defendants applied to have the judgment set aside and the plaintiffs applied to have it amended so as to exclude the two items and to reduce the judgment sum accordingly. Mustill J (as he then was) amended the judgment, which was for an amount of over $1,000,000, by reducing it by a sum of $63,400 under O 20 r 11. His decision was affirmed on appeal by the Court of Appeal.

10 The principles stated by Thean J was followed in ***Lau Ming Hing Richard***. In that case ***Chong Siew Fai J*** observed at page 332 (*supra*):

> In this regard, I venture to observe that the modern tendency of the courts seems to lean in favour of allowing amendment of a judgment debt to a lesser sum in cases of accidental slip or omission rather than setting aside the whole sum, where justice permits the former course to be adopted. See *Navimprex Centrala Navala v George Moundreas & Co SA*, showing that the power to correct clerical mistakes was extended to those made by a party or his advisers. See also *Philip Securities (Pte) v Yong Tet Miaw*. It may be noted that in those cases cited, the judgments were entered in default. In our instant case the order or judgment was entered by consent of the parties and hence is a stronger case for amendment.

11 It was contended by plaintiffs' counsel that the decision of the deputy registrar was against the comments and rulings made by Thean J in ***Philip Securities***. The issue before me revolved mainly around the construction of O 20 r 11 of the Rules of Court, and as to the court's powers and jurisdiction to amend the judgment entered for an amount in excess of sum actually due and owing due to an error.

12 Dealing with the scope and ambit of O 20 r 11 of the Rules of Court, the authors of ***Halsbury's Laws of England*** (reissue, 4th Edn) at

para 279 comment:

> … The court has power, on summons or motion and without an appeal, at any time to correct clerical mistakes in judgments or orders or errors arising in them from any accidental slip or omission. *What gives the court jurisdiction under this provision is that the slip or omission was accidental, and not due to a mistake or error of the court or a party or any misunderstanding*. The court may decline to correct its order or judgment under this provision, but undue delay is not itself a ground for doing so.
>
> In addition to this provision the court has an inherent jurisdiction to correct its own orders so as to give effect to its intention and to make its meaning plain. [Emphasis added.]

13 On the same subject, Prof Pinsler in his book ***Civil Procedure*** says at page 727:

> … After the judgment or order is perfected, amendments may only be made in relation to 'clerical errors', 'accidental slips' and 'omissions' (such as those which occur in the drawing up the judgment or order). The court also has the inherent power to correct errors to give clear expression to its intention in the judgment or order. The rationale is that the court is entitled to correct the record to make it consistent with the judgment or order which it obviously meant to pronounce. This is a matter of discretion which the court will not necessarily exercise if there is a likelihood that injustice might be caused thereby. The court has no power to correct substantive errors concerning the decision itself (ie 'a mistake of its own in law or otherwise') even if they are apparent on the face of the order. In these circumstances, the remedy would lie in the appeal process. …

14 Reverting to the appeal at hand, the facts in this case were not dissimilar to that in either ***Philip Securities*** or the English Court of Appeal decision in ***Navimprex Centrala Navala v George Moundreas & Co SA*** (1983) 127 Sol J 392 (per Ackner and Oliver LJJ, as they then were) referred to with approval by Thean J in ***Philip Securities***. I reaffirm the principles stated in both cases and say that the court is empowered under O 20 r 11 to amend a judgment entered, when it is established to its satisfaction that the slip or omission was accidental, as was the case herein, provided of course that such an amendment was not to the disadvantage of the other party which in this case was not even opposing the application.

15 Furthermore, I am of the view that para 14 to the First Schedule to the Supreme Court of Judicature Act provides that the High Court shall have the 'powers to grant all reliefs and remedies at law and in equity'. These additional powers conferred on the High Court are an useful adjunct which the court may draw upon as necessary when it is just or equitable to do so. These powers are to be exercised with utmost care to right wrongs and to offer redress to applicants with promptitude particularly when circumstances make it plain that resiling from the exercise of such powers would yield nothing but hardship and delay and profit none. In the case at hand, the plaintiffs' explanation that the error was occasioned by an accidental lapse in communication, not at the time the claim was presented, but later when the application was in train, and that they had moved swiftly to rectify the error to the advantage of the defendant, appeared to have considerable merit.

16 In the premises, for the reasons appearing herein, I allowed the plaintiff's appeal to amend the judgment so entered with no objection from the defendant.

Order accordingly.

Sgd:

MPH RUBIN

Judge