Swiss Singapore Overseas Enterprises Pte Ltd v Navalmar U.K. Ltd
[2003] SGHC 196

Case Number : Suit 1331/2002, RA 136/2003

Decision Date : 02 September 2003

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Joseph Tan Wee Kong (Kenneth Tan Partnership) for the appellant/defendant; R. Srivathsan and Subashini (Haridass Ho & Partners) for respondent/plaintiff

Parties : Swiss Singapore Overseas Enterprises Pte Ltd — Navalmar U.K. Ltd

1 This is an appeal against the order of the assistant registrar who dismissed the appellants' application for a stay of proceedings on the grounds of *forum non conveniens*. The respondents are the plaintiffs in this suit claiming US$494,453.31 or, alternatively, damages to be assessed by reason of the appellants' failure to issue switch bills of lading to the respondents as agreed. The High Court in Singapore made an order on 5 November 2002 directing the appellants to issue the bills. The appellants refused and applied for a stay of execution pending appeal to the Court of Appeal. The application for stay of execution was refused and the appellants appealed. The two appeals (including the appeal against the 5 November order) were eventually dismissed. In the meantime, however, the appellants gave notice to the respondents that they were claiming a lien over the cargo which was then on board the vessel in Madras, India. The respondents therefore applied, out of urgency, to the Madras High Court for the release of the cargo. The application was granted on the condition that security be provided. The order was varied as to the amount of security but otherwise upheld on appeal (by the appellants against the orders) to the Court of Appeal, and then the Supreme Court of India.

2 On 18 December 2002, which was about a month after the appellants' appeals to the Court of Appeal (in Singapore) were dismissed, the appellants gave notice to refer the dispute to arbitration, but no further steps were taken. Instead, on 17 February 2003 the High Court (Singapore) gave directions to the respondents to file and serve the statement of claim by 3 March 2003 and the appellants to file the defence by 17 March 2003, and the reply by respondents by 31 March 2003. Various other directions were also given. On 7 March 2003 the appellants consented to the respondents' application to amend the general indorsement to the writ and on 14 March 2003 the respondents filed and served the statement of claim.

3 The appellants now say that the present proceedings be stayed in favour of the proceedings in India. Mr Tan, counsel for the appellants argued that the claim for damages for refusal of delivery of cargo is the subject matter of the respondents' claim in Madras. He says that Indian law governs the refusal to deliver the cargo. Finally, he argued that the evidence in support of the respondents' claim is to be found in India and that there being little connection with Singapore, the respondents were therefore merely seeking a procedural advantage.

4 These present proceedings in Singapore were commenced on 1 November 2002. The main cause of action was a breach of contract in the failure by the appellants to issue switch bills of lading. The consequence of that was, *inter alia*, the inability of the cargo being discharged as contemplated. The issues relating to the cargo were part and parcel of the respondents' cause of action in these proceedings in which not only had the appellants entered appearance and submitted to jurisdiction, but was also contested on two interlocutory matters very substantially, all the way to the Court of Appeal. On the other hand, the action in India was commenced solely for the purposes

of releasing the cargo, which would otherwise have been stranded, pending the trial here. The matter in India is largely resolved save two subsidiary issues relating to load port demurrage and excess freight which the appellants are claiming but have not yet lodged a formal claim. In any event, those issues have little bearing on the present proceedings.

5 Mr Srivathsan submitted that the appellants had argued before the Madras High Court, when they were resisting the action there, that all disputes must be referred to arbitration in Singapore. This is set out in Pratap's first affidavit of 31 March 2003. Consequently, as stated above, the appellants commenced arbitration proceedings by giving notice but have not proceeded beyond that.

6 Against all the above, the appellants would wish to compel the respondents to continue the fight (commenced here) in India instead where the respondents may have great difficulty summoning their witnesses who are in Singapore. The trial in Singapore is also in all likelihood to begin much sooner than if the action was to be carried to India. Most importantly, nothing in the appellants' affidavits or Mr Tan's submissions had persuaded me that on the cause of action pleaded in this suit, India is the more appropriate forum. The law as encapsulated in *PT Hutan Dumas Raja v Yue Xio Enterprises (Holdings) Ltd* [2001] 2 SLR 49 is well known and I need not repeat them here. The factors enumerated in that case that I need to consider and have set out above, indicates strongly that the present proceedings ought to continue.

For the reasons above, the appeal was dismissed.