Baridhi Shipping Lines Ltd and Another v Sea Consortium Pte Ltd and Another [2002] SGHC 134

Case Number : Suit 756/2001, SIC 837/2002

Decision Date : 27 June 2002

Tribunal/Court : High Court

Coram : Lee Seiu Kin JC

Counsel Name(s) : Doris Chua And Chang Man Phing (Harry Elias Partnership) for the plaintiffs; Yang Ing Loong (Allen & Gledhill) for the defendants

Parties : Baridhi Shipping Lines Ltd; Anor — Sea Consortium Pte Ltd; Anor

Conflict of Laws – Natural forum – Stay of plaintiffs' action in Singapore – Stay of action as Bangladesh the more appropriate forum -Bangladeshi court ruling it has no jurisdiction to try plaintiffs' claim – Plaintiffs applying to lift stay – Applicable principles – Whether to lift stay

Judgment

GROUNDS OF DECISION

1 The first Plaintiff ("Baridhi") is a company registered in Bangladesh. At all material times it was, and still is, the agent in Bangladesh for Evergreen Marine Corporation (Taiwan) Ltd ("EMC"), a Taiwanese main line operator that manages and operates numerous vessels worldwide. As agent, Baridhi promotes and manages the business of EMC in Bangladesh, including securing shipping contracts for EMC.

2 The second Plaintiff ("HRC"), also a Bangladeshi company, is in the business of transporting cargo but on a smaller scale compared to EMC's operations. Its mode of operation is to contract with major lines, such as EMC, to transport cargo out of Bangladesh to another country where that cargo would be loaded into larger vessels belonging to EMC for carriage to the final destination. For cargo destined for Bangladesh, HRC would pick up such cargo from EMC vessels and convey them to Bangladeshi ports. HRC and operators like it are called "feeder operators".

3 The first Defendant ("SCPL") is a company registered in Singapore. It is a feeder operator like HRC and is its competitor in Bangladesh. The second Defendant ("Wong") is a director of SCPL. The Plaintiffs allege that in respect of the acts complained of, Wong had acted in the course of his employment or had done so for and on behalf of SCPL.

4 The Statement of Claim alleges that Wong had published an e-mail dated 6 April 2001 which contained words that are defamatory of the Plaintiffs. The e-mail was sent to, *inter alia*, officers of EMC in Taiwan, an officer of RTW Shipping (S) Pte Ltd which is the agent for EMC in Singapore, and the office of the agent of EMC in Sri Lanka. The Plaintiffs' claim is in damages, including special damages and exemplary damages. In 4 and 5 of the Statement of Claim the Plaintiffs explained the background to that e-mail in this manner:

> 4. The 1st Defendant was to have transported certain cargo out of Bangladesh for EMC. However, had it done so, it would have been in breach of the Bangladesh Flag Vessels (Protection) Shipping Ordinance, 1982 ("the Ordinance") construed together with the Notification dated 26 September 1982 in the Bangladesh Gazette. This was because being a foreign entity in Bangladesh, the 1st Defendant did not have the requisite waiver under the Ordinance. Hence the 1st Plaintiff arranged for the said cargo to be transported instead

> by the 2nd Plaintiff. Being owners and operators of Bangladeshi flag vessels, the 2nd Plaintiff did not and does not need to procure such a waiver.
>
> 5. When EMC queried why the said cargo was transported by the 2nd Plaintiff and not the 1st Defendant, the 1st Plaintiff explained in e-mails dated 16 March 2001 and 22 March 2001. However, the 2nd Defendant disagreed with the explanation in his e-mails dated 19 March 2001 and 6 April 2001.

5 The e-mail of 6 April 2001, in essence, stated that the issue of the legality of using SCPL to carry the cargo was just the pretext upon which Baridhi diverted cargo to HRC. Wong had alleged in the e-mail that the legislation in question was an outdated one which was originally enacted to protect the Bangladesh Shipping Corporation. He deposed that HRC, being a private shipping company was not the national line and it was not the intention of the legislation to protect such companies. However HRC and other private lines had been taking advantage of the legislation by putting undue pressure on the Director-General (Shipping) in Bangladesh to reject waivers for foreign vessels like those of SCPL. The e-mail ended in the following manner:

> HRC are going about on a malicious campaign, trying to get these age old rules implemented, which is totally against the principles of Modern day Trade and the Globalisation market.
>
> For your info, your agent in Bangladesh have a very Bad name in the market and their doings have in fact a negative image on themselves. If you study the movement of EMC bxs in the past few years, there is a drop. Martin, if you require to qualify our sources, pls check and confirm thru some independent sources about HRC's reputation in Bangladesh.
>
> …
>
> Please do not quote this message to HRC directly.

6 The Plaintiffs pleaded that the words in the e-mail, in their natural and ordinary meaning, meant and were understood to mean that:

> (a) Baridhi had lied to EMC and/or has distorted the truth in its explanation to EMC as to why SCPL was not engaged to transport the cargo in question;
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> (b) Baridhi was incompetent and inefficient and had a bad business reputation;
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> (c) HRC had lied to the Director-General (Shipping) or had distorted the truth about the legislation;
>
> (d) HRC had been dishonest, exploitative and had conducted its business in an improper manner.

7 The writ in this action was filed on 18 June 2001 and served on 20 June on the Defendants in Singapore. On 4 July 2001 the Defendants took out an application in SIC 1513/2001 to stay the action on the ground that Bangladesh is the more appropriate forum. Two supporting affidavits were filed by Lim Kin Seng ("Lim"), the legal officer of SCPL. He related the background to the dealings that SCPL had with Baridhi and HRC. SCPL had been operating feeder services in Bangladesh since 1989 and between 1995 and 2000, Baridhi was SCPL's agent in Bangladesh. However SCPL terminated this arrangement with effect from 15 April 2000 and appointed a new agent, Everbest Shipping Agencies Ltd ("Everbest"). SCPL believed that Baridhi began to allocate EMC cargo to HRC, which started feeder operations only in 1997. HRC had somehow persuaded the Director-General (Shipping) not to issue waiver certificates to foreign feeder operators such as SCPL. Without such certificates, a foreign operator of feeder services would be liable to punishment by a fine up to the value of the cargo. Lim stated that it was obvious that HRC had sought to eliminate competition by unfair means through the use of the said legislation. After taking legal advice in Bangladesh, SCPL, through its agent Everbest, commenced legal proceedings on 27 March 2001 in Bangladesh against the Director-General (Shipping) and others in Writ Petition No.992 of 2001. One of the remedies sought was a declaration that the Director-General was to refrain from refusing to grant waiver certificates under the influence of HRC. On 27 March 2001, the Bangladeshi High Court made an interim order that the Director-General was not to refuse any waiver for a period of two months. However on application by HRC on 8 May 2001, this order was stayed.

8 As to the e-mail in question, Lim deposed that EMC had, around September 2000 and pursuant to SCPL's request, instructed HRC to share out the cargo load for the Chittagong-Colombo sector in the proportion 60:40 in favour of SCPL. However despite this HRC continued blatantly to object to the issuance of waiver certificates by the Director-General (Shipping), and then cited the lack of a waiver as the excuse for not sharing out the cargo. Because of this, Martin Chen ("Chen") of EMC sent an e-mail on 4 April 2001 to EMC's agent in Singapore and Colombo instructing them to stop booking on HRC vessels until further notice. This e-mail was also sent to HRC for its comments. HRC responded on 5 April by e-mail to Chen, saying that it did not share out the cargo with SCPL because of the refusal of the Director-General to grant waivers. HRC claimed that it was for the protection of EMC's interests that it did not load on SCPL's vessels. Chen forwarded this e-mail to SCPL for its response, which it gave in the form of the offending e-mail of 6 April 2001.

9 The Defendants contend that the matter has little or no connection with Singapore because it was published here to only one person whereas it was also published in Taipei, Bangladesh and Sri Lanka. On the other hand, the matter had substantial connection with Bangladesh because:

> (a) the feeder route involved was the Chittagong-Colombo sector;
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> (b) the dispute concerns the interpretation of Bangaldeshi legislation;
>
> (c) there was litigation pending in Bangladesh in respect of the powers of the Director-General (Shipping) with regard to the legislation;
>
> (d) HRC is resident in Bangladesh and its reputation is mainly in Bangladesh;
>
> (e) evidence to prove justification of the statements in the e-mail would be more conveniently adduced in Bangladesh than Singapore.

RA 214/2001

10 The Defendants' application was heard by the Senior Assistant Registrar on 26 October 2001. He ruled in favour of the Defendants and stayed the present action. The Plaintiffs appealed against that decision in RA 214/2001. I heard the appeal on 17 January 2002 and dismissed it. However in the course of the appeal the Plaintiffs had produced the opinion of an expert on Bangladeshi law stating that the defamation action could not be maintained in Bangladesh. The Defendants disputed this and produced their own expert to depose to the contrary. However I note that the opinion is not expressed in unambiguous terms. It states as follows:

> The Code of Civil Procedure in force in Bangladesh provides any dispute including defamation will be adjudicated under the Jurisdiction of Bangladesh Courts irrespective of nationality. I have read paragraph 6 of the plaintiff's Statement of Claim in Suit No. 756/2001/E (the Singapore proceedings). The allegation is related to Bangladeshi laws and the alleged injury to the plaintiff is also within the territory of the Bangladesh. I think this subject matter of dispute should be determined in Bangladesh on consideration of relevant oral, documentary and circumstantial evidences which are all available in Bangladesh.

In view of this, I gave leave to the Plaintiffs to apply to lift the stay in the event that the Defendants challenge the jurisdiction of the Bangladeshi court or assert there that there is no cause of action in Bangladesh.

The Present Application: SIC 837/2002

11 The Plaintiffs took out the present application on 21 March 2002 to lift the stay in view of certain developments since their appeal was dismissed in January. These are set out in the affidavit of Foo Say Nong ("Foo") of 19 March 2002. He deposed that shortly after their appeal was dismissed on 17 January 2002, the Plaintiffs commenced an action in the Bangaldeshi court on 7 February. The Plaintiffs exhibited a copy of the plaint they had filed in the Court of the 5th Joint District Judge, Dhaka which named both the Defendants in the present action as defendants. The plaint is on substantially the same terms as the Statement of Claim in this action. However on 20 February the Joint District Judge of the 5th Court in Dhaka made the following order:

> This is a suit for defamation and damage. Suit valued at Tk. 10 Crore. Advelorem Court fee of Tk. 28,750/- paid with the plaint. Related documents photo-copies filed by the plaintiff as per firisti. It appears from the averment made in the plaint. That the cause of action arose in Singapore due to Publication of the e-mail on 6th April, 2001. The defendants are also the resident of Singapore and do not have any residence or asset in Bangladesh. So, the Court or any Court of Bangladesh do not have jurisdiction to proceed with or try with the case as per law. This suit is triable in Singapore under relevant law of Singapore.
>
> Hence, the plaint be returned to the plaintiffs through their learned lawyer for presentation before the proper Court of

jurisdiction in Singapore.

12 In view of the position taken by the 5th District Court of Dhaka, the Plaintiffs made this application to lift the stay ordered by the Senior Assistant Registrar on 26 October 2001 which I had affirmed on 17 January 2002.

13 The nub of the dispute is whether the e-mail of 6 April 2001 contains statements defamatory of the Plaintiffs, and if so, whether a defence of justification can be made out. As to the meaning of the words complained of, there is no difference whether the suit is heard in Singapore or Bangladesh. On the question of damages, the main recipients concerned are the officers of EMC in Taiwan, of RTW Shipping (S) Pte Ltd in Singapore, and EMC's office in Sri Lanka. Hence on that point, Bangladesh has no significant advantage over Singapore. Counsel for the Defendants had stated that the defences available were justification and qualified privilege. It was on the defence of justification that substantial advantage could be derived from having the action heard in Bangladesh as there were issues relating to Bangladeshi legislation, in particular whether the ordinance in question was applicable to HRC. The Plaintiffs pointed out that SCPL had taken out proceedings in the Bangladesh High Court against the Director-General (Shipping) which decision would resolve that issue. In determining the appeal, I was of the view that Bangladesh would be the more appropriate forum as a question of Bangladeshi law would require to be determined. For that reason I dismissed the Plaintiffs' appeal against the stay granted by the Senior Assistant Registrar on 26 October 2001.

14 However, the Plaintiffs are now faced with a ruling of the Bangladeshi court which states that they have no cause of action against the Defendants in Bangladesh. Counsel for the Defendants pointed out that the Defendants took no steps to oppose or challenge jurisdiction. That may be true but the fact remains that it is a decision of the Bangladeshi court. The Plaintiffs had in their first application for stay adduced evidence to the effect that they had no cause of action in Bangladesh. This was by way of an opinion from their Bangladeshi counsel. However this was contradicted by the Defendants' expert and I had considered that the Plaintiffs had not proved their assertion on this point. Now the Plaintiffs have a clear ruling by the Bangladeshi court that they had no cause of action in Bangladesh. To my query, counsel for the Defendants was unable to say that there was any evidence of fraud. The plaint exhibited appears to show substantially what is in the Statement of Claim in the present action. On the evidence before me, I am satisfied that the Plaintiffs have proved that they have no cause of action in Bangladesh.

15 Simply put, the Plaintiffs' case is that not only is Bangladesh not the more appropriate forum, it is not even a possible forum. It is the Defendants who have to satisfy the court that Bangladesh is the more appropriate forum. In *Oriental Insurance Co Ltd v Bhavani Stores Pte Ltd* [1998] 1 SLR 253 the plaintiff was a trading company based in Singapore and the defendants were an Indian insurance company with a registered office in Singapore. The Court of Appeal held at 22 that:

> … where a Singapore court has jurisdiction as of right, it must be convinced that the foreign court is so clearly and distinctly more appropriate that it would justify the court's decision to deny the plaintiffs their day in a Singapore court.

In the present case the Plaintiffs have commenced proceedings in Singapore and have properly served the writ on the Defendants here. The Bangladeshi court has decided that it has no jurisdiction. The burden rests on the Defendants to show that Bangladesh is the more appropriate forum. On the evidence before me, they have clearly not done so.

Sgd:

LEE SEIU KIN

JUDICIAL COMMISSIONER

SUPREME COURT