Yugiantoro v Budiono Widodo
[2001] SGHC 349

Case Number : Suit 573/2001/P, RA 143/2001/P

Decision Date : 20 November 2001

Tribunal/Court : High Court

Coram : Tan Lee Meng J

Counsel Name(s) : Sivakumar Murugaiyan (Colin Ng & Partners) for the appellant/defendant; Daniel Koh (Engelin Teh & Partners) for the respondent/plaintiff

Parties : Yugiantoro — Budiono Widodo

Judgment

GROUNDS OF DECISION

1. The appellant, Mr Budiono Widodo, who was sued by the respondent, Mr Yugiantoro, asserted that the action in Singapore should be stayed on the ground that Indonesia is a more appropriate forum for the suit. The Assistant Registrar refused to stay the said proceedings. I dismissed the defendants appeal against the Assistant Registrars decision and now give my reasons for having done so.

Background

2. Mr Yugiantoro, an Indonesian citizen, claimed that on or about January or February 1997, he and Mr Widodo entered into an oral agreement in Singapore at the latters office at Manhattan House, Chin Swee Road, regarding the sale and purchase of shares in a Hong Kong company. He alleged that under this agreement, he agreed to purchase approximately US$2m worth of Pacific Plywood Holdings Ltd (hereinafter referred to as "Pacific") shares. He further alleged that in return for his undertaking not to sell the said shares for one year, Mr Widodo, the chairman of Pacific, agreed to indemnify him for any loss arising from a fall in the value of the shares at the end of the said period of one year.

3. Mr Yugiantoro asserted that the Pacific shares which he purchased were worthless one year later. As such, he contended that Mr Widodo was obliged to pay him US$2m. When Mr Widodo did not pay him the sum claimed, Mr Yugiantoro initiated the present action.

4. Mr Widodo, who contended that he did not enter into the alleged indemnity arrangement, asserted that the dispute between him and Mr Yugiantoro should be resolved in the Indonesian courts. His application to have the action stayed on the ground that Indonesia is a more appropriate forum was dismissed by the Assistant Registrar on 11 July 2001.

Applicable legal principles

5. The principles applicable to the granting of a stay where the question of forum non conveniens arises are well-known and have been considered by the Court of Appeal on numerous occasions. In *Oriental Insurance Co Ltd v Bhavani Stores Pte Ltd* [1998] 1 SLR 253, 257, Yong Pung How CJ said:

> The principles governing this matter are clear and established. The approach suggested by Lord Goff in *The Spiliada* [1987] 1 Lloyds Rep 1 has since been approved and applied by the Court of Appeal in *Brinkerhoff Maritime Drilling Corp*

& Anor v PT Airfast Services Indonesia and another appeal [1992] 2 SLR 776. We set out the relevant passages from the judgment of Lord Goff:

> In my opinion, the burden resting on the defendant is not just to show that England is not the natural or appropriate forum for the trial, but to establish that there is another available forum which is clearly or distinctly more appropriate than the English forum. In this way, proper regard is paid to the fact that jurisdiction has been founded as of right.
>
> Since the question is whether there exists some other forum which is clearly more appropriate for the trial of the action, the court will look first to see what factors there are which point in the direction of another forum and these will include not only factors affecting convenience or expense (such as availability of witnesses), but also other factors such as the law governing the relevant transaction and the places where the parties respectively reside or carry on business.
>
> If the court concludes at that stage that there is no other available forum which is clearly more appropriate for the trial of the action, it will ordinarily refuse a stay.
>
> If however the court concludes at that stage that there is some other available forum which prima facie is clearly more appropriate for the trial of the action, it will ordinarily grant a stay unless there are circumstances by reason of which justice requires that a stay should nevertheless not be granted.

Whether Indonesia is a more appropriate forum

6. A defendant who seeks a stay of proceedings on the ground that there is a more appropriate forum elsewhere has the task of satisfying the court that the other forum is a more appropriate forum.

7. In his written submissions, Mr Widodos counsel, Mr Sivakumar Murugaiyan, asserted as follows:

> It is the Defendants case that all the connecting factors of the present dispute lie in Indonesia and not in Singapore.
>
> (a) Both the Plaintiff and the Defendant are citizens of and are domiciled in Indonesia.
>
> (b) Both the Plaintiff and the Defendant have assets in Indonesia.
>
> (c) All the conversations regarding the shares took place in Indonesia.
>
> (d) Indonesian law would govern any alleged oral guarantee/indemnity agreement

(which existence is denied).

8. In contrast, Mr Yugiantoros counsel, Mr Daniel Koh, submitted that Singapore is the appropriate forum for the action. He said that the following ought to be noted:

> (a) Mr Yugiantoro owns residential property in Singapore and his three children live and study in Singapore.
>
> (b) Mr Widodo has residential property in Singapore and he has received correspondence sent to him at his apartment in Beverly Hills Condominium, Grange Road, Singapore.
>
> (c) Mr Widodo is a director and a shareholder of a number of Singapore companies.
>
> (d) The only action in relation to the matter being disputed is the one in Singapore.

9. If only the place of residence and location of assets are considered, Indonesia is not necessarily a more appropriate forum. Admittedly, both Mr Yugiantoro and Mr Widodo are Indonesian citizens but they both have homes, assets and business interests in Singapore as well. Indeed, the agreement which gave rise to the present action was alleged to have been made in Mr Widodos Singapore office in Chin Swee Road.

10. As for the availability of witnesses and evidence, it was not asserted that a trial in Singapore will be inconvenient for Mr Widodos witnesses or that relevant evidence is unavailable in Singapore.

11. As for Mr Sivakumars submission that the action should be tried in Indonesia because Indonesian law is the proper law of the contract and complicated issues under Indonesian law regarding the validity of an indemnity without the consent of a spouse are involved, Mr Koh pointed out that this assertion is misguided since Mr Widodos position is that he did not enter into the alleged agreement with Mr Yugiantoro. That being the case, it would be illogical for him to speak of any governing law, be it Indonesian or otherwise.

12. If the alleged oral contract was made, it certainly did not deal with the question of the proper law of the contract. In the circumstances of this case, it would not be meaningful to try and determine whether or not any inference may be drawn regarding the intention of the parties on the choice of law. It would be more productive to determine whether or not the alleged agreement has, as Mr Widodo asserted, the closest and most real connection with Indonesian law. In *Las Vegas Hilton Corporation t/a Las Vegas Hilton v Khoo Teng Hock Sunny* [1997] 1 SLR 341, 351, Chao Hick Tin J, as he then was, noted as follows:

> To determine the question of closest and most real connection many factors may be taken into account, the main ones are the place of contracting, the place of performance, the places of residence or business of the parties respectively; and the nature and subject-matter of the contract: see *Re United Railways of Havana and Regla Warehouses Ltd* [1960] Ch 52 at 91 per Jenkins LJ.

13. As has been mentioned, Mr Yugiantoro alleged that his contract with Mr Widodo was made in Singapore and both the parties have homes and business interests in Singapore as well as Indonesia. Mr Sivakumar asserted that there being no real evidence as to what is the proper law of the contract,

the factor which carries more weight in the circumstances of this case is the lex loci solutionis of the contract. He contended that Indonesia is the place for the performance of the guarantee because demands for payment were first sent to Mr Widodos Indonesian address. He added that the fact that Mr Yugiantoro had made various attempts to enforce the alleged oral guarantee in Indonesia indicated that he intended and expected that the alleged oral guarantee would be performed in Indonesia. He also pointed out that the letters of demand were written in Bahasa Indonesia.

14. Mr Koh submitted that the fact that his client had sent letters of demand to Mr Widodo in Indonesia is a neutral factor. He pointed out that proceedings have not been commenced against Mr Widodo in Indonesia and his client had written twice to Mr Widodo in Singapore, once personally and once through his lawyers, to demand payment of the amount allegedly owed to him. Mr Yugiantoro stated that he had initially tried to resolve the dispute by asking a close business associate in Indonesia to engage solicitors in Indonesia to write some letters to Mr Widodo. When Mr Widodo did not respond, he related the facts in full to his Singapore solicitors, and upon their advice that Singapore was the appropriate forum, he gave instructions for an action to be commenced without further delay.

15. Mr Koh also said that the fact that his clients letters to Mr Widodo in Indonesia were written in Bahasa Indonesia cannot be regarded as an indicator that the proper law of the contract is Indonesian law. This is because his client is fluent in Bahasa Indonesia. In fact, his affidavit in the present proceedings is a sworn translation of its contents in Bahasa Indonesia.

16. If all circumstances are taken into account, it cannot be said that Mr Widodo has established that Indonesia is the place of performance of the alleged oral contract or that the alleged contract between him and Mr Yugiantoro has the closest and most real connection with Indonesian law.

17. As for Mr Sivakumars argument that it would be more appropriate for the courts in Indonesia to deal with the complex issues under Indonesian law regarding the furnishing of a guarantee without spousal consent, it must be borne in mind that the relevant question to be determined in this case is not whether or not complex issues under Indonesian law are involved but whether or not Indonesian law is, in the first place, applicable to the alleged oral contract between Mr Widodo and Mr Yugiantoro. The fact that Indonesian law on spousal consent for guarantees is complicated cannot, by itself, be a reason for holding that the alleged contract between Mr Yugiantoro and Mr Widodo is governed by Indonesian law.

18. Mr Sivakumar referred to the decision of the Court of Appeal in *Bambang Sutrisno v Bali International Finance Ltd & Ors* [1999] 3 SLR 140, where the Court of Appeal stayed an action with respect to the enforcement of a guarantee executed in Singapore by the appellant, an Indonesian and a Singapore permanent resident, on the ground that the Indonesian court was a more appropriate forum. However, that case is distinguishable from the present case. In *Bambangs* case, the parties agreed in the contract of guarantee that Indonesian law was the proper law of the contract. Furthermore, the appellant was obliged under the contract to submit to the non-exclusive jurisdiction of the District Court of Central Jakarta, or other courts in Indonesia, as determined by the respondents. It was also noted that the appellants wife had instituted proceedings in the West Jakarta District Court for the purpose of annulling the guarantee and indemnity executed by the appellant on the ground that she had not consented to the execution of that instrument. The Court of Appeal, which noted that there were difficult issues relating to spousal consent to guarantees under Indonesian law, accepted that although the jurisdiction clause was, by its express terms, non-exclusive, some weight must be accorded to the selection of the Indonesian court as the forum for the determination of the dispute relating to the personal guarantee. In the light of these circumstances, the Court of Appeal thought that "the appellant had shown exceptional circumstances

amounting to strong cause for a stay of the action" and that the Indonesian court was clearly more appropriate than the Singapore forum for the trial of the action. In contrast, in the present case, it was not established that the proper law of the alleged contract between Mr Widodo and Mr Yugiantoro is Indonesian law and the main thrust of Mr Widodos defence is that he did not enter into any contract to indemnify Mr Yugiantoro.

Conclusion

19. As Mr Widodo did not establish that Indonesia is a more appropriate forum for the action, his appeal against the Assistant Registrars decision was dismissed with costs.

Sgd:

TAN LEE MENG
JUDGE