Lee Kuan Yew v Joshua Benjamin Jeyaretnam
[2001] SGHC 52

Case Number	: Suit 224/1997
Decision Date	: 20 March 2001
Tribunal/Court	: High Court
Coram	: Lai Siu Chiu J
Counsel Name(s)	: Davinder Singh SC with Hri Kumar (Drew & Napier) for the plaintiff; The defendant (in person)
Parties	: Lee Kuan Yew — Joshua Benjamin Jeyaretnam

JUDGMENT:

Grounds of Decision

The background

1. The defendant applied in person by summons in chambers entered no. 604770 of 2000 (the defendant's application) on 22 December 2000 to strike out this action for want of prosecution. The defendant's application was dismissed by James Leong the Senior Assistant Registrar (SAR) on 19 January 2001. The defendant appealed against the decision of the SAR in Registrar's Appeal no. 600021 of 2001 (the appeal). I heard and dismissed, the appeal on 13 February 2001. The defendant has now filed a notice of appeal (in Civil Appeal no. 600023 of 2001) against my decision.

The facts

2. The plaintiff in this action is the Senior Minister in the Prime Minister's Office and a Cabinet Minister of the Government of Singapore. He was the former Prime Minister of Singapore. The defendant is and was at the material time, the Secretary-General of the Workers' Party; he was (until April 2000) also an advocate and solicitor of the Supreme Court of Singapore.

3. The plaintiff sued the defendant for defamation arising out of certain remarks made by the defendant at an election rally of the Workers' Party held on 1 January 1997 (the election rally), which was the eve of polling day for the 1997 general elections. The defendant, together with one Tang Liang Hong (Tang) and three (3) other members of the Workers' Party, contested the electoral constituency of Cheng San GRC in the 1997 elections, against a team of five (5) candidates from the People's Action Party (PAP).

4. In addition to this action, the defendant was sued for defamation (over the speeches he made at the election rally) by various government leaders in seven (7) other suits (the other suits); these included the Prime Minister, some Cabinet Ministers, Members of Parliament and the PAP candidates who contested the 1997 elections. The plaintiff as well as the plaintiffs in the other suits, agreed to be bound by the outcome of the Prime Minister's case against the defendant in Suit No. 225 of 1997 (the Main Suit). The Main Suit, this action and the other suits were set down for trial on or about 9 June 1997. Trial dates were fixed for 18 August to 2 September 1997. By an Order of Court dated 18 July 1997, it was ordered that the Main Suit should be heard first.

5. The Main Suit was tried between 18 and 22 August 1997 before Rajendran J. At the close of the trial, counsel for the plaintiff (as well as for the plaintiffs in the other suits) informed Rajendran J who recorded it at para 201 in his judgment (see *Goh Chok Tong v Jeyaretnam Joshua Benjamin* [1998] 1 SLR 547 at p 605) that the ten (10) plaintiffs agreed to be bound by his findings on the meaning of the words alleged to be defamatory; the defendant did not state his stand on the issue. In September 1997, Rajendran J delivered his judgment; the Prime Minister appealed (in Civil Appeal No. 205 of 1997) and the defendant cross-appealed (in Civil Appeal No. 218 of 1997) against his decision. Both appeals were heard in April 1998 and judgment was

reserved. On 17 July 1998, the Court of Appeal allowed the Prime Minister's appeal but dismissed the defendant's cross-appeal (see *Goh Chok Tong v Jeyaretnam Joshua Benjamin* [1998] 3 SLR 337).

6. On 14 December 2000, the plaintiff applied by notice for further directions no. 604665 of 2000 (the plaintiff's application) under Order 14 r 12 of the Rules of Court for a determination of the natural, ordinary and innuendo meanings of the defamatory words set out in para 17 of the statement of claim in this suit. Paragraph 17 of the statement of claim reads as follows:

> The defendant was the last to speak at the Rally. While the defendant was speaking, Tang was seen walking up to him and whispering to him. Shortly thereafter, and as the defendant was ending his speech, he held up the said police reports or document(s) purporting to be the said police reports, and spoke the following (underlined) defamatory words ("the Words") of and concerning, inter alia, the plaintiff to a highly charged audience:-
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> 'We don't want any complaint from the police, but it's important, my friends -- I am glad you are listening quietly, that you leave quietly, but please win this battle for yourself and not for the Workers' Party, and finally, Mr Tang Liang Hong has just placed before me two reports he has made to the police against, you know, Mr Goh Chok Tong and his team. But just remember, have one thing on your mind, one purpose, one will -- that it is not for Mr Tang Liang Hong or for me, or for the Workers' Party that you are voting. You are voting for yourself".

7. In *Goh Chok Tong v Jeyaretnam Joshua Benjamin* [1998] 3 SLR 337, the Court of Appeal had found that the Words, in their natural and ordinary meaning, meant and were understood to mean:

> *Mr Tang being a lawyer and a politician, having avowed to protect his reputation and integrity had taken a serious step and made police reports against Mr Goh and that it would be likely that the police would investigate into some wrongdoings alleged in the reports on the part of Mr Goh.*

and by innuendo that:

> *Mr Goh had done something seriously wrong in launching the attacks against Mr Tang and that Mr Goh would be likely to be investigated for the offence or offences alleged in the reports*

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8. In his affidavit filed in support of the plaintiff's application, Hri Kumar of the plaintiff's solicitors exhibited a letter dated 7 December 2000, which his firm had written to the defendant's then solicitors G Krishnan & Co; it contained the following paragraphs:-

> Please confirm that your client agrees that the defamatory meanings found by the Court of Appeal in Civil Appeals Nos. 205 and 218 of 1997 shall apply to our client's action in Suit No. 224 of 1997.
>
> Please let us hear from you before 5.00 pm on 12 December 2000.

9. By way of a reply to the above letter, the plaintiff's solicitors were extended a copy of, G Krishnan & Co's letter to M/s Leo Fernando dated 7 December 2000 requesting the latter *to file the appropriate Notice of Change of Solicitors and take over the matter* However, as at 14 December 2000 when the plaintiff's application was filed, no response was received from M/s Leo

Fernando; neither did the firm file a Notice of Change of Solicitors.

10. On 16 December 2000, G Krishnan & Co applied to court to discharge themselves from further acting for the defendant; their application was granted on 20 December 2000.

11. On the same day (19 January 2001) that he dismissed the defendant's application, the SAR granted the plaintiff's application; the defendant did not appeal against the latter decision. On that day too, the defendant was adjudged a bankrupt in Bankruptcy No. 2491 of 2000. His appeal against the bankruptcy order was dismissed on 7 February 2001.

The submissions

12. At the hearings before me and the SAR, the defendant submitted that the plaintiff (and those in the other suits) had done nothing for three (3) years since, the allocation of trial dates and Rajendran J's judgment in the Main Suit in September 1997; the Court of Appeal had delivered judgment in the appeals arising therefrom more than 2 years ago. There had therefore been an inordinate, unexplained delay and it would be unjust to allow this and the other suits to proceed. Further, the plaintiff's application had failed to comply with O 3 r 5 of the Rules of Court (the Rules) in that, neither he nor his former solicitors were given the requisite notice of intention to proceed.

13. Although he conceded that O 3 r 5 of the Rules had been repealed (on 15 December 1999), the defendant contended that nonetheless his right to such a notice had accrued by reason of s 16(1)(c) of the Interpretation Act (Cap 1) and the repeal did not alter or affect his right to be given the notice. The defendant also relied on s 18 of the Interpretation Act.

14. Before proceeding further, it would be appropriate at this juncture to set out the two sections of the Interpretation Act referred to by the defendant. Section 16(1)(c) states:

> Where a written law repeals in whole or in part any other written law, then, unless the contrary intention appears, the repeal shall not
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> > (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any written law so repealed.

while s 18 reads as follows:-

> The expiration of a written law shall not affect any civil or criminal proceeding previously commenced under such written law, but every such proceeding may be continued and everything in relation thereto may be done in all respects as if the written law continued in force.

15. In his submissions, counsel for the plaintiff relied on O 21 r 2(6) of the Rules; rule 2 reads as follows:-

> (6) Subject to paragraph (6A), if no party to an action or a cause or matter has, for more than one year (or such extended period as the Court may allow under paragraph (6B), taken any step or proceeding in the action, cause or matter that appears from the records maintained by the Court, the action is deemed to have been discontinued.
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> (6A) Paragraph (6) shall not apply where the action, cause or matter has been stayed pursuant to an order of court.
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> (6B) The Court may, on an application by any party made before the one year

> referred to in paragraph (6) has elapsed, extend the time to such extent as it may think fit.
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> (7) Paragraph (6) shall apply to an action, a cause or matter, whether it commenced before, on or after 15th December 1999, but where the last proceeding in the action, cause or matter took place before 1st January 2000, the period of one year shall only begin on 1st January 2000.

16. I note that Rules 2(6) to (6B) above came into effect on 1 January 2001 while rule 2(7) was introduced on 15 December 1999, the day that O 3 r 5 was repealed. Counsel for the plaintiff submitted that the latter rule did not exist as at the date of the plaintiff's application (14 December 2000) so as to warrant compliance. Whether the last proceeding in this action was the act of setting down the action for trial (on 9 June 1997) or, the judgment of the Court of Appeal on 17 July 1998, the fact remained that under O 21 r 2(7) of the Rules, the period of one year only began on 1 January 2000. As the plaintiff's application was filed before 31 December 2000, this action was not deemed to be discontinued under O 21 rule 2(6). Indeed, had the defendant responded to his firm's letter dated 7 December 2000, counsel for the plaintiff indicated that he would not have filed the plaintiff's application. When I inquired of the defendant why he did not respond to that letter, the defendant said he ignored it because it should have been obvious to 'them' [the plaintiff and the plaintiffs in the other suits] that all they had to do was to amend their statements of claim to bring their pleadings in line with the appellate court's ruling.

The law

17. I turn now to the law governing an application to strike out an action for want of prosecution. I start by referring to the Court of Appeal decision in *Wee Siew Noi v Lee Mun Tuck* [1993] 2 SLR 232, cited by the defendant.

18. In that case, the plaintiff was the administrator of the estate of his brother (Lee) who died in an accident on 25 July 1979 while riding as a passenger in a motorcar driven by the first defendant. The plaintiff took out a writ on 20 July 1982 against the first defendant and her employer (the second defendant), claiming damages on behalf of Lee's estate, under the Civil Law Act. The second defendant applied on 2 May 1990, well after the limitation period had expired, to strike out the plaintiff's claim for want of prosecution. His application was dismissed by the court below whereupon he appealed. The appellate court dismissed the second defendant's appeal. In so doing, it followed the principles enunciated by Lord Diplock in *Allen v Sir Alfred McAlpine & Sons Ltd* [1968] 2 WLR 366 (at p 383) and again in the House of Lords in *Birkett v James* [1978] AC 297. Warren Khoo J (at p 235) held that an order dismissing an action for want of prosecution being a draconian one, it will not be lightly made unless the court is satisfied:-

> (1) that the default has been intentional and contumelious such as, disobedience to a peremptory order of the court or conduct amounting to an abuse of the process of the court; or
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> (2)(a) that there has been inordinate and inexcusable delay on the part of the plaintiff or his lawyers, and
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> (b) that such delay will give rise to a substantial risk that it is not possible to have a fair trial of the issues in the action or, is such as is likely to cause or to have caused serious prejudice to the defendant either as between themselves and the plaintiff or between each other or between them and a third party.

19. The defendant did touch on the issue of inordinate and unexplained delay; however this is only the first part of the two limbs set out in test (2) above, and both limbs are to be read conjunctively. In the affidavit filed in support of the defendant's

application, the question of prejudice was not raised by the defendant at all. Before me however, the defendant complained that he had suffered serious prejudice due to the delay because he had lost the services of George Carman QC who had previously been admitted for this action but had passed away late last year; the Queen's Counsel had also defended the defendant in the Main Suit. Counsel for the plaintiff countered that there was nothing in the defendant's affidavit to suggest that he cannot find another counsel to replace George Carman. On the contrary counsel pointed out, the defendant had told the SAR that he had two (2) other defences since the resolution of the Main Suit; therefore the defendant's position had actually improved in the interval.

20. Counsel for the plaintiff cited *QCD (M) Sdn Bhd (in liquidation) v Wah Nam Plastic Industry Pte Ltd* [1999] 2 SLR 381 for his argument that mere delay was not an abuse of process. In that case, Prakash J similarly had to decide an appeal from the Registrar's decision to strike out an action for want of prosecution on the part of the plaintiff. Like this action, the limitation period for the plaintiff's claim in that case had not yet set in. In allowing the plaintiff's appeal, Prakash J adopted the principles in *Birkett v James* (supra) and further held:-

> a. the courts had, in addition to the grounds recognised in *Birkett v James* established that abuse of process, involving wholesale disregard of the rules of court, was an additional ground for striking out an action (following *Arbuthnot Latham Bank v Trafalgar Holdings* [1998] 2 AER 181);
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> b. the plaintiff's conduct could not be characterised as contumelious which word imports an element of scorn and flagrant disregard of court procedures.
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> c. It would serve no purpose to strike out the action where the plaintiff could immediately start a new one;
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> d. The plaintiff had not disobeyed any court order, and there was no evidence that the plaintiff had no genuine intention of prosecuting the action to its conclusion.

21. I associate myself fully with Prakash J's holdings which are equally applicable to this action. There was no complaint by the defendant that the plaintiff had been guilty of intentional and contumelious default in that the plaintiff had disobeyed any order of court which would amount to an abuse of the process of court. Certainly, the court files do not show that the plaintiff had failed to comply with any direction/order of court or, that he did not intend to prosecute this action to its conclusion. Indeed, no further steps needed to be taken or could be taken by the plaintiff except to go to trial. In that regard, I was informed by counsel for the plaintiff that the Registrar had fixed a pre-trial conference on 22 February 2001 for the taking of trial dates. It would also serve no purpose to strike out this action as, there was nothing to stop the plaintiff from instituting a fresh suit; the limitation period for the plaintiff's claim would only set in on 31 December 2002 as publication of the Words complained of took place on 1 January 1997. When this fact was pointed out to the defendant, his less than satisfactory response was, that it was open to question whether the plaintiff can have a multiplicity of actions. The defendant had also failed to convince me that he had suffered prejudice let alone serious prejudice, by the delay. The fact that the defendant could no longer avail himself of the services of the late George Carman did not mean that he could not be assured of a fair trial. The defendant can always intruct another counsel or comparable Queens Counsel as the case may be, to represent him.

22. I turn next to the defendant's complaint that he was not served a notice of intention to proceed, under O 3 r 5 of the Rules. I dismissed that argument as completely unmeritorious since that provision was repealed on 15 December 1999. In this regard, s 18 of the Interpretation Act cannot assist the defendant. In view of my earlier observation that O 3 r 5 was replaced immediately by O 21 r 2(7), s 16 of the same Act does not apply because of the words *unless the contrary intention appears*, in that section. As O 3 r 5 was diametrically opposite to O 21 r 2(7), it cannot co-exist with the latter rule. Consequently, there is no question of the defendant's 'accrued' rights being preserved when the latter rule came into operation simultaneously with the repeal of O 3 r 5.

23. I had in para 11 above made mention of the defendant's bankruptcy. I need to digress at this stage to refer to those proceedings in some detail. The genesis of Bankruptcy No. 2491 of 2000 was Suit No. 2308 of 1995 (the 1995 Suit) where eleven (11) persons sued the defendant (and three other parties including the Workers' Party) for defamation. From the court records of Bankruptcy No. 2491 of 2000, I note that the 1995 suit was tried over several days in September-October 1997 and again in April and November, 1998. On 30 November 1998, the court awarded judgement and damages to the plaintiffs (save for the 10th plaintiff whose claim was dismissed).

24. In Civil Appeal No. 315 of 1998, three (of the four) defendants in the 1995 Suit (including the defendant) appealed against Justice Goh Joon Seng's decision. The appeal was heard in April and dismissed in May, 1999 by the Court of Appeal (see *A Balakrishnan & Ors v Nirumalan Pillay* [1999] 3 SLR 22). The 9th plaintiff (Indra Krishnan) in the 1995 Suit was the petitioner in Bankruptcy No. 2491 of 2000. She was awarded damages assessed at $25,000 against the defendant, the Workers' Party and another party; her judgment sum was not satisfied, hence the bankruptcy proceedings.

25. Looking at the trial dates for the 1995 Suit, it was part-heard in the two (2) months following the hearing of the Main Suit before Rajendran J and again in April 1998, just before the Court of Appeal heard the defendant's cross-appeal and the Prime Minister's appeal against Rajendran J's decision. Indeed, the defendant was fully occupied with the 1995 Suit until 21 April 1999 when his appeal against Goh J's decision was heard. Consequently, one would have thought that the defendant would have been thankful to have had some respite between trials of and appeals from, the Main Suit and the 1995 Suit, instead of complaining that this action and the other suits had not come on for trial.

26. As the defendant's application did not pass the tests enunciated in *Allen v Sir Alfred McAlpine & Sons* Ltd and restated in *Wee Siew Noi v Lee Mun Tuck*, I dismissed the appeal therefrom.

Lai Siu Chiu

Judge