

Lai Swee Lin Linda v Attorney-General
[2008] SGHC 17

Case Number : Suit 995/2004
Decision Date : 31 January 2008
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : The plaintiff/appellant in person; Leong Kwang Ian (Attorney-General's Chambers) for defendant/respondent
Parties : Lai Swee Lin Linda — Attorney-General

Civil Procedure – Discontinuance – Whether letters relating to request for further arguments considered a step or proceeding – Order 21 r 2(6) Rules of Court (Cap 322, R 5, 2004 Rev Ed)

31 January 2008

Tay Yong Kwang J:

The application

1 The plaintiff acts in person in these proceedings. She is a legally trained person. In RA No. 61 of 2007, she appealed against the decision of Assistant Registrar Kenneth Yap who had ordered her amended Statement of Claim in this action to be expunged from the court records because the action was deemed discontinued under O 21 r 2(6) of the Rules of Court (Cap 322, R 5). The assistant registrar also directed her to file an application to reinstate the action, failing which no further document was to be accepted by the registry of the Supreme Court (“the registry”) for filing.

2 I heard the plaintiff’s appeal and dismissed it on 25 April 2007. Several months later, on 13 September 2007, the plaintiff took out Originating Summons No. 1369 of 2007 before the Court of Appeal to seek leave to file an appeal out of time against my decision. On 26 October 2007, she was granted leave to file an appeal within two weeks of the Court of Appeal’s order. The Court of Appeal made no order as to costs for the hearing before it. On 6 November 2007, she filed her notice of appeal (in CA No. 134 of 2007).

3 State Counsel for the defendant very helpfully prepared a chronology of the main events in this action and its related matters. The following sets out the relevant events:

- | | | |
|------------------|---|---|
| 17 December 2004 | - | the plaintiff commenced this action for alleged wrongful termination of her employment contract and other relief in administrative law. |
| 10 January 2005 | - | the defendant applied to strike out parts of the plaintiff’s Statement of Claim pursuant to O 18 r 19 of the Rules of Court. |
| 14 February 2005 | - | the defendant’s application was heard before an assistant registrar (“AR”) who reserved judgment. |

- 23 February 2005 - the said AR ordered certain portions of the Statement of Claim struck out and gave leave to the plaintiff to amend other portions of the Statement of Claim within three weeks. He also ordered the defendant to file and serve the Defence within 14 days from the date of service of the amended Statement of Claim. The plaintiff was ordered to pay costs of \$400 to the defendant.

- 9 March 2005 - the plaintiff appealed against the AR's decision.

- 17 March 2005 - the plaintiff wrote to inform the defendant about the above appeal and asked for a two-week grace period to engage solicitors. The defendant acceded to her request.

- 5 April 2005 - Tan Lee Meng J ("Tan J") heard and dismissed the appeal but allowed three sentences to be reinstated in the Statement of Claim. No costs order was made as none was sought.

- 6 April 2005 - the plaintiff wrote to inform the defendant of her intention to appeal against Tan J's decision and requested that payment of taxed costs ordered against her in earlier proceedings be held in abeyance.

- 11 April 2005 - the defendant served a statutory demand on the plaintiff for payment of costs ordered against her by the Court of Appeal in the earlier proceedings (see [2001] SGCA 10).

- 29 April 2005 - the plaintiff applied in OSB No. 38 of 2005 to set aside or to stay the statutory demand ("the bankruptcy proceedings").

- 1 June 2005 - an AR dismissed the plaintiff's application in the bankruptcy proceedings. No order on costs was sought by the defendant.

- 14 June 2005 - the plaintiff appealed against the dismissal of her application in the bankruptcy proceedings.

- 25 July 2005 - Tan J dismissed her appeal (see [2005] SGHC 182).

- 24 August 2005 - the plaintiff appealed to the Court of Appeal (in CA No. 87 of 2005) against Tan J's decisions made on 5 April 2005 in the present action and on 25 July 2005 in the bankruptcy proceedings. The defendant objected and applied to set aside the notice of appeal in respect of the present action.

- 24 October 2005 - the Court of Appeal heard the defendant's application and ordered that the appeal in respect of the present action in CA No. 87 of 2005 be set aside. The plaintiff was ordered to pay costs of \$1000.

- 10 November 2005 - the registry informed the parties that CA No. 87 of 2005 (in respect of the bankruptcy proceedings) was scheduled for hearing before the Court of Appeal in the week beginning on 27 March 2006.
- 27 January 2006 - the registry informed the parties that CA No. 87 of 2005 was deemed withdrawn pursuant to O 57 r 9(4) of the Rules of Court as the record of appeal and other required documents had not been filed and that the hearing date was therefore vacated.
- 13 February 2006 - the plaintiff filed an affidavit in support of her application to extend time for filing her appeal papers in CA No. 87 of 2005. This affidavit was not served on the defendant until one year later.
- 8 February 2007 - the plaintiff filed her amended Statement of Claim in the present action.
- 16 February 2007 - the registry called the parties to attend a pre-trial conference in respect of the present action.
- 1 March 2007 - AR Kenneth Yap ruled that the present action was deemed discontinued as no step was taken between August 2005 and August 2006. He ordered the amended Statement of Claim to be expunged from the court records and directed the plaintiff to file an application to reinstate the action, failing which no further document was to be accepted by the registry for filing.

4 As mentioned earlier, the plaintiff's appeal before me related to the order made on 1 March 2007 by AR Kenneth Yap. O 21 r 2(6), (6A) and (6B) of the Rules of Court provide:

(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 records maintained by the Court, the action, cause or matter is deemed to have been discontinued.

(6A) Paragraph (6) shall not apply where the action, cause or matter has been stayed pursuant to an order of court.

(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.

5 Where an action has been automatically discontinued, an application may be made to reinstate the action under O 21 r 2(8) which provides:

(8) Where an action, a cause or a matter has been discontinued under paragraph (5) or (6), the Court may, on application, reinstate the action, cause or matter, and allow it to proceed on such terms as it thinks just.

6 In *Moguntia-Est Epices SA v Sea-Hawk Freight Pte Ltd* [2003] 4 SLR 429, Judith Prakash J said

(at [20]):

In our case, the trigger date is the date of the last step in the action as it appears in the court records (and this may be a step taken by the plaintiff or by the defendant) and the guillotine date is the day before the anniversary of the trigger date.

In *Attorney-General v Tan Wee Beng* [2002] SGHC 261, an AR observed (at [25]) that the words “step or proceeding ... that appears from the records maintained by the Court” in O 21 r 2(6) connote an action vested with the formality of the court adjudication process and that such a step or proceeding must therefore involve documents which are filed in court and therefore excludes correspondence with the court and correspondence between the parties. I agree with this observation but would opine that a letter to a judge requesting further arguments in cases where such a process is required by law would also fall within the ambit of “step or proceeding”. This is logical because such a letter is a necessary step preceding an appeal and is part of the litigation process to drive the case to its conclusion.

7 The plaintiff submitted that the issue before me was whether any step was taken by her between 8 February 2006 and 8 February 2007 (when the amended Statement of Claim was filed). She said that after the Court of Appeal allowed the defendant’s application on 24 October 2005, she wrote a letter dated 31 October 2005 to request further arguments as the substantive issues had not been argued and that she would be enlisting an expert in administrative law from the Faculty of Law of the National University of Singapore to assist her with the arguments. She was informed by the registry on 7 November 2005 that the Court of Appeal did not wish to hear further arguments. She then took steps to file the appeal papers in respect of her appeal in the bankruptcy proceedings.

8 In my view, the last step or proceeding (or the “trigger date” as stated by Judith Prakash J in [6] above) in the present action was when the Court of Appeal heard and allowed the defendant’s application to strike out the notice of appeal in so far as it relates to the present action. That was on 24 October 2005. There is no procedure for further arguments before the Court of Appeal mandated by law and the plaintiff’s letter of 31 October 2005 would not therefore be considered a “step or proceeding” within the meaning of O 21 r 2(6). Even if one were to consider the said letter and the registry’s reply of 7 November 2005 as such step or proceeding, no other step or proceeding took place between 7 November 2005 and 8 February 2007 when the amended Statement of Claim was filed, a period of more than one year. All the matters during that stretch of time mentioned by the plaintiff related to the appeal in respect of the bankruptcy proceedings and not the present action, including her affidavit of 13 February 2006. Clearly, the bankruptcy proceedings had nothing to do with the present action. They arose out of earlier proceedings in court taken out by the plaintiff. Bankruptcy proceedings are a separate matter in any event even if they arose out of the present action. The step or proceeding that is material is not one taken in any related matters. It must relate to the action in issue.

9 For the reasons stated in [6] above, the plaintiff’s letter dated 24 March 2006 to the registry to ask for a copy of Tan J’s grounds of decision and notes of evidence with respect to the striking out appeal in the present action would also not be a step or proceeding for automatic discontinuance purposes. It appeared from her arguments before me that she believed that her appeal against Tan J’s decision in the striking out appeal was still alive when that appeal had clearly been set aside by the Court of Appeal.

10 In my opinion, the AR was correct in finding that the present action was deemed discontinued before the amended Statement of Claim was filed although I differed from him on when the discontinuance took effect. In my view, the action was deemed discontinued one year after

24 October 2005. As the amended Statement of Claim was filed on 8 February 2007, it was well after automatic discontinuance had taken place. I would add that the AR who allowed her leave to amend on 23 February 2005 included an order that unless the amended Statement of Claim was filed and served within three weeks from the date of his order, the paragraphs in question would be struck out too.

11 The matter before me concerned only the issue whether the present action was deemed discontinued. It was not about whether the action should be reinstated under O 21 r 2(8) although the plaintiff had added in her further submissions that if I were of the opinion that the action was deemed discontinued, she would ask that it be reinstated and allowed to proceed "in view of the exceptional circumstances and irregularities of my case, in the interest of justice and fair play". The defendant gave notice that if an application for reinstatement was made, he would seek to argue that the cause of action was already barred by limitation as the alleged breach was on 21 December 1998, more than six years before the deemed discontinuance. The plaintiff should take out such an application as directed by the AR if she wishes to pursue this matter further.

12 For the above reasons, I dismissed the plaintiff's appeal. As the defendant did not wish to have costs for the appeal, I made no order as to costs.

Copyright © Government of Singapore.