

Rightrac Trading v Ong Soon Heng t/a Everbright Engineering & Trading and Another (Seow Hock Ann, Third Party)
[2003] SGHC 236

Case Number : MC Suit 28172/2002K
Decision Date : 13 October 2003
Tribunal/Court : High Court
Coram : Lai Siu Chiu J
Counsel Name(s) : R E Martin and Loo Ngan Chor (Loo Ngan Chor & Co) for the plaintiffs; Chia Ho Choon (Ng Lee & Partners) for the defendants
Parties : Rightrac Trading — Ong Soon Heng t/a Everbright Engineering & Trading; Lim Kim Choon — Seow Hock Ann

Courts and Jurisdiction – Magistrates' courts – Transfer to District Court – Plaintiff commenced action in Magistrate's Court and applied to transfer claim to District Court as value of claim subsequently exceeded jurisdiction of Magistrate's Court – Applicable test – Whether plaintiff entitled to transfer as of right – Whether s 53 of the Subordinate Courts Act (Cap 321, 1999 Rev Ed) applied

The background

1 Rightrac Trading (the plaintiffs) sued Everbright Engineering & Trading and Lim Kim Choon (the first and second defendants respectively) for damage caused to the plaintiff's crane. The first defendant was sued vicariously in his capacity as the employer of the second defendant. It was the second defendant who operated the plaintiffs' crane and used it to remove scrap metal in the course of which the boom of the crane snapped and bent.

2 In the statement of claim, the plaintiffs pleaded that the value of their crane before the damage was about \$50,000/-, which figure is below the limit for claims (\$60,000/-) filed in the Magistrates' Courts, pursuant to s 2 of the Subordinate Courts Act Cap 321 (SCA).

3 On 20 March 2003, the plaintiffs filed summons for directions no. 5959 of 2003 (the application) wherein they *inter alia* applied (in paras 3 and 5) for their claim (after amendment) to be transferred to the District Courts and renamed accordingly; the draft amended statement of claim (for which they also sought leave to file under para 6) attached to the application showed that the value of the damaged crane had increased to \$65,000/-, thereby taking the claim out of the jurisdiction of the Magistrates' Courts.

4 The application for transfer was dismissed by the Deputy Registrar of the Subordinate Courts on 29 April 2003 and was similarly dismissed on 6 June 2003 on appeal to a District Judge in chambers. Consequently, by way of Registrar's Appeal No 18 of 2003 (the Appeal), the plaintiffs appealed to the High Court which appeal came on for hearing before me.

The decision below

5 Both the Deputy Registrar who heard the application and the District Judge who heard the plaintiffs' appeal, felt bound by the decision in *Tan Kok Ing v Tan Swee Meng & Others* [2003] 1 SLR 657. In that case, the High Court ruled that there was no inherent jurisdiction in the Magistrates' Courts to transfer an action commenced in the Magistrates' Courts to the District Courts. Any such transfer had to meet the requirements of s 53 of the SCA which states:-

A Magistrate's Court may, either of its own motion or on the application of a party to an action,

transfer the action to a District Court on the ground that some important question of law or fact is likely to arise.

The court in *Tan Kok Ing* held that for the question of law or fact to be "important", it should affect more than the immediate interests of the parties. The amount in issue in itself did not show an "important question of law or fact that is likely to arise". The court further held that O 89 r 4 of the Rules of Court (the Rules) being subsidiary legislation, must be read subject to s 53.

6 Before the District Judge, counsel for the plaintiffs when asked if there was some important question of law or fact that is likely to arise, had answered in the negative and added that the only reason for the transfer was due to the (amended) claim being in excess of the jurisdiction for an MC suit.

The Appeal

7 Mr Martin for the plaintiffs referred to other sections of the SCA besides s 53, to the Rules, the Supreme Court of Judicature Act Cap 322 (the SCJA) and the Interpretation Act Cap 1. He submitted that the decision in *Tan Kok Ing's* case should not be followed because the court there did not consider other provisions in the above-mentioned Acts. Instead, he urged the court to follow the decision of the Court of Appeal in *Ong Pang Wee & Others v Chiltern Park Development Pte Ltd* [2003] 2 SLR 267. He noted that the court in *Tan Kok Ing's* case did not consider s 69 of the SCA whilst conversely, the Court of Appeal (majority decision) in *Ong Pang Wee's* case did not address s 53 thereof.

8 Counsel submitted that there is an exception to the rule that subsidiary legislation cannot override primary legislation, citing *Whitefield Ltd v Starkey* (1932) 32 SR (NSW) 651 and *Halsbury's Laws of Australia* vol 8 para 125-155). If the decision in *Tan Kok Ing's* case was followed, it meant that in giving effect to s 53 of the SCA, s 69 thereof was disregarded altogether. That however, would be contrary to the rule (see *Halbury's Laws of England* 4 ed vol 44(1) p 913 para 1481) that:

It is presumed that Parliament intends that the court, when considering, in relation to the facts of the instant case, which of the opposing constructions of an enactment corresponds to its legal meaning, should find against a construction that produces a futile or pointless result, since this is unlikely to have been intended by Parliament.

It would be appropriate at this juncture to refer to the two (2) local cases.

9 In *Tan Kok Ing v Tan Swee Meng*, the plaintiff applied to the Magistrates' Courts to transfer his claim (for damages arising from injuries sustained in a road accident) from the Magistrates' Courts to the District Courts, pursuant to s 53 of the SCA. After he had filed his claim (in MC Suit 12116 of 2000), it became apparent that the plaintiff's injuries were more serious than he had initially thought. The plaintiff's application failed before the Deputy Registrar and the District Judge. He appealed to the High Court by way of a Registrar's Appeal which appeal was dismissed by Woo JC who (in addition to the ground set out in para 5 above), held that the legislation does not allow the direct transfer of an action in the Magistrate's Court to the High Court. Neither does it allow the High Court to order a transfer from the Magistrates' Courts to the District Courts.

10 In arriving at his conclusions, Woo JC relied on *Kee Chai Heng v Ketua Polis Daerah Kuala Muda* [1999] 2 MLJ 668. While he did not agree with the submission of counsel for the defendants that O 89 r 4 of the Rules provided a procedure for transfer only after one of the limbs in s 53 of the SCA has been satisfied, he agreed that the rule should not be read in isolation. Otherwise, any

Subordinate Court has an unfettered discretion to order a transfer of proceedings from a Magistrate's Court to a District Court so long as the court ordering the transfer is satisfied that the transfer ought to be effected, thereby rendering s 53 otiose.

11 In *Tan Kok Ing's* case, s 53 was contrasted with two (2) other provisions in the SCA, namely ss 24 and 38. Section 24 reads:

(1) Where, in an action founded on contract or tort in a District Court, any counterclaim or set-off and counterclaim of any defendant involves a matter beyond the jurisdiction of the District Court, any party to the action may apply to the High Court, within such time as may be prescribed by Rules of Court, for an order that the whole proceedings, or the proceedings on the counterclaim or set-off and counterclaim, be transferred to the High Court.

while s 38 states:

Where it is made to appear to the High Court, on the application of a party to any civil proceeding pending in a District Court, that the proceeding by reason of its involving some important question of law, or being a test case or for any other sufficient reason, is one which should be tried in the High Court, it may order the record to be transferred to the High Court.

12 The clear difference in wording between s 53 and s 24 means (as was canvassed before Woo JC) that Parliament did not intend the latter provision to operate automatically unlike the former, merely because a claim is found to exceed the jurisdiction of the Magistrates' Courts. Section 38 gave the High Court the power, on an application made by a party to proceedings, to transfer District but not Magistrates' Courts claims, to the High Court.

13 The Malaysian court in *Kee Chai Heng* dealt with legislation which differed from ours in wording. There, the plaintiff had filed an action against the defendants for negligence in the sessions court. At the commencement of the hearing, the sessions court judge ordered the case to be transferred to the magistrate's court after giving the parties the opportunity to submit on this course of action. Dissatisfied with the order, the plaintiff appealed, contending that the total value of damages claimed would exceed RM25,000 and hence, by virtue of s 90 of the Subordinate Courts Act 1948 (the 1948 Act), the claim was outside the jurisdiction of the magistrate's court. The High Court allowed the plaintiff's appeal and held that in civil cases, a sessions court does not have the power to transfer any case filed before it to the magistrate's court. Under para 3(2) of the Third Schedule of the 1948 Act, the sessions court only has power to transfer a case that is before it to another court of co-ordinate jurisdiction, ie to another sessions court.

14 The decision was undoubtedly correct based on s 99A of the 1948 Act, which says:

In amplification and not in derogation of the powers conferred by this Act or inherent in any court, and without prejudice to the generality of any such powers, every Sessions Court and Magistrate's Court shall have the further powers and jurisdiction set out in The Third Schedule

read with para 3 of the Third Schedule (headed **Transfer of Proceedings**) which states:

(1) (Repealed by Act 7 of 1964).

(2) Power, on application or of its own motion, to transfer any proceedings to another court of co-ordinate jurisdiction.

while O 47 r 1 of the Malaysian Subordinate Courts Rules 1980 (made pursuant to the Malaysian Subordinate Courts Rules Act 1955) provides:

Where the Judge of any Court is satisfied that any proceedings in that Court can be more conveniently or fairly tried in some other Court he may order the proceedings to be transferred to the other Court.

15 Based on the principle that subsidiary legislation (O 47 r 1) cannot prevail over primary legislation (as contained in para 3 of the Third Schedule to the 1948 Act), the sessions court judge had no powers to transfer the case before him to a magistrate's court. As the Malaysian case was based on primary/subsidiary legislation which differs from ours, I do not find the case particularly helpful.

16 I turn next to *Ong Pang Wee v Chiltern Park Development Pte Ltd*. Coincidentally, this was an appeal against Woo JC's decision (see *Chiltern Park Development Pte Ltd v Ong Pang Wee* [2002] 4 SLR 79). Coincidentally too, Mr Martin acted for the appellants.

17 In *Ong Pang Wee's* case, the defendants had applied to transfer to the High Court the MC suit taken out against them by the developer/plaintiffs (for maintenance fees of \$13,443.47) on the ground that their counterclaim (\$353,900) for rectification of defects in apartments which they had purchased in Chiltern Park, came under the jurisdiction of the High Court. Woo JC dismissed the application, after holding that para 10 of the First Schedule to the SCJA must be read subject to s 18 thereof and in turn, read subject to ss 24, 38, 41 and 53 of the SCA. He held that the SCA envisaged a transfer of proceedings from only the District Courts to the High Court, not from the Magistrates' Courts to the High Court. Reference was also made to O 89 r 2(1) of the Rules.

18 In dismissing the defendants' appeal, the Court of Appeal (majority decision) held:

(i) As s 18(2) of the SCJA was subject to written law under s 18(3), the High Court could only exercise its powers of transfer of proceedings as provided for by the SCA;

(ii) s 52(2) of the SCA, which extended to the Magistrate's Courts limitations and provisions applying to the District Court, could not be interpreted as conferring the necessary jurisdiction to transfer;

(iii) while O 89 r 1 and 2 of the Rules were expressed to deal with the transfer of cases from the Subordinate Courts to the High Court, the Rules should be read with the SCA, and thus deal only with transfers from the District Court to the High Court.

19 Mr Martin drew the court's attention to the passages where Prakash J referred to the interplay between O 89 of the Rules, s 80 of the SCJA and s 69 of the SCA; she said in the following paragraphs (at p 277-278):

30 Finally, we would like to refer to O 89 r(1)(2) of the Rules and the role of the Rules Committee. The Rules Committee constituted under s 80(3) of the SCJA has the power to make Rules of Court regulating and prescribing the procedure and practice to be followed in the High Court and the Court of Appeal. Section 80(2) sets out specific purposes for which Rules of Court may be made. By sub-paragraph (d) of s 80(2) one of these purposes is to prescribe "the procedure in connection with the transfer of proceedings from any subordinate court to the High Court". The restrictive wording of this sub-paragraph must be compared with the expansive wording of s 69(3) of the SCA.

31 Read with S 69(1), s 69(3)(b) of the SCA gives the Rules Committee appointed under the SCJA the power to make Rules of Court regulating and prescribing the procedure and practice to be followed in the District Courts and the Magistrates' Courts in the exercise of their civil jurisdiction and among these is the power to make Rules "prescribing *the circumstances* and procedure by which proceedings may be transferred from one court to another" [emphasis ours]. Thus, it can be seen that whilst in respect of transfers to the High Court the Rules Committee only has the power to prescribe *the procedure* for it, in the case of proceedings within the regimes of the District Courts and Magistrates Courts, the primary legislation has given the Rules Committee power to make secondary legislation setting out the circumstances in which transfers of cases between those two regimes inter se can be done.

32 The Rules Committee has, in exercise of its power under s 69 of the SCA, made provision by way of O 89 r 4(1) for a subordinate court to transfer proceedings from it to any other subordinate court where it is satisfied that those proceedings ought to be tried in that other court. This first sub-rule is the one dealing with the circumstances of transfer. The procedure for transfer is dealt with by sub-rules 4(2) and 4(3).

33 As regards the transfer of cases from the subordinate courts to the High Court, this has been taken care of by O 89 r 1 and 2. Order 89 r 1(1) is entitled "Applications under sections 24, 37 and 38" and provides that an application under those sections of the SCA must be made by originating summons. Rule 2 sets out the procedure to be adopted by the registries of the respective courts when a transfer order has been made by the High Court. It is clear that neither rule sets out the circumstances in which an application may be initiated. That is governed by the sections of the primary legislation. Woo JC considered that the reference in r 1(1) to sections in the SCA dealing with transfers between the High Court and the District Court and vice versa was a reinforcement of the scheme in the SCA which provides only for such transfers and not for transfers between the Magistrates' Courts and the High Court. We agree. Further, as Woo JC rightly stated at first instance "Subsidiary legislation cannot override primary legislation". So even though O 89 r 2(1) refers generally to the transfer of "any proceedings from the subordinate courts to the High Court" it must be interpreted in accordance with the specified provisions in the SCA *ie* ss 24, 38 and 41 which themselves state expressly that they deal with the transfer of cases from the District Court to the High Court.

20 Chao JA dissented. He was of the view that the High Court does have the power to transfer a case from the Magistrate's Court to the High Court. He felt that s 24 of the SCA does apply to Magistrates' Courts by virtue of the fact that the Rules Committee had prescribed Rules (in O 89 r 1 and 2) enabling a case pending in the Subordinate Courts (not District Courts) to be brought up to the High Court. In the alternative, he based his arguments on s 18(2) and (3) of the SCJA (and para 10 of the First Schedule) read with O 18 rr 1, 2 and 3 of the Rules.

21 It would be appropriate to set out O 89 rr 1, 2 and 4 of the Rules at this juncture; it states:-

(1) – (1) Any application to the High Court under sections 24, 37 and 38 of the Subordinate Courts Act (Chapter 321) must be made by originating summons in Form 7.

(2) The High Court hearing such an application may order the proceedings in the Subordinate Courts to be stayed until after the final determination of the application.

(2) – (1) Where an order is made by the High Court for the transfer of any proceedings from the Subordinate Courts to the High Court, the Registrar of the Subordinate Courts must send to the Registrar of the Supreme Court the file of the proceedings, all documents, exhibits and a certified

copy of the notes of evidence (if any) of the proceedings.

(2) The Registrar of the Supreme Court must give notice of the transfer to every party to the proceedings.

(4) – (1) Where a Subordinate Court is satisfied that any proceedings in that Court ought to be tried in some other Subordinate Court, it may order the proceedings to be transferred to the other Court;

(2) Any order under paragraph (1) may be made by the Court on its own motion or on the application by summons of any party to the proceedings;

(3) Where an order under paragraph (1) is made by the Court on its own motion, the Registrar must give notice of the transfer to every party to the proceedings.

22 Chao JA also referred to s 38, 53 and 69(3)(b) of the SCA in the following paragraphs (at p 283-284) of his judgment:

55 As regards transfer of cases within the Subordinate Courts, the Rules Committee is empowered by s 69(3)(b) of the SCA to lay down rules "prescribing the circumstances and procedure by which proceedings may be transferred from one court to another". Thus, there can be no question that the rules in Order 89 are *intra vires* the powers conferred on the Committee.

56 The argument is made that with s 53 of the SCA, a case in the Magistrate's Court may only be transferred to be heard by the District Court where "some important question of law or fact is likely to arise". I do not think the existence of s 53 means that in no other circumstances may a case before the Magistrate's Court be transferred to be heard in the District Court or the High Court. Section 53 is essentially a specific power given to the Magistrate's Court, as a transfer under that section can be made even in a case which falls squarely within the Magistrate's Court jurisdiction. It can be exercised whenever the case involves an important question of law or fact. To say that a case in the Magistrate's Court can only be transferred to the District Court in the circumstances set out in s 53 would render r 4 of O89 nugatory

57 I should add that there is a similar kind of provision in s 38 of the SCA which reads..... It will be seen that s 38 can apply even in a case where the amount in dispute does not exceed the District Court limit. It can hardly be argued that the existence of s 38 curtails or restricts the operation of s 24.

23 Not unexpectedly, counsel for the defendants argued that even if s 69(3)(b) of the SCA had featured in Woo JC's decision, it would not have made a difference and he urged the court to follow *Tan Kok Ing's* case.

The decision

24 I start with s 69 of the SCA which the Court of Appeal (including Chao JA) referred to. It reads:-

(1) The Rules Committee appointed under section 80(3) of the Supreme Court of Judicature Act (Cap 322) may make Rules of Court regulating and prescribing the procedure and the practice to be followed in the District Courts and the Magistrates' Courts in the exercise of their civil jurisdiction and any matters incidental to or relating to any such procedure or practice.

(2) The power to make Rules of Court shall extend to all matters of procedure or practice, or matters relating to or concerning the effect or operation in law of any procedure or practice or the enforcement of judgments or orders, in any case within the cognizance of the District Courts and Magistrates' Courts in the exercise of the civil jurisdiction as to which Rules of Court have been or might lawfully be made for cases within the cognizance of the High Court.

(3) Without prejudice to the generality of subsections (1) and (2), the power to make Rules of Court shall extend to –

(a) prescribing the office or offices where process may be issued and business other than the hearing of proceedings transacted;

(b) prescribing the circumstances and procedure by which proceedings may be transferred from one court to another;

25 The relevant portions of s 80 of the SCJA state:-

(1) The Rules Committee constituted under subsection (3) may make Rules of Court regulating and prescribing the procedure (including the method of pleading) and the practice to be followed in the High Court and the Court of Appeal respectively in all causes and matters whatsoever in or with respect to which those courts respectively have for the time being jurisdiction (including the procedure and practice to be followed in the Registry of the Supreme Court) and any matters incidental to or relating to any such procedure or practice.

(2) Without prejudice to the generality of subsection (1), Rules of Court may be made for the following purposes:-

.....

(d) regulating and prescribing the procedure to be followed on appeals from any subordinate court to the High Court or the Court of Appeal and the procedure in connection with the transfer of any proceedings from any subordinate court to the High Court or from the High Court to a subordinate court...

26 The Court in *Tan Kok Ing's case* (para 10) focussed on s 53 of the SCA and held that O 89 r 4 being subsidiary legislation cannot override the former provision. Such a rule of interpretation is actually encapsulated in statute under s 19 of the Interpretation Act (Cap 1) which states:

When any Act confers powers on any authority to make subsidiary legislation, the following provisions shall, unless the contrary intention appears, have effect with reference to the making and operation of the subsidiary legislation:

(a) subsidiary legislation may at any time be amended, varied, rescinded or revoked by the same authority and in the same manner by and in which it was made subject to the following provisions:

(b)

(c) no subsidiary legislation made under an Act shall be inconsistent with the provisions of any Act.

How then should one reconcile ss 53 and 69(3)(b) of the SCA?

27 To begin with, *Ong Pang Wee's* case dealt with a transfer of a Suit from the Magistrates' Courts to the High Court. Unless the dissenting view of Chao JA is to be preferred, the majority decision of the Court of Appeal was to the effect that present legislation (ss 24 and 38 of the SCA) prohibits a double jump from a Magistrate's Court to the High Court. Consequently, an unfortunate litigant who commences proceedings in a Magistrate's Court (rightly or wrongly) and finds subsequently that his claim exceeds the jurisdiction of not only the Magistrates' but also of the District Courts, must first transfer his claim to the District Courts and then take out an Originating Summons to further transfer his claim therefrom to the High Court. If the decision in *Tan Kok Ing's* case is followed, the luckless litigant cannot get past the first hurdle; he will not be able to get his claim into the District Courts unless he satisfies the Court *that some important question of law or fact is likely to arise* from the transfer.

28 Was the interpretation given to s 53 in *Tan Kok Ing's* case the intention of Parliament? What then of s 69(3)(b) of the SCA and s 80(2)(d) of the SCJA? How then does one explain the distinction drawn by the Court of Appeal between the two (2) provisions in *Ong Pang Wee's* case? I shall attempt to make sense of the apparently conflicting provisions.

29 Section 69(3)(b) empowers the Rules Committee to prescribe the circumstances and procedure by which proceedings may be transferred from one court to another inter se, within the regime of the Subordinate Courts. Section 80(2)(d) on the other hand regulates and prescribes the procedure in connection with the transfer of any proceedings from any Subordinate Court to the High Court. Hence the Court of Appeal's description (in para 30) of the wording in s 69(3) of the SCA as being more expansive as compared with s 80(2)(d) of the SCJA.

30 The Rules Committee is empowered by s 69(3)(b) to set out the circumstances of transfer; that is to be found in O 89 r 4(1) of the Rules. Under O 89 r 4(1), a Subordinate Court only needs to be satisfied that any proceedings in that court ought to be tried in some other Subordinate Court, in order to make the transfer (emphasis added). Neither O 80 of the Rules nor s 69 is made subject to any or other, provisions of the SCA, let alone s 53.

31 Returning now to para 56 of Chao JA's judgment (para 22 *supra*), I fully agree with his interpretation of s 53 of the SCA. To say that a case in a Magistrate's Court can only be transferred to a District Court in the circumstances set out in s 53 would render O 89 r 4 nugatory.

32 Regrettably therefore, I must depart from the position taken in *Tan Kok Ing's* case. It is my view that when a claim exceeds the jurisdiction of a Magistrate's Court as set out under s 52 of the SCA, the party which applies to transfer the claim to the District Courts should be granted the application as of right. This would be giving effect to O 89 r 4(1) of the Rules. Any misgivings or reservations which the court hearing the application may have can be reflected in an appropriate costs order, pursuant to s 40 of the SCA. If the court hearing the application is of the view that the applicant should have commenced his action initially in the District instead of the Magistrates' Courts, he can either be penalised by, not being awarded any costs or in an extreme case by, awarding the opposite party costs in any event. Conversely, should the applicant be proved ultimately to be wrong in making the transfer of a claim from the Magistrates' Courts to the District Courts or to the High Court, he will be penalised in costs, pursuant to s 39 of the SCA.

33 It is only where an application is made to transfer a Magistrate's Court claim to a District Court when the amount is below the current jurisdiction of a District Court, that the applicant must satisfy the requirement in s 53, that there is *some important question of law or fact* that warrants

the transfer.

34 The same purposive interpretation should be given to s 38 of the SCA. In other words, where a party to a District Court Suit applies to transfer his claim to the High Court when his claim is \$250,000 or less, he must first satisfy the High Court hearing the Originating Summons that the proceedings:

- (i) involve some important question of law;
- (ii) or is a test case;
- (iii) or for any other sufficient reason

before his application can be granted. Such an interpretation is neither forced nor does it render any provision in the SCA or any order in the Rules, otiose.

35 I am reinforced in my view by s 9A(1) of the Interpretation Act which states:

In the interpretation of a provision of a written law, an interpretation that would promote the purpose or object underlying the written law (whether that purpose or object is expressly stated in the written law or not) shall be preferred to an interpretation that would not promote that purpose or object.

I should point out that the definition of *written law* under s 2 of this Act includes subsidiary legislation.

Conclusion

36 Consequently, as it is my view that the plaintiffs were entitled as of right, to a transfer of their claim to the District Courts as the sum involved was in excess of the jurisdiction of the Magistrates' Courts, I am allowing prayer 1 of the Appeal with costs as per prayer 3. The orders made below are set aside and the orders (2) for costs are reversed in the plaintiffs' favour. No order is made on prayer 2 of the Appeal. The plaintiffs should instead restore the other prayers in their Summons for Directions No. 5959 of 2003J for hearing in the District Courts after the case has been transferred.

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