IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2022] SGCA 63

Originating Application No 2 of 2022 (Summons No 15 of 2022)

Between

Pradeepto Kumar Biswas

… *Applicant*

And

(1) Gouri Mukherjee
(2) Sabyasachi Mukherjee

… *Respondents*

JUDGMENT

[Courts And Jurisdiction — Judges — Recusal]
[Courts And Jurisdiction — Appeals]

Pradeepto Kumar Biswas
v
Gouri Mukherjee and another

[2022] SGCA 63

Court of Appeal — Originating Application No 2 of 2022
(Summons No 15 of 2022)
Andrew Phang Boon Leong JCA and Steven Chong JCA
15 August 2022

5 October 2022 Judgment without an oral hearing.

Steven Chong JCA (delivering the judgment of the court):

Introduction

1 A married couple ("the Mukherjees") sued Mr Pradeepto Kumar Biswas ("Mr Biswas") some eight years ago for breaching fiduciary duties he owed in the handling of their "investments" which they claimed were shams. They were successful and were awarded a judgment sum several years later. Although Mr Biswas appealed, this was eventually struck out and it appeared that this was the end of the matter. But two years later, when the Mukherjees attempted to enforce the judgment debt against Mr Biswas via bankruptcy proceedings, Mr Biswas initiated multiple proceedings to set aside the judgment debt and the judgment itself. The applications before us are the latest in these attempts.

Background

2 The Mukherjees' suit against Mr Biswas was the subject of HC/S 1270/2014 ("Suit 1270") and was heard before Belinda Ang J (as she then was). Ang J issued her judgment in *Sabyasachi Mukherjee and another v Pradeepto Kumar Biswas and another suit* [2018] SGHC 271 ("the Trial Judgment"). Therein, Ang J allowed the Mukherjees claim, finding that Mr Biswas had breached his fiduciary duties to the Mukherjees. Mr Biswas was made liable to pay US$3.45m ("the Judgment Debt") to the Mukherjees.

3 Mr Biswas appealed against this decision by way of CA/CA 2/2019 ("CA 2"), but this was ultimately struck out by this court in November 2019 after Mr Biswas breached an unless order: see *Pradeepto Kumar Biswas v Sabyasachi Mukherjee and another* [2019] SGCA 79 ("the Striking Out Judgment").

4 On 13 July 2021, the Mukherjees served on Mr Biswas a statutory demand premised on the Judgment Debt ("the Statutory Demand"). He challenged this in HC/OSB 74/2021 ("OSB 74"), arguing that it should be set aside on the premise that the Judgment Debt was disputed on substantial grounds. The basis of Mr Biswas's challenge was that the Mukherjees had procured the Judgment Debt by fraud because they had committed perjury in Suit 1270. The main evidence that he relied on was a letter from Tan Kok Quan Partnership, the Mukherjees' previous lawyers ("the TKQP Letter").

5 Mr Biswas's challenge failed before an Assistant Registrar ("AR"), so he appealed by way of HC/RA 260/2021 ("RA 260"). Vinodh Coomaraswamy J heard RA 260 and agreed with the AR, finding that there were no grounds to set aside the Statutory Demand. He thus dismissed RA 260 in October 2021.

6 Dissatisfied, Mr Biswas sought permission to appeal against the decision in RA 260 ("the RA Decision") by way of AD/OS 53/2021 ("OS 53") We note that at the time of OS 53, the Rules of Court (2014 Rev Ed) ("ROC 2014") used the terminology of "leave to appeal", but for simplicity, we adopt the current terminology of "permission to appeal" throughout this judgment.

7 As *per* the ROC 2014, Mr Biswas was required to apply for permission to appeal by 13 October 2021. Originally, he filed a *summons* before the High Court on 12 October 2021, but he was informed on 26 October 2021 that this was incorrect because for permission to be obtained, he would have to make an application to the *appellate court* and this would thus require an *originating summons*. Accordingly, he withdrew the summons and later filed OS 53 on 8 November 2021, a delay of almost one month. He thus also sought extensions of time to file the application for permission to appeal; and to file the appeal against the RA Decision. Ultimately OS 53 was dismissed in its entirety by the Appellate Division of the High Court ("Appellate Division") on 4 May 2022.

The present applications

8 Mr Biswas now brings CA/OA 2/2022 ("OA 2") under the Rules of Court 2021 ("ROC 2021"), seeking permission to appeal against the Appellate Division's decision to dismiss OS 53. He claims that there is a point of law of public importance that will arise in an appeal against OS 53, and it would thus be appropriate for this court to hear it.

9 In addition, he has filed CA/SUM 15/2022 ("SUM 15"), an ancillary application for the recusal of Andrew Phang JCA from considering and deciding OA 2 on the basis that justifiable doubts have arisen over Phang JCA's impartiality, *ie*, that there was an appearance of bias. In support of this

allegation, Mr Biswas raises several other related proceedings in which Phang JCA was involved. In response, the Mukherjees sought to rely on affidavits in previous proceedings involving Phang JCA. We granted permission for them to rely on these affidavits, either in whole or in part.

The Recusal Application

10 We begin first with SUM 15, Mr Biswas's application for Phang JCA to recuse himself.

General observations on allegations of apparent bias

11 At the outset, we must stress that allegations of judicial bias are extremely serious. They can damage the integrity of the judiciary and throw the entire administration of justice into disrepute. By their very nature, they should be "rare in the extreme" and made with the utmost circumspection and precision. Furthermore, allegations of bias can be used as "weapon[s] of abuse" by disgruntled litigants, and waste judicial time and resources. This court has previously warned that such allegations, if found to be unmeritorious, will elicit serious consequences: *BOI v BOJ* [2018] 2 SLR 1156 ("*BOI*") at [141].

12 Despite the gravity of the present application, the grounds put forward by Mr Biswas in his submissions are vague. He relies on the fact that CA 2 – his appeal against the decision in Suit 1270 – was struck out by Phang JCA and was thus never heard. But he does not explain why this would give rise to an appearance of bias. Instead, he simply recites jurisprudence on apparent bias without drawing any links to the facts of the present case.

13 The grounds for SUM 15 are somewhat clearer in Mr Biswas's supporting affidavit. The suggestion seems to be that Phang JCA should recuse

himself because he had dealt with other related matters that were resolved *against* Mr Biswas. These include CA/OS 24/2021 ("OS 24"), which was an application for a retrial of Suit 1270; CA/OS 10/2016, an application for permission to appeal against a search order that had been granted against him; and CA 2, which was struck out by way of CA/SUM 91/2019 ("SUM 91") due to Mr Biswas's breach of an unless order. These were all decided against Mr Biswas, and it seems that based on the mere fact of these adverse orders, he claims that this somehow engenders a perception of bias.

14 But adverse outcomes may well be due to the fact that the merits of those proceedings were not on Mr Biswas's side. It must be remembered that apparent bias will only be found where the circumstances give rise to a suspicion or apprehension of bias in the mind of a *reasonable* observer who is *not unduly sensitive or suspicious*. Such an observer would not develop doubts (at least not *reasonable* doubts) simply because a judge makes several adverse decisions against a single litigant. After all, the reasonable observer is also "informed" and would be aware of the "traditions of integrity and impartiality that administrators of justice have to uphold": *BOI* at [103]. They would thus also understand that judges often hear multiple parts of what is "essentially a single case" (*TOW v TOV* [2017] 3 SLR 725 ("*TOW*") at [36], cited in *Werner Samuel Vuillemin v Overseas-Chinese Banking Corp Ltd and another matter* [2018] SGHC 92 at [46]) and thus may be required to make multiple adverse rulings against a single litigant where the merits are not with them.

15 To be clear, we are not saying that multiple adverse rulings against a single litigant by a single judge can *never* be grounds for finding apparent bias. There may well be exceptional cases where a judge has consistently ruled against a party in various proceedings and it *is* appropriate to make a finding of apparent bias. As a preliminary matter, the adverse rulings would have to be

made in error. But judicial error alone would not be sufficient – the rulings would typically have to be accompanied by exaggerated or intemperate language (see *TOW* at [57]), or be based on facts or statements of law that are clearly and inescapably wrong.

16 We stress that such cases would be extremely rare – for a party to succeed in proving apparent bias based on multiple adverse rulings, a high threshold would have to be crossed. Such a high standard is necessary as a party alleging that an adverse ruling was made erroneously should normally bring an appeal, not a recusal application: see *Soh Rui Yong v Liew Wei Yen Ashley* [2021] SGHC 96 at [42].

The allegations made by Mr Biswas

17 Returning to the present application, Mr Biswas does not point to any intemperate language accompanying the decisions made against him. Instead, it seems that his complaint is that there were "errors" in the decisions made by Phang JCA. First, he refers to alleged "cheating" by the Mukherjees which Phang JCA had purportedly ignored. Second, he claims that the *coram* in CA 2 (which included Phang JCA) was unwilling to "look at the proportionality of the consequence of an unless order".

18 But Mr Biswas offers scant evidence in support, and "bare allegations do not suffice to make out a case of apparent bias": *Png Hock Leng v AXA Insurance Pte Ltd* [2022] SGHC(A) 10 at [19]. Indeed, it is clear on the evidence that Mr Biswas's allegations are completely bereft of merit. We consider both in turn.

The consequences of the Unless Order

19 We first deal with Mr Biswas's allegation that the *coram* in CA 2 (which included Phang JCA) was unwilling to "look at the proportionality of the consequence of an unless order". This refers to the fact that CA 2 was struck out because he had breached an unless order (see [3] above). But on the face of this allegation, it is not clear to us what Mr Biswas's precise point is and how that would be relevant to a recusal application.

20 It seems to us that what Mr Biswas is arguing is that CA 2 should not have been struck out merely because he had failed to comply with an unless order. If that is the case, we cannot accept that this was an error, let alone one that would give rise to an appearance of bias.

21 It is far from controversial that a breach of an unless order may lead to an action or appeal being struck out where the breach was intentional and contumelious: see *Mitora Pte Ltd v Agritrade International (Pte) Ltd* [2013] 3 SLR 1179 ("*Mitora*") at [48]–[49]. But (as Mr Biswas seems to allude to) even where such a breach has occurred, the court should be guided by considerations of *proportionality* in assessing the appropriate sanction. For example, striking out an action may be justified where there has been an "inexcusable breach of a significant procedural obligation": *Mitora* at [39] and [47].

22 In our judgment, proportionality *was* in fact considered in the striking out of CA 2, contrary to Mr Biswas's assertions. For context, after Mr Biswas filed CA 2, he failed to file several key documents on time, or filed them in contravention of the relevant procedural requirements. This went on for several months until the Mukherjees filed SUM 91 on 1 August 2019 to strike out CA 2 on the basis of Mr Biswas's procedural non-compliance. This court found

Mr Biswas's conduct to be unacceptable, but nonetheless granted him one last opportunity and issued an unless order on 12 September 2019 requiring him to rectify the deficiencies by 30 September 2019. Failing this, it was stipulated that CA 2 would be struck out. Mr Biswas failed to comply, and the Mukherjees then wrote to this court on 3 October 2019 seeking a confirmation that CA 2 would be struck out. It was only then that CA 2 was struck out.

23 Phang JCA, delivering the judgment of the court (see the Striking Out Judgment), held that Mr Biswas's breach was "contumelious", and that it was "not disproportionate to enforce" the Unless Order. In coming to this conclusion, the court observed that Mr Biswas did not make any *bona fide* attempts to comply with the Unless Order: at [22]–[25]. Additionally, the breach was "not a mere technical breach" as he had omitted key documents in CA 2 and the hearing of CA 2 would have been delayed by at least four months due to Mr Biswas's non-compliance: at [26]–[27].

24 It is readily apparent from the above that this court *did* in fact consider the proportionality of striking out CA 2 due to Mr Biswas's breach of the Unless Order. CA 2 was only struck out *after* Mr Biswas was given a second chance to rectify the several procedural missteps he had taken. Further, the factors that this court considered amply justified the striking out of CA 2. This puts to rest any suggestions of error or appearance of bias in connection with the Striking Out Judgment.

The "cheating" allegation

25 We now turn to the allegation that Phang JCA had ignored the "cheating" by the Mukherjees. That cheating allegation took the form of a claim of perjury committed by the Mukherjees in Suit 1270.

26 The "perjury" which Mr Biswas relies on is that the Mukherjees had allegedly lied about the "investments" which were the subject of Suit 1270. He argues that in Suit 1270, the Mukherjees' claim that the "investments" were "shams" was accepted by Ang J resulting in a ruling in their favour. He then claims that a letter from the Mukherjee's previous lawyers – the TKQP Letter mentioned above at [4] – shows that the "investments" were genuine, and thus the Mukherjees had lied before Ang J, *ie*, they had committed perjury. He purportedly relies on paragraph 2(c) of the TKQP Letter to somehow demonstrate the Mukherjees' admission that the "investments" were not shams.

27 But in our view, the TKQP Letter does not reveal any perjury whatsoever by the Mukherjees. The TKQP Letter was sent in the context of settlement negotiations between Mr Biswas and the Mukherjees. Mr Biswas had himself suggested the very terms found in the TKQP Letter during the negotiations, and TKQP had formalised these terms in the letter. Thus, the TKQP Letter is not evidence of *the Mukherjees'* admission that the "investments" were real. Instead, they were the words of Mr Biswas.

28 Even if we take the TKQP Letter as being the Mukherjees' words, these words in our judgment do not show any admission that the investments were real. The TKQP Letter states that the Mukherjees would transfer all "beneficial interest and rights" in the "investments"; it does not state that they would transfer *legal* title. This is significant as it is consistent with the Mukherjees' position that they did not have formal, physical or legal title to the "investments". Thus, all that TKQP Letter states is that once Mr Biswas paid the Mukherjees the relevant settlement sums, they would relinquish *whatever* interest they might have had in the "investments" (even though they were not sure what these interests were).

29 Thus, there is simply no merit in the allegation that the TKQP Letter shows that the Mukherjees had committed "perjury" or had "cheated" in Suit 1270. It follows that Phang JCA did not ignore or "allow" any "cheating" by the Mukherjees because no such "cheating" took place in the first place. Mr Biswas's reliance on the TKQP Letter is ultimately a disingenuous attempt to clutch at straws.

Other allegations raised by Mr Biswas

30 The two main allegations raised by Mr Biswas therefore fail. But before concluding, we note that Mr Biswas has also raised several other allegations in his written submissions in support of SUM 15. Most of these submissions were based on documents that were *not included* in Mr Biswas's affidavit for SUM 15 and were only raised in his written submissions where he attached them as annexures without leave of court. The Mukherjees objected to this and Mr Biswas was asked to explain the procedural deficiency. In a letter dated 26 August 2022, he explained that he was "not … well traversed in the [Rules of Court]".

31 But even if we accept that Mr Biswas's failure to include the documents was due to oversight, we do not admit them because they bear no relevance for the purposes of SUM 15. Mr Biswas's overarching point is that the new documents "explicitly put to rest the matter of [the Mukherjees'] lies and their perjury." But the documents do not pertain to Phang JCA *at all* (none of them was ever previously placed before Phang JCA) and thus cannot be grounds for finding that justifiable doubts have arisen over his impartiality. In this connection, it is important to bear in mind that the matter before us concerns the recusal application against Phang JCA and therefore the new material must bear relevance to him and/or any proceedings he was involved in.

32 First, Mr Biswas relies on a journal article that considers the Trial Judgment to show that it is "widely reported" and that in the Trial Judgment, "different conclusions c[a]me up without ascertaining the facts". This he argues, would give rise to a reasonable suspicion of bias. It appears to us that Mr Biswas is essentially claiming that there were errors in the Trial Judgment, and that this alone would raise a reasonable suspicion of bias with the public since it was "widely reported".

33 To begin with, it is not clear why the Trial Judgment is relevant, as Phang JCA was not involved in that decision. Next, although we do not accept that there were errors in the Trial Judgment, as we have noted above, errors are not ordinarily grounds for recusal. In any event, Mr Biswas has not identified any specific errors in the Trial Judgment. Finally, it is not clear why: (a) it matters that the Trial Judgment is "widely reported" and known to the public; and (b) how that would necessarily give rise to a reasonable suspicion of bias.

34 Second, Mr Biswas includes several documents which he says shows that the Mukherjees had committed perjury, obstructed "natural justice", misled the court, and evaded service. But such claims (even if they are true), concern only the actions of *the Mukherjees*, not Phang JCA. It is thus hard to see how any of these documents are relevant to the present application.

35 Finally, Mr Biswas relies on a letter where he claims that a man known as "Mr Hopkins" had colluded with the Mukherjees to commence Suit 1270 against him. Once again, this has no connection whatsoever to Phang JCA and hence can bear no relevance to SUM 15.

Conclusion on apparent bias

36 We therefore dismiss Mr Biswas's application for Phang JCA to recuse himself. In our judgment, it did not even come close to approaching the standard required for a finding of apparent bias. Indeed, from Mr Biswas's affidavit and submissions, it seems that he did not even attempt to properly argue a case for apparent bias. This is relevant to the issue of costs, which we address below at [65(b)].

Application for permission to appeal

37 Having dealt with Mr Biswas's recusal application, we now consider the main application for permission to appeal against OS 53.

38 In OS 53, Mr Biswas sought three prayers. First, he sought permission to appeal against the RA Decision. Second, he sought an extension of time to file this application for permission to appeal. Finally, he sought an extension of time to file an appeal against the RA Decision. The Appellate Division dismissed all three.

39 In the present application, it is not clear which part of this dismissal Mr Biswas seeks permission to appeal against. In any case, it seems to us that there is only one order by the Appellate Division which is capable of being appealed in the first place.

40 To explain, the Appellate Division strictly did not refuse permission to appeal against the RA Decision. Instead, it noted that permission to appeal was *not* required to begin with. We agree with the Appellate Division on this point, and thus, technically, there was no need for Mr Biswas to seek permission to appeal against this part of the Appellate Division's decision.

41 But even if the Appellate Division *had* refused leave to appeal, paragraph 1(*c*) in the Ninth Schedule of the Supreme Court of Judicature Act 1969 ("SCJA") specifically states that an appeal cannot be brought against a decision of the Appellate Division regarding permission to appeal against a decision of the General Division. Thus, in any event, no appeal can lie against this part of the Appellate Division's decision in OS 53, and it follows that we cannot grant permission to appeal against it.

42 Logically, the two points above would *also* mean that Mr Biswas's prayer for an extension of time to apply for permission to appeal against the RA Decision would be moot.

43 This leaves only the Appellate Division's decision to deny Mr Biswas an extension of time to file an appeal against the RA Decision. A decision of the Appellate Division regarding an extension of time is not mentioned in the Ninth Schedule, and thus an appeal may be brought in respect of such a decision.

44 Under s 47 of the SCJA, such an appeal may only be brought with the permission of this court. Permission may only be granted if the appeal would "raise a point of law of public importance", also known as "the Threshold Merits Requirement" as termed in *UJM v UJL* [2021] SGCA 117 ("*UJM*") at [95].

45 Mr Biswas claims that such a point exists, arising out of the Appellate Division's reference to our decision in *Pradeepto Kumar Biswas v Sabyasachi Mukherjee and another and another matter* [2022] SGCA 31 ("the Retrial Judgment").

46 The Retrial Judgment pertained to, *inter alia*, the decision in OS 24. There, Mr Biswas claimed that there should be a retrial of Suit 1270 because the

Mukherjees had committed "perjury" – the same allegation he raised in SUM 15 (see [25]–[26] above). Like our finding in SUM 15, the Retrial Judgment similarly stated that the TKQP Letter did not reveal any perjury by the Mukherjees. However, that statement was strictly *obiter* since this court had ruled in the Retrial Judgment that we did not have jurisdiction to hear the merits of OS 24. This was because there was no pending appeal before this court, and the ordering of a retrial could only be done in the exercise of this court's appellate jurisdiction: see the Retrial Judgment at [34]–[35].

47 This allegation of perjury was *also* raised in OSB 74 before the AR and in RA 260 before Coomaraswamy J; this was the basis for Mr Biswas's challenge against the Statutory Demand, and similarly, the TKQP Letter was the central piece of evidence he relied on (see [4]–[5] above).

48 Returning to OS 53, in determining whether an extension of time to file an appeal against the RA Decision should be granted, the Appellate Division examined whether an appeal against that decision would be hopeless or devoid of merit: *Lee Hsien Loong v Singapore Democratic Party and others and another suit* [2008] 1 SLR(R) 757 at [18] and *Aberdeen Asset Management Asia Ltd and another v Fraser & Neave Ltd and others* [2001] 3 SLR(R) 355 at [43].

49 The Appellate Division held that an appeal against the RA Decision would indeed be hopeless. Although the Appellate Division did not give full reasons, it seems to us that it took the view that any appeal against the RA Decision would necessarily revolve around Mr Biswas's allegation of perjury by the Mukherjees. If it were found that this allegation was devoid of merit, as we have so found to be the case, it would follow that the appeal would likewise be hopeless. Thus, the Appellate Division's reference to the Retrial Judgment

was a reference to the observations in that judgment that the TKQP Letter did not support Mr Biswas's allegation of perjury.

50 It was this reference to the Retrial Judgment by the Appellate Division which Mr Biswas takes issue with. He claims that this shows that the Appellate Division had simply accepted the observations in the Retrial Judgment. This, he argues, raises a point of law of public importance that will arise in an appeal against OS 53: did the Appellate Division err in relying on the Retrial Judgment instead of exercising its own independent judgment in holding that any appeal against the RA Decision would be hopeless? We will refer to this as "the alleged Point of Public Importance".

The Threshold Merits Requirement

51 In our view, the alleged Point of Public Importance does not merit this court to grant Mr Biswas permission to appeal against the Appellate Division's decision because it evidently does not meet the Threshold Merits Requirement.

52 To begin with, it seems clear to us that the Appellate Division *did* exercise its own independent judgment. That being the case, this alleged Point of Public Importance does not even arise. The essence of Mr Biswas's argument seems to be that the Appellate Division had found itself bound by the *obiter* remarks of this court in the Retrial Judgment. But in its decision, the Appellate Division did not indicate in any way that its hands were tied by the Retrial Judgment. Nor did it say that the issue of the TKQP Letter was *res judicata*. It appears to us that the Appellate Division did take into consideration the *obiter* remarks of the CA Judgment as it was entitled to do so and agreed with the reasoning therein. This is clearly not impermissible and therefore does not raise any point of law, let alone a point of law of public importance.

53 But even if the Appellate Division *did* find itself bound by the *obiter* remarks in the Retrial Judgment (taking Mr Biswas's case at its highest), it seems to us that the alleged Point of Public Importance would *not* have a substantial bearing on the outcome of an appeal against OS 53: *UJM* at [102(b)]. In seeking an extension of time to file an appeal, one of the key inquiries is the explanation for not filing in time. The Appellate Division noted at the outset that there was "no good explanation" for the delay in filing the appeal against the RA Decision. Thus, apart from the lack of merits of the appeal, this delay is another hurdle that Mr Biswas has failed to address.

The Discretionary Appropriateness Requirement

54 Furthermore, even if we assume that the Threshold Merits Requirement is met, we are of the view that OA 2 should not be allowed as it does not pass "the Discretionary Appropriateness Requirement": *UJM* at [119]. This is because the alleged Point of Public Importance does not require a decision of the Court of Appeal to be resolved: O 18 r 29(5)(*b*)(i) of the Rules of Court 2021. At its core, it engages uncontroversial principles of *stare decisis*. Reduced to its essence, it simply seeks a determination as to whether the Appellate Division is bound by *obiter dicta* of the Court of Appeal. There is no controversy that the answer is in the negative.

55 Furthermore, in our view, it would not be in the "interests of the administration of justice" for this court to consider the alleged Point of Public Importance because OS 53 was an abuse of process: O 18 r 29(5)(*b*)(ii) of the ROC 2021. The Appellate Division found that OS 53 was an abuse of process, citing the fact that permission was not required to appeal against the RA Decision (a fact that Mr Biswas was made aware of), yet Mr Biswas nonetheless sought permission to appeal in OS 53.

56 In his written submissions for the present application, Mr Biswas argues that there was no basis for this holding. He claims that whether permission to appeal is required is a question that is "unclear and open to fierce debate" that has "spawned countless decisions and will no doubt continue well into the future". His argument seems to be that he should not be faulted for applying for permission as it was unclear and he was playing it safe.

57 Even if we accept that Mr Biswas had applied for permission to appeal out of an abundance of caution, there were plainly other aspects of OS 53 which justified the Appellate Division's conclusion that it was an abuse of process.

58 First, the allegation of perjury at the centre of OS 53 was, in our view, baseless. Given the serious nature of an allegation of perjury, one would have expected OS 53 to be well-supported. But as it turned out, the evidence relied on by Mr Biswas was nowhere near enough, *ie*, his allegation against the Mukherjees was "manifestly groundless" and "without foundation": *Chee Siok Chin and others v Minister for Home Affairs and another* [2006] 1 SLR(R) 582 ("*Chee Siok Chin*") at [33] and [34(c)], cited in *Republic of India v Vedanta Resources plc* [2021] 2 SLR 354 ("*Republic of India*") at [53].

59 Second, it must be remembered that OS 53 (and by extension, any appeal against it) was the latest in several lines of parallel litigation involving the Mukherjees and Mr Biswas.

(a) First, OS 53 was a response to the bankruptcy proceedings initiated by the Mukherjees. As we have noted, the main allegation made by Mr Biswas was that the Judgment Debt was obtained by the Mukherjees' perjury, and thus the Statutory Demand should be set aside.

(b) Second, Mr Biswas attempted to obtain a retrial of Suit 1270 through OS 24 (see [45]–[46] above). Once again, the allegation made here was that the Mukherjees had perjured themselves during Suit 1270. If OS 24 had been successful, the Trial Judgment (and thus the Judgment Debt and the Statutory Demand) would have been set aside in anticipation of a fresh trial.

(c) Third, Mr Biswas filed HC/S 921/2021 against the Mukherjees, claiming for "unjust enrichment" ("the New Suit"). There, the main allegation was once again that the Mukherjees had perjured themselves during Suit 1270. He has similarly sought to impugn the Trial Judgment and consequently the Judgment Debt and Statutory Demand.

60 What is clear from the above is that Mr Biswas, in three separate proceedings, has made the same allegation (that the Mukherjees committed perjury in Suit 1270) and essentially sought the same relief: the setting aside of the Judgment Debt and the Statutory Demand.

61 More concerning is the *timing* of these proceedings in relation to the service of the Statutory Demand. The Statutory Demand was served on 13 July 2021. Mr Biswas then attempted to challenge it, but his challenge was dismissed in September 2021. His appeal against this dismissal, RA 260, was also dismissed on 4 October 2021. Only two days later, on 6 October 2021, OS 24 was filed. Then, just over a month later, two new proceedings were commenced by Mr Biswas in quick succession: OS 53 was filed on 8 November 2021, and the New Suit was filed on 10 November 2021.

62 The above demonstrates that Mr Biswas only took action *after* the Mukherjees had commenced bankruptcy proceedings, and after his initial

attempts at challenging the Statutory Demand had failed. He then resorted to using "multiple", "successive proceedings" to resist the Mukherjees' enforcement efforts. Such proceedings, having been commenced in *every division* of the Supreme Court within a short period, are "likely to cause improper vexation or oppression" to the Mukherjees, and thus amount to an abuse of process: *Chee Siok Chin* at [34(d)], cited in *Republic of India* at [53].

63 OS 53, being a part of this effort to oppress, must also be classified as such. Thus, it would not be in the interests of the administration of justice to hear a further appeal from it.

Conclusion

64 We dismiss both SUM 15 and OA 2. Neither, in our opinion, bore any semblance of merit.

65 Accordingly, the Mukherjees are entitled to costs for both.

(a) As regards the costs of OA 2, this court made it clear in *UJM* that unmeritorious applications for permission to appeal would be met with costs consequences: at [130]. The present application did not come close to meeting either the Threshold Merits Requirement or the Discretionary Appropriateness Requirement. Thus, in our opinion, costs should be fixed at the higher end of the relevant range found in Appendix G of the Supreme Court Practice Directions. We thus award the Mukherjees costs fixed at S$12,000 inclusive of disbursements.

(b) As for SUM 15, we find that it did not even come close to succeeding. Despite the gravity of SUM 15's subject matter, the allegations and arguments made by Mr Biswas were completely

unsubstantiated. As we have warned previously in *BOJ*, such unmeritorious applications will not be free of consequences. In our opinion, the appropriate consequence here would be to award the costs of SUM 15 to the Mukherjees on an indemnity basis, fixed at S$20,000 inclusive of disbursements.

Andrew Phang Boon Leong
Justice of the Court of Appeal

Steven Chong
Justice of the Court of Appeal

The applicant (in person);
See Chern Yang and Cheng Hiu Lam Larisa (Drew & Napier LLC)
for the respondents.