Cheong Ghim Fah and Another v Murugian s/o Rangasamy (No 2)
[2004] SGHC 125

Case Number : Suit 493/2002

Decision Date : 11 June 2004

Tribunal/Court : High Court

Coram : V K Rajah JC

Counsel Name(s) : Roy Yeo (Chia Yeo Partnerhip) for plaintiffs; Vijay Kumar Rai (V K Rai and Partners) for defendants

Parties : Cheong Ghim Fah; Goh Jak Fong @ Goh Jit Fong — Murugian s/o Rangasamy

Civil Procedure – Costs – Taxation – Proceedings prima facie falling within jurisdiction of Subordinate Courts – Whether proceedings ought to be taxed on High Court scale – Order 59 r 27(5) Rules of Court (Cap 322, R 5, 2004 Rev Ed)

Conflict of Laws – Foreign judgments – Recognition – Judgment from Singapore Subordinate Courts not recognised by foreign jurisdiction – Whether sufficient reason to commence proceedings in Singapore High Court – Malaysian Reciprocal Enforcement of Judgments Act 1958

Words and Phrases – "Sufficient reason" – Definition – Section 39 Subordinate Courts Act (Cap 321, 1999 Rev Ed)

11 June 2004

V K Rajah JC:

1 In *Cheong Gim Fah and another v Murugian s/o Rangasamy* [2004] 1 SLR 628, I assigned liability to the extent of 85% to the defendant for causing the death of a jogger in a motor accident. Interlocutory judgment was entered in favour of the plaintiffs with damages to be assessed by the Registrar. On 2 April 2004, an assistant registrar assessed damages due to the deceased's estate at $216,523.60. This sum falls within the pecuniary limit of $250,000 which represents the jurisdictional scope of the District Court in civil matters.

2 On the issue of costs, the assistant registrar, taking into account O 59 r 27 of the Rules of Court (Cap 322, R 5, 2004 Rev Ed) ("RSC"), ruled that "costs are awarded to the plaintiffs to be taxed on the [District Court] scale on a standard basis". The assistant registrar concurrently granted the plaintiffs liberty to apply directly to me, pursuant to O 59 r 27(5), for a final decision as to whether costs should be assessed on the High Court scale.

The legislative matrix

3 While the High Court retains the general jurisdiction to entertain all manner of actions and causes, the legislature has directed, with clear lines of demarcation, which matters ought to be heard in the subordinate courts alone. There are strong policy reasons underpinned by expediency dictating that this jurisdictional demarcation be respected in the absence of any grounds satisfying the statutory acid test of "sufficient reason". The administrative and judicial arteries of work flow in the High Court would be clogged if a cavalier approach were adopted by solicitors in observing this vital jurisdictional demarcation. Moreover, solicitors should in no event incur unnecessary costs if a more economical and equally expeditious process of dispute resolution exists. The subordinate courts have been constituted to provide a forum for the just, expeditious and economical resolution of smaller claims.

4 In light of these considerations there are inherent legislative directives governing the assessment of costs of matters which, though adjudicated in the High Court, fall within the jurisdiction of the subordinate courts. *Prima facie* the costs awarded in such matters ought to be assessed on the subordinate courts scale. (For ease of reference, I shall refer to such proceedings henceforth as "subordinate court proceedings").

The legislative directives

5 Section 39 of the Subordinate Courts Act (Cap 321, 1999 Rev Ed) ("SCA") stipulates:

> (1) Where an action founded on contract or tort or any written law to recover a sum of money is commenced in the High Court which could have been commenced in a subordinate court, then, subject to subsections (3) and (4), the plaintiff —
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> > (a) if he recovers a sum not exceeding the District Court limit, shall not be entitled to any more costs of the action than those to which he would have been entitled if the action had been brought in a District Court; and
> >
> > (b) if he recovers a sum not exceeding the Magistrate's Court limit, shall not be entitled to any more costs of the action than those to which he would have been entitled if the action had been brought in a Magistrate's Court.
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> (2) For the purposes of subsection (1)(a) and (b), a plaintiff shall be treated as recovering the full amount recoverable in respect of his claim without regard to any deduction made in respect of contributory negligence on his part or otherwise in respect of matters not falling to be taken into account in determining whether the action could have been commenced in a subordinate court.
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> (3) Where a plaintiff is entitled to costs on the subordinate courts scale only, the Registrar of the Supreme Court shall have the same power of allowing any items of costs as a District Judge or Magistrate would have had if the action had been brought in a subordinate court.
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> (4) In any action, the High Court, if satisfied —
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> > (a) that there was *sufficient reason* for bringing the action in the High Court; or
> >
> > (b) that the defendant or one of the defendants objected to the transfer of the action to a subordinate court,
> >
> > may make an order allowing the costs or any part of the costs thereof on the High Court scale or on the subordinate courts scale as it may direct.
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> …
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> (6) This section shall not affect any question as to costs if it appears to the High Court that there was *reasonable ground* for supposing the amount recoverable in respect of the plaintiff's claim to be in excess of the amount recoverable in an action commenced in a subordinate court.
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> [emphasis added]

6 Order 59 r 27(5) of the RSC stipulates:

> Notwithstanding paragraphs (1) to (4), if any action is brought in the High Court, which would have been within the jurisdiction of a Subordinate Court, the *plaintiff shall not be entitled* to any more costs than he would have been entitled to if the proceedings had been brought in a Subordinate Court, *unless in any such action a Judge certifies that there was sufficient reason for bringing the action in the High Court*. [emphasis added]

The rival contentions

7 Counsel for the plaintiffs accepted that the assistant registrar had no discretion in light of O 59 r 27(5) to make any other order of costs. He however contended that there was sufficient reason for initiating the subject proceedings in the High Court and that a judge could vary the assistant registrar's order. He asserted first of all that the sum of $216,000 awarded by the assistant registrar loomed close to the jurisdictional limit of the subordinate courts. According to his clients' genuine estimation, damages should have been assessed in the region between $300,000 to $400,000 and his clients should not, to that extent be penalised if the actual amount fell barely short of such an estimation. Next, there were several allegedly interesting and difficult points of law and fact raised in the subject proceedings which would, in the interests of finality, have rendered High Court proceedings preferable. This, he claimed, would in the final analysis obviate an appeal and lead to an ultimate saving of costs. Finally, he drew my attention to a 1996 decision of the Malaysian High Court, *Excelmore Trading Pte Ltd v Excelmore Classics Sdn Bhd* (cited in *Mallal's Digest of Malaysian and Singapore Case Law* vol 2(3) (4th Ed, 2001 Reissue) at para 5056). The Malaysian High Court held in that decision that a judgment emanating from the subordinate courts in Singapore was not registrable under the Malaysian Reciprocal Enforcement of Judgments Act 1958 ("MREJA"); the MREJA recognised only the judgments of a superior court. Counsel contended that commencing proceedings in the subordinate courts would, in the circumstances, have amounted to negligence on his part. The defendant, a Malaysian, had no assets in Singapore. Furthermore, the defendant's Malaysian insurer, the substantive defendant in the proceedings, had neither a physical presence nor any assets in Singapore.

8 Counsel for the defendant, on the other hand, argued that the court's primary, if not sole, consideration was to have regard to the final amount adjudged. Acceding to the plaintiffs' arguments would, he contended, open the floodgates encouraging the filing of matters in the High Court that should rightly be commenced in the subordinate courts.

Principles

9 The general rule is that an award of costs is made for the purpose of compensating, in some way, the successful party for the legal costs it has incurred. An award of costs does not normally carry with it any punitive element designed to *punish* the unsuccessful party.

10 The legislative directive in s 39 of the SCA is patently intended to ensure that the statutory division of the caseload between the two courts is religiously observed by litigants and their solicitors. A party that breaches this statutory mandate by incorrectly commencing proceedings in the High Court should not be entitled to recover costs that have been unreasonably incurred; hence it should only be permitted to recover the subordinate courts scale of costs unless there is *sufficient reason* justifying the initial election. Without attempting an exhaustive definition of the term "sufficient reason", in the context of s 39 of the SCA, it can be said to embrace matters that are out of the ordinary. All said and done, this term is an etymological chameleon that has no fixed or settled meaning; satisfying this requirement is coloured and evaluated entirely by its statutory context and the relevant factual matrix. The term has overlapping but not consistently identical meanings in ss 37, 38 and 39 of the SCA.

11 In *Australian Master Builders Co Pty Ltd v Ng Tai Tuan* [1987] SLR 539, Chan Sek Keong JC (as he then was) opined that s 37 of the SCA gave the High Court an unfettered discretion to transfer, at any time, any proceedings commenced in the High Court by writ of summons to the District Court. He corrrectly pointed out that the words "notwithstanding any other provisions of this Act" vest in the High Court the discretion to increase the ordinary civil jurisdiction of the District Court by means of such a transfer. Chan JC also emphasised that it is not desirable to design specific rules as to when and how the court should exercise its discretion to transfer proceedings. More recently, in *Sunlink Engineering Pte Ltd v Koru Bena Sdn Bhd* [2003] 2 SLR 452, Tan Lee Meng J, after citing Chan JC's views, observed that the need to meet another country's legislation on reciprocal enforcement of foreign judgments did not, *without more*, confer on a plaintiff the right to be heard in the High Court if the case could in the normal course of events be heard in the subordinate courts. He was concerned that otherwise, a different set of rules could, without exception, apply to every such foreign defendant. This could result in a misallocation of High Court resources, as time could then be unjustifiably spent on claims which ought to be dealt with in the subordinate courts. These are indeed legitimate concerns. It is noteworthy, however, that Tan J, in transferring the subject proceedings to a subordinate court, grounded his decision on the basis that the foreign defendant had not only a presence in Singapore but had also just secured a multi-million dollar contract for the construction of a Singapore school.

12 It is evident from the statutory scheme and policy of the SCA and the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) ("SCJA") that all proceedings falling *prima facie* within the purview of the SCA ought to be commenced in the subordinate courts. Even if a matter involves "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", the proper course of procedure for a solicitor to adopt is to file the proceedings in the subordinate courts, in the first instance, and thereafter apply for the transfer of the proceedings to the High Court, pursuant to s 38 of the SCA. Section 31 of the SCA now expressly confers on the District Court the same power as the High Court; it is, to that extent, no longer an option for parties seeking an injunction or a declaration as their primary or sole relief to commence proceedings in the High Court, if the matter *prima facie* falls within the jurisdiction of the subordinate courts. A solicitor who insouciantly initiates subordinate court proceedings in the High Court by simply assuming that there is "sufficient reason" for doing this could be placing his client's interests in jeopardy by adopting such a course of action. There could be a consequential delay arising from the subsequent transfer of those proceedings to the subordinate court and/or adverse costs consequences – this may eventually crystallise into a personal liability for the solicitor concerned.

13 What exactly is the gamut of cost consequences for parties if and when subordinate court proceedings are commenced in the High Court? In the usual course of events, costs awarded ought to be assessed on the subordinate courts scale. A successful defendant in such a matter should also almost invariably be awarded the lower scale of costs; the rationale being that it shared a duty to ensure that the proceedings ought to be heard in the appropriate forum. The fact that O 59 r 27(5) of the RSC only refers to plaintiffs does not undermine the nature or scope of this overriding duty and obligation *vis-à-vis* defendants. The obligation to correctly initiate proceedings or appropriately transfer proceedings (as the case may be) rests squarely on all the solicitors involved in a matter. It should also be noted that instances, where it would have been obvious from the outset to any reasonable solicitor that the High Court was not the appropriate forum for the proceedings, should almost invariably warrant that the solicitor and client costs be similarly taxed on the subordinate courts scale. In addition, the court has an overriding inherent jurisdiction to direct that an offending solicitor be allowed to recover only a fraction of his usual costs for having transgressed the statutory directives on jurisdiction. A solicitor may, in these circumstances, end up entitled to only a portion of the usual costs. Furthermore, if subordinate court proceedings are transferred out by the High Court,

the plaintiffs' solicitors could be ordered to bear the consequential costs personally. Such a sanction, which could be deployed in egregious cases, serves to deter solicitors from commencing proceedings indiscriminately, in flagrant disregard of the statutory policy and prerequisites embodied in the SCJA and SCA.

Decision

14 On the basis of the then available facts, it was reasonable for the plaintiffs' solicitors, at the outset, to take the view that the damages their clients might potentially recover would fall in the region of $300,000 to $400,000. There were a number of factual imponderables in play. Commencing proceedings in the subordinate courts would have precluded their clients from recovering damages in excess of the District Court's jurisdiction. It must be emphasised that s 39(6) of the SCA recognises that if there is "*reasonable ground* for supposing the amount recoverable" [emphasis added] would be in excess of the subordinate court's jurisdiction, the strictures imposed do not apply. That the plaintiffs did not in fact ultimately recover an amount in excess of the District Court jurisdiction should not, in the circumstances of these proceedings, be held against them. The test is not one of hindsight but of reasonableness refracted through the factual prism existing when the proceedings were initiated. Needless to say, if solicitors realise that the upper limit of recoverability falls within the subordinate courts' jurisdiction prior to the commencement of a hearing, steps ought to be taken to immediately transfer the proceedings to the appropriate forum.

15 There is yet another reason why I was persuaded that it was appropriate to initiate the subject proceedings in the High Court. It seems clear to me that if a subordinate court judgment cannot be enforced as a foreign judgment in another jurisdiction, this could be a "sufficient reason" for initiating the action in the High Court. Historically, common law courts in various jurisdictions have only recognised judgments of other foreign superior courts for the purposes of enforcement (see *Halsbury's Laws of England* vol 10 (4th Ed Reissue, 2002) at para 309):

> The chief distinctions between superior and inferior courts are found in connection with jurisdiction. Prima facie, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while *nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognisance of the particular court* …
>
> Another distinction between superior courts and inferior courts is that while the unreversed judgment of a superior court is conclusive as to all relevant matters decided by it, *the judgment of an inferior court involving a question of jurisdiction is not final*. [emphasis added]

This is a historical anomaly and reality that has to be acknowledged and acceded to. Indeed only judgments of foreign superior courts are recognised in Singapore for the purposes of statutory enforcement: see Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed) and Reciprocal Enforcement of Foreign Judgments Act (Cap 265, 2001 Rev Ed). If the High Court were to turn away litigants whose *sole* means of enforcing a judgment lies in a foreign jurisdiction *and* if a judgment of the subordinate courts would not be recognised in that jurisdiction, such litigants would effectively be deprived of any judicial assistance by Singapore courts. That surely cannot be right if Singapore is *the* appropriate forum to assume jurisdiction for the matters concerned. It is inconceivable that the Legislature intended that the High Court should assume a rigid approach by resolutely declining jurisdiction in such cases, *ergo* the qualification by means of the safety net of "sufficient reason". In my view, Singapore is indeed the appropriate jurisdiction for the subject proceedings. I do not interpret Tan J's decision in *Sunlink Engineering* ([11] *supra*) as postulating anything further than that based on the facts of that case, and considering the defendant had assets

in Singapore, the High Court was not the appropriate forum. "Sufficient reason" to commence subordinate court proceedings in the High Court, as opposed to the District Court, had not been established in that case as the judgment could, to all intents and purposes, have been enforced in Singapore. Having said that, if indeed there are concerns about an avalanche of such matters coming before the High Court, then this should be a matter for law reform. Perhaps a statutory mechanism to register subordinate court judgments in the High Court to accord them the status of a decision of a superior court through a deeming provision, prior to foreign enforcement, can be contemplated. This should assuage all concerns and fears relating to "floodgates". It is interesting to note, until 1993, s 46 of the Subordinate Courts Act (Cap 321, 1985 Rev Ed) allowed the District Court to forward judgments to the High Court for execution. Such judgments were, upon receipt, deemed to have "been made by the High Court". Curiously, this provision appears to have been intended only to facilitate enforcement within the jurisdiction and was unceremoniously repealed by Act 15 of 1993.

16 For completeness, I should state that if subordinate court proceedings are entertained in the High Court, only on the basis of intended enforcement in a foreign jurisdiction, the subordinate courts scale of costs should continue to be applicable. Such matters are heard by the High Court purely to facilitate enforcement and an additional layer of costs should not be added.

17 I was not, however, in the least impressed by the plaintiffs' remaining contention that the complexity or importance of the issues raised in the proceedings justified the initiation of proceedings in the High Court. The issues raised in the proceedings, while interesting, were well within the purview and competence of the District Court. Only a case of unusual complexity or one that raises an issue of public interest or an important point of law could ever warrant such a contention. As observed in [12], the correct procedure in such a case is to initiate proceedings in the subordinate courts and *then* to apply for a transfer to the High Court. Nor is it tenable to either assume or assert that an appeal can be properly obviated by initiating proceedings in the High Court in the first instance. This approach would make a mockery of, and wholly undermine, the statutory scheme for the division of work between the courts and will not be countenanced.

18 In the result, as the plaintiffs satisfied ss 39(4)(a) and 39(6) of the SCA, I held that the plaintiffs were entitled to have commenced the subject proceedings in the High Court and directed that the plaintiffs' costs be assessed on the High Court scale.

Concluding observations

19 In *Australian Master Builders Co Pty Ltd v Ng Tai Tuan* ([11] *supra*), Chan JC rightly asserted that the discretion to transfer proceedings between courts is an unfettered discretion; the same applies *a fortiori* to the discretion to award costs. An unfettered discretion should not by its very definition be fettered by inflexible guidelines, lest it evolves in the process into an inflexible rule of thumb. Suffice it to say that the court will view each such matter that comes before it by asking, "Was it reasonable in the circumstances, having regard to the legislative scheme, to have initiated proceedings directly in the High Court?" The appropriate response will have to be formulated against the backdrop of the legislative policy that there should be different horses for different courses.

20 Solicitors must at all times exercise prudence and take the appropriate steps to initiate civil proceedings in their proper fora. If they fail to do so they run the risk of being penalised in costs and censured. They may also find the proceedings delayed if the High Court, on its own motion or otherwise, decides to transfer what should have started off as subordinate court proceedings to their proper fora. Parties who find their hearings delayed as a consequence could in turn legitimately take their solicitors to task for any such delay and/or unnecessary incurring of costs. Solicitors could face as a result issues of personal liability for wasted costs, which would be most unfortunate.

Costs of the plaintiffs to be taxed on the High Court scale.