

Pandian Marimuthu v Guan Leong Construction Pte Ltd
[2001] SGHC 96

Case Number : OS 7004/2001
Decision Date : 16 May 2001
Tribunal/Court : High Court
Coram : G P Selvam J
Counsel Name(s) : Perumal Athitham (Yeo Perumal Mohideen & Partners) for the applicant; Prasanna Prabhakaran (Karuppan Chettiar & Partners) for the respondents
Parties : Pandian Marimuthu — Guan Leong Construction Pte Ltd
Civil Procedure – Appeals – Claim exceeding \$50,000 – Whether leave to appeal should be granted – Whether plaintiff entitled to appeal as of right

Civil Procedure – Costs – Security – Principles applicable – When security for costs ordered – Effect of failure to combine appeal against leave to appeal with appeal against order for security

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The claim and the appeal

This is an application for leave to appeal against the decision of the district judge ordering the plaintiff to furnish security for costs in the sum of \$5,000. This is a personal injury case.

The plaintiff is an Indian national and a construction worker. On 2 January 1999 he suffered injuries to his spine and knee. He says that at that time he was engaged in work relating to the construction of a road within Changi Airport. On that date he was indisputably working for the defendants.

He brought this action in the subordinate courts seeking damages. Before this he had made a claim under the Workmen's Compensation Act (Cap 354, 1998 Ed). The Commissioner of Labour issued a notice of assessment on 21 January 2000. Later the plaintiff changed his mind and withdrew his claim under the Workmen's Compensation Act and filed this action.

The statement of claim asserted that the plaintiff and another worker, while at work, were standing on a staging. The legs of the staging were fitted with casters (swivel wheels). Two other co-workers pushed the staging to the next work spot while the plaintiff and his co-worker remained on the staging. While the staging was being pushed one of the casters hit a snag in the floor. The caster came off and the staging tilted to one side. In the result the plaintiff lost his balance and fell to the ground. The staging toppled on him. Consequently he suffered injuries. He says that the defendants were negligent. He made the alternative or additive assertion that the defendants were in breach of the Factories Act (Cap 104, 1998 Ed) and the Factories (Building Operations and Works of Engineering Construction) Regulations (Cap 104, Rg 8, 1999 Ed).

At this point I must advert to the 'Detailed Description of Accident' set out in the 'Notice of Accident' submitted by the defendant under the Workmen's Compensation Act and the Workmen's Compensation Regulations (Cap 354, Rg 1, 1990 Ed). I reproduce it in an edited form to correct the grammar:

The said worker was deploy [sic] to open the formwork at mechanical room to erect the scaffolding for access to work. While climbing up the scaffolding to working platform, he slipped and fell and his right leg was injured.

The notice further said that the plaintiff `Carried out general construction work **as instructed by site foreman**` (emphasis is added). At the end of the Notice of Accident, a director of the defendants certified that the information given in the notice `is correct to the best of my knowledge`.

In the defence filed in this action the defendants pleaded allegations incongruent with the contents of the Notice of Accident. The defence admitted that the stage was moved while the plaintiff was on the stage. The following admission in the notice is omitted from the defence: `While climbing up the scaffolding to working platform, he slipped and fell`. Furthermore, there is no positive case in respect of the staging hitting the snag on the floor.

The discrepancy in the notice and the defence augurs ill for the defendants. Prima facie, the plaintiff is likely to recover substantial damages even as a division of liability. There is no defence to the cause of action. The likelihood of the plaintiff succeeding is very strong. Such being the case, the question of security for costs becomes an unjust exercise intended to stifle a strong prima facie claim simply because the plaintiff is a foreigner without an address within the jurisdiction. Its purpose effectively is to deny justice to the plaintiff.

When the order for security was made the plaintiff wanted to appeal against the order. However, he was advised that he required leave to appeal. He then applied for leave. He was denied leave. He has appealed against the refusal.

The law on appeal

It is necessary to interpose at this stage an important point as to whether leave was required to appeal against the order for security for costs. This concerns s 21(1) of the Supreme Court of Judicature Act (Cap 322, 1999 Ed). This provides as follows:

Subject to the provisions of this Act or any other written law, an appeal shall lie to the High Court from a decision of a District Court or Magistrate`s Court in any suit or action for the recovery of immovable property or in any civil cause or matter where the amount in dispute or the value of the subject-matter exceeds \$50,000 or such other amount as may be specified by an order made under subsection (3) or with the leave of a District Court, a Magistrate`s Court or the High Court if under that amount.

It was thought that `the amount in dispute` was the amount of security which was ordered. This was patently wrong. The amount relates to `the cause or matter`. The court`s power to order security for costs is in respect of the plaintiff`s claim and not the defendant`s application for security for costs. That is the amount of the substantive claim that is in dispute. The application for costs had no relation to the amount in dispute in the case. The application for security involved a question of procedural and interlocutory matter. It is a question of whether the plaintiff should be allowed to prosecute his claim unconditionally. The ceiling of \$50,000 relates to the substantive claim which in this case clearly exceeds \$50,000. The special damages alone exceeds \$85,000. The plaintiff, accordingly, was entitled to appeal as of right. That is not the point of appeal which is before me. The subject matter of appeal is whether leave to appeal ought to have been granted. I will therefore proceed to decide the point before me.

Leave to appeal - the principles

The guiding principle for granting leave is whether the appeal is likely to succeed and whether, if leave is not granted, there is a likelihood of substantial injustice. In **Smith v Cosworth Casting Processes** [1997] 4 All ER 840[1997] 1 WLR 1538, the English Court of Appeal stated that: `The Court will only **refuse** leave if satisfied that the applicant has no realistic prospect of succeeding on the appeal.` That was said in relation to proposed appeals to the Court of Appeal. The same principle must apply with equal force to appeals from the subordinate court to the High Court.

The principles governing ordering security for costs

That compels me to consider the merits of the appeal. This in turn compels me to state the principles which govern the exercise of the power to order security. They are as follows:

(1) Security will not be ordered based on the mere fact that the plaintiff is a foreigner with no address or assets within the jurisdiction. The applicant must establish that in all the circumstances of the case it would be just to grant the application.

(2) In considering the application, the court should be mindful of the underlying principle on which security is ordered - that is, the plaintiff should not be permitted to litigate on an unlikely claim and leave the defendant with a paper judgment for costs. This means that there must be an appreciable degree of certainty that there will a judgment for costs in favour of the defendant. Otherwise the order for security will be purposeless and will defeat the ends of essential justice when the plaintiff is disabled or unable to secure the security.

(3) The court should be circumspect to ensure that the defendant`s purpose of seeking security for costs is not to quell the plaintiff`s quest for justice.

(4) Ultimately the court should, on a broad view, weigh the merits of the claim and defence and decide whether it would be just to order security.

See:	(a)	The 1999, para 23/3/3;
	(b)	The 1999, para 23/3/3;
	(c)	Creative Elegance (M) v Puay Kim Seng [1999] 1 SLR 600 ;
	(d)	Allen v Jambo Holdings [1980] 2 All ER 502[1980] 1 WLR 1252; and
	(e)	Oxy Electric v Zainuddin [1990] 2 All ER 902[1991] 1 WLR 115.

English White Book Hong Kong White Book The decision

Applying the principles and having regard to the facts and circumstances set out earlier I am of the view that the plaintiff`s claim stands a high probability of success. The defendants` application has

the clear marks of an attempt to stifle a bona fide claim.

Accordingly, having regard to all the circumstances of the case it would not be just to order security for costs. In the result, the intended appeal against the order for security for costs has good merits. The plaintiff should be given leave to appeal and so I do. The plaintiff in this case should have combined the appeal against the order so that the former could be heard at once if leave is granted. He has not done so. In the circumstances, I am constrained to give leave and let the appeal against the order for security be heard separately.

The defendant shall pay the costs of the appeal to the district court and the High Court.

Outcome:

Appeal allowed.

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