Lim Kok Boon (Lin Guowen) *v* Lee Poh King Melissa
[2012] SGHC 77

Case Number : Divorce No 3178 of 2010 (Registrar's Appeal No 228 of 2011)

Decision Date : 11 April 2011

Tribunal/Court : High Court

Coram : Quentin Loh J

Counsel Name(s) : Mr Arvind Daas Naaidu (Legal21 LLC) for the appellant; Ms Tan Yew Cheng (Leong Partnership) for the respondent.

Parties : Lim Kok Boon (Lin Guowen) — Lee Poh King Melissa

Civil Procedure – Rules of Court – Non-Compliance – Appeals – leave

11 April 2011 Judgment reserved.

Quentin Loh J:

1 This appeal from the district court raises the issue as to when time for an appeal starts to run - the date when the District Court makes the order or the date when the District Judge ("DJ") refuses to hear further arguments. This is the sole issue on appeal. There is no alternative prayer to extend time if the notice of appeal is held to be filed out of time. This has not been a live issue in the High Court for some time now and I am surprised to hear from the Appellant that it continues to raise its head ever so often in the Subordinate Courts.

Facts and the Decision Below

2 DJ Wong Shen Kai made his orders on ancillary matters ("the Order") on 18 October 2011, which included, *inter alia*, an order that the sum of $38,850 be deducted from the Appellant's share of the net proceeds of sale of the matrimonial flat to account for the Appellant's debts which were discharged by the Respondent. Three days later, on 21 October 2011, the Appellant's solicitors wrote to the Registrar of the Subordinate Courts to request for further arguments. This letter however was not copied to the Respondent's solicitors as it should have been under the Subordinate Courts Practice Directions. The DJ certified on 27 October 2011 that he required no further arguments.

3 The Appellant's notice of appeal was filed on 8 November 2011. If time for filing of the notice of appeal started to run from the time the Order was made, the Appellant's time to file a notice of appeal would have expired on 1 November 2011. The Appellant's notice of appeal would accordingly be out of time by 7 days. But if time were to run from the time the Judge certified that he would not hear further arguments, then the notice of appeal would have been filed within time as the last day to do so would be 10 November 2011.

4 The Respondent, (the plaintiff below), filed Summons in Chambers No. 19133 of 2011/H, ("Summons 19133"), to strike out the Appellant's notice of appeal. DJ Edgar Foo, ("DJ Foo"), who heard this summons, granted the striking out of the notice of appeal on the basis that the provision for an extension of time to appeal pending a request for further arguments only applied to appeals in the High Court and not in the Subordinate Courts. [note: 1]

5 The Appellant now seeks an order that DJ Foo erred in law by holding that the appeal was filed out of time.

Filing of further arguments in the Subordinate Courts

The Appellant's Argument

6 The Appellant argues that O 55C of the Rules of Court (Cap. 322, R 5, 2006 Rev Ed) ("ROC"), which governs appeals from interlocutory orders, judgments or decisions made in chambers ("interlocutory orders") in the Subordinate Courts, is silent on the matter of further argument and what a request for further arguments does to the time within which a notice of appeal must be filed. Because it is silent, it is argued that there is a lacuna. The Appellant therefore contends that s 28B Supreme Court of Judicature Act, (Cap.322, 2007 Rev Ed) ("SCJA") governing extension of time to appeal pending a request for further arguments, should be used as a supplement to O 55C to provide a mechanism which deals with a request for further arguments and appeal timelines. There should be uniformity for such appeals, be they from the Subordinate Court to a High Court judge or from the High Court to the Court of Appeal.

Subordinate Court Act (SCA) vis-a-vis the SCJA

7 Having considered the matter, I regretfully cannot agree with the Appellant's submission. There are two different regimes governing appeals from interlocutory orders made by a judge in chambers for the Subordinate Court and the High Court.

8 There is no statutory provision for the filing of further arguments in the Subordinate Courts Act (Cap.321, 2007 Rev Ed) ("SCA"). A failure to apply for further arguments on interlocutory orders given in the Subordinate Courts has never operated as a bar to an appeal, which lies to a judge of the High Court in chambers. In contrast, in the High Court, the former s 34(1)(c) SCJA specifically barred an appeal to the Court of Appeal from an interlocutory order of a High Court judge where the parties failed to make an application for further arguments. The repealed s 34(1)(c) read:

> **Matters that are non-appealable or appealable only with leave**
>
> **34.** —(1) No appeal shall be brought to the Court of Appeal in any of the following cases:
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> ...
>
> (c) subject to any other provision in this section, where a Judge makes an interlocutory order in chambers unless the Judge has certified, on application within 7 days after the making of the order by any party for further argument in court, that he requires no further argument;

This was interpreted in *Jumabhoy Asad v Aw Cheok Huat Mick and others* [2003] 3 SLR(R) 99 at [6] to mean the following:

> By this provision, it is clear that there can be *no appeal* against an interlocutory order made by a judge in chambers *unless* the aggrieved party shall, within 7 days thereof, make an application to the judge to hear further arguments and the judge has certified that he requires no further argument.
>
> [emphasis added]

9 Contrary to the Respondent's submissions, the new s 28B SCJA was not simply intended to replace the former s 34(1)(c). One of the main reasons for S 34(1)(c)'s repeal, by amendments to the SCJA in 2011 ("the 2011 SCJA Amendments"), was to remove the harshness of preventing an appeal for parties who failed to apply for further arguments. Senior Minister of State for Law, Associate Professor Ho Peng Kee explained the implications of this replacement in the Parliamentary Debate on the Second Reading of the SCJA (Amendment) Bill on 18 October 2010:

> Currently, a litigant *must* first apply to the High Court to make "Further Arguments" before he can file an appeal to the Court of Appeal. Failure to do so within the stipulated time frame could prevent the litigant from subsequently filing an appeal to the Court of Appeal. This amendment *removes the technical requirement by making the need to file such "Further Arguments" voluntary*.
>
> [emphasis added]

Other reasons included the tight timelines that could be caused by a late reply from the judge as to whether he wished to hear further arguments and the practical difficulties in distinguishing interlocutory and final orders. In any case neither the SCA nor the SCJA contain provisions in relation to the mechanism or procedure for filing further arguments.

10 O 55C r 1 provides the procedure for appeals from interlocutory orders of a DJ or Magistrate in chambers. As pointed out by the Appellant, it is silent on the procedure or time lines when a party asks for further arguments thereon. However, the Practice Direction in the Subordinate Courts, at para. 122 in Part XII, provides as follows:

> **122. Requests for further arguments before the Judge or Registrar**
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> (1) All requests for further arguments shall be by way of letter and should:
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> (a) state the party making the request;
>
> (b) identify the Judge or Registrar who heard the matter in question;
>
> (c) specify when the order concerned was made;
>
> (d) state the provision of law under which the request is made;
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> (e) set out the proposed further arguments briefly, together with any authorities; and
>
> (f) include a copy of each of the authorities cited.
>
> (2) A copy of the request should be furnished to all parties concerned.
>
> (3) All requests should be addressed to the Registrar.

O 55C r 1(4) provides that unless the Court otherwise orders, the notice of appeal must be filed within 14 days of the judgment, order or decision appealed against. O 55C r 1(5) provides that except so far as a Court may otherwise direct, an appeal under this Rule shall not operate as a stay of proceedings in which the appeal is brought. The Practice Direction makes no mention of the time within which the appeal must be filed if a request is made for further argument. This must mean time is not extended when such a request is made because O 55C r 1(4) still takes effect.

11 In the High Court, the mechanism or procedure laid down when an application for further argument is made is found in O 56 r 2. O 56 r 4 specifically provides that O 56 shall only apply to proceedings in the Supreme Court. Prior to the 2011 Amendments to the SCJA, the former O 56 r 2(1) provided that an application to a judge for further argument shall be made in accordance with practice directions for the time being issued by the Registrar. These Supreme Court Practice Directions, at para. 71(1)-(4), were identical to those prevailing in the Subordinate Courts referred to above, save that there was one extra sub-paragraph which dispensed with the need to comply with para. 71(1)(e) and (f) if the request for further argument was merely to comply with s 34(1)(c) SCJA. After the 2011 Amendments to the SCJA, para. 71(4) [note: 2] was removed and it is now identical to para. 122, Part XII of the Subordinate Court Practice Directions quoted above.

12 Importantly, O 56 r 2(2) specifically provides that if there was no answer as to whether the Judge was prepared to hear further arguments within 14 days of the receipt of the application, then the Judge was deemed to have certified that he required no further arguments; O 56 r 2(2) reads:

> Unless the Registrar informs the party making the application within 14 days of the receipt of the application that the Judge requires further arguments, the Judge shall be deemed to have certified that he requires no further arguments.

In contrast, O 55C r 1 does not contain a similar sub-rule.

Principles governing further arguments before the amended S 28B SCJA

13 There appears to be case law which rules that time for an appeal runs from the time the judge refuses to hear further arguments, or hears and rejects these arguments: see *Thomson Plaza (Pte) Ltd v Liquidators of Yaohan Department Store Singapore Pte Ltd (in Liquidation)* [2001] 2 SLR(R) 246 at [10] ("*Thomson Plaza*"). The rationale behind this was explained by the Court of Appeal in *Singapore Press Holdings v Brown Noel Trading* [1994] 3 SLR(R) 114 at [40], ("*Singapore Press Holdings*"), citing the unreported case of *J H Rayner (Mincing Lane) Ltd v Teck Hock & Co (Pte) Ltd* [1989] Mallal's Digest 394:

> Section 34(2) [*ie* s 34(2) of the repealed Supreme Court of Judicature Act] contemplates a situation where a party who is adversely affected by an interlocutory order may wish to appeal against that order but before so doing would like the judge to reconsider the order in the light of such further arguments as he may be able to put forward. *If a judge agrees to hear further arguments, it must mean that he is prepared to change his mind* if on hearing further arguments he comes to the conclusion that the original decision is wrong wholly or in some respects. *In other words, until he has heard such arguments, his decision must remain* tentative.
>
> [emphasis added]

However the facts of the case are distinguishable from the present because the judge initially agreed to hear further arguments. On the day fixed to hear further arguments the judge changed his mind and commented that his decision was a final decision and the Appellants had failed to comply with the practice direction. The underlying assumption of this reasoning was therefore that the judge agreed to hear further arguments in the first place. *Thomson Plaza* is distinguishable from this appeal because the DJ here had not agreed to hear further arguments.

14 The real question in this appeal is what happens when a request for further arguments has been filed but there is no response from the DJ before the time for appeal runs out. As noted above, O 56 r 2(2) makes provision for this eventuality in the High Court. This rule was interpreted in *Aberdeen*

Asset Management Asia v Fraser & Neave [2001] 4 SLR 441 ("*Aberdeen Asset Management*") to mean that, if no reply is given, the time period for allowing an appeal starts from the end of the 14 days:

... on the date the aggrieved party is informed by the Registrar that the judge does not require further argument or on the expiry of the 14 days limited, as the case may be, the aggrieved party may then proceed with the appeal to this court.

15 Where the rules are silent, as O 55C is, and where a request for further argument is not a bar to an appeal, then *Aberdeen Asset Management* and its approach is inapplicable. As O 55C r 1(4) states clearly, a litigant who wishes to appeal against an interlocutory order made by a DJ or Magistrate in chambers, must file his notice of appeal within 14 days after the judgment, order or direction appealed against was made, irrespective of whether he writes in for further argument. As a practical measure the least the litigant could do is to ask the court to grant an appropriate order extending time or to inform the other party or parties pursuant to the Subordinate Courts Practice Directions at para. 122, Part XII, and secure their agreement not to insist on the 14-day time limit to file an appeal in an effort to save costs, (but whether the court will agree is another matter), failing which O 55C r 1(4), despite the obvious possibility of increasing costs thereby, applies.

The power of this Court to bring the SCA into line with S 28B SCJA

16 The short answer to the Appellant's contention that the court should apply s 28B SCJA to the Subordinate Courts is that it has no power or jurisdiction to do so. Even if it had some residual discretion under O 92 r 4, there are well known limits established by prior authority, (*eg*., *Wee Soon Kim Anthony v Law Society of Singapore* [2001] 2 SLR(R) 821 at [27] and [29], referring to "a need of such a gravity that the court should invoke its inherent jurisdiction"), within which this discretion is to be exercised. O 92 r 4 itself refers to preventing an injustice or an abuse of process. This would be a wholly inappropriate case to exercise that discretion and to somehow read O 56 r (2)(2) into O 55C r 2 is something I cannot and should not do.

Whether the Court can apply the new principles in S28B SCJA

17 S 28B SCJA is not a restatement or clarification of the principles surrounding applications for further argument. It was a change by the abolition of the s 34(1)(c) SCJA bar to an appeal in interlocutory orders and to put in place new procedures and time limits for appeals against interlocutory orders of a Judge in chambers to the Court of Appeal. S 28B SCJA reads:

> **Further arguments before Judge exercising civil jurisdiction of High Court**
>
> **28B.** —(1) Before any notice of appeal is filed in respect of any judgment or order made by a Judge, in the exercise of the civil jurisdiction of the High Court, after any hearing other than a trial of an action, the Judge may hear further arguments in respect of the judgment or order, if any party to the hearing, or the Judge, requests for further arguments before the earlier of —
>
> (a) the time the judgment or order is extracted; or
>
> (b) the expiration of 14 days after the date the judgment or order is made.
>
> (2) After hearing further arguments, the Judge may affirm, vary or set aside the judgment or order.
>
> (3) *If any request for further arguments has been made* under subsection (1) —

(a) *no notice of appeal shall be filed* in respect of the judgment or order *until* the Judge —

(i) affirms, varies or sets aside the judgment or order after hearing further arguments; or

(ii) certifies, or is deemed to have certified, that he requires no further arguments; and

(b) the time for filing a notice of appeal in respect of the judgment or order shall begin on the date the Judge —

(i) affirms, varies or sets aside the judgment or order after hearing further arguments; or

(ii) certifies, or is deemed to have certified, that he requires no further arguments.

(4) For the avoidance of doubt, a party to the hearing may, but is not required to, request for further arguments before he files a notice of appeal in respect of the judgment or order.

[emphasis added]

The new s 28B SCJA therefore makes an application for further arguments on interlocutory orders voluntary and supercedes *Aberdeen Asset Management's* ruling that a request for further arguments operates as an automatic stay of appeal time lines. This also statutorily overruled *Lim Kok Koon v Tan Jin Hwee Eunice* [2004] 2 SLR 322 where the court had made clear that an application for further arguments did not have the effect of operating as an automatic stay for filing of the appeal where Chao JA had stated at [18]:

> [I]n any event, on such a request, whether the judge certifies that he will not hear further arguments, or there is simply no reply [within the time limit set by O 56 r 2(2)], the effect will be that the order of the judge stands and any notice of appeal must be filed within the prescribed time reckoned from the date the order was first made. *Otherwise it would mean that a party could, by just requesting for further arguments, extend time to file his notice of appeal.*
>
> [emphasis added]

The above passage is, in my respectful view, apposite and supports my view set out at [15] above.

18 Unlike the ROC, the SCJA does not apply to the Subordinate Courts. Under s 2 SCJA, "Judge" means a judge of the High Court. There is no room to read s 28B as applying to the Subordinate Courts when a party is appealing from an interlocutory order made by a DJ or Magistrate in chambers.

A rational and consistent approach for divorce proceedings

19 The Appellant also argues that prior to 1 April 1996, all divorce proceedings under Part X of the Women's Charter (Cap 353, 1985 Ed) ("WC") had to be commenced, heard in and determined by the High Court. All divorce proceedings under Part X of the WC were then transferred to the District Courts by the Supreme Court of Judicature (Transfer of Matrimonial, Divorce and Guardianship of Infant Proceedings to District Court) Order 1996 ("the 1996 Transfer Order"). However, by subsequent transfer orders, all ancillary matters which involved contested division of matrimonial assets of $1.5 million or more were transferred back to the High Court for hearing. There were now ancillary matters being heard in the Subordinate and High Courts depending on the value of the

contested matrimonial assets. The Appellant therefore argues that there should be uniformity, certainty and predictability in both courts as to the procedure and provisions relating to requesting a judge to hear further arguments in ancillary matters. Further, under s 32 of the SCA, a DJ in chambers hearing ancillary matters in divorce proceedings transferred to the District Court is entitled to exercise the power exercisable by a Judge in chambers in the High Court:

> **Powers of a District Judge in chambers**
>
> **32** A District Judge shall have the power in any civil proceeding pending in a District Court to make any order or to exercise any authority or jurisdiction which, if related to a proceeding pending in the High Court, might be made or exercised by a Judge of the High Court in Chambers.

This, the Appellant argues, includes hearing further arguments in interlocutory orders and s 28B SCJA should therefore apply. Finally, the Appellant submits that because divorce proceedings are, in the first instance, High Court proceedings, s 28B SCJA ought to apply to all proceedings that have been transferred to the District Court pursuant to the 1996 Transfer Order.

20 I cannot accept these arguments. The Appellant's arguments ignore one basic fact. The transfers of matrimonial matters under Part X of the WC and the current split for ancillary matters where the contested net value of the matrimonial assets fall on either side of the $1.5 million divide are all legal, valid and binding. The history of these proceedings cannot reshape what subsequent and clear statutory provisions, rules of court or practice directions should or should not be. I have already dealt with these clear statutory provisions, rules of court and practice directions and that one set prevails in the Subordinate Courts and another in the Supreme Court. S 32 clearly does not assist the Appellant. It only provides for the powers of a DJ. It does not make an order of a DJ an order of a High Court judge.

21 Having said all that, I do however agree that where possible there should be uniformity, but that is more a matter for the Rules Committee and not for a court to do so. All I can do is to suggest that perhaps the Rules Committee might want to look into this. There is also some merit in avoiding the situation where a litigant asks for further argument, then files a notice of appeal before the time to do so expires, only to have the DJ reply after the notice of appeal has been filed that he will hear further argument. The rationale for the further argument procedure, (see *Singapore Press Holdings Ltd* at [40], *Aberdeen Asset Management* and Jeffrey Pinsler SC, *Singapore Court Practice 2009*, (10th Anniversary Ed,), para 55C/1/2), still holds true.

Conclusion

22 For the reasons set out above the appeal is dismissed. As noted above, there is no appeal in relation to any extension of time to file an appeal; this issue is therefore not before me.

23 Costs must follow the event. I award costs to the Respondent and fix costs at $2,000 plus reasonable disbursements.

[note: 1] Notes of Evidence, 9 Dec 2011, p 6.

[note: 2] Amended w.e.f. 12 December 2011 pursuant to Amendment No.3 of 2011.

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