

Tan Soo Giem v Yeo Ching Chua
[2003] SGHC 264

Case Number : MC Suit 605781/2000, RA 600004/2003
Decision Date : 28 October 2003
Tribunal/Court : High Court
Coram : Lai Kew Chai J
Counsel Name(s) : Lim Tiang Yao and Winston Low (Winston Low and Partners) for plaintiff; S Magintharan (Netto Tan and S Magin) for defendant
Parties : Tan Soo Giem — Yeo Ching Chua

Civil Procedure – Appeals – Leave – Extension of time – Jurisdiction of Subordinate Courts to extend time to file for leave to appeal – Order 55D rr 4(2), 4(3) Rules of Court (Cap 322, R 5, 1996 Rev Ed)

1 In March 2003 the deputy registrar of the Subordinate Courts dismissed the application of the defendant to extend time to file an application for leave to appeal pursuant to s 21 of the Supreme Court of Judicature Act ("SCJA") and O 55D r 4(3). On the authority of *Chen Chien Wen Edwin v Pearson* [1991] 2 MLJ 501, the Deputy Registrar ruled that, on the proper construction of O 55D r 4(3) read with r 14 of the Rules of Court, a Magistrate's Court did not have jurisdiction to hear the application. He ruled that the application for extension of time for that purpose must be made to the High Court.

2 The defendant appealed to the district judge. The district judge allowed the appeal. She held that a Subordinate Court has jurisdiction to extend time for the filing of an application for leave to appeal to itself under O 55D r 4(2)(a) or r (3)(a) read with r 14 of the Rules of Court. Not satisfied with the decision of the district judge, the plaintiff pursuant to the leave granted has appealed to the High Court against that decision.

The background

3 The background facts leading to this appeal may be stated within a reasonably brief compass. On 28 January 2003 a Magistrate's Court ordered the defendant to pay the plaintiff the sum of \$7,000 with interest in respect of a claim in restitution. If the defendant had wanted to appeal against that judgment, he would have had to file an application for leave to appeal by 7 February 2003 as required by s 21 of the Act and pursuant to O 55D r 4(3) of the Rules of Court. But the defendant was late and filed the application only on 10 February 2003. He said he was then unrepresented by counsel and was under the impression that he had 14 days and not 7 days to file the application.

The Issue

4 The issue, as identified by the district judge, is this: does a District Court or Magistrate's Court ('Subordinate Court') have jurisdiction to extend the time to file for leave to appeal under O 55D r 4(2) and r (3) of the Rules of Court?

The Rules of Court

5 By the Rules of Court Amendment Rules 1998 (Amendment No. 2) S612/98, O 55D of the Rules of Court was introduced with effect from 1 January 1999. It was put in place in view of the amendment to s 21 of the Act vide S608/98 under which the monetary limit for an appeal as of right in any civil cause or matter was raised from \$5,000 to \$50,000 in respect of appeals from the

Subordinate Courts. Where “the amount in dispute or the value of the subject matter” fell below \$50,000, the intended appellant has to seek the leave of the Magistrate’s Court or the District Court, being the court of first instance. If leave was refused, he may file an application for leave to appeal to the High Court.

The relevant provisions of the Rules of Court

6 I should begin by referring to O 3 r 4 on extension of time. Order 3 r 4(1) provides that the Court may, on such terms as it thinks just, by order extend the time within which a person is required or authorised by the Rules of Court to do any act in any proceedings. Rule 4(2) provides that the Court may extend the period, although the application for extension of time is not made until after the expiration of the period.

7 I should now refer to two rules under O 55D, namely r 4 and r 14.

Rule 4 reads:

“4-(1) Subject to this rule, every notice of appeal must be filed and served under Rule 3(8) within 14 days-

(a) in the case of an appeal against the refusal of an
application. From the date of the refusal; and

(b) in all other cases, from the date on which the judgment
or order appealed against was pronounced.

(2) A party applying for leave under Section 21(1) of the Supreme Court of Judicature Act (Chapter 322) to appeal against an order made, or a judgment given, by a District Court must file his application –

(a) to a District Court within 7 days of the judgment or order;
and

(b) in the event that leave is refused by the District Court, to
the High Court within 7 days of the refusal.

(3) A party applying for leave to appeal under Section 21(1) of the Supreme Court of Judicature Act (Chapter 322) to appeal against an order made or judgment given, by a Magistrate’s Court must file his application –

(a) to a Magistrate’s Court within 7 days of the judgment or
order; and

(b) in the event leave is refused by the Magistrate’s Court to
the High Court within 7 days of the refusal.

(4) A party who had obtained leave to appeal under paragraph (2) or (3) shall file and serve the

notice of appeal from the date on which such leave was given.”

Rule 14 reads:

“14. Without prejudice to the power of the High Court under Order 3, Rule 4, to extend the time prescribed by any provision of this Order, the period for filing and serving the notice of appeal under paragraph (1) of Rule 4 may be extended by the Court below on application made before the expiration of that period.”

Grounds of Appeal

8 I now turn to the grounds of appeal. It is submitted that on a plain reading of O 55D and r 14 together with *Pearson's* case, it is clear that only the High Court has jurisdiction. *Pearson's* case, it is submitted, held that O 57 r 4 read with r 17, as they were drafted, and which are similar in text as O 55D r 14, conferred the power of extension of time to file a notice of appeal exclusively on the Court of Appeal.

9 It is useful to take a closer look at *Pearson's* case to see what the decision stands for. The respondent in that divorce petition failed to file and lodge the notice of appeal against a decision of the High Court within the prescribed period of time. An originating motion was filed in the High Court for an order that the time for filing the notice be extended. Counsel for the petitioner raised the preliminary objection and contended that the High Court did not have jurisdiction to hear the motion on a plain and ordinary reading of O 57 r 4 read with r 17.

10 The relevant provisions of the then O 57 rr 4 and 17 when *Pearson* was decided in 1991 were as follows:-

Rule 4(1)

Subject to this Rule, every notice of appeal must be filed and served under Rule 3(6) within one month –

(a) in the case of an appeal from an order in Chambers, from the date when the order was pronounced or when the applicant first had notice thereof;

(b) in the case of an appeal against the refusal of an application, from the date of the refusal; and

(c) in all other cases, from the date on which the judgment or order appealed against was pronounced.

Rule 17

‘Without prejudice to the power of the Court of Appeal under Order 3 rule 5 to extend the time prescribed by any provision of this Order, the period for serving notice of appeal under Rule 4 or for making an application ex parte under Rule 16(3) may be extended by the Court below on the application made before the expiration of the period.’

11 Chao J., as he then was, decided that O 57 r 17 implied that any application for extending time for serving notice may only be done by the Court of Appeal, unless it fell within one of the exceptions, of which the application before him was not. It should be borne in mind that O 57 of the then Rules of Supreme Court and the present O 57 of the Rules of Court deal only with appeals to the

Court of Appeal and not with applications for leave to appeal.

12 It is also important to keep in view the procedural framework regulating an appeal against a decision of a Subordinate Court to the High Court. Only the High Court could grant leave to appeal in any suit or action for the recovery of immovable property or in any civil cause or matter where the amount in dispute or value of the subject matter was less than \$2,000. In 1994, the value was increased to \$5,000. In 1999, section 21 of the Act was amended to allow a Subordinate Court to hear applications for leave to appeal where the amount in dispute or the value of the subject matter is less than \$50,000.

13 As noted by the district judge, in 1996, the Rules of Supreme Court and the Rules of the Subordinate Courts were repealed and unified as the Rules of Court. In consequence of the 1999 changes, rr 4(2) and (3) and r 14 were included in what is now O 55D. Though the relevant rules for which the exceptions are made are different, the text of r 14 is exactly the same as it appeared in then O 57 r 17. But in my view, the similarity in expression is the extent of the similarity. Order 55D r 14 has nothing to do with an extension of time for an application for leave to appeal to a Subordinate Court.

14 I am also of the view that *Pearson's* case is therefore distinguishable. The context within which procedural rules would operate is materially different.

15 Counsel for the appellant relies on *Tjo Kwe In v Chia Song Kwan* [2002] 4 SLR 406. The decision of Lee Sieu Kin JC., as he then was, is consistent with the decision in *Pearson's* case. These two cases are authorities for the proposition that a Subordinate Court has jurisdiction to extend the time for filing a notice of appeal only if the application to extend time is made before the time for appeal to the High Court expires under O 55D r 4(1) read with r 14. The width of those rulings is limited within the procedural framework under the Act and O 55D r 4(1). When *Pearson's* case was decided, there was no equivalent provision of the present s 21(1) of the Act or O 55D rr 4(2) and (3) of the Rules of Court. Up to 1999, a Subordinate Court had no jurisdiction to hear applications for leave to appeal to the High Court. It was only in 1999, when the subject limit was revised from \$5,000 to \$50,000 that the jurisdiction to hear applications for leave to appeal was given to the Subordinate Courts.

16 I now refer to the final ground relied on by the district judge for her decision in allowing the appeal. She referred to the consequences of applying the High Court's interpretation in *Pearson's* case. It would mean that all applications for extension of time for leave to appeal from a decision of the Subordinate Court under O 55D must be made to the High Court. The district judge remarked, and I agree with her, that this would lead to an odd result. In principle, I am of the opinion that the district judge is correct in stating that the principles for extension of time to appeal would be applied in considering an application for extension of time to file the application for leave to appeal. The factors generally are the length of the delay, the reason for the delay, the merits of the application for leave to appeal and degree of prejudice to the other party. Against these principles, if the High Court grants an extension of time for leave to appeal, the application for leave to appeal will then be heard by the Subordinate Court. Since the factors would have been considered by the High Court in extending time, it would follow, at least in most cases, that the Subordinate Court would grant leave to appeal as a matter of course. I agree that the rules should not be construed to require this unnecessary two staged process. The appellant's contrary arguments are rejected.

17 In the circumstances, the appeal is dismissed with costs fixed at \$3,000.

Appeal dismissed

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