

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2017] SGCA 35

Civil Appeal No 144 of 2016

Between

CHUA PENG HO

... Appellant

And

- (1) **SARAVANAN A/L SUBRAMANIAM AS
DEPENDENT OF THE ESTATE OF
LINGASWARI A/P KOUSHANAN
(DECEASED)**
- (2) **FAZLI AZUNAIDY BIN KAMARUDDIN**
- (3) **SARAVANAN A/L SUBRAMANIAM**
- (4) **THAM WAI KHUAN**

... Respondents

In the matter of Registrar's Appeal from State Courts No 18 of 2016

Between

CHUA PENG HO

... Appellant

And

- (1) **SARAVANAN A/L SUBRAMANIAM AS
DEPENDENT OF THE ESTATE OF
LINGASWARI A/P KOUSHANAN
(DECEASED)**
- (2) **FAZLI AZUNAIDY BIN KAMARUDDIN**
- (3) **SARAVANAN A/L SUBRAMANIAM**
- (4) **THAM WAI KHUAN**

... Respondents

EX TEMPORE JUDGMENT

[Civil Procedure] — [Discontinuance]

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Chua Peng Ho
v
Saravanan a/l Subramaniam (dependent of the estate of
Lingaswari a/p Koushanan (deceased)) and others

[2017] SGCA 35

Court of Appeal — Civil Appeal No 144 of 2016
Andrew Phang Boon Leong JA and Tay Yong Kwang JA
3 May 2017

Andrew Phang Boon Leong JA (delivering the judgment of the court *ex tempore*):

1 This appeal arises out of a road traffic accident which led to the commencement of District Court Suit No 1738 of 2013. By consent, interlocutory judgment was entered on 4 February 2015, although it was only extracted some time later on 28 August 2015. In a subsequent summons filed on 28 March 2016, the preliminary issue was raised as to whether the suit was deemed discontinued pursuant to O 21 r 2(6) of the Rules of Court (Cap 322, R5, 2014 Rev Ed) (“O 21 r 2(6)”). O 21 r 2(6) reads as follows:

(6) Subject to paragraph (6A), if no party to an action or a cause or matter has, for more than one year (or such extended period as the Court may allow under paragraph (6B)), taken any step or proceeding in the action, cause or matter that appears from records maintained by the Court, the action, cause or matter is deemed to have been discontinued.

2 The Deputy Registrar held that the suit was deemed discontinued on 4 February 2016 as the extraction of the interlocutory judgment did not constitute a step in the proceedings. This was reversed on appeal to the District Judge (“the DJ”), who ruled (in *Saravanan a/l Subramaniam as dependent of the Estate of Lingaswari a/p Koushanan (Deceased) and also for the benefit of the other dependents of the Estate of Lingaswari a/p Koushanan (Deceased) v Chua Peng Ho and another* [2016] SGDC 195 (“the District Court Judgment”)) that the extraction of the interlocutory judgment qualified as such a step. The further appeal to the High Court was dismissed by the Judge, who found himself in entire agreement with the DJ. The Judge subsequently granted leave to appeal to this court.

3 The sole issue before this court is whether the extraction of the interlocutory judgment amounted to a “step or proceeding” for the purposes of O 21 r 2(6). This, in turn, gives rise to the following sub-issues:

- (a) whether a “step or proceeding” for the purposes of O 21 r 2(6) has to be one that moves the action forward towards resolution; and
- (b) if a “step or proceeding” for the purposes of O 21 r 2(6) has to be one that moves the action forward towards resolution, whether the extraction of the interlocutory judgment moved the action forward towards resolution.

4 Having considered the submissions by counsel for the parties, we hold that a “step or proceeding” for the purposes of O 21 r 2(6) does *not* have to be one that moves the action forward towards resolution. The Appellant had relied on the decision of this court in *The “Melati”* [2004] 4 SLR(R) 7 (“*The Melati*”) (at [17]) for the proposition to the contrary. However, a close perusal of the judgment in *The Melati* (especially at [17]–[24]) will demonstrate that

this court had been merely referring to the precise step taken in *that* case (*viz*, the filing and serving of a statement of claim (albeit out of time)) and how, on *the facts*, that step had moved the action forward towards resolution. It was *not* laying down a *general normative proposition* that, in order to constitute a “step or proceeding” pursuant to O 21 r 2(6), the act concerned had to be one that moved the action forward towards resolution. In our view, what O 21 r 2(6) proscribes is total inaction or inactivity and/or an act that is not part of the “records maintained by the Court” (see also *The Melati* at [24], citing the views of Judith Prakash J (as she then was) in *Moguntia-Est Epices SA v Sea-Hawk Freight Pte Ltd* [2003] 4 SLR(R) 429).

5 Indeed, as Chao Hick Tin JA, delivering the judgment of the court, pertinently observed in *The Melati* (at [24]), “[t]he court has sufficient arsenal to deal with a party who abuses its process” (a point also noted by the DJ in the District Court Judgment at [30] as well as at [51]). Chao JA proceeded to note as follows (at [24]):

... We seriously doubt there would be many litigants who would deliberately take such a risk and put the court’s patience to the test.

6 In the circumstances, the extraction of the interlocutory judgment *amounted to* a “step or proceeding” for the purposes of O 21 r 2(6) in the context of the present case. It is therefore unnecessary for us to consider the second sub-issue (above at [3(b)]), although we would also endorse the DJ’s reasoning on this point as well as her conclusion that the extraction of the interlocutory judgment *was*, in any event, a “step” which moved the case forward towards resolution (see the District Court Judgment at [47]–[50]).

7 The appeal is therefore dismissed with costs

8 As we have already noted, the High Court Judge was in entire agreement with the District Court Judgment and did not see the need to issue a separate judgment. We are also in entire agreement with the District Court Judgment and would like to take this opportunity to commend the DJ for her comprehensive and well-reasoned judgment.

Andrew Phang Boon Leong
Judge of Appeal

Tay Yong Kwang
Judge of Appeal

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for the appellant;
Mahendra Prasad Rai and Dean Salleh (instructed) (Cooma & Rai),
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Leonard Chew Wei Chong (Morgan Lewis Stamford LLC) for the
second respondent (watching brief);
Chong Pik Wah (Wong Thomas & Leong) for the third respondent
(watching brief);
Priya Dharshini Pillay (Niru & Co LLC) for the fourth respondent
(watching brief).
