Lea Tool and Moulding Industries Pte Ltd (in liquidation) v CGU International Insurance plc (formerly known as Commercial Union Assurance Co plc)
[2000] SGHC 241

Case Number : Suit 1149/1993

Decision Date : 20 November 2000

Tribunal/Court : High Court

Coram : Lai Kew Chai J

Counsel Name(s) : Tan Bok Hoay and Sharon Tay (Donaldson & Burkinshaw) for the plaintiffs; Anthony Soh and Carrie Gill (Azman Soh & Murugaiyan) for the defendants

Parties : Lea Tool and Moulding Industries Pte Ltd (in liquidation) — CGU International Insurance plc (formerly known as Commercial Union Assurance Co plc)

Civil Procedure – Judgments and orders – Unless orders – Default judgment pursuant to non-compliance with unless order – Setting aside irregular judgment

Civil Procedure – Rules of court – Non-compliance – Non-compliance – Whether corporate litigants may act without solicitors in legal proceedings – O 5 r 6(2)Rules of Court

: In July 1992, the plaintiffs took up a fire insurance policy with the defendants to insure their factory, stocks, plant and machinery. On 2 August 1992 a fire at the plaintiff`s factory destroyed it and its contents. On 26 May 1993 the plaintiffs commenced these proceedings claiming the liquidated sum of $1,473,320.00, or alternatively, damages to be assessed.

On 1 April 1997 a default judgment was entered pursuant to an unless order of the Registrar of the Supreme Court. I will revert to the circumstances in due course. Nearly three years later, and in fact on 10 March 2000, the plaintiffs by SIC 501221/2000 applied to the Registrar seeking an order to set aside the judgment entered on 1 April 1997 whereby the plaintiffs` action was ordered to be dismissed with costs. The application was dismissed by the assistant registrar with costs fixed at $1,500 and the plaintiffs appealed to the judge-in-chambers. I heard the appeal and on 15 May 2000 I dismissed the appeal with costs fixed at $4,000. The plaintiffs requested for further arguments. I acceded to their request and heard further arguments. On 26 June 2000, after hearing further arguments, I reversed my earlier orders. I allowed the appeal, set aside the default judgment of 1 April 1997 and the orders of the assistant registrar. I now set out the relevant procedural history giving rise to the appeal and the reasons why, after hearing further arguments, I made the orders I did.

The background and procedural history

The plaintiffs (`Lea Tool`) were represented by Wong Meng Meng & Partners who filed a writ of summons claiming $2,460,000 for losses and damages to property under the fire policy. The claim was subsequently amended in July 1996 to $1,473,320, about half of the original sum. Donaldson & Burkinshaw acted for the defendants (`CGU`). By December 1993 pleadings were closed. Lea Tool attempted to obtain summary judgment and they failed. They were in financial strait jacket and their financial problems culminated in their liquidation and, not unexpectedly, they were experiencing financial difficulties in meeting the usual expenses of litigation. In October 1994 their solicitors obtained an order discharging themselves from further acting for Lea Tool. Until 31 July 1995 no further steps were taken in the case.

On 31 July 1995, Lea Tool finally appointed Azman Soh & Murugaiyan as their new solicitors. On 11

September 1996 the Registrar of the Supreme Court directed Lea Tool to set down the action for trial by 6 December 1996. Under the then Rules of Court, and as directed, Azman Soh & Murugaiyan would have had to file their as well as the CGU`s bundles of bocuments. Lea Tool`s solicitors set down the action without filing CGU`s bundle of documents required under O 34 r 3(1)(e) of the Rules of Court (`the Rules`).

The Registrar of the Supreme Court fixed trial dates for six days between 19 May 1997 and 27 May 1997. The solicitors for CGU sent repeated reminders to Lea Tool`s solicitors to file the defendants` (CGU`s) bundle of documents in compliance with the rules. There was no reply from Lea Tool. As it transpired, Lea Tool had not paid their solicitors and, inevitably, on 27 February 1997 Azman Soh & Murugaiyan were discharged by order of court from having to act for Lea Tool.

On 1 March 1997, Azman Soh & Murugaiyan wrote to the Registrar of the Supreme Court and applied for a one week adjournment of Pre-Trial Conference (PTC) No 6 fixed for 4 March 1997. They informed the Registrar that Lea Tool needed the time to appoint another firm of solicitors to act for them. PTC No 6 was adjourned by the Registrar to 13 March 1997. According to the correspondence Lea Tool intended to appoint Wilfred Yeo Quahe & Tan in place of Azman Soh & Murugaiyan. But the appointment was not finalised; more likely than not, fee arrangements were not dealt with to the satisfaction of both lawyers and Lea Tool.

At the PTC No 6 held on 13 March 1997 before the Registrar, no counsel for Lea Tool appeared. Mr Tan Bok Hoay of Donaldson & Burkinshaw appeared as counsel for CGU. Pursuant to his powers under O 34A r 2(3) of the Rules of Court, the Registrar made an unless order under which leave was granted to Lea Tool to comply with O 34 r 3 of the Rules of Court by 27 March, failing which Lea Tool`s action would be dismissed with costs. Mr Tan met Mr Tham Weng Key of Lea Tool in person and Mr Anthony of Azman Soh & Murugaiyan outside the chambers of the Registrar. It was not disputed that Mr Tan gave notice of the unless order. Mr Tan took care to give written notice by his firm`s letter of 14 March 1997.

On 26 March 1997 an important step was in substance taken by Lea Tool. Mr Tham on behalf of Lea Tool personally filed a bundle of documents. On behalf of CGU Mr Tan drew attention to O 5 r 6(2) of the Rules of Court which provided to this effect: `Except as expressly provided by or under any written law, a body corporate may not begin or ***carry on such proceedings*** otherwise than by a solicitor.` He took the view that filing the bundle of documents was `a procedural step that (was) part of a larger action`. He therefore came to the view that Lea Tool could not properly file CGU`s bundle of documents, another bundle of which was duly served on Donaldson & Burkinshaw. Solicitors for CGU therefore took that view that, in the absence of any order of court permitting Lea Tool to do so, there was in law no proper filing of CGU`s bundle of documents. In other words, their contention that there was no filing of the bundle of CGU`s documents since the bundle was filed by Mr Tham on behalf of Lea Tool and it was not filed by a firm of solicitors, contrary to O 5 r 6(2) of the Rules.

On 1 April 1997, CGU applied and entered judgment in default in pursuance of the unless order made by the Registrar. Accordingly by Wednesday, 9 April 1997 Lea Tools ought to have applied to set aside the judgment.

On 4 July 1997, Lea Tools were put into liquidation. It was only on 14 November 1999 that the Official Receiver appointed Azman Soh and Murugaiyan to apply to set aside the judgment of 1 April 1995.

I read the file notes of this case . There was no record or minute to indicate that at the time judgment was allowed to be entered the assistant registrar concerned was told that Lea Tools had in fact filed the bundle of documents, albeit it was filed by Mr Tham on their behalf and not by a firm of

solicitors. The solicitors for CGU was unable to confirm to me if he had raised the objection that the filing of CGU`s bundle of documents by Mr Tham purportedly on behalf of Lea Tools was no filing in law as it was not filed by a firm of solicitors.

According to an affidavit filed by Mr Axel Chan, then a partner of the firm of Ang JW and Partners, his firm was instructed on 3 April 1997 to take over the matter from Azman Soh & Murugaiyan. He was instructed by Mr Tham that there was an appeal coming up for hearing and that the trial of the suit was fixed for six days commencing on 19 May 1997. Mr Tham did not know of the entry of the judgment on 1 April 1997. CGU`s solicitors could not serve the judgment on Lea Tools at their business premises which had been destroyed by fire but copies of the judgment and relevant letters were sent to a postbox.

Mr Axel Chan further stated in his affidavit that following his service of the notice of change of solicitors on Donaldson & Burkinshaw Mr Tan Bok Hoay rang him and, after expressing some surprise, informed him that Lea Tools` action had been struck out and that judgment had been entered against Lea Tools. Mr Axel Chan telephoned Mr Tan Bok Huay for the circumstances under which the action was struck out. By letter of 10 April 1997, Donaldson & Burkinshaw merely referred to the request for the unless order and despatched a copy of the order to Mr Axel Chan. Mr Tan Bok Hoay stressed that adequate notice of the unless order had been given to Lea Tools. There was, however, no mention that in obtaining judgment for non-compliance of the unless order he or his associate had informed the assistant registrar that a bundle of documents of CGU was filed but CGU was taking the position that there was no filing as it was not filed by a firm of solicitors.

In the result, the facts surrounding the so-called non-compliance of the unless order were the following. Lea Tools were ordered by the Registrar`s order to take two steps to move the case forward. First, they were ordered to set it down for trial. Secondly, they were ordered to file the defendants CGU`s bundle of documents in compliance with the rules then applicable. The underlying rationale behind the Registrar`s orders to file the documents were self-evident. There had been five pre-trial conferences during which the management of this case took up the time and attention of the Registrar. The unless order was made at PTC No 6. The case was obviously not moving at a pace that was necessary for the efficient and timeous administration of justice in our legal system. Our courts were in our sixth year in our total assault against the backlog of cases. If we pause to reflect for a moment the number of PTCs which were conducted relentlessly and vigorously over the thousands of cases as recorded in our official statistics, the number of PTCs literally ran into hundreds of thousands. Without the PTCs, cases would have gone to sleep as they did in the past. Where they moved, it was entirely at the initiative of one or the other or all of the parties to any particular piece of litigation.

Where the attention in the past was the interest of litigants and litigants alone, the new approach in the administration of justice put into the equation the interest of the administration of justice and the communitarian need that limited resources of the courts` time and resources for adjudication were and are not wasted or extravagantly or lopsidedly hogged by any litigant or set of litigants. Timeliness and specific procedural steps had to be laid down to fix dates for trial and disposal of cases. Litigants who wish to use the services of the courts are duty bound to abide by the Rules of Court and the orders made.

However, our procedural laws are ultimately handmaidens to help us to achieve the ultimate and only objective of achieving justice as best we can in every case. They are not permitted to rule us to such an extent that injustice is done. In the case of filing by a company not represented by a firm of solicitors, it is not the immutable rule of procedure that any step taken in any proceeding by a corporate litigant has to be done by a solicitor or else the step taken by an officer of and on behalf of

the corporate litigant counts for nothing. That is unsustainable as a matter of principle and logic. Thus in **Arbuthnot Leasing International Ltd v Havelet Leasing Ltd & Ors** [1991] 1 All ER 591 it was stated by Scott J as he then was, that courts have an inherent power in the exceptional cases to allow an officer of a company to appear in, and by logical extension, to take any step to continue with any pending litigation.

At the first hearing, I was rather concerned that Lea Tools` application to set aside the order dismissing their claims under the fire policy was made nearly three years after such dismissal. That by any reasonable measure was far too long, especially at a period when the efficient and timely despatch of judicial business is still very much part of our credo. I observed that Mr Tham must have known of the judgment and dismissal of Lea Tools` action. I thought that the appeal ought to be dismissed with costs. That was my initial order.

In requesting for further arguments, counsel for Lea Tools stressed that the judgment entered into was an irregular judgment; it should never have been entered as Lea Tools had complied with the unless order or had, on any reasonable view, thought that they had complied with the order when Mr Tham filed CGU`s bundle of documents, when Lea Tools was in the midst of engaging a fresh set of lawyers. In **Syed Mohamed Abdul Muthaliff v Arian Bhisham Chotrani** [1999] 1 SLR 750 , the Court of Appeal stipulated, among others, the following rules relevant for present purposes: (1) when considering the consequences of a failure to comply with an unless order, the relevant question is whether such failure is intentional and contumelious; (2) where a party could clearly show that there was no intention to ignore or flout the order and that the failure to obey is due to extraneous circumstances, such failure to obey an order should not be treated as contumelious; (3) contumacy or `perverse and obstinate resistance to authority` would be preferred over `insolent reproach or abuse` as a criterion to strike out an action; and (4) a striking order may be ordered if the failure to obey one or a number of orders was due to negligence, incompetence or sheer indolence.

However, the Court of Appeal underlined the importance that a party seeking to avoid an order to strike out must show that he had made positive efforts to comply.

In the present case, the bundle of documents was indeed filed by or on behalf of CGU. There is no record whatsoever to confirm that this fact was brought to the attention of the assistant registrar before the striking out order was made. Counsel for Lea Tools also stressed that it was only at the hearing before. It followed that the judgment was an irregular judgment and had to be set aside as of right.

An affidavit was filed on behalf of CGU to state that the Singapore Civil Defence Force no longer had the police report nor the fire investigation report as the incident had taken place more than seven years ago. In my view, the effect of the unavailability of these documents of these documents should not be exaggerated. The defendants had completed their investigations within a reasonable time after the occurrence of the fire. They had sufficient evidence to have resisted successfully Lea Tools` application for summary judgment. They were ready to go for trial. Their affidavits of evidence in chief and their bundles of documents had been filed. On the other hand, Lea Tools` claims are substantial. They and their creditors should not be deprived of the benefit of an insurance cover merely because of a minor irregularity. The substantial fact was that Mr Tham of Lea Tools had filed the bundle of documents and CGU should not have even attempted to enter judgment without an application in writing, supported by an affidavit and full submission on the point about the invalidity of the filing since it was a procedural step not taken by a firm of solicitors as required.

In the premises I allowed the appeal with costs as fixed.

Outcome:

Appeal allowed.