HCMP 2652/2016

IN THE HIGH COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

# COURT OF APPEAL

MISCELLANEOUS PROCEEDINGS NO 2652 OF 2016

(On intended Appeal from DCCJ 1914 of 2015)

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YUEN OI YEE LISA Plaintiff

and

CHAROEN SIRIVADHANABHAKDI 1st Defendant

THAPANA SIRIVADHANABHAKDI 2nd Defendant

MATTHEW KICHODHAN 3rd Defendant

MICHAEL CHYE 4th Defendant

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Before : Hon Cheung JA and Hon Poon JA in Court

Date of Judgment : 28 November 2016

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| J U D G M E N T |

Hon Poon JA (giving the Judgment of the Court) :

Introduction

On 16 November 2015, Acting Chief District Judge Ko (“the Judge”) struck out the applicant’s claim in DCCJ 1914/2015 on the ground that it disclosed no reasonable cause of action, was frivolous and vexatious. He further made a restricted proceedings order against the applicant (“the RPO”), which materially provides :

“ 5(a) subject to sub-paragraph (b) below, the Plaintiff herein, whether in her personal; capacity or in the name of her firm or a company in which she has interest, be prohibited from commencing any fresh proceedings, by whatever originating process, in the District Court concerning any matters involving or relating to or touching upon or leading to the proceedings herein and the proceedings in LBTC 588/2011 and HCA 2054/2012, whether against any of the defendants herein or their current or former legal representatives (including Messrs Hobson and Ma and any of their current or former employees, officers, partners, consultants, and counsel Mr Jason Yu and Mr Gary Lam) or otherwise without the leave of the District Court;

(b) Notwithstanding the other provisions in this order, the Plaintiff is at liberty to commence fresh proceedings against the 8th Defendant herein (namely, Best Spirits Company Limited) under section 66 of the Personal Data (Privacy) Ordinance, Cap 486 to claim for damage for injury to her feelings as a result of the contravention identified in the Result of Investigation dated 16 May 2013 of the Privacy Commissioner (ie Annex 2 to the letter from the Privacy Commissioner to the 8th Defendant dated 16 May 2013).”

Pursuant to the RPO, the applicant applied to the Judge for leave to commence fresh proceedings against 4 of the 8 defendants in DCCJ 1914/2015 by way of a draft summons dated 19 August 2016, supported by two affirmations dated 19 and 22 August 2016 (“the Intended Action”). The Judge dismissed the applicant’s application as he took the view that the Intended Action would be a repetition of DCCCJ 1915/2015 which had already been struck out (“the Order”).

On 19 September 2016, the applicant took out an inter partes summons to seek an order (“the Application”) :

“ to urge the Police for my witness statements to be made against Mr Andy Lee and Mr Philip Au Yeung in order to discharge my husband’s Bankruptcy Order in HCB 1128/2015 through his appeal in CACV 138/2015 (on an appeal from HCB 1128/2015) before 15 December 2016.”

On 21 September 2016, the Judge refused to grant the applicant leave to appeal against the Order to the Court of Appeal. He also dismissed the Application.

By a summons dated 5 October 2016, the applicant now renews her application for leave to appeal and re-seeks the Application before the Court of Appeal.

Discussion

Under sections 63 and 63A of the District Court Ordinance, Cap 336, an appeal to the Court of Appeal may only be made with leave and no leave should be granted unless the appeal has a reasonable prospect of success or there is some other reason in the interests of justice why the appeal should be heard.

As rightly pointed out by the Judge, the Intended Action is a mere repetition of DCCJ 1914/2015, which had already been struck out. The applicant is not entitled to resurrect that action, which the Judge had found to be an abuse of process, in the guise of a fresh action. The Judge was entirely correct in making the Order. The applicant’s intended appeal has no merits whatsoever. And we can see no other reason in the interests of justice why the intended appeal should be heard. We refuse to grant leave to appeal against the Order.

As to the Application, it is not a proper step taken in any legal extant proceedings. It must be dismissed. And the Judge was right in so doing. We too would dismiss it. Even if we were to treat it as an application for leave to appeal against the Judge’s dismissal of the Application, we could see no substance in the intended appeal and no other reason in the interests of justice why the intended appeal should be heard.

Conclusion

For the above reasons, we dismiss the applicant’s summons dated 5 October 2016. We make no order as to costs as the 4 proposed defendants to the Intended Action are all absent all along.

As the applicant’s application by way of the said summons is totally without merit, we make an order under Order 59, rule 2A(8) of the Rules of the High Court, Cap 4A, that no party may request the determination to be reconsidered at an oral hearing inter partes.

(Peter Cheung) (Jeremy Poon)

Justice of Appeal Justice of Appeal

The plaintiff appeared in person