Chee Siok Chin and Another v Attorney-General
[2006] SGHC 153

Case Number : OS 1203/2006

Decision Date : 13 September 2006

Tribunal/Court : High Court

Coram : Belinda Ang Saw Ean J

Counsel Name(s) : M Ravi (M Ravi & Co) for the plaintiffs; Jeffrey Chan (Attorney-General's Chambers) for the defendant

Parties : Chee Siok Chin; Chee Soon Juan — Attorney-General

Civil Procedure – Originating processes – Whether originating summons should be heard in open court rather than in judge's chambers on ground that proceedings raising constitutional issues of public interest and involving defamation suits by politicians

Constitutional Law – Natural justice – Right to fair hearing – Whether repeal of provision precluding plaintiffs in fraud and defamation cases from obtaining summary judgment unconstitutional and breaching principles of natural justice – Order 14 r 1(2) Rules of the Supreme Court 1970 (GN No S 274/1970), Rules of the Supreme Court (Amendment No 2) Rules 1991 (GN No S 281/1991)

Courts and Jurisdiction – Judges – Application for judge to recuse herself on ground of actual bias – Whether circumstances of actual bias existing

13 September 2006

Belinda Ang Saw Ean J:

1 This Originating Summons No 1203 of 2006 ("the OS") was brought by the plaintiffs, Chee Siok Chin ("CSC") and Chee Soon Juan ("CSJ"), against the Attorney-General of Singapore as defendant for a declaratory order in terms that the deletion or repeal of O 14 r 1(2) of the Rules of the Supreme Court 1970 (GN No S 274/1970) ("RSC 1970") by way of the Rules of the Supreme Court (Amendment No 2) Rules 1991 (GN No S 281/1991) ("the 1991 amendments") be declared unconstitutional and in breach of the principles of natural justice. The plaintiffs and their counsel walked out of the chambers hearing of the OS on 16 August 2006. That came about soon after the court turned down the plaintiffs' oral application to hear the OS in open court. Even so, the OS was not withdrawn and the plaintiffs' counsel, Mr M Ravi, invited the court to consider his written submissions tendered earlier. I dismissed the OS on its merits and ordered the plaintiffs to pay the defendant's costs.

2 Before coming to the reasons for the dismissal of the OS, it is appropriate as background that I first recount the case management decisions taken during housekeeping as well as explain my decision to dismiss the plaintiffs' recusal application. A convenient starting point would be the plaintiffs' application to adjourn the hearing of the OS and two other summonses for summary judgment which were listed for hearing on 16 August 2006 at 10.00am. The summonses were Summons No 2838 of 2006 filed in Suit No 261 of 2006 (commenced by Lee Hsien Loong against CSC and CSJ as second and third defendants respectively) ("Suit 261/2006") and Summons No 2839 of 2006 filed in Suit No 262 of 2006 (commenced by Lee Kuan Yew against CSC and CSJ as second and third defendants respectively) ("Suit 262/2006"). For convenience, Suit 261/2006 and Suit 262/2006 are hereafter referred to as "the defamation actions".

3 Present in Chamber 5A for housekeeping matters were Mr Ravi, Mr Kao Wen Shen, a student on attachment to Mr Ravi's firm, and the plaintiffs. Mr Kao and the plaintiffs were allowed to sit in

with leave of the court. Mr Jeffrey Chan Wah Teck appeared for the Attorney-General in the OS. Also present was Mr Davinder Singh SC and his assistant, Ms Tan Siu Lin. Mr Singh is the counsel for Lee Hsien Loong, the plaintiff in Suit 261/2006, and Lee Kuan Yew, the plaintiff in Suit 262/2006. Mr Ravi also represents CSC and CSJ in the defamation actions.

4 One particular housekeeping matter which was brought to my attention before the chambers hearing was Mr Ravi's request to re-fix the O 14 hearing date of both defamation actions. The other related to a clarification, which the court wanted from Mr Ravi, as to whether he intended to raise, as a preliminary point at the hearing of the O 14 summonses, the issues in the OS. If so, in practical terms, appropriate case management directions would have to be given. Following my enquiry, Mr Ravi confirmed that the issues in the OS would not be raised at the O 14 hearing.

5 As I mentioned, Mr Ravi had earlier written to the Registrar on 11 August 2006 to re-fix the hearing date of the O 14 summonses to a date in late September. Mr Singh objected to this in his letter of the same date. The High Court Registry kept to the fixture and asked the parties on 15 August 2006 to make the necessary application to the judge hearing the matters. That, to my knowledge, was the state of play. It subsequently transpired that before the 10.00am hearing, Mr Ravi filed a notice of appeal in the OS to a judge of the High Court in chambers ("the Notice of Appeal"), a copy of which was extended to the court in chambers. By the Notice of Appeal, CSC and CSJ were appealing against the decision of the Registrar made on 15 August 2006 for the OS and O 14 summonses to be heard simultaneously. Understandably, at that very early stage of filing, no hearing date had been assigned and the Notice of Appeal could not be formally served on the Attorney-General. I understand that Mr Singh was given a copy of the Notice of Appeal outside Chamber 5A.

6 Mr Ravi applied for the OS and O 14 summonses to be adjourned on account of this Notice of Appeal. Mr Singh objected to an adjournment. His understanding was that the OS and O 14 summonses were to be heard sequentially. Mr Chan also objected to the adjournment of the OS, and his assessment of the Notice of Appeal, from his perspective as a "seasoned campaigner before the courts", was that it was a non-issue. Evidently, Mr Ravi did not take kindly to that comment. Mr Ravi's retort at the very start of his turn to reply was that, unlike Mr Chan, he was a "seasoned campaigner of human rights". This was followed by a short outburst between Mr Chan and Mr Ravi. Mr Chan took exception to Mr Ravi's remarks which Mr Chan felt was a personal attack. Whilst they were engaged in an exchange with each other, I directed Mr Ravi to continue with his reply submissions, whereupon he promptly accused the court of being biased and asked that I recuse myself from sitting in all matters. I then asked Mr Ravi to state the grounds of his recusal application. He straightaway stated that the court had allowed Mr Chan to interrupt him when it was his turn to speak. By not stopping Mr Chan, the court was biased. He then sought permission to speak with his clients outside chambers. I allowed his request. After conferring with his clients, Mr Ravi renewed the application, asking me to recuse myself from sitting because of actual bias. On this occasion, he cited the following incidents as circumstances in support of the recusal application:

(a) The OS should be dealt with first. Housekeeping matters in relation to the OS and the O 14 summonses should not be heard together. In so doing, the court was biased. Furthermore, housekeeping matters should be held in open court.

(b) Despite objections to Mr Singh being present in chambers, he was still allowed to sit in chambers and to even raise objections on the Notice of Appeal.

(c) Mr Ravi was interrupted by Mr Chan and when Mr Ravi was appealing to the court to stop Mr Chan, the court instead chose to "tick [Mr Ravi] off".

(d) The court had prejudged the Notice of Appeal. It was said that I shook my head when Mr Ravi was handing to me the Notice of Appeal.

7 In my judgment, the circumstances cited as relevant to the issue of actual bias were entirely frivolous and ludicrous. The first factor had to do with the court not splitting the housekeeping matters. It bears noting that Mr Ravi was seeking to adjourn the hearing date of both the OS and O 14 summonses. The Notice of Appeal, which was filed in the OS, was the sole reason for the adjournment sought by the plaintiffs. Furthermore, Mr Ravi had made no application for housekeeping matters to be heard in open court. Both Mr Chan and Mr Singh confirmed my understanding of the situation. Above all, it is the discretion of this court to regulate its own method of case management or housekeeping. The second factor was the presence of Mr Singh in chambers for housekeeping. At the outset, Mr Singh had informed me of his interest in the Notice of Appeal as it concerned the O 14 summonses and that Mr Ravi had agreed to Mr Singh being present in chambers in connection with Mr Ravi's application to adjourn the O 14 summonses. Mr Ravi did not disillusion Mr Singh of his understanding. In what I see as simply factitious, Mr Ravi claimed that whilst he was agreeable to Mr Singh being present, his clients were the ones who were protesting. In any case, Mr Singh had an interest in being present and to be heard on Mr Ravi's application for an adjournment, a matter to which Mr Singh had made known his objections as early as 11 August 2006. The complaint that I had allowed Mr Singh to comment on the merits of the Notice of Appeal is again unfounded. Mr Singh had wanted to comment on the Notice of Appeal, but I did not think it was necessary and I told him so. Turning to the allegation that I had allowed Mr Chan to interrupt Mr Ravi instead of reprimanding Mr Chan, as stated in [6] above, I directed Mr Ravi to continue with his reply submissions. My direction (and it was similarly understood by Mr Chan) was a polite way of stopping the bickering and was a signal for the proceedings to resume. Finally, on the allegation that I shook my head when Mr Ravi was handing over the Notice of Appeal, his contention was that the court had prejudged the Notice of Appeal and that to the plaintiffs was evidence of "a prejudicial judicial temperament". In other words, that particular head movement had a visible stamp of actual bias; I was affected by actual bias.

8 I note that Mr Ravi, who was looking at me when he handed the Notice of Appeal over, was not himself claiming that he had seen me shake my head. Mr Chan said he did not notice it. I was certainly not conscious that I shook my head. It was something told to Mr Ravi by his clients. To that unusual contention, I will say this in its context. It bears noting that I had earlier stopped Mr Singh from commenting on the merits of the Notice of Appeal. Mr Singh had wanted the Notice of Appeal heard immediately. Had I prejudged the Notice of Appeal as alleged, I would have gone along with Mr Singh and Mr Chan to hear the Notice of Appeal straightaway, rather than continue to hear out Mr Ravi on his application for an adjournment. I was of the view that, as the Notice of Appeal had only just been filed, it should be allowed to take its course. The hearing for an adjournment was abruptly interrupted by the recusal application. After the recusal application was rejected, I ordered an adjournment of the O 14 summonses pending the outcome of the Notice of Appeal. The hearing date of the O 14 summonses was to coincide with the hearing date of the Notice of Appeal. Pausing for a moment, I should mention that I have since learnt of the plaintiffs' decision, made after the hearing of 16 August 2006, not to proceed with the Notice of Appeal.

9 The plaintiffs pitched their recusal application on actual bias. Objections and applications based on what, in case law, is called "actual bias" are very rare as proof of actual bias is often very difficult. This is because the law does not countenance the questioning of a judge about extraneous influences affecting his mind; the policy of the common law is to protect litigants who can discharge the lesser burden of showing a real danger of bias without requiring them to show that such bias actually exists (see *Locabail (UK) Ltd v Bayfield Properties Ltd* [2000] QB 451 at [3]). In one local case, actual bias was alleged (see *Lee Kuan Yew v Tang Liang Hong* [1997] 2 SLR 233). In that case,

what was alleged against the judge was that he had a pecuniary interest in the outcome of the matter such as to disqualify him from sitting. The Court of Appeal affirmed, on the facts of that case, the judge's refusal to recuse himself from sitting (see *Tang Liang Hong v Lee Kuan Yew* [1998] 1 SLR 97).

10 There was, in the present case, no basis whatsoever justifying the recusal application on actual bias. A fair-minded and reasonable observer would hardly on those flimsy grounds cited by Mr Ravi (assuming the incidents have been accurately depicted), conclude that I would not be able to make an objective and impartial decision of the matters placed before me as would the next judge. It is obvious that no judge is expected to withdraw on such ill-founded accusations; as such, I had no hesitation in rejecting the application. I should add that unless there are proper grounds for recusal, our courts must be careful not to accede to such applications by litigants who do not want a case to be heard by a particular judge. Judge shopping is not to be condoned as it is insidious, and undermines and weakens the administration of justice.

11 Separately, a lawyer as an officer of the court has a duty to the court not to willy-nilly take out a recusal application on behalf of his clients. He ought not to lend himself to making such an application unless he is plainly satisfied that there is material upon which the clients can properly do so. The recusal application was sudden and, I would even say, was audaciously made by Mr Ravi. At the time he made the application, he could only cite the incident with Mr Chan as a basis for actual bias. It was after he and his clients came back into chambers that other reasons were presented to the court.

12 L P Thean JA in *Tang Liang Hong v Lee Kuan Yew* ([9] *supra*) at [51] and [68] commented on the duty of lawyers to the court and the need for vigilance by the court whenever recusal applications based on actual bias or apparent bias are made. What was said there is equally applicable here. I adopt what was said and the relevant paragraphs are now reproduced:

> 51 A claim that there is apparent bias on the part of a judge must be based on facts that are substantially true and accurate. The fact that an allegation of bias has been made against a judge is not enough; otherwise a party could secure a judge of his choice by merely alleging bias or apparent bias on the part of another or other judges. A judge is not obliged to withdraw based on facts which are inaccurate, false or devoid of substantiation. In this connection, it is helpful to refer to the case of *Bainton v Rajski* (1992) 29 NSWLR 539 where one of the litigants at the hearing of an appeal from an interlocutory order before the Court of Appeal of New South Wales sought to disqualify two of the appellate judges from hearing the appeal before them on the ground of an apprehension of bias. The application was rejected and both the judges decided to sit on hearing the appeal. Mahoney JA who was one of the two judges sought to be disqualified said, at p 541:
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> > It is accepted that justice must be done in fact and that the appearance of justice must be maintained. But that, and particularly the latter, does not require that, if a party alleges or even believes in the disqualifying facts alleged, the judge should withdraw. If that were so, the administration of justice and the rights of other parties would be governed by the allegation of or the belief in facts, however dishonest, paranoiac, unbalanced or honestly wrong.
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> Much earlier, in the case of *Re JRL, ex p CJL* (1986) 161 CLR 342 at p 352 Mason J (as he then was) of the High Court of Australia said:
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> > Although it is important that justice must be seen to be done, it is equally important that

> judicial officers discharge their duty to sit and do not, by acceding too readily to suggestions of appearance of bias, encourage parties to believe that by seeking the disqualification of a judge, they will have their case tried by someone thought to be more likely to decide the case in their favour.
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> …
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> 68 In conclusion we would add this. We should bear in mind the following passage from the judgment of the Court of Appeal in England in *Arab Monetary Fund v Hashim & Ors* (*The Times*, 4 May 1993), (*The Independent*, 30 April 1993, transcript) which we find most apt:
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> > Just as an inference of apparent bias is not to be lightly drawn, so such a charge is not to be lightly made. That remains true even where, as here, any suggestion of actual bias is expressly disclaimed. Cases may unhappily arise in which evidence of bias or apparent bias is so clear that an application for the discharge or removal of a judge is justified. But such an application is never justified simply by the instructions of the client. Counsel's duty to the court and to the wider interests of justice in our judgment requires that he should not lend himself to making such an application unless he is conscientiously satisfied that there is material upon which he can properly do so.

13 Following my refusal to recuse myself from the proceedings, Mr Ravi applied to stay the OS pending an appeal of this decision. It is trite law that an appeal does not operate as a stay of proceedings and the burden was on the plaintiffs to obtain a stay. Mr Ravi, on their behalf, failed to establish that a stay of proceedings should in this case be granted. His arguments fell short of satisfying the test for a stay. Bearing in mind that the allegation of actual bias was made on the flimsiest of grounds, Mr Ravi was hard-pressed for reasons that would warrant a departure from the general rule. I had no difficulty dismissing his application for a stay of proceedings.

14 With housekeeping matters out of the way, Mr Singh, with the permission of the court, left the chambers. Mr Ravi was asked if he was ready to proceed with the OS. It was then that Mr Ravi applied for the OS to be heard in open court.

15 Mr Ravi had put forward the argument that a departure from the usual practice of hearing an originating summons in chambers was justified in this instance as the OS raised constitutional issues which were of public interest and, furthermore, the OS was connected to two defamation suits involving politicians. After hearing his arguments and Mr Chan's objections, I declined to hear the OS in open court. The normal practice is to hear originating summonses in chambers (see O 28 r 2 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed)) and, based on a precedent cited by Mr Chan (namely, *Jeyaretnam JB v AG* [1990] SLR 610 where the hearing of the originating summons concerning the seat of the plaintiff as a Member of Parliament was conducted in chambers), Mr Ravi's reasons were not compelling enough to warrant a departure from the norm. I agreed with Mr Chan that the issues in the OS were plainly questions of law and, as such, any written judgment on the matter would serve as a sufficient record of the proceedings in chambers.

16 After I declined to hear the OS in open court, Mr Ravi promptly informed me of his instructions not to participate in a hearing in chambers as CSC and CSJ did not wish to legitimise the process. Yet, curiously, Mr Ravi invited the court to consider his written submissions which were already before the court. I should mention that I indicated to Mr Ravi that it was not necessary for his clients to make a decision straightaway, as I was prepared to give them until the next day to decide. After conferring with his clients outside Chamber 5A, Mr Ravi again informed me that the plaintiffs vehemently registered their objections to my decision that the proceedings were not to be

heard in open court and that they did not want to legitimise the proceedings, presumably because the proceedings were to remain in chambers. The plaintiffs and their counsel walked out. The seriousness of a potential constitutional challenge in the OS and its ostensible merits paled swiftly into insignificance as soon as the publicity of an open court hearing was denied to them. The plaintiffs' decision to walk out of the chambers hearing was not surprising. Foremost in their minds was the publicity of an open court hearing since the media was expected to be present.

17 I now come to the hearing of the OS. Mr Chan informed me that in view of what had transpired he would proceed to deal with the merits of the application, rather than ask for a dismissal of the OS in the absence of the plaintiffs or their counsel. Mr Chan submitted on Mr Ravi's written submissions as well as advanced his own arguments. After considering Mr Ravi's written submissions and hearing Mr Chan, I dismissed the OS with costs to be taxed. I now state my reasons for the dismissal.

18 Both plaintiffs filed almost identical affidavits in support of the OS. As stated, O 14 r 1(2) of RSC 1970 precluded plaintiffs in causes of action like fraud and defamation from obtaining summary judgment. The plaintiffs' assertion was that O 14 r 1(2) recognised that defamation actions warranted a full trial, as it was their constitutional right. In their view, the notion of a full trial was also consistent with principles of natural justice. The 1991 amendments abrogated this right to a full trial, which entails a public hearing as trials are normally conducted in open court. In my view, the merits of these assertions were not made out in Mr Ravi's written submissions. His arguments were skewed and completely devoid of merit.

19 It is clear from Mr Ravi's written submissions that the plaintiffs were not challenging the absence of trial by jury in Singapore. They also did not challenge the 1991 amendments on grounds that the deletion of the sub-rule was *ultra vires* the enabling legislation, namely, s 80 of the Supreme Court of Judicature Act (Cap 322, 1985 Rev Ed) ("SCJA").

20 Contrary to the plaintiffs' contention, the 1991 amendments were not, as Mr Chan pointed out, promulgated by Parliament, but by the Rules Committee pursuant to its powers under s 80 of the SCJA. Section 80 empowers the Rules Committee to prescribe rules governing procedure in the Supreme Court. It is convenient to look at O 14 r 1(2) of RSC 1970. Order 14 r 1 reads:

> (1) Where in an action to which this Rule applies a statement of claim has been served on a defendant and that defendant has entered an appearance in the action, the plaintiff may, on the ground that that defendant has no defence to a claim included in the writ, or to a particular part of such a claim, or has no defence to such a claim or part except as to the amount of any damages claimed, apply to the Court for judgment against that defendant.
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> (2) Subject to paragraph (3), this Rule applies to every action begun by writ other than one which includes —
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> (*a*) a claim by the plaintiff for libel, slander, malicious prosecution, false imprisonment, seduction or breach of promise of marriage; or
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> (*b*) a claim by the plaintiff based on an allegation of fraud.
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> …

21 Order 14 r 1(2) of the RSC 1970 was derived from the English Rules of the Supreme Court 1965. The causes of action mentioned in r 1(2) were typically tried before a jury in England (see s 6

of the Administration of Justice (Miscellaneous Provisions) Act 1933 (c 36) (UK), s 69 Supreme Court Act 1981 (c 54) (UK) and [25] below). However, there are no jury trials in Singapore. The anomaly in O 14 r 1(2) was either overlooked or not appreciated until Chan Sek Keong J (as he then was) pointed it out many years later in *Blue Nile Co Ltd v Emery Customs Brokers (S) Pte Ltd* [1990] SLR 454, a case concerning fraudulent misrepresentation. In that case, bills of lading were issued for three shipments of black tea that were never shipped on board the named vessels. Order 14 r 1(2)(*b*) of the RSC 1970 precluded the plaintiff from applying for summary judgment if fraud as defined in *Derry v Peek* (1889) 14 App Cas 337 was alleged and the disability persisted even though the defendants filed a defence admitting fraud on the part of their employee who acted without their consent. As the exclusion contained in O 14 r 1(2)(*b*) was directed at and confined to actions based on *Derry v Peek* fraud, Chan J was obliged to give effect to it and he dismissed the application for summary judgment, but not before calling for the sub-rule to be abrogated. Chan J said at 458, [13]:

> I agree entirely with counsel's submission that the sub-rule is not only anomalous in Singapore but also that it serves no purpose whatever as we have no trial by jury. The sub-rule should be abrogated.

Chan J's remarks led to the Rules Committee amending O 14 r 1(2) by way of the 1991 amendments which came into operation on 1st August 1991. I should add that since there were no jury trials in Singapore for civil proceedings (and, as an aside, in 1970, jury trials for criminal proceedings were abolished (see GN No S 11/1970)), the Rules Committee could not have, by subsidiary legislation (*ie*, the 1991 amendments), taken away any substantive legal rights to trial to begin with. In my view, the 1991 amendments were indisputably within the powers conferred on the Rules Committee by s 80 of the SCJA.

22 This leads me to Mr Ravi's contention that the 1991 amendments were inconsistent with the Constitution itself. I have already mentioned in [18] that the arguments were devoid of merit. For a start, Mr Ravi has not identified exactly which part of the Constitution had been violated by the 1991 amendments. He did not explain how Parliament had abrogated the plaintiffs' constitutional right. As explained in [20] above, the 1991 amendments were made by the Rules Committee. The plaintiffs in their respective affidavits referred to "a fundamental right to have a trial in open Court in defamation actions". There is, as Mr Chan rightly pointed out, no such right set out anywhere in the Constitution.

23 Mr Ravi had earlier on in chambers alluded to Art 14 of the Constitution. The freedom of speech and expression in Art 14(1)(*a*) of the Constitution is restricted by the common law claim for defamation as modified by the Defamation Act (Cap 75, 1985 Rev Ed) (see *Jeyaretnam Joshua Benjamin v Lee Kuan Yew* [1990] SLR 38 at 39, [5]). If the plaintiffs were saying that the 1991 amendments violated their right to freedom of expression in Art 14 in that the defamation actions against them could no longer proceed automatically, so to speak in a loose sense, to a full trial, Mr Ravi would have to show that O 14 as a procedure for the summary disposal of defamation actions violates Art 14. This line of argument must lead to a challenge of the summary powers of the court not only under O 14 but also under O 18 r 19 of the Rules of Court. Even confining Mr Ravi's arguments to defamation claims being an exception to O 14, Mr Ravi must still have to wrestle with the summary power of the court under O 18 r 19. I will come to this in due course.

24 Mr Ravi compared the O 14 position in Singapore with the positions in Malaysia and Hong Kong. Order 14 r 1(2) of the Rules of the High Court 1980 (PU(A) 50/1980) (M'sia) and O 14 r 1(2) of the Rules of the Supreme Court (HK) still preclude applications for summary judgment for, *inter alia*, fraud and defamation actions. He also relied on *Skink Ltd v Comtowell Ltd* [1994] 2 HKC 286 in support of his contention that O 14 proceedings are wholly inappropriate for defamation actions. First, the comparisons are irrelevant as the O 14 rules in Hong Kong and Malaysia are different from ours.

The short point here is that the plaintiffs accepted (having not taken a contrary stance) that the 1991 amendments were not *ultra vires* s 80 of the SCJA (see [19] above). Second, *Skink Ltd v Comtowell Ltd* has little to do with the issue here and hence is not a helpful case. The question there was whether summary judgment could be obtained as the fraud alleged concerned an undervalue sale and fell outside the scope of O 14 r 1(2) of the Hong Kong Rules of the Supreme Court. The Hong Kong Court of Appeal upheld the ruling of Kaplan J who adopted the wider approach in holding that not only *Derry v Peek* fraud came within the exception in O 14 r 1(2)(b) (see the decision of Kaplan J reported in [1994] 1 HKC 646).

25 Until the UK Civil Procedure Rules 1998 ("CPR"), defamation proceedings were expressly excluded from the summary judgment procedure in O 14 of the English Rules of Supreme Court. There is now in England a regime for summary disposal of defamation claims in the Defamation Act 1996 (c 31) (UK). The Act permits the court to dispose summarily of a plaintiff's claim if it appears to the court that the defence to the claim has no realistic prospect of success, and that there is no other reason why the claim should be tried. Under the CPR, there are two regimes for summary proceedings in defamation cases: summary judgment under CPR Pt 24 and summary disposal under the provisions of the Defamation Act 1996 as regulated by CPR Pt 53. CPR Pt 24 is not confined to the grant of summary relief as defined by the Defamation Act 1996. CPR Pt 53 contains the rules governing the procedure for summary disposal of defamation actions. The summary disposal procedure enables the court to consider the strength of the claim and defence at any stage and to dispose of the claim summarily at the instance of either party (see *Civil Procedure* (Sweet & Maxwell, 2006) vol 1 at para 53.2.1). Jury trials are still available for cases which are not suitable for summary disposal (see *Civil Procedure* vol 1 at para 24.2.4).

26 When there is a jury trial for a defamation action, two questions arise: one is for the judge and the other is for the jury. L P Thean JA had occasion to explain the two questions in *Microsoft Corp v SM Summit Holdings Ltd* [1999] 4 SLR 529 at [45]. I shall paraphrase his explanation. The judge decides the question of law which is whether the words complained of are reasonably capable of bearing a defamatory meaning as pleaded or some lesser defamatory meaning. The jury decides the question of fact, which is whether the words do bear the defamatory meaning pleaded or a lesser defamatory meaning. The question to the jury only arises if the judge decides the question of law in favour of the plaintiff. In Singapore, defamatory actions, like all other civil actions, are tried and decided by a judge sitting alone as a decision-maker of fact and law. As such, it will be too "artificial" an exercise for the judge to consider the aforesaid two questions (see [48] of Thean JA's judgment). The judge only has to decide whether the words complained of bear the defamatory meaning as pleaded by the plaintiff or some lesser defamatory meaning.

27 Besides O 14, there is O 18 r 19, which is the flip side of the same procedural coin. The provisions of O 18 r 19 afford a prompt and summary method of disposing of a claim or defence, which for example, is a sham or one which cannot possibly succeed. This summary power to strike out a defence to a defamatory action was exercised in *Bank of China v Asiaweek Ltd* [1991] SLR 486. In that case, the plaintiff bank applied to strike out the defence. The defendant had published a statement in a magazine stating that as a result of political repression in China, the Chinese in Singapore had made a run on the Bank of China (Singapore branch) and quoted the deputy general manager as saying that "[u]p to last Thursday, a total of about US$75m was withdrawn, leaving the bank no alternative but to suspend business temporarily". The defendant raised two defences: (a) a bare denial that the words complained of were defamatory of the plaintiff or were understood to bear the meanings as alleged by the plaintiff or any other meaning defamatory of the plaintiff, and (b) the statutory defence under s 7 of the Defamation Act. L P Thean J (as he then was) examined the defences raised and found that they were manifestly unsustainable, frivolous and vexatious and a sham. In those circumstances, a striking out was appropriate as it would obviate the necessity for a

full trial of hopeless litigation.

28 A second case which illustrates the summary power of the court to strike out, this time, a claim for libel is *Ramaiah Naragatha Vally v Singapore Press Holdings Ltd* [1996] 2 SLR 497. The plaintiffs sued Singapore Press Holdings Ltd ("SPH") and Television Corporation of Singapore Pte Ltd ("TCS") on account of some newspaper reports and write-ups in *The Straits Times* under the heading "Curry murder case to be in new TCS serial". The first plaintiff was the wife of the deceased. Her brothers were the second, third and fourth plaintiffs. Her mother was the fifth plaintiff and her sister, the sixth plaintiff. The offending passage was said to have, *inter alia*, the following defamatory meanings, namely:

(a) the first plaintiff made a false missing person police report when the deceased was murdered by the first plaintiff and her brothers;

(b) the deceased was murdered in the caretaker's quarters which happened to be the home of the fourth and fifth plaintiffs, and the deceased was murdered in a certain manner as could only have been executed by the plaintiffs;

(c) although the plaintiffs were charged for committing and abetting the murder of the deceased, they were subsequently released for lack of proof; and

(d) even though it was later proved that the deceased was murdered by the plaintiffs, they could not be prosecuted for the same crime because of legal technicalities.

TCS as second defendant applied for and obtained an order for the statement of claim to be struck out. The court recognised that it was within its discretion to adopt this summary procedure to order striking out if it was plain and obvious that the claim or defence could not succeed.

2 9 *Bank of China v Asiaweek Ltd* was a case decided before the 1991 amendments. That decision recognised that O 18 r 19 of the RSC 1970 could be made use of in a defamation action despite the existence of O 14 r 1(2) of the RSC 1970. If anything, the 1991 amendments would have had the effect of harmonising O 14 and O 18 r 19.

30 For these reasons, the assertion that the O 14 summary procedure is *per se* unconstitutional is simply spurious. Similarly, the contention that the 1991 amendments contradicted the principles of natural justice is also groundless. The plaintiffs have not shown how the summary judgment procedure under O 14 or the summary process of striking out under O 18 r 19 when applied to defamation actions would be contrary to principles of natural justice. The rubric "natural justice" embodies the basic concept of impartiality (that no person should be a judge in his or her own cause) and fairness (that everyone has a right to be heard and that none ought therefore to be condemned unheard). Of relevance here is the right not to be condemned unheard.

31 The summary process of O 14 in itself does not deprive a defendant from a right to be heard. Where a defendant has a contestable defence, a plaintiff will not be able to obtain summary judgment. It is where the defence is incontestably bad that justice requires the exercise of this summary process so as to prevent a plaintiff with a meritorious claim from being put to the delay and expense caused by hopeless litigation. Historically, O 14 in its earliest form was introduced in England simply as a means of disposing of cases which were virtually uncontested. In 19th century England, creditors of the plainest of cases, *eg*, for the price of goods sold and delivered or upon a dishonoured cheque, would have to wait for their cases to go for trial with all the attendant delay and expense that would necessarily be wasted. Debtors found a way to gain time at the expense of injustice to

the claimant as a debtor had only to record his plea to the claim. Those debtors often did not appear at the trial. The situation became so intolerable that bankers and other holders of bills in the City of London agitated for redress. In 1855, the Summary Procedure on Bills of Exchange Act 1855 (c 67) (UK) was passed. More than a decade later by the Supreme Court of Judicature Act 1873 (c 66) (UK), and the Rules of the Supreme Court 1883 (UK), the scope of the summary judgment procedure was extended. It was again extended in 1937 where the procedure was made applicable to all actions except libel, slander, malicious prosecution, false imprisonment, and actions in which fraud was alleged. By 1964, the procedure became available with the same exceptions in all actions commenced by writ in the Queens' Bench or Chancery Division. (See Simon Goulding, *Odgers on Civil Court Actions* (Sweet & Maxwell, 24th Ed, 1996) at para 5.03.) The summary judgment procedure was made not only available to a plaintiff but also to a defendant with a counterclaim. Notably, over time, the rules of court including the procedure for summary judgment were received overseas by former colonies of the British Empire. Now, with the introduction of the CPR in 1999, CPR Pt 24 (previously O 14) covers all cases, whether claimant, defendant, counterclaimant or other parties. The main exceptions to CPR Pt 24 are limited to certain types of proceedings for possession of residential premises and proceedings for an admiralty claim *in rem*. Applications for summary judgment against the Crown are also excluded. Applications for summary judgment in respect of defamation actions are now allowed. The Defamation Act 1996 came into force in England on 28 February 2000. As stated in [25] above, CPR Pt 53 regulates the summary disposal of defamation actions brought under the provisions of the Defamation Act 1996. Without a doubt, the summary judgment procedure remains very much an integral part of modern litigation. Lord Woolf MR in *Swain v Hillman* [2001] 1 All ER 91 at 94 commented on the importance and usefulness of CPR Pt 24 in the administration of justice in these terms:

> [Part 24] saves expense; it achieves expedition; it avoids the court's resources being used up on cases where this serves no purpose, and I would add, generally, that it is in the interests of justice. If a claimant has a case which is bound to fail, then it is in the claimant's interests to know as soon as possible that that is the position. Likewise, if a claim is bound to succeed, a claimant should know that as soon as possible.

32 Lord Woolf MR's comments are equally relevant and applicable in Singapore. As O 14 of our Rules of Court now stands, an application for summary judgment can only be made after a defendant has served his defence. The O 14 summary procedure operates as a filter and sieves out cases where there is plainly no issue or question in dispute which ought to be tried. In this way, any plaintiff with a valid claim is able to obtain summary judgment upon his claim or part of his claim without the delay and expense of a full trial. A defendant with a counterclaim may also apply for summary judgment on his counterclaim. There is nothing in this summary procedure that contradicts the principles of natural justice. The defendant has the right to serve his defence and to serve his show-cause affidavit, and will have an opportunity to resist the application for summary judgment at the show-cause hearing. At the hearing of a summary judgment application, the parties have an opportunity to present their case. The plaintiff must establish the merits of his case if he is to obtain summary judgment. If the defendant is able to demonstrate that he has a defence or that at least his defence raises triable issues of fact or law or both, the court may, depending on the strength of the case, make a conditional order or order unconditional leave to defend the action. An order granting unconditional leave to defend simply means that there are enough merits to warrant a full trial. Significantly, no appeal can lie to the Court of Appeal against an order granting unconditional leave to defend (see s 34(1)(*a*) of the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed)). I should add that whilst a trial of the action can thereafter be expected, this presupposes that the procedures laid down in the Rules of Court have been complied with by the parties prior to setting down the action for trial. From this perspective, there is no "automatic" right to a trial, either before or after the 1991 amendments.

33 The virtues of a public trial expressed in *dicta* relied upon by Mr Ravi from *Scott v Scott* [1913] AC 417 and *Harman v Secretary of State for the Home Department* [1983] 1 AC 280 ("*Harman*") are not counterpoints to the summary procedure debate. The first case of *Scott v Scott* concerned the jurisdiction of the court to hear nullity proceedings *in camera*, and the power of the judge to make an order which not only excludes the public from the hearing, but restrains the parties from afterwards making public the details of what took place at the hearing. Under the UK Matrimonial Causes Act 1857 (c 85) which was under discussion in *Scott v Scott*, nullity suits were to be conducted in open court. The petitioner in that case applied, and obtained an order, for the nullity proceedings to be held *in camera*. After the decree *nisi* was pronounced, the petitioner obtained a transcript of the proceedings and sent copies of the transcript to the respondent's father, his sister and a third person. The respondent took out contempt proceedings against the petitioner for publishing copies of the transcript. The House of Lords held that the order to hear *in camera* was made without jurisdiction but that even if there was jurisdiction to make such an order, transcripts from a hearing *in camera* could still be published. In *Harman,* a solicitor made available to a journalist documents obtained in discovery. Although the documents were already made public in that they were read in open court, the court held that the solicitor was in breach of his undertaking not to use the documents for some other collateral or ulterior purpose of his own. Lord Scarman's speech on public trials from which Mr Ravi quoted was made in the context of discovery and, in his dissenting judgment, Lord Scarman held that litigants and their lawyers could use the documents obtained in discovery in public discussion after they became public knowledge.

34 Mr Chan further submitted that the OS should be dismissed as it was fundamentally flawed. The plaintiffs did not identify the conditions for declaratory orders in the supporting affidavits. On the face of the OS, the plaintiffs appeared to be claiming rights *in vacuo* as there was no existing controversy between the plaintiffs and the AG. This point was not addressed in Mr Ravi's written submissions. I was not minded without the benefit of full arguments, to rule on this issue. Besides, it was not necessary to do so having reached the conclusion that the OS failed for the reasons already stated.

35 In conclusion, the artificiality in the plaintiffs' case as deposed to by the plaintiffs in their affidavits and as presented in Mr Ravi's written submissions is undeniable. Accordingly, the OS was dismissed with costs to be taxed.