

Ricky Charles s/o Gabriel Thanabalan v Chua Boon Yeow
[2002] SGCA 52

Case Number : CA 50/2002
Decision Date : 02 December 2002
Tribunal/Court : Court of Appeal
Coram : Chao Hick Tin JA; Tan Lee Meng J; Yong Pung How CJ
Counsel Name(s) : Perumal Athitham (Yeo Perumal Mohideen & Partners) for the appellant; Fazal Mohamed bin Abdul Karim and Harpal Singh (B Rao & K S Rajah) for the respondent
Parties : Ricky Charles s/o Gabriel Thanabalan — Chua Boon Yeow

Civil Procedure – Jurisdiction – Application to transfer proceedings from District Court to High Court – Plaintiff obtaining interlocutory judgment in District Court – Whether assessment of damages can be transferred to High Court – s 18 and cl 10 of first schedule Supreme Court of Judicature Act (Cap 322) – O 89 r 2 Rules of Court (Cap 322, R 5, 1997 Rev Ed)

Courts and Jurisdiction – High court – Power to transfer proceedings from District Court to High Court – Whether assessment of damages can be transferred to High Court where interlocutory judgment entered in District Court – s 18 and cl 10 of first schedule Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) read with s 38 Subordinate Courts Act (Cap 321, 1999 Rev Ed)

interlocutory judgment had already been obtained in the district court – Supreme Court of Judicature Act (Cap 322) s 18 and cl 10 of first schedule – Subordinate Courts Act (Cap 321) s 38

Facts

The appellant and the respondent were involved in a motor vehicle accident on 25 December 1999. On 18 July 2000, the appellant commenced an action against the respondent for damages for personal injuries arising out of the accident. The defence was filed on 22 August 2000. Subsequently, about ten months later, on 15 June 2001, the appellant obtained an interlocutory judgment from the district court, against the respondent, by consent, with damages to be assessed. On 11 January 2002, the appellant filed an application to transfer the proceedings from the district court to the High Court, on the ground that his damages might exceed the jurisdictional limit of the district court. His application was dismissed by the judicial commissioner in Originating Summons 46 of 2002/W on the basis that the High Court had no jurisdiction to order the transfer, in view of the interlocutory judgment. The judicial commissioner further stated that even if the High Court had the jurisdiction to transfer the proceedings, notwithstanding the interlocutory judgment, the appellant still had to persuade him to exercise his discretionary power in the appellant's favour. He was of the view that it was too late for the appellant to try and overcome the jurisdictional limit of the district court via a transfer of the proceedings to the High Court, since the parties had proceeded and interlocutory judgment was entered on the basis that the damages awarded would be circumscribed by the jurisdiction of the district court.

Held,

dismissing the appeal :

(1) Section 18(3) of the SCJA provides very clearly that the powers set out in the first schedule are to be exercised in accordance with any written law relating to them. The judicial commissioner had correctly interpreted that, although clause 10 of the first schedule gives the High Court very wide powers to transfer proceedings from the district court to the High Court, it has to be read subject to s 38 of the SCA (see 10) .

(2) The power of the High Court to transfer proceedings from a lower court to itself or *vice versa* is a necessary one, in the interests of

justice. Nevertheless, such a power should not be exercised liberally. The onus is really on a plaintiff to commence his action in the correct court. The plaintiff, who has commenced his action in the inappropriate court, ought not to be allowed, without good cause, to simply rectify his own error by applying for a transfer of proceedings (see 12).

(3) Section 38 of the SCA gives the High Court the discretion to transfer an entire action, ie the claim, encompassing both the question of liability and quantum to the High Court. It is not within the spirit of the section, which requires the matter to be "*one which should be tried in the High Court*", to permit a transfer of a case where interlocutory judgment had already been obtained in the district court, leaving only the quantum to be assessed and what was sought to be transferred to the High Court was merely the assessment of damages. This would be to truncate a single proceeding and blur the distinction between the two jurisdictions. By obtaining an interlocutory judgment in the district court, the appellant had affirmed his claim within the jurisdiction of that court (see 16).

Case(s) referred to

Australian Masters Builders Co Pte Ltd v Ng Tai Tuan

(1988) 1 MLJ 273 (refd)

Legislation referred to

Rules of Court O 89 r 2

Subordinate Courts Act (Cap 321) s 38

Supreme Court of Judicature Act (Cap 322) s 18, cl 10 of first schedule

[Delivered by Yong Pung How CJ]

Judgment

GROUND OF DECISION

This was an appeal against the decision of the High Court, in Originating Summons No 46 of 2002/W, which dismissed the appellant's application to transfer proceedings in the district court to the High Court, pursuant to s 18(2) of the Supreme Court of Judicature Act ("SCJA") and O 89 r 2 of the Rules of Court. Having heard counsel for the parties, we dismissed the appeal with costs. We now give our reasons.

The background

2 The appellant and the respondent were involved in a motor vehicle accident on 25 December 1999, when the motor vehicle driven by the respondent collided into the motorcycle ridden by the appellant. The accident resulted in the death of the appellant's pillion rider and the respondent was charged under s 304A of the Penal Code, for causing death by a rash and negligent act. The

respondent pleaded guilty and was fined \$8000, in default four months' imprisonment, and was banned from driving for a period of seven years.

3 On 18 July 2000, the appellant commenced an action against the respondent for damages for personal injuries arising out of the accident. In the statement of claim filed, the appellant claimed \$33,600.63 for medical expenses and hospitalisation bills incurred, as well as for future medical expenses. The defence was filed on 22 August 2000.

4 Subsequently, about ten months later, on 15 June 2001, the appellant obtained an interlocutory judgment from the district court, against the respondent by consent, with damages to be assessed. On 4 October 2001, the appellant's solicitors wrote to the respondent's solicitors, asking whether the respondent was willing to consent to the district court having an increased jurisdiction beyond its limit of \$250,000, in view of the fact that the appellant's medical expenses had already amounted to \$160,000. The appellant was also scheduled to go for another operation, which would cost approximately \$50,000 to \$55,000. There was no reply from the respondent's solicitors. As a result, the appellant made an application to transfer proceedings from the district court to the High Court on 11 January 2002.

The decision below

5 The judicial commissioner approached the matter by stating that clause 10 of the first schedule to the SCJA should be read together with s 38 of the Subordinate Courts Act ("SCA"). As such, although the High Court has a wide power to transfer proceedings from the district court to the High Court under clause 10, the grounds for doing so should come under one of the limbs in s 38 of the SCA.

6 The judicial commissioner acknowledged that the possibility of the damages exceeding \$250,000 would normally constitute a "sufficient reason" under s 38 of SCA for an order of transfer. Nevertheless, he doubted that the High Court had the jurisdiction now to order the transfer of proceedings, in view of the fact that an interlocutory judgment had already been granted by the district court. He further stated that, even if the High Court had the jurisdiction to do so, notwithstanding the interlocutory judgment, the appellant still had to persuade him to exercise his discretionary power in the appellant's favour.

7 The judicial commissioner did not accept the argument that the respondent would have consented to an interlocutory judgment from the High Court in any event. To him, the fact remained that an interlocutory judgment had been entered in the district court. If the assessment of damages was conducted without a transfer of proceedings to the High Court, the damages to be awarded would be circumscribed by the jurisdiction of the district court. Since the parties had proceeded on that basis and interlocutory judgment was entered on that basis, he was of the view that it was too late for the appellant to try and overcome the jurisdictional limit of the district court by applying to transfer the proceedings to the High Court.

The issues

8 Before us, as in the court below, the issues were first, whether the High Court has the power to transfer the proceedings from the district court to the High Court when an interlocutory judgment has already been entered by the district court and secondly, if so, whether the High Court should have, in its discretion, ordered the transfer.

The appeal

9 At the outset, we would state that we fully agreed with the judicial commissioner's reading of s 18(3) of the SCJA and s 38 of the SCA. Section 18 of the SCJA states that :

(1) The High Court shall have such powers as are vested in it by any written law for the time being in force in Singapore.

(2) Without prejudice to the generality of subsection (1), the High Court shall have the powers set out in the First Schedule.

(3) The powers referred to in subsection (2) shall be exercised in accordance with any written law or Rules of Court relating to them.

10 Section 18(3) provides very clearly that the powers set out in the first schedule are to be exercised in accordance with any written law relating to them. The judicial commissioner had correctly interpreted that, although clause 10 of the first schedule gives the High Court very wide powers to transfer proceedings from the district court to the High Court, it has to be read subject to s 38 of the SCA, which states that :

38. Where it is made to appear to the High Court, on the application of a party to any civil proceeding pending in a District Court, that the proceeding by reason of its involving some important question of law, or being a test case, or for any other sufficient reason, is *one which should be tried in the High Court*, it may order the record to be transferred to the High Court. (emphasis added)

11 Counsel for the appellant sought to persuade us that the intention of Parliament in enacting clause 10 of the first schedule and s 38 of the SCA in the first place was to empower the courts to order a transfer of proceedings in the district court to the High Court, in order to do substantial and complete justice. Adjunct to that main purpose, it was further argued that the provisions gave the appellant a legitimate course of action to rectify a *bona fide* error in filing his action in the district court. In addition, it was argued that the interlocutory judgement could not be a bar to the transfer of the proceedings because an interlocutory judgment, termed as such, is a judgment which is merely given provisionally while something remains to be decided before the termination of a cause of action. Hence, the power to transfer the proceedings to the High Court was "well alive and potent".

12 No doubt, the power of the High Court to transfer proceedings from a lower court to itself or *vice versa* is a necessary one, in the interests of justice. Nevertheless, such power should not be exercised liberally. The onus is on a plaintiff to commence his action in the correct court. The plaintiff, who has commenced his action in the inappropriate court, ought not to be allowed without good cause to simply rectify his own error by applying for a transfer of proceedings.

13 We were of the view that the very reason in the first place for the existence of s 38 of the SCA was to place some restriction on the very wide powers generally conferred by clause 10 of the first schedule. It is not in every case of an application to transfer proceedings from a district court to the High Court that such a transfer can and will take place.

14 The fact that the interlocutory judgment did not bring the action to an end did not, in our

view, advance the appellant's case. This was because nothing more was shown other than that the overriding requirement in s 38 of SCA of "any civil proceeding *pending* in the district court" was satisfied. This was, however, not sufficient for an order to transfer proceedings.

15 In the case before us, the claim was a straightforward one for damages for personal injuries. Counsel for the appellant relied on certain medical reports, in particular the two medical reports by Dr P Thiagarajan, dated 19 September and 15 December 2001, to show that the appellant was going to incur further medical expenses and hence, there was a possibility that his damages might exceed the jurisdictional limit of the district court. Ordinarily, this would be well within the third limb of s 38 of the SCA, constituting "sufficient reason" for the High Court to transfer the proceedings.

16 Unfortunately, an interlocutory judgment had already been obtained from the district court. In our opinion, s 38 gives the High Court the discretion to transfer an entire action, ie, the claim, encompassing both the question of liability and quantum to the High Court. We did not think that it is within the spirit of the section, which requires the matter to be "*one which should be tried in the High Court*", to permit a transfer of a case where interlocutory judgment had already been obtained in the district court, leaving only the quantum to be assessed, and what was sought to be transferred to the High Court was merely the assessment of damages. This would be to truncate a single proceeding and blur the distinction between the two jurisdictions. By obtaining an interlocutory judgment in the district court, the appellant had affirmed his claim within the jurisdiction of that court.

17 With regard to the only case cited to us by counsel for the appellant, *Australian Masters Builders Co Pte Ltd v Ng Tai Tuan* (1988) 1 MLJ 273, we would only say that the judicial commissioner correctly distinguished that case, in that there was no interlocutory judgment in favour of the plaintiffs for the balance of the claim and the application was to transfer High Court proceedings to the district court, with a corresponding reduction in their claim.

18 Though this was not vital to our conclusion, we would add that, in this case, the appellant had had several medical reports in his hand in the course of the proceedings in the district court, which indicated strongly that his damages might exceed the jurisdictional limit of the district court. In particular, in the medical report dated 15 August 2000 prepared by Dr Yeo Khee Quan of Yeo Orthopaedic Centre, it was stated that the appellant had had multiple operations in an attempt to control infection and these had failed as he was still discharging sinus and there was evidence of infection in the upper fracture site. Dr Yeo was of the opinion that the appellant was likely to require *multiple operations* in the future in an attempt to correct his problem. The chances of success in these operations were doubtful and the appellant would probably require extensive and prolonged care in the next two years.

19 In the light of all these medical reports made available to him, the appellant ought to have known that his damages might exceed the jurisdictional limit of the district court. He ought to have considered transferring the proceedings to the High Court at that stage. Instead, he chose to obtain an interlocutory judgment against the respondent, by consent on 15 June 2001. In these circumstances, we were of the view that the appellant should not be allowed to transfer the proceedings to the High Court.

20 In the premises, the appeal was dismissed with costs.

Sgd:

YONG PUNG HOW
CHIEF JUSTICE

CHAO HICK TIN
JUDGE OF APPEAL

TAN LEE MENG
JUDGE

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