Thomson Plaza Pte Ltd v The Liquidators of Yaohan Department Store Pte Ltd [2001] SGCA 44

Case Number : CA 600009/2001, NM 600022/2001

Decision Date : 21 June 2001

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ

Counsel Name(s) : Harish Kumar and Sim Yuan Po Thomas (Engelin Teh & Partners) for the appellants; Suhaimi Lazim and Pradeep Pillai (ShookLin & Bok) for the respondents

Parties : Thomson Plaza Pte Ltd — The Liquidators of Yaohan Department Store Pte Ltd

Civil Procedure – Appeals – Notice of appeal – Motion to strike out notice of appeal – Whether notice filed out of time

Civil Procedure – Judgments and orders – Further arguments – Effect of allowing further arguments – Effect on request for further arguments of failure to comply with practice directions – Effect of court's agreement to accede to request for further arguments notwithstanding non-compliance with practice directions

(delivering the grounds of judgment of the court): This was a motion filed by the respondents, the Liquidators of Yaohan Department Store, to strike out a notice of appeal filed by the appellants, Thomson Plaza Pte Ltd, on the ground that the notice was filed out of time and without the leave of court. We dismissed the motion after hearing the parties. We now give our reasons as the issue raised therein is one of practical importance.

The background

On 12 July 2000, the appellants filed SIC 603083/2000 in CWU 325/1997 to appeal against the decision of the respondents, rejecting the appellants` proof of debt. The summons was heard over two days (29-30 August 2000) before GP Selvam J in chambers who reserved judgment. On 29 November 2000 the judge dismissed the appellants` application with costs. On the same day the solicitors for the appellants wrote to the Registrar of the Supreme Court seeking further arguments before the judge. The letter ended with this sentence:

> *This request **is also made** for the purpose of complying with s 34(1)(c) of the Supreme Court of Judicature Act (Cap 322), **if applicable**. [Emphasis is added.]*

On 6 December 2000, the Registrar informed the parties that `the abovementioned matter is fixed for further arguments on Monday, 15 January 2001 at 10.00am before the Honourable Justice G P Selvam in Court No. 11`.

On 15 January 2001, the parties attended before the judge. Apparently on that day the judge had second thoughts about hearing further arguments. He also commented that the decision of 29 November 2000 was a final judgment and that the appellants had failed to comply with the practice direction which required an applicant to set out the gist of the further arguments. It would seem that no further arguments were, in fact, heard on that day. The judge merely reiterated his decision of 29 November 2000 and made no further order.

On 14 February 2001, the appellants filed their notice of appeal against the decision of the judge given on 15 January 2001.

Effect of decision to hear further arguments

Before going into a consideration of the effect of the court agreeing to hear further arguments, there is a preliminary point we need to address. This concerns the question whether the decision of the judge of 29 November 2000 was in the nature of an interlocutory order or a final order. From the way the request was framed in the appellants` solicitors letter of 29 November 2000, it was clear that the appellants were requesting for further arguments on two alternative bases, depending on whether the order of 29 November 2000 was final or interlocutory. It is settled law that even in respect of a final order, the judge has an inherent jurisdiction to recall his decision and to hear further arguments, so long as the order is not yet perfected: **Re Harrison`s Share under a Settlement** [1955] Ch 260[1955] 1 All ER 185. Therefore, it is quite unnecessary for us to go into a determination of the question whether the decision of 29 November 2000 was interlocutory or final. The test to be applied in deciding that question was examined by this court in **Rank Xerox (Singapore) v Ultra Marketing** [1992] 1 SLR 73 and it is wholly unnecessary for us to say anything more about that.

Reverting to the question of the consequence of a judge agreeing to hear further arguments, that question was considered by the courts here in two cases: **JH Rayner (Mincing Lane) v Teck Hock & Co** (Unreported) and **Singapore Press Holdings v Brown Noel Trading** [1994] 3 SLR 151 . In ***JH Rayner*** , Chan Sek Keong J (as he then was) said:

> *If a judge agrees to hear further arguments, it must mean that he is prepared to change his mind if on hearing further arguments he comes to the conclusion that the original decision is wrong wholly or in some respects. In other words, until he has heard such arguments, his decision must remain tentative.*

The views expressed by Chan Sek Keong J were adopted by this court in ***Singapore Press Holdings*** (supra) where, after citing the passage above, the court said (at p 166):

> *So in the instant case when the learned judicial commissioner agreed to hear further argument from SPH on 9 June 1993 he must have been prepared to change his mind on the order he had made on 28 May 1993 or at least to alter his thinking on some of the issues he had to decide in coming to his conclusion which might have had some bearing on the order he made; ...*

We were conscious that in both the above two cases, the courts were considering the effect of a decision to hear further arguments in relation to an interlocutory order pursuant to s 34(1)(c) of the Supreme Court of Judicature Act (Cap 322, 1999 Ed). However, we were unable to see any reason why the effect of a court agreeing to hear further arguments in relation to a final order should be any different. In both situations, whether it was a case of the court agreeing to hear further arguments under s 34(1)(c) or under the inherent jurisdiction in relation to a final order, the effect must be the same. In both situations the court was in effect saying that it was prepared to review the matter, and that the decision already made would, as a result, be put on hold or suspended until the hearing of further arguments. This was plain common sense and logic. Once a court had determined that it would hear further arguments, there was really no `decision` anymore against which an appeal could have been lodged. The whole question which the court had earlier decided had thereby become

`open`.

We noted that in this instance, the judge on the date appointed to hear further arguments decided that he would not want to hear anything more. That was entirely within his discretion. But what he decided on 15 January 2001 could not alter the fact that until 15 January 2001, following from his earlier decision taken on 6 December 2000 to hear further arguments, the original decision of 29 November 2000 was put on hold or suspended. There was no decision against which the appellant could have appealed. We do not wish to speculate why the judge, having on 6 December 2000 acceded to the request to hear further arguments, changed his mind on 15 January 2001. It was only upon the judge`s refusal to hear anything more on 15 January 2001, that the decision of 29 November 2000 was affirmed. Only from that day onwards could the appellants appeal against that decision. Thus, the notice of appeal filed by the appellants on 14 February 2001 was within time and was in order.

Non-compliance with practice direction

There is one other point we need to touch on and this relates to the question of non-compliance with the ***Supreme Court Practice Directions*** (1997 Ed) Pt X, para 51, the pertinent parts of which read:

> *(1) All requests for further arguments shall be by way of letter and should:*
>
> *...*
>
> *(e) set out the proposed further arguments briefly, together with any authorities; and*
>
> *(f) include a copy of each of the authorities cited.*
>
> *(2) Where the application raises no new issue or argument but is solely for the purpose of complying with section 34(1)(c) of the Supreme Court of Judicature Act, the applicant must state so. In such a case, clauses 51(1)(e) and (f) need not be complied with.*

To the extent that the letter of 29 November 2000 from the appellants` solicitors sought further arguments on two alternative bases, namely, inherent jurisdiction and under s 34(1)(c), the appellant should have in relation to the request under the inherent jurisdiction in respect of a final order, `set out the proposed further arguments briefly, together with any authorities`. This, the appellants had failed to do. The court would have been justified to reject the appellants` request and direct that the appellants comply with the practice direction before the court would be prepared to consider the request. However, the court did not do that, and notwithstanding the non-compliance, it acceded to the request of the appellants. Having done that, it would be too late in the day for the court to say, on the day appointed for further arguments, that the request for further arguments should not have been acceded to. Once the parties were notified by the Registrar that the judge would hear further arguments, all decisions made, to which that request related, would be put on hold. Even if the court should have, on the appointed day to hear further arguments, peremptorily despatched whatever arguments an appellant made and even ticked off counsel for non-compliance, that cannot alter the fact that it was only on that day that the earlier judgment was affirmed. Time to appeal would only be reckoned from that day.

Outcome:

Motion dismissed.