Afro Asia Shipping Co (Pte) Ltd v Haridass Ho & Partners and Another
[2003] SGHC 21

Case Number : Suit 807/2002

Decision Date : 10 February 2003

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : Kenneth Tan SC (Kenneth Tan Partnership) for the plaintiffs; Haridass Ajaib (Haridass Ho & Partners) for the first defendants; Chan Kia Pheng (Khattar Wong & Partners) for the second defendants

Parties : Afro Asia Shipping Co (Pte) Ltd — Haridass Ho & Partners; UOB Kay Hian Pte Ltd

Civil Procedure – Striking out – Dispute over interpretation of consent order – Consent order containing liberty to apply provision

Civil Procedure – Striking out – Plaintiffs initiating fresh action – Whether plaintiffs' claim disclose no reasonable cause of action, frivolous or vexatious, or abuse of process – Rules of Court (Cap 322, R 5, 1997 Rev Ed) O 18 r 19(1)

These proceedings were the subject of an appeal in Registrar's Appeal No. 216 of 2002 (the Appeal) and on my dismissal of the same, are now the subject of a notice of appeal filed in Civil Appeal No. 140 of 2002 by the plaintiffs.

The facts

1. Afro-Asia Shipping Company (Pte) Ltd (the plaintiffs) are a local company and are the owners of a building situated along Robinson Road called Afro-Asia Building (the Building). Haridass Ho & Partners (the first defendants) are a firm of Singapore solicitors who, at the material time, acted for members of the Bajumi family (the Bajumis), who are shareholders in the plaintiffs together with members of the Tan family (the Tans). The respective patriarchs (fathers) of the two (2) families had founded the plaintiffs back in 1961, as equal shareholders. UOB Kay Hian Pte Ltd (the second defendants) are a local securities company. The Bajumis sued the plaintiffs (and the Tans) in OS No. 727 of 1996 (the OS) and instituted proceedings against the same parties under s 216 of the Companies Act, in Companies Winding Up No. 162 of 1996, relating to assets owned by the plaintiffs; these assets included the Building, a rubber plantation in Indonesia and a block (17.4 million) of shares in a Singapore public company called Ssangyong Cement (Singapore) Limited. (Hereinafter the public company and the shares will be referred to as Ssangyong Cement and Ssangyong shares respectively). Both proceedings which were consolidated by Order of Court dated 16 September 1996 came on for hearing before Choo JC on 9 May 2001. By then, the two warring families had come to a settlement which essentially allowed the Bajumis to retain the Indonesian assets while the Tans would take over the Singapore assets. Choo JC's task was to determine the value of the assets (3) based on valuation reports tendered by the parties. The valuations he made resulted in appeals being filed in Civil Appeals No. 600066 and 600067 of 2001 respectively by the Bajumis and the Tans.

2. On 18 March 2002, the Court of Appeal made inter alia, the following consent orders (the First Order of Court):-

(1) the Judgement dated 9 May 2001 be reversed and set aside;

(2) the three (3) principal assets namely, the Building, the Ssangyong shares and rubber

plantation be sold forthwith;

(3) the parties agree that the sale of the assets in Singapore, namely, the Building and the Ssangyong shares be conducted by reputable and qualified professionals in Singapore;

(4) in respect of the Ssangyong shares, if either or both parties wish, their proportionate percentage (ie 50%) of the Ssangyong shares may be deposited with their respective solicitors, without the same being sold;

(i) the parties' respective solicitors, save that they be entitled to register the same in their names or name of a nominee company, undertake not to sell or deal with the respective Ssangyong shares held with them, until time for distribution for the same or until further order;

(ii) the respective block of Ssangyong shares will only be distributed to the parties by their respective solicitors at the same time as the proceeds of sale of the remaining assets are distributed or until further order.

(5) there be liberty to apply.

3. On an application made by the Bajumis under the liberty to apply provision in item (5) above, the Court of Appeal (inter alia) made the following additional orders on 22 July 2002 (the Second Order of Court):-

(1) the dividends on the 8.7 million Ssangyong shares registered in the name of UOB Kay Hian Private Limited, acting as agents for the solicitors of the Bajumis, are to be paid to UOB Kay Hian Private Limited's Sub-account no. 2051-1707-2536 and dealt with as provided for in para 4(ii) of the first order;

(2) nothing in the first order, nor in this order, shall be taken to have determined what the area of the rubber plantation should have been under any prior contractual arrangements between the Tans and the Bajumis.

4. Before the Bajumis obtained the Second Order of Court, the plaintiffs commenced this suit (on 9 July 2002). I should point out that the application of the Bajumis was filed on 27 June 2002. In the statement of claim, the plaintiffs alleged that the first defendants had agreed to hold 8.7 million Ssangyong shares on trust. They further alleged that the first defendants had furnished written assurances and undertakings to the plaintiffs agreeing to hold the shares on trust. It was alleged that the plaintiffs had prepared and signed documents (which included a Form to the Central Depository Pte Ltd [CDP]) to the effect that the deposit of shares placed with the first defendants reflected such an arrangement. The plaintiffs had then handed the Form to the CDP on 16 April 2002. Between 16 and 18 April 2002, the plaintiffs discovered from the CDP that the Form was altered to reflect the first defendants as beneficial owners of the 8.7 million Ssangyong shares. Through the second defendants, the first defendants had taken the position they were entitled to the dividends on those Ssangyong shares and claimed on Ssangyong Cement accordingly in Suit No. S742 of 2002/H. On 29 July 2002, the Assistant Registrar ordered the second defendants to amend their statement of claim in Suit No. S742 of 2002/H to plead, the basis on which they claimed to become the registered owner of the 8.7 million Ssangyong shares and, the capacity in which they held those shares. On 11 October 2002, the Assistant Registrar ordered Ssangyong Cement to pay interest on the dividend ($508,950)

declared on 8.7 million Ssangyong shares at 1.5% per annum, from the date of the writ (in Suit No. S742 of 2002/H) and that the dividend be paid into the second defendants' CDP sub-account as per the Second Order of Court.

5. In this suit, the plaintiffs claimed inter alia, a declaration that both defendants held the 8.7 million Ssangyong shares on trust for the plaintiffs who remained the beneficial owners and are beneficially entitled to all the rights thereon. A further declaration was sought that the altered Form was null and void and of no effect.

The application

6. On 1 August 2002, the first defendants applied vide summons-in chambers entered no. 2781 (the application) to strike out the plaintiffs' statement of claim against both defendants, pursuant to O 18 r 19(1)(a) or rule 19(1)(b) or rule 19(1)(d) of the Rules of Court, on the ground that the action herein discloses no reasonable cause of action, or is scandalous, frivolous or vexatious, and or is an abuse of the process of court.

7. An affidavit was filed by a partner (Randhir Ram Chandra [RRC]) of the first defendants in support of the application. RRC revealed that the Tans (who effectively control the plaintiffs) did not agree with the literal interpretation of the First Order of Court namely, that the parties' proportionate percentage (50%) of the Ssangyong shares may be deposited with their solicitors without the same being sold. The plaintiffs persuaded Ssangyong Cement to withhold payment from the second defendants of the dividend declared on the 8.7 million Ssangyong shares and pay it instead to the plaintiffs. It was for that reason that the Bajumis applied to the Court of Appeal and obtained the Second Order of Court. It was equally clear therefrom that the beneficial ownership of the 8.7 million Ssangyong shares was vested in the Bajumis. Consequently, RRC deposed, the plaintiffs' claim was untenable on a plain reading of both Orders of Court.

8. The plaintiffs countered the application by filing summons-in-chambers entered no. 2916 of 2002 (the O 14 application) on 8 August 2002 for summary judgment against both defendants. On their part, they filed two (2) affidavits by their directors Tan Chin Hoon and Tan Yok Koon, in support of the O 14 application and also to oppose the application. Basically, the two (2) affidavits repeated the assertions stated in the statement of claim.

9. The application was granted an order in terms by the Assistant Registrar on 23 August 2002 against whose decision the plaintiffs filed the Appeal.

The Appeal

10. At the hearing of the Appeal, counsel for the plaintiffs submitted that there was no basis for the court below to strike out the plaintiffs' claim for a declaration that the plaintiffs remained the beneficial owners of the 8.7 million Ssangyong shares and retained the rights thereon. He pointed out that by the First Order of Court, it was clearly contemplated that the three (3) assets of the plaintiffs (including the 17.4 million Ssangyong shares) would not change ownership, until the sale proceeds therefrom had been distributed. As such, the first defendants' argument that there had already been a division of the assets of the plaintiffs was plainly wrong. The 8.7 million Ssangyong shares can only

be distributed at the same time as the proceeds of sale of the other two (2) assets (or until further order); pending distribution, those shares were deposited with the first defendants as a comfort that the plaintiffs would not sell or otherwise deal with them. This position was in no way affected by the Second Order of Court.

11. Reliance was placed on s 130D(1) of the Companies Act Cap 50 by the plaintiffs – alteration of the Form so that the first defendants were the named persons in the CDP register meant that they were deemed to be members of Ssangyong Cement. Section 195(4) of the same Act states that no trust is recognised which meant that dividends would be paid to the party appearing in the register of the CDP and not to the beneficial owners (the plaintiffs) of the Ssangyong shares.

12. Another argument put forward by the plaintiffs was, that the lodging of the Form with the CDP (presumably by the second defendants as agents of the first defendants) misrepresented the position – stating that the first defendants are beneficial owners of the 8.7 milllion Ssangyong shares flies in the face of the Orders of Court of the Court of Appeal and the first defendants' own representation to the plaintiffs, that they would hold those shares on trust. The plaintiffs have a good cause of action against the first defendants for misrepresentation, although a good cause of action is not a precondition to obtaining a declaration.

13. The plaintiffs contended that the CDP form with the misrepresentation was no basis for the payment of the dividend. Payment was made pursuant to the Second Order of Court. A fresh CDP Form/an amended Form should be filed to reflect the correct position.

14. Lastly, the plaintiffs submitted, the Appeal concerned the striking out of the entire writ of summons/statement of claim. It is settled law that such a drastic measure should only be taken in plain and obvious cases. It was premature to strike out the writ of summons/statement of claim at this stage, given the complex issues. It cannot be said that the plaintiffs do not have an arguable case that they own the 8.7 million Ssangyong shares in dispute.

15. On their part, counsel for both defendants submitted that it was not for this or any other court but, the Court of Appeal, to determine the issue of who retained the beneficial interest in the 8.7 million Ssangyong shares. Essentially, the plaintiffs were asking for an interpretation of the two (2) Orders made by the Court of Appeal which was outside the purview of any court other than the appellate court; they should have gone back to the Court of Appeal for further directions, under the liberty to apply provision in the First Order of Court. It was not a question of granting the plaintiffs leave to amend the statement of claim to cure whatever shortcomings existed in their pleaded case. There was also a suggestion by counsel for the second defendants that the plaintiffs had a collateral purpose in instituting this suit; it was a retaliative strike against the second defendants for claiming (in Suit No. S742 of 2002/H) the dividend declared on the 8.7 million Ssangyong shares, which the plaintiffs considered their entitlement.

The decision

16. I rejected the plaintiffs' arguments, dismissed the Appeal and upheld the decision of the court below, for reasons which I shall now set out.

17. Order 18 r 19(1) of the Rules of Court relied on for the application read as follows:

> The Court may at any stage of the proceedings order to be struck out or amended any pleading or the endorsement of any writ in the action, or anything in any pleading or in the endorsement, on the ground that –
>
> (a) it discloses no reasonable cause of action or defence, as the case may be;
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> (b) it is scandalous, frivolous or vexatious;
>
> (c) ……
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> (d) it is otherwise an abuse of the process of the Court,
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> and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

18. Pursuant to O 18 r 19(2), no evidence/affidavit is admissible on an application made under O 18 r 19(1)(a), as it solely relates to issues of law (see Pinsler's *Singapore Court Practice 1999* at p 899). For an application to succeed under O 18 r 19(1)(a), it must be patently clear on the face of the pleading or endorsement that there is no reasonable cause of action or defence. The Court of Appeal in *Gabriel Peter & Partners v Wee Chong Jin & Ors* [1998] 1 SLR 374 (at p 384 para 21) stated:

> The guiding principle in determining 'what a reasonable cause of action' is under O 18 r 19(1)(a) was succinctly pronounced by Lord Pearson in *Drummond-Jackson v* British Medical Association [1970] 1 All ER 1094. A reasonable cause of action, according to his lordship, connotes a cause of action which has some chance of success when only the allegations in the pleading are considered. As long as the statement of claim discloses some cause of action, or raises some question fit to be decided at the trial, the mere fact that the case is weak and is not likely to succeed is no ground for striking it out. Where a statement of claim is defective only in not containing particulars to which the defendant is entitled, the application should be made for particulars under O 18 r 12 and not for an order to strike out the statement.

Applying the above principle to the statement of claim, it seemed to me that the plaintiffs did not have any arguable case, however weak. The pleadings did not disclose some question to be tried, it related to an order of court already made which needed to be clarified.

19. I turn now to the affidavit of RRC, for the remaining limbs of the application made under O 18 rr 19(1)(b) and (c) of the Rules of Court. The deponent had pointed out that in registering the 8.7 million Ssangyong shares in the law firm's name, the first defendants as solicitors for the Bajumis were merely carrying out the letter and spirit of the First Order of Court as set out in para 2(4) above. The First Order of Court clearly intended that there should be a division of the assets of the plaintiffs between the Bajumis and the Tans, although sale was not permitted. Having opted to take their 50% portion of the Ssangyong shares, the Bajumis became the beneficiaries of those shares notwithstanding the fact that the block was registered in the name of their solicitors, under the CDP

sub-account of the second defendants. Consequently, para 20 of the statement of claim which reads:

> In claiming title as beneficial owners inconsistent with the CA [Court of Appeal] Order [dated 18 March 2002] and the said representations which reflect the true arrangements, the defendants have wrongfully converted the said shares for their own use and have dealt with it in a manner inconsistent with the trust arrangements.

was untenable.

20. It was not disputed that the proceedings herein arose out of the First Order of Court made by the appellate court. It was also common ground that the Court of Appeal gave the parties liberty to apply therein, recognising that further directions may be required from time to time in the implementation of the orders made, relating to the division/sale of the assets. As such, there was no reason for the plaintiffs to have started proceedings afresh relating to any matters which had been decided or, were under the purview of the appellate court. Even if the plaintiffs (as they did) disagreed with the first defendants' interpretation of the First Order of Court, I was of the view that their recourse was not to commence these proceedings but, to seek the appellate court's ruling on whose interpretation was correct; this they failed to do. Once the Bajumis had sought and obtained from the Court of Appeal, the ruling encompassed in the Second Order of Court, these proceedings were no longer sustainable and should have been discontinued.

21. I was/am fully aware of the well established principle that a court will not readily accede to an application to strike out an endorsement or pleading unless, there is a very clear case for making out one of the grounds. The reluctance of courts to strike out claims summarily was explained in *Tan Eng Khiam v Ultra Realty Pte Ltd* [1991] SLR 798 where Selvam JC (as he then was) said (at p 803):

> This is anchored on the judicial policy to afford a litigant the right to institute a bona fide claim before the courts and to prosecute it in the usual way. Whenever possible the courts will let the plaintiff proceed with the action unless his case is wholly and clearly unarguable.

or, put in another way, a plaintiff is not to be 'driven from the judgment seat' (per Fletcher-Moulton LJ in *Dyson v Attorney-General* [1911] 1 KB 410 at p 419). The above principle has also been restated more than once by the Court of Appeal (see *Tan Soo Leng David v Wee, Satku & Kumar Pte Ltd* [1994] 3 SLR 481).

22. The words 'frivolous or vexatious' in O 18 r 19(1)(b) of the Rules of Court have been defined to mean cases which are obviously unsustainable or wrong, the words connote purposelessness in relation to the process or a lack of seriousness or truth and a lack of bona fides (see Pinsler's *Supreme Court Practice* 1999 [*supra*] at pp 915 and 916), 'not calculated to lead to any practical result' (*Goh Koon Suan v Heng Gek Kiau & Ors* [1991] 2 MLJ 307 per Yong Pung How CJ at p 311).

23. To allow the plaintiffs to continue their action would also amount to 'an abuse of the process of

the Court' under O 18 R 19(1)(d). The phrase was explained in *Gabriel Peter & Partners v Wee Chong Jin & Ors* (supra) at p 384 para 22 as follows:

> ….It includes considerations of public policy and the interest of justice. This term signifies that the process of the court must be used bona fide and properly and must not be abused. The court will prevent the improper use of its machinery. It will prevent the judicial process from being used as a means of vexation and oppression in the process of litigation. The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed and will depend on all the relevant circumstances of the case. A type of conduct which has been judicially acknowledged as an abuse of process is the bringing of an action for a collateral purpose, as was raised by the respondents. In *Lornho v Fayed* (No. 5) [1993] 1 WLR 1489, Stuart-Smith LJ stated that, if an action was not brought bona fide for the purpose of obtaining relief but for some other ulterior or collateral purpose, it might be struck out as an abuse of the process of the court.

24. In the course of presenting his arguments for the Appeal, counsel for the plaintiffs agreed that it was open to his clients to go back to the Court of Appeal. That statement completely undermined the plaintiffs' position. Implicit in that concession was an admission that these proceedings need not, indeed I would say should not, have been commenced.

25. I was of the view that all the well established principles for striking out actions/pleadings had been made out in this case. Accordingly, I dismissed the Appeal with costs to both defendants.