Changhe International Investments Pte Ltd (fka Druidstone Pte Ltd) v Banque International A Luxembourg Bil (Asia) Ltd
[2000] SGHC 158

Case Number : Suit 1725/1999

Decision Date : 04 August 2000

Tribunal/Court : High Court

Coram : Amarjeet Singh JC

Counsel Name(s) : Ong Lee Woei and Jacinthan Voon (Michael Khoo & Partners) for the appellants/plaintiffs; Vinodh Coomaraswamy and David Chan (Shook Lin & Bok) for the respondents/defendants

Parties : Changhe International Investments Pte Ltd (fka Druidstone Pte Ltd) — Banque International A Luxembourg Bil (Asia) Ltd

Civil Procedure – Jurisdiction – Application to assistant registrar to overturn order of another assistant registrar – Whether assistant registrar correct in not hearing application

Civil Procedure – Judgments and orders – Case management unless order – Default on unless order – Proper course to take upon default of unless order

: The appellants/plaintiffs (`the plaintiffs`) defaulted on an unless case management order (amongst others) made during pre-trial conference (PTC) by the Registrar to file their list of documents on or before 2 March 2000. The order had further stipulated that for failure to comply with any direction the action is dismissed with costs. The unless order also similarly required the respondents/defendants (`the defendants`) to file their list of documents in default of which their defence would be struck off and judgment entered for the plaintiffs. Whilst the defendants complied with the order, the plaintiffs did not.

The plaintiffs` default having arisen on 2 March 2000, the defendants` counsel made an inter partes application on 7 March 2000 by summons-in-chambers to perfect the unless order and accordingly asked for an order dismissing the plaintiffs` action as a result of the said unless order having become operative. The plaintiffs` counsel attended and submitted at the hearing before an assistant registrar on 8 March 2000. On that date, an order was made by the assistant registrar dismissing the plaintiffs` claim with costs as prayed for by the defendants. The plaintiffs` counsel did not appeal against that order.

Later, new solicitors were engaged by the plaintiffs. The plaintiffs` new counsel made an application on 9 June 2000 that the Registrar set aside the order of 8 March 2000. At the hearing on 14 June 2000, the defendants` solicitors had submitted that the plaintiffs` solicitors should have appealed and that the effect of the application asking for relief to overturn the order of 8 March 2000 was in fact an appeal to a fellow assistant registrar to overturn the order of another assistant registrar. The plaintiffs` rejoinder was that in the first place the order of 8 March 2000 should never have been sought by the defendants as there was already an unless order. I observed that the plaintiffs` counsel`s submission amounted to a concession that their default in respect of the unless order had already resulted in the dismissal of their suit. The assistant registrar after the hearing on the point of jurisdiction, dismissed the plaintiffs` application without hearing the merits.

The plaintiffs appealed. Very much the same submissions were made before me at the hearing of the appeal.

Having heard all the submissions, I was satisfied that the order of 8 March 2000 by the assistant

registrar was right. Procedurally, the assistant registrar could not entertain the plaintiffs` application and could not normally vary another assistant registrar`s order. He lacked jurisdiction to do so.

In so far as the unless order was concerned, such an order generally takes effect without further order. However, the order has to be perfected in the absence of specific rules relating to perfection. I was of the opinion that a party to a case is entitled to take one of two paths where there has been a default on an unless order. In this case, the first is by filing with the Registry a request by letter accompanied by a draft order of court for judgment or the dismissal of the action as the case may have been as a right arising under the order on the ground that the order had not been complied with. If the draft order is approved and it is faired and extracted, the unless order is perfected. This may be the preferred course to take. The second, which is the alternative course, is by the party availing itself of the general application procedure of the court to achieve the same end. The plaintiffs in this case opted to proceed under the general application procedure of the court, ie by way of a summons-in-chambers perhaps out of an excess of caution. The defendants were not prohibited from making an application to the court in this manner to obtain the order of 8 March 2000 in view of the consequences of the plaintiffs` default having come into operation, namely, that the plaintiffs` claim filed on 9 December 1999 be dismissed with costs pursuant to the order of court dated 24 February 2000. The order of 8 March 2000 was, in my opinion, declaratory of the effect of the unless order. It similarly perfected the unless order into a judgment consequent upon its breach. There was, moreover, no prejudice to the plaintiffs as it was an inter partes application and the plaintiffs were present and heard at the hearing on that date. They may not re-litigate the same matter save by way of an appeal which they have failed to file.

Outcome:

Appeal dismissed.