

Imrex Aviation Pte Ltd v Ellipse Technologies Pte Ltd
[2000] SGHC 121

Case Number : Suit 1566/1999, RA 600188/2000
Decision Date : 29 June 2000
Tribunal/Court : High Court
Coram : Choo Han Teck JC
Counsel Name(s) : Loo Ngan Chor [Loo Ngan Chor & Company] for the appellant/defendant;
Margaret George [Koh Ong & Partners] for the respondent/plaintiff
Parties : Imrex Aviation Pte Ltd — Ellipse Technologies Pte Ltd

JUDGMENT:

Grounds of Decision

1. On 2 May 2000, counsel for the plaintiffs appeared before the learned registrar on her clients application for leave to discontinue the action. Leave was granted and the defendants were awarded costs to be agreed or taxed.
2. The defendants appealed against the order as to costs on the ground that their counsel was not able to present his arguments on 2 May 2000 as he was engaged in the Subordinate Courts. He says that he did not receive the notice of hearing and was only informed of it on the morning of 2 May 2000. A further hearing was convened for counsel to present his arguments on costs but the order (on costs) was not varied.
3. The defendants appealed against the order on costs and the appeal came before me on 25 May 2000. I heard and dismissed the appeal. The defendants now appeal against my decision.
4. Before me, Mr. Loo for the defendants (appellants) had submitted that his clients are entitled to costs on an indemnity basis to be paid personally by one Spencer Ong, director of the plaintiff company. He argued that the standard order on costs against the plaintiffs is insufficient.
5. His main ground was that Spencer Ong made inconsistent statements in his sworn affidavits and was responsible for exaggerating a \$15,000 claim into a US\$5m one. I do not think that this was a particularly strong point because the plaintiff would have paid for that indiscretion in the form of the higher fees under the High Court scale. Mr. Loo further submitted that had the matter proceeded to trial the lies would have been exposed. Counsel likened the conduct of Spencer Ong as an abuse of the process of court.
6. I am of the view that the circumstances narrated by Mr. Loo do not merit a departure from the usual order that costs (on a party-to-party basis) be paid by the party seeking a discontinue an action. It may be that the witnesses and directors of a plaintiff company had made inconsistent or untruthful statements, but that may well be precisely why they were advised to discontinue the action. Costs on the standard basis is the proper and correct order to be made in such cases and the learned registrar was clearly right in so making that order. In any event, no order should or could be made against a person who is not a named party or who was not served with notice of the intended application against him.
7. I should add that sole issue of the appeal concerns the question of costs. Under s 34(2) of the Supreme Court of Judicature Act, Cap 322 the appellants require leave to appeal but no leave appears to have been obtained. If that is indeed so the Notice of Appeal to the Court of Appeal is invalid by reason of that omission.

Choo Han Teck

Judicial Commissioner

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