

Lee Choon Keng v Nadarajan a/l Iyavoo and Another
[2009] SGHC 98

Case Number : OS 955/2008
Decision Date : 22 April 2009
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : Margaret Neo Kee Heng (Hoh Law Corporation) for the plaintiff; Mabel Choo Siew Cher (Hin Tat Augustine & Partners) for the first defendant; Joanna Seetoh (Rodyk & Davidson LLP) for the second defendant
Parties : Lee Choon Keng — Nadarajan a/l Iyavoo; Sabina Teo alias Sabina Teo Swan Keow

Courts and Jurisdiction – Judges – Transfer of cases – Application to transfer proceedings in District Court to High Court

22 April 2009

Kan Ting Chiu J:

1 This matter arises out of a road traffic accident in Singapore. The plaintiff was riding his motor cycle when it was involved in a collision with a car driven by the second defendant. Soon after that collision, a motor trailer driven by the first defendant came along and collided into the motor cycle and the car.

2 The plaintiff's motor cycle and the motor trailer driven by the first defendant were Malaysian-registered vehicles, whilst the second defendant's car was Singapore-registered.

3 The plaintiff instituted legal proceedings in Singapore against the two defendants for damages arising from the collisions. He filed his action in the District Court on 23 April 2007. The principal injuries he sustained were a fracture to his right tibia and fibula, with shortening, loss of movement and weaknesses.

4 On 15 July 2008, the plaintiff applied to transfer the action to the High Court for hearing. By that time the writ had been served, the pleadings had closed and the witnesses' affidavits of evidence-in-chief had been exchanged. The application was opposed by the two defendants.

5 The application was supported by an affidavit of the plaintiff's solicitor on 14 July 2008 ("the affidavit in support"), who deposed at [4], [6] and [7]:

4. Although *the claim is within the jurisdiction of the Subordinate Courts*, the 1st Defendant is a Malaysian citizen, the motor trailer No. WFM 4719 is a Malaysian-registered vehicle and the insurers of the said motor trailer are also a Malaysian insurance company known as RHB Insurance based in Malaysia. ...

...

6. However, if the Plaintiff obtains Judgment against the 1st Defendants for his claim for personal injuries at the Subordinate Courts after he proceeds for trial at the Subordinate Courts,

he will be *unable to enforce such Judgment in Malaysia against the 1st Defendant unless it is a Judgment obtained from a superior court* i.e. the High Court of Singapore.

7. As such, it is necessary for any Judgment in this matter against the 1st Defendant to be awarded by the Honourable High Court in Singapore to enforce such Judgment out of the jurisdiction in Malaysia under the Malaysian statute corresponding to our Singapore Reciprocal Enforcement of Commonwealth Judgments Act (Cap. 264), which requires such Judgment to be obtained from a superior court viz. the High Court of Singapore and for such effective enforcement purposes, this action should hence be transferred to the High Court for trial.

[Emphasis added]

I will examine the ground disclosed in [\[6\]](#) and [\[7\]](#) under "Recovery by registration".

6 Two further grounds were brought up after the application was dismissed. The plaintiff's solicitor stated in a letter dated 1 September 2008 ("the letter") seeking leave to make further submissions (which I rejected):

4. In particular, we wish to draw the attention of the Court to the following:-

a. The Plaintiff's claim for damages arising from personal injury from a motor accident is in excess of the District Court limit of \$250,000.00.

...

e. Although the Plaintiff may sue on a Judgment that may be obtained at our Singapore Subordinate Courts in Malaysia subsequently, it would be an action based on a debt rather than for compensation under the Motor Vehicles (Third-Party Risks And Compensation) Act or equivalent statute in Malaysia and the insurers for the Defendants would not be liable to the Plaintiff for third party risks as such action outside Singapore would be based on a debt.

7 I will discuss the further ground in sub-para (a) under "The claim exceeds the District Court's jurisdiction" and the ground in sub-para (e) under "Recovery against the insurers".

8 These two grounds were not included in the affidavit in support of the application, and they should not be taken into consideration. However, I will consider the merits of these grounds in the interest of completeness and because my comments apply to similar applications that may be made in other actions on the same grounds.

Recovery by registration

9 The reason put forth in [\[6\]](#) of the affidavit in support was that while a judgment of the Singapore High Court can be registered and enforced in Malaysia under the Reciprocal Enforcement of Judgments Act 1958 (Act 99) ("REJA") of Malaysia, a judgment of the District Court cannot be registered under the REJA.

10 Two points can be made on the utility and necessity for registration:

- (i) a judgment which the plaintiff obtains against the first defendant may be enforced in Malaysia even if it is not registered under the REJA; and

- (ii) for the reasons stated in [21]-[23] hereof, the registration of any judgment will only enable it to be enforced against the first defendant, but not against the insurers of the motor trailer.

11 As the plaintiff's solicitor stated, "the Plaintiff may sue on a Judgment that may be obtained at our Singapore Subordinate Courts in Malaysia subsequently". This is possible because under Malaysian law foreign judgments in personam can be recognised and enforced. Halsbury's Laws of Malaysia Vol 26 Malayan Law Journal Sdn Bhd 2005 states at [440.093]:

Actions on foreign judgments. Subject to certain qualifications, a judgment in personam of a foreign court of competent jurisdiction is capable of recognition and enforcement in Malaysia. Apart from statute, such a judgment will not be enforced directly by execution or any other process, but will be regarded, for procedural purposes, as creating a debt between the parties to it, the debtor's liability arising on an implied promise to pay the amount of the foreign judgment. The debt so created is a simple contract debt [*Dupleix v De Roven* (1705) 2 Vern 540; *Grant v Easton* (1883) 13 QBD 302, CA (Eng)] and not a specialty debt, and is subject to the appropriate limitation period. It is immaterial that the debtor dies before judgment is given by the foreign court, and that the judgment is pronounced against his personal representative.

The reference to *debt* limits the judgments which may be recognised and enforced to money judgments, and excludes other forms of judgments.

12 In the present case, any judgment that the plaintiff may obtain against the first defendant would be a money judgment for damages for injuries and losses incurred in the accident. Consequently, while a judgment against the first defendant from the District Court is not registerable and enforceable under the REJA, the plaintiff can sue the first defendant on the judgment in Malaysia, and then enforce the Malaysian judgment against him.

13 Counsel also referred to s 54B of the Subordinate Courts Act (Cap 321 2007 Rev Ed) ("SCA") in the letter. The provision states:

54B. —(1) Where it appears to the High Court, on the application of a party to any civil proceedings pending in a subordinate court, that the proceedings, by reason of its involving some important question of law, or being a test case, or for any other sufficient reason, should be tried in the High Court, it may order the proceedings to be transferred to the High Court.

and the Explanation thereto states:

The intended enforcement overseas of any judgment obtained in the High Court, under any enforcement arrangements currently in force, would *ordinarily* be sufficient reason for transferring the proceedings to the High Court.

[Emphasis added]

14 Section 54B was incorporated into the SCA in 2005. Even before that provision was enacted, the question of transferring an action from the Subordinate Courts to the High Court to aid enforcement had been considered in *Cheong Ghim Fah v Murugian s/o Rangasamy (No 2)* [2004] 3 SLR 193, wherein V K Rajah JC stated at [15]:

... It seems clear to me that if a subordinate court judgment cannot be enforced as a foreign

judgment in another jurisdiction, this could be a “sufficient reason” for initiating the action in the High Court. Historically, common law courts in various jurisdictions have only recognised judgments of other foreign superior courts for the purposes of enforcement (see *Halsbury’s Laws of England* vol 10 (4th Ed Reissue, 2002) at para 309):

The chief distinctions between superior and inferior courts are found in connection with jurisdiction. Prima facie, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while *nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognisance of the particular court ...*

Another distinction between superior courts and inferior courts is that while the unreversed judgment of a superior court is conclusive as to all relevant matters decided by it, *the judgment of an inferior court involving a question of jurisdiction is not final*. [emphasis in original]

This is a historical anomaly and reality that has to be acknowledged and acceded to. Indeed only judgments of foreign superior courts are recognised in Singapore for the purposes of statutory enforcement: see Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed) and Reciprocal Enforcement of Foreign Judgments Act (Cap 265, 2001 Rev Ed). If the High Court were to turn away litigants whose *sole* means of enforcing a judgment lies in a foreign jurisdiction *and* if a judgment of the subordinate courts would not be recognised in that jurisdiction, such litigants would effectively be deprived of any judicial assistance by Singapore courts. That surely cannot be right if Singapore is *the* appropriate forum to assume jurisdiction for the matters concerned. ...

[emphasis in original]

and his views were evidently taken into account when s 54B was enacted.

15 The learned judge’s reference to a judgment of the subordinate courts not being recognised (as contrasted to with being enforceable) leaves open the situation where the judgment is recognised, but is not enforceable. The words “would ordinarily be” in the Explanation allow such a judgment to be considered on a different basis. If a judgment can be enforced by an action founded on the judgment, then the need and justification to transfer the action to facilitate registration is reduced.

16 If the plaintiff had sued the first defendant for non-monetary relief, he would have good cause to have his action transferred to the High Court. However, there are two factors which weakened his case:

- (i) enforcement is possible in Malaysia without the transfer as explained in [\[11\]](#) – [\[12\]](#) herein; and
- (ii) the solicitors for the first defendant had stated at the hearing that the insurers of the motor trailer had not at any point shown any unwillingness to satisfy any judgment or any intention to repudiate liability towards the first defendant.

17 The plaintiff may be unhappy that he has to sue in Malaysia on the District Court judgment to recover the amount awarded. But a person in his position must institute legal proceedings in Malaysia

even if the action is transferred because he still has to apply in Malaysia to have the High Court judgment registered there. Thus, he will have to commence legal proceedings in Malaysia whether or not the action is transferred to the High Court.

The claim exceeds the District Court's jurisdiction

18 The new ground put forward in the letter, that the claim is in excess of \$250,000 was in direct contradiction of the clear confirmation in the affidavit in support that "the claim is within the jurisdiction of the Subordinate Courts". There was no explanation offered as to how much the claim was, how it was made up and why it had increased between July 2008 when the affidavit was made and September 2008 when the letter was written.

19 When a party applies to transfer a case from a lower court to a higher court on the ground that the claim is in excess of the jurisdiction of the original court, it should adduce proper evidence of that fact. The plaintiff has failed to do that.

Recovery against the insurers

20 Sub-para (e) of the letter reveals the primary reason for the application. The plaintiff knew that both defendants are insured against motor accident claims. In fact both defendants are represented in this action by solicitors appointed by their respective insurers. The second defendant's insurers are a Singapore company, but the first defendant's insurers are a Malaysian company. The plaintiff's solicitor's reference to the Motor Vehicles (Third-Party Risks and Compensation) Act (Cap 189 2000 Rev Ed)) ("M V (T-P R & C) A") of Singapore, and the equivalent Malaysian statute, the Road Transport Act 1987 (Act 333) ("RTA"), indicates that the plaintiff is looking primarily to the insurers to satisfy any judgment that he may obtain in the action. I believe that the plaintiff does not have high expectations that any judgment can be recovered from the first defendant personally.

21 In the M V (T-P R & C) A, the provisions which oblige motor insurers to pay damages awarded against their insured are s 9(1):

9. —(1) If after a certificate of insurance has been issued under section 4 (9) to the person by whom a policy has been effected judgment in respect of any such liability as is required to be covered by a policy under section 4 (1) (b) (being a liability covered by the terms of the policy) is obtained against any person insured by the policy then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to this section, pay to the Public Trustee as trustee for the persons entitled thereto —

(a) any sum payable thereunder in respect of the liability including any amount payable in respect of costs; and

(b) any sum payable in respect of interest on that sum by virtue of any written law relating to interest on judgments.

and s 4(1) (b):

4. —(1) In order to comply with the requirements of this Act, a policy of insurance must, subject to subsection (4), be a policy which —

...

(b) insures such person, persons or classes of persons as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of the death of or bodily injury to any person caused by or arising out of the use of the motor vehicle in Singapore and in any territory specified in the Schedule.

The insurers referred to are insurers of vehicles registered in Singapore.

22 In the RTA, the equivalent provisions are s 96 (1):

96. (1) If, after a certificate of insurance has been delivered under subsection 91(4) to the person by whom a policy has been effected, judgement in respect of any such liability as is required to be covered by a policy under paragraph 91(1)(b) (being a liability covered by the terms of the policy) is given against any person insured by the policy, then notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled the policy, the insurer shall, subject to this section, pay to the persons entitled to the benefit of the judgement any sum payable thereunder in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any written law relating to interest on judgements.

and s 91(b):

91. (1) In order to comply with the requirements of this Part, a policy of insurance must be a policy which –

...

(b) insures such person, or class of persons as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of the death of or bodily injury to any person caused by or arising out of the use of the motor vehicle or land implement drawn thereby *on a road*:

[Emphasis added]

23 When s 91 (b) refers to injuries caused on a road, that refers to a road in Malaysia. The RTA, being domestic legislation, has no extra-territorial application, and does not apply to accidents in Singapore. This is made clear in s 1 (3) of the act which specifies that the act shall apply throughout Malaysia (and by implication only in Malaysia).

24 For these reasons neither the M V (T-P R & C) A nor the RTA can assist the plaintiff in making any recovery from the first defendant's insurers. The former Act only applies to the insurers of Singapore-registered vehicles, and the latter Act does not apply to claims arising from road accidents which occur outside Malaysia.

25 In these circumstances, I dismissed the plaintiff's application to transfer his action to the High Court because:

- (i) he can enforce any judgment that he may obtain against the first defendant without having the action transferred;

- (ii) he will not be able to enforce any judgment against the first defendant's insurers even if the action is transferred to the High Court and the judgment is registered in Malaysia;
and
- (iii) it is inimical to efficient case management to transfer an action which is within the jurisdiction of the District Court to the High Court unless the applicant can show that there is a real need or purpose for the transfer, and the plaintiff had not done that.

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