Yip Kong Ban and another *v* Lin Jian Sheng Eric and another [2010] SGHC 118

Case Number : Originating Summons No 1777 of 2007 (Registrar's Appeal No 105 of 2010)

Decision Date : 21 April 2010

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Cheah Kok Lim (Sng & Company) for the defendants/appellants; Deborah Liew and Gregory Vijayendran (Rajah & Tann LLP) for the plaintiffs/respondents.

Parties : Yip Kong Ban and another — Lin Jian Sheng Eric and another

Civil Procedure

21 April 2010

Choo Han Teck J:

1 The plaintiffs were contracted to buy a property from the defendants. As the first plaintiff was not a Singapore citizen, he needed to obtain approval for the purchase from the Land Dealings Approval Unit. When his application was refused, he claimed that the contract was subject to approval being given. That was, however, not an express term of the contract. The plaintiffs' application by way of this Originating Summons for a declaration that it was an implied term was dismissed by Lee J on 12 August 2008. On 2 October 2008, Lee J further ordered that the plaintiffs be entitled to the sum of $44,000 held by the stakeholder M/s Sng & Co in excess of damages assessed and due to the defendants.

2 On 29 January 2010 the plaintiffs' solicitors wrote to the defendants' solicitors for a refund of the $44,000. The property had in the meantime been sold for $1,080,000 whereas the original contract price with the plaintiffs was $1,100,000. The parties had also settled the question of costs at $30,000 in February 2009. Thus, after deducting this from $44,000 a sum of $14,000 remained with the stakeholder. The plaintiffs asked for this to be paid out to them pursuant to Lee J's order.

3 The defendants refused on the ground that the damages due being the difference between the sale price and the contract price was $20,000. Thus the plaintiffs were not entitled to the $14,000 and further, had to pay the defendants $6,000 to make up the damages accrued, this is, the $20,000 difference in price.

4 The plaintiffs' solicitors wrote to the defendant to say that by O 21 r 2(6) of the Rules of Court (Cap 322, r 5, 2006 Rev Ed) the defendant not having pursued his claim for damages within 12 months from Lee J's order, the matter is deemed to have been discontinued. Counsel for the defendants, Mr Cheah Kok Lim, submitted that the defendants needed time to get the property sold, and that was done only in June 2009. The defendants' affidavit stated that the failure to proceed with the assessment of damages was due to inadvertence. It should be mentioned that although the assessment should be a simple matter in this case, the plaintiffs were entitled to challenge the defendants as to the efficacy in which the property was subsequently sold.

5 The assistant registrar dismissed the defendants' application for leave to re-instate the matter under r 2(8), and the defendant thus appealed against the dismissal. On appeal before me, both

counsels referred to *Moguntia-Est Epices SA v Sea-Hawk Freight Pte Ltd* [2003] 4 SLR(R) 429 in which Judith Prakash J expressed some views as to how the court should exercise its discretion in granting a party leave to reinstate the matter. The three factors stated in that judgment (at [21]) were as follows —

(a) Has the plaintiff satisfied the court that he is innocent of any significant failure to conduct the case with expedition prior to the trigger date having regard to the particular features of the case. If he has not, then reinstatement should be refused;

(b) Has he satisfied the court that in all the circumstances his failure to take any step in the action since the trigger date (and this would include his failure to apply for an extension of time) is excusable, *ie* should be forgiven? If he has not, then again reinstatement should be refused;

(c) Has the plaintiff satisfied the court that the balance of justice indicates that the action should be reinstated? If not once again reinstatement should be refused.

Mr Cheah argued that these applied to cases where the applicant was the plaintiff. In this case the applicants were the defendants. I am of the view that no such distinction ought to be drawn. The rule was intended to remind litigants that equity will not assist the slothful. The court will grant leave to reinstate if there were good reasons to do so and that no great hardship is caused to the other party. The primary question to be determined therefore would be to uncover the reasons for the delay. In this regard, inadvertence, unfortunately, is not sufficient. I am not ruling that inadvertence in all cases would not be considered as a sufficient factor but in this case, there was nothing more than mere inadvertence. It was just an oversight on the part of the defendants. That is the situation the rule was made to deal with in the first place. When a party does not proceed with a cause or matter he does so either intentionally, in which event there is no issue (except mistake or fraud), or he does so inadvertently. In the latter case, he must satisfy the court why he should be permitted to have his cause or matter reinstated. In the absence of a sound reason, the matter remains as having been withdrawn. If mere inadvertence alone was sufficient to re-instate a cause or matter deemed discontinued, r 2(6) would be of little use and r 2(8) would just be a formality.

6 The defendants' appeal was therefore dismissed with no order as to costs.

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