IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHC 270

Originating Summons No 664 of 2021

Between

(1) Syed Suhail bin Syed Zin
(2) Gobi a/l Avedian
(3) Datchinamurthy a/l Kataiah
(4) Hamzah bin Ibrahim
(5) Iskandar bin Rahmat
(6) Saminathan Selvaraju
(7) Rosman bin Abdullah
(8) Roslan bin Bakar
(9) Masoud Rahimi bin Mehrzad
(10) Zamri bin Mohd Tahir
(11) Pannir Selvam Pranthaman
(12) Tan Kay Yong
(13) Ramdhan bin Lajis

… *Plaintiffs*

And

Attorney-General

… *Defendant*

JUDGMENT

[Civil Procedure] — [Costs] — [Personal liability of solicitor for costs]

TABLE OF CONTENTS

Syed Suhail bin Syed Zin and others
v
Attorney-General

[2021] SGHC 270

General Division of the High Court — Originating Summons No 664 of 2021
Ang Cheng Hock J
28 October, 9 November 2021

30 November 2021 Judgment reserved.

Ang Cheng Hock J:

1 Costs orders are part and parcel of our civil litigation process. Every counsel will be familiar with the many rules as to costs. A party who has pursued a claim or an application that has failed will usually be ordered to pay costs to the successful party. The underlying principle for this general rule is that costs should follow the event, meaning that the party who has prevailed on the merits should normally be entitled to his costs. The court will almost always order such costs to be paid by the litigant himself. After all, it is the litigant for whose benefit the claim has been pursued or defended by counsel.

2 However, there are instances where the court may decide to order that the costs should be borne, not by the litigant, but by counsel personally. This happens rarely. Generally, the court is slow to penalise counsel with the burden of having to pay the costs of litigation out of his own pocket, unless the circumstances of the case are such that justice demands that it be done. Under

O 59 r 8(1) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("the Rules of Court"), the court may order costs to be paid by counsel personally when costs have been incurred unreasonably or improperly, or when costs have been wasted by the failure to conduct proceedings with reasonable competence and expedition. In *Munshi Rasal v Enlighten Furniture Decoration Co Pte Ltd* [2021] 1 SLR 1277 ("*Munshi Rasal*"), the Court of Appeal endorsed a three-step test to guide the exercise of discretion as to when costs should be ordered against counsel personally (at [17]):

> (a) First, has the counsel "acted improperly, unreasonably or negligently"?
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> (b) If so, one moves on to the second consideration, which is whether such conduct by counsel caused the other party to incur "unnecessary costs"?
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> (c) Again, if this is answered affirmatively, one proceeds to consider whether it is "in all the circumstances just" to order the counsel to compensate the other party for the whole or any part of the costs incurred.

3 Of the three steps, the first is probably the most contentious. In what circumstances will the court consider that counsel has acted improperly, unreasonably or negligently? The Court of Appeal in *Tan King Hiang v United Engineers (Singapore) Pte Ltd* [2005] 3 SLR(R) 529 ("*Tan King Hiang*"), while recognising that these terms are not amenable to precise definition, endorsed some useful guidelines laid down by the English Court of Appeal in *Ridehalgh v Horsefield* [1994] Ch 205 on how they may be interpreted (see *Tan King Hiang* at [18]):

> ['improper'] covers, but is not confined to, conduct which would ordinarily be held to justify disbarment, striking off, suspension from practice or other serious professional penalty. … [It also includes] [c]onduct which would be regarded as improper according to the consensus of professional (including judicial) opinion … whether or not it violates the letter of a professional code.
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> … ['unreasonable'] aptly describes conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of a reasonable explanation.
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> …
>
> ['negligent'] should be understood in an untechnical way to denote failure to act with the competence reasonably to be expected of ordinary members of the profession.

4 As the Court of Appeal stated in *Tan King Hiang*, these terms are not mutually exclusive (at [19]). I find that there is also no exhaustive test of when counsel might be said to be acting improperly, unreasonably or negligently, which is unsurprising given the myriad of circumstances when counsel might be said to be doing so. Much will depend on the particular facts of the case and the conduct of the counsel in question. Some help is provided by the precedents. For example, in *Bintai Kindenko Pte Ltd v Samsung C&T Corp* [2018] 2 SLR 532, the Court of Appeal held that one situation where a personal costs order might be appropriate is "where the solicitor advances a wholly disingenuous case or files utterly ill-conceived applications even though the solicitor ought to have known better" (at [67]). In another case, *Iskandar bin Rahmat v Public Prosecutor* [2021] SGCA 89, the Court of Appeal reminded counsel that it is their "professional responsibility to ensure that all suits and applications filed possess a proper legal basis" and that an "application which was *entirely devoid of legal foundation* … if filed recklessly without any legitimate basis, may result

in adverse costs consequences for the applicant or even his counsel" [emphasis in original] (at [53]).

5 The originating summons in this case ("the OS") was fixed for hearing before me on 28 October 2021. It was an application for leave to commence judicial review proceedings. The Attorney-General was named as the defendant. At the start of the hearing, Mr Ravi s/o Madasamy ("Mr Ravi"), counsel for the plaintiffs, informed me that he wished to withdraw his application in the OS in its entirety. Mr Tan Chee Meng SC ("Mr Tan"), counsel for the defendant, expressed no objections.

6 What remained outstanding was the issue of costs. The usual order would be that the plaintiffs must bear the defendant's costs. But, Mr Tan then informed me that the defendant had instructed him to seek a personal costs order against Mr Ravi. To this, Mr Ravi protested and described this as a "threat" against him.[1] He also vowed to report Mr Tan to the Law Society of Singapore for unprofessional conduct.[2] I adjourned the matter so that the defendant could file written submissions as to why a personal costs order should be made against counsel, and for Mr Ravi to file his submissions in reply. Counsel must be given a chance to show cause as to why a personal costs order is unwarranted. I also directed the defendant to file an affidavit to exhibit the correspondence that both Mr Tan and Mr Ravi had referred to when orally addressing the court on the issue of a personal costs order, which I will refer to later (see [21]–[23] below).

7 Having considered both sets of submissions, I find that this is an appropriate case for a personal costs order to be made against Mr Ravi. I will

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1 Notes of Hearing, 28 Oct, p 3 line 15.

2 Notes of Hearing, 28 Oct, p 3 lines 14–15.

explain my grounds in this judgment. But first, let me start by providing some necessary background.

The Originating Summons

8 The plaintiffs are all prisoners at Changi Prison Complex. All of them, save for the fifth plaintiff, had been convicted of drug trafficking under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed). The fifth plaintiff had been convicted of murder under the Penal Code (Cap 224, 2008 Rev Ed).[3] For their respective offences, all the plaintiffs had been sentenced to the death penalty, but the second plaintiff's death sentence was subsequently set aside following a successful criminal review application to the Court of Appeal.[4]

9 During the course of the proceedings involving the second and third plaintiffs in two appeals before the Court of Appeal in *Gobi a/l Avedian and another v Attorney-General and another appeal* [2020] 2 SLR 883 ("*Gobi*"), it was revealed that the defendant's chambers had requested and received from the Singapore Prison Service ("the SPS") copies of correspondence belonging to the second and third plaintiffs.[5] In its judgment issued on 13 Aug 2020 in those appeals, the Court of Appeal observed that "there was no legal basis in the form of a positive legal right" on the part of the SPS to forward copies of the private correspondence of the second and third plaintiffs to the defendant's chambers (see *Gobi* at [90]). The Court of Appeal clarified that the SPS may only disclose a prisoner's correspondence to the defendant's chambers if either the prisoner had consented or an order of court had been obtained (*Gobi* at [91]). To do otherwise was impermissible under the Prisons Regulations (Cap 247, Rg

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3 Affidavit of Ravi s/o Madasamy ("Mr Ravi's Affidavit") at para 3.

4 Mr Ravi's Affidavit at para 3.

5 Mr Ravi's Affidavit at para 6.

2 2002 Rev Ed) ("the Prisons Regulations"), which had been made pursuant to s 84(1) of the Prisons Act (Cap 247, 2000 Rev Ed) ("the Prisons Act") (see *Gobi* at [89]). However, the Court of Appeal also accepted that the defendant's chambers had destroyed copies of the correspondence (discovered in those proceedings) that it had, and that the incidents of unauthorised disclosure of such correspondence by the SPS to the defendant's chambers was an "oversight" and not an attempt by the defendant's chambers to seek any unfair advantage in the proceedings (see *Gobi* at [92]–[93]).

10 Following the decision in *Gobi*, and during the course of criminal review proceedings concerning the first plaintiff's conviction for drug trafficking in *Syed Suhail bin Syed Zin v Public Prosecutor* [2021] 1 SLR 159 ("*Syed Suhail*"), the lead counsel for the prosecution, DPP Francis Ng SC ("DPP Ng"), disclosed that its file for the first plaintiff contained copies of personal correspondence, including legally privileged material, sent to or received by the first plaintiff.[6] These had been sent to the defendant's chambers by the SPS.[7] In response, the first plaintiff applied to disqualify the entire corps of officers at the defendant's chambers from acting for the Public Prosecutor in the criminal review proceedings (see *Syed Suhail* at [12]). This application was dismissed by the Court of Appeal after it obtained confirmation from DPP Ng that he had not been involved in the previous appeal against conviction by the first plaintiff which had been unsuccessful and that he did not have sight of the contents of the personal correspondence of the first plaintiff (*Syed Suhail* at [12]). The Court of Appeal held that the first plaintiff had failed to show any basis on which the entirety of the defendant's chambers should be disqualified from appearing in the criminal review proceedings, nor any prejudice that may have been

6 Mr Ravi's Affidavit at para 9.

7 Mr Ravi's Affidavit at p 52.

occasioned by the disclosure of the first plaintiff's personal correspondence in the context of the criminal review proceedings (*Syed Suhail* at [12]).

11 Before the Court of Appeal's judgment in *Syed Suhail* was issued on 16 October 2020, another set of legal proceedings was commenced concerning the correspondence of prisoners. On 1 October 2020, Originating Summons No 975 of 2020 ("OS 975") was filed. OS 975 was an application by the plaintiffs, as well as some other prisoners, seeking an order of pre-action discovery concerning the defendant's chamber's requests for copies of correspondence between the plaintiffs and their lawyers and families, as well as copies of the plaintiffs' correspondence forwarded to the defendant's chambers by the SPS.[8] OS 975 also sought leave to serve pre-action interrogatories on the defendant's chambers primarily with a view to identifying the relevant persons involved in handling the plaintiffs' correspondence.[9]

12 In the course of OS 975, through affidavits by Deputy Attorney-General Hri Kumar Nair ("DAG Nair") filed on 18 November and 16 December 2020, the defendant disclosed all the correspondence sent by or to the plaintiffs which was in the possession, custody or power of the defendant.[10] This was based on a review conducted by a team of officers from the defendant's chambers after OS 975 was filed.[11]

13 OS 975 was heard and dismissed by See Kee Oon J. In his judgment issued on 16 March 2021, See J found that it would not be appropriate for the

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8 Mr Ravi's Affidavit at paras 10–11; Affidavit of Hri Kumar Nair ("Mr Nair's Affidavit") at para 16.

9 Mr Nair's Affidavit at para 16.

10 Mr Nair's Affidavit at para 17 and pp 16 and 29.

11 Mr Nair's Affidavit at para 17.

court to allow the plaintiffs' applications for pre-action discovery and pre-action interrogatories given that any civil proceedings against the government had to be commenced in any event against the defendant (see *Syed Suhail bin Syed Zin and others v Attorney-General and another* [2021] 4 SLR 698 ("*Syed Suhail OS 975*") at [14]–[18]). See J also held that pre-action discovery was not necessary because the defendant had already made voluntary disclosure of all the plaintiffs' correspondence that was forwarded by the SPS to the defendant (see [42]–[44]). The judge also observed that the defendant had "categorically affirmed" that his chambers had not used the plaintiffs' correspondence or otherwise gained any advantage through the use of such correspondence in any legal proceedings against the plaintiffs (at [43]).

14 I should also point out that, in *Syed Suhail OS 975*, when addressing the question of whether the plaintiffs in OS 975 had possible claims for breach of statutory duty, See J observed: "[t]hat there has been a breach of the relevant provisions in the Prisons Act and [the Prisons Regulations] is not in question, *as has been determined by the Court of Appeal* in [*Gobi* ([9] above)]" [emphasis added] (at [48]). There was no appeal against the decision of the High Court in *Syed Suhail OS 975*.

15 Mr Ravi was the counsel for appellants in *Gobi*. He was counsel for the applicant in the criminal review proceedings in *Syed Suhail* ([10] above). He also acted for the plaintiffs in *Syed Suhail OS 975*.

16 On 2 July 2021, the plaintiffs, represented by Mr Ravi, filed the OS. This was an application brought under O 53 rr 1 and 7 of the Rules of Court. In other words, it was an application for leave to commence judicial review proceedings. In the OS, the plaintiffs prayed for leave to be granted to them to seek the following reliefs:

(a) a declaration that the defendant acted *ultra vires* and unlawfully when his chambers requested the personal correspondence of the first, third and eighth plaintiffs, without their consent;

(b) a declaration that the SPS acted *ultra vires* and unlawfully when it disclosed the plaintiffs' personal correspondence to the defendant's chambers, without their consent;

(c) a prohibitory order against the defendant's chambers from requesting from the SPS copies of the plaintiffs' personal correspondence or information about the contents of such correspondence;

(d) a prohibitory order against the SPS from disclosing to the defendant's chambers the plaintiffs' personal correspondence or information about the contents of such correspondence;

(e) a declaration that the defendant and the SPS had "breached confidence" in the case of the first, third, fourth, fifth, ninth and 11th plaintiffs.

(f) a "mandatory order" for the destruction of the copies of the first, third, fourth, fifth, ninth and 11th plaintiffs' correspondence received in breach of confidence by the defendant's chambers;

(g) damages for breach of confidence in the case of the first, third, fourth, fifth, ninth and 11th plaintiffs;

(h) a declaration that the SPS had infringed the copyright belonging to the first, fifth and seventh plaintiffs; and

(i) nominal damages for breach of copyright in the case of the first, fifth and seventh plaintiffs.

17 For ease of reference, I will refer to the reliefs in [16(a)]–[16(b)] as "the Declarations", those in [16(c)]–[16(d)] as "the Prohibitory Orders", and those in [16(e)]–[16(i)] as "the Private Law Reliefs".

18 It was not any of the plaintiffs but Mr Ravi who himself filed the affidavit in support of the application. In his affidavit of 1 July 2021, Mr Ravi stated the plaintiffs had "made this application seeking leave to commence proceedings out of caution" in the event that the court was of the view that the plaintiffs were not seeking merely declarations as prayed for, but that they were in truth seeking prohibitory orders.[12] He also added that the plaintiffs were "of the view that *it should not be necessary to seek a prohibitory order to ensure that the [defendant] and [the SPS] desist from the offending activity in the future*" [emphasis added].[13] This was because of the decision of the Court of Appeal in *Gobi* ([9] above) and also See J's observation in *Syed Suhail OS 975* ([13] above). Mr Ravi also stated in his affidavit:[14]

> Furthermore, in light of the express provisions of [the Prison Regulations], a prohibitory order against [the SPS] would seem to amount to no more than an order that [the SPS] act in accordance with its powers already clearly defined and set out by [the Prison Regulations]. Going forwards then [*sic*], the obligations are clear. Nevertheless, the [plaintiffs] will be guided by the Court.

19 Deputy Attorney-General Hri Kumar Nair ("DAG Nair") filed an affidavit on behalf of the defendant in response to the OS and Mr Ravi's

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12 Mr Ravi's Affidavit at para 21.

13 Mr Ravi's Affidavit at para 22.

14 Mr Ravi's Affidavit at para 22.

affidavit. He explained that, as of the Court of Appeal's decision in *Gobi*, the SPS and the defendant's chambers have had in place a policy that a prisoner's correspondence will not be sent by the SPS to the defendant's chambers, unless the prisoner's consent or an order of court in relation to such disclosure has been obtained.[15] DAG Nair also revealed that the defendant's chambers had written to Mr Ravi on 16 July 2021 to inform him that they would be destroying the plaintiffs' correspondence that had been disclosed in OS 975.[16] Mr Ravi had replied on 21 July 2021 to state, *inter alia*, that the plaintiffs had no objection to the destruction of the said correspondence.[17] The defendant's chambers then proceeded to destroy all copies of the correspondence sent by or to the plaintiffs that were disclosed in OS 975.[18]

20 Mr Ravi filed an affidavit in response to DAG Nair's affidavit. In his affidavit, Mr Ravi clarified that the plaintiffs were not seeking leave to bring an application for a "mandatory order" for the destruction of the plaintiffs' correspondence (see [16(f)] above).[19] Rather, what was sought was a mandatory injunction to compel the defendant to destroy the plaintiffs' personal correspondence that were in the defendant's chambers' possession.

21 On 22 October 2021, a day after the defendant's written submissions were filed in relation to the OS, the defendant's counsel, Wong Partnership LLP ("Wong Partnership"), wrote to Mr Ravi.[20] This letter was marked "without

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15 Mr Nair's Affidavit at para 10.

16 Mr Nair's Affidavit at para 20.

17 Mr Nair's Affidavit at para 20.

18 Mr Nair's Affidavit at para 21.

19 Reply Affidavit of Ravi s/o Madasamy ("Mr Ravi's Reply Affidavit") at para 10.

20 Affidavit of Vishi Sundar ("Mr Sundar's Affidavit") at para 4(a).

prejudice" even though I strain to understand why this was so. Be that as it may, in their letter, Wong Partnership asserted that the OS was legally and factually unsustainable, and invited Mr Ravi to withdraw the application ahead of the scheduled hearing, with the question of costs reserved. Wong Partnership's letter also gave express notice of the defendant's intention to seek a personal costs order against Mr Ravi should the hearing proceed and the OS was dismissed.

22 On 25 October 2021, Mr Ravi replied to state that the plaintiffs were amenable to withdrawing the OS but only on certain conditions that were set out in his letter (which was dated 22 October 2021).[21] Among these conditions was one that required the defendant to confirm that he would not challenge "the procedural basis of [the plaintiffs] seeking declarations under O 15 r 16".

23 On 26 October 2021, Wong Partnership replied on behalf of the defendant to invite Mr Ravi to confirm by noon of 27 October 2021 whether the plaintiffs would withdraw the OS unconditionally, with the question of costs reserved.[22] Again, in this letter, express notice was given to Mr Ravi of the defendant's intention to seek a personal costs order, but this time, Wong Partnership stated that the defendant would pursue such a costs order if Mr Ravi withdrew the OS only after noon on 27 October 2021.

24 There was no reply to Wong Partnership's letter of 26 October 2021. As already mentioned (see [5] above), parties appeared before me on 28 October 2021, where Mr Ravi expressed his intention to withdraw the OS. This was not

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21 Mr Sundar's Affidavit at para 4(b).

22 Mr Sundar's Affidavit at para 4(c).

subject to any conditions. Given that the defendant had no objections, I granted leave for the withdrawal accordingly.

Whether there was a proper basis for the reliefs sought

25 I agree with the defendant's submission that the OS was one that should never have been brought.[23] It was presented as an application under O 53 of the Rules of Court for leave to commence judicial review proceedings. However, there was in fact no genuine attempt by the plaintiffs to seek any form of prerogative relief in the OS and, given what had already transpired by the time the OS was filed, it was devoid of any proper legal or factual foundation.

26 First, let me deal with the Prohibitory Orders. These were sought to prohibit the defendant's chambers from requesting for copies of the plaintiffs' personal correspondence, and to prohibit the SPS from sending the plaintiffs' correspondence to the defendant's chambers. However, the Court of Appeal in *Gobi* ([9] above) had made it clear that the defendant's chambers had no right to any copies of the personal correspondence of prisoners, unless consent had been given by them or there was an order of court authorising such disclosure. That the legal position on such correspondence was settled was noted by See J in *Syed Suhail OS 975* ([13] above). That was precisely why Mr Ravi himself stated in the affidavit in support of the OS that "it should not be necessary" to seek the Prohibitory Orders and the "obligations are clear" in light of the developments in *Gobi* and *Syed Suhail OS 975* (see [18] above).[24] Evidently, Mr Ravi recognised that there was no basis for the Prohibitory Orders.

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23 Defendant' Written Submissions on Costs ("Submissions") at para 3.

24 Mr Ravi's Affidavit at para 22.

27 Even if there were any lingering doubts about the matter, the affidavit filed by DAG Nair in the OS would have put matters beyond any serious argument. As already noted, DAG Nair explained that, as of the Court of Appeal's decision in *Gobi*, the SPS and the defendant's chambers had implemented a policy that a prisoner's correspondence will not be sent by the SPS to the defendant's chambers unless the safeguards as set out in *Gobi* have been complied with (see [19] above). With that affidavit, any concerns about such correspondence being shown by the SPS to the defendant's chambers should have been addressed. It would have driven home the point that there was no basis at all for the plaintiffs to still proceed to seek the Prohibtory Orders as reliefs.

28 Second, in relation to the "mandatory order" at [16(f)] above, Mr Ravi had clarified through his responsive affidavit in the OS that he was not seeking leave to apply for any prerogative relief in this regard (see [20] above).[25] Rather, he explained that what was really sought was a mandatory injunction to compel the defendant to destroy the correspondence of the plaintiffs that the defendant's chambers had received from the SPS.

29 That being the case, I am of the view that there was in fact no genuine attempt by the plaintiffs to seek any form of prerogative relief in the OS, whether in the form of a prohibitory order or a mandatory order. That this was the case is also put beyond doubt by Mr Ravi's explanations for why the plaintiffs proceeded under O 53, which I will turn to later (see [36]–[38] below). What then remains of the OS are the Declarations and the Private Law Reliefs.

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[25] Mr Ravi's Reply Affidavit at para 10.

30 It is well-established that a party can only seek a declaration under O 53 of the Rules of Court if it has first obtained leave under O 53 r 1 to apply for a prerogative order (*Vellama d/o Marie Muthu v Attorney-General* [2013] 4 SLR 1 ("*Vellama*") at [53]). Given the absence of any genuine attempt to seek any form of prerogative relief in the OS, the Declarations sought were therefore "freestanding" declarations against the defendant under O 53 of the Rules of Court, which were procedurally unsustainable as a matter of law.

31 In any event, it is also clear that the Declarations would not have been granted. First, one basic requirement that must be satisfied before a party possesses standing to seek declaratory relief is that there must be a "real controversy" between the parties to the action for the court to resolve (*Vellama* at [16]). In this case, the issue as to the parties' rights vis-à-vis the copies of the correspondence of the plaintiffs as prisoners has already been settled by *Gobi* ([9] above), where the Court of Appeal made it clear that, under the Prisons Regulations, it was impermissible for the SPS to disclose a prisoner's correspondence to the defendant's chambers without first obtaining either the prisoner's consent or an order of court. In the subsequent proceedings in *Syed Suhail* ([10] above) and *Syed Suhail OS 975* ([13] above), none of the parties attempted to re-open this issue, or to question the correctness of the decision in *Gobi*, nor could they. Put simply, there was no longer any controversy over the question of whether there had been a breach of the relevant provisions in the Prisons Act and the Prisons Regulations in respect of the conduct of the defendant's chambers and/or the SPS which the plaintiffs have complained of in the Declarations (see also *Syed Suhail OS 975* at [48]).

32 Second, the court's power to grant declaratory relief is discretionary in nature. Declarations will not be granted where there is no need for them, even if the court has the requisite jurisdiction to grant them (see, *eg*, *Salijah bte Ab*

Latef v Mohd Irwan bin Abdullah Teo [1995] 3 SLR(R) 233 at [18]; *Legis Point LLC v Tay Choon Ai* [2018] 3 SLR 1269 at [35]). Given the legal proceedings that preceded the OS and the developments which transpired, it is clear that there was no necessity for the Declarations. Since *Gobi*, neither the defendant nor the SPS has taken the position that the defendant's chambers has any legal right to copies of the correspondence of the prisoners in the custody of the SPS. As of the Court of Appeal's decision in *Gobi*, the SPS and the defendant's chambers had also implemented a policy that a prisoner's correspondence will not be sent by the SPS to the defendant's chambers unless the safeguards in *Gobi* have been complied with (see [19] above). That being so, I cannot see how the plaintiffs would ever be granted leave under O 53 to seek the Declarations (see [16(a)]–[16(b)] above), even if one is to leave aside for the moment the question of whether there was any prerogative relief being sought in the OS.

33 As for the Private Law Reliefs, these pertain to private law remedies for some of the plaintiffs' claims for breach of confidence and breach of copyright. Under O 53 r 7(1) of the Rules of Court, an applicant's entitlement to bring private law claims under O 53 is premised on, amongst other things, leave being first granted to the applicant to apply for judicial review to seek a prerogative order, and such a prerogative order or a declaration being made at the substantive judicial review hearing. As I have already explained, there has been no genuine attempt by the plaintiffs to seek any form of prerogative relief in the OS, and what they sought were in substance "freestanding" declarations under O 53. In these circumstances, leave under O 53 would *never* have been granted to the plaintiffs to seek any of the Private Law Reliefs because the entitlement of the plaintiffs to pursue these claims would only have arisen if they had first sought and obtained leave to apply for some form of prerogative relief,

something which I find they never intended to do despite including the relevant prayers in the OS (see [29] above).

34 I would also make an observation that the "mandatory order" at [16(f)] above sought by some of the plaintiffs for the destruction of copies their correspondence appears now to be moot. This is because both the defendant and Mr Ravi have since agreed that such correspondence in the possession of the defendant's chambers are to be destroyed (see [19] above). That being so, it has not been explained by Mr Ravi why this relief was still being pursued up until the day on which the OS was scheduled to be heard.

35 In sum, it is quite clear that the OS was one that was "entirely devoid of legal foundation". Since there was no genuine attempt by the plaintiffs to seek any form of prerogative relief, what the plaintiffs effectively sought in the OS were "freestanding" declarations, which are procedurally unsustainable as a matter of law under O 53. In any case, with the position as to the parties' legal rights with respect to copies of the plaintiffs' correspondence already settled in the earlier litigation, it was quite pointless for the plaintiffs to have embarked on this application for leave to seek judicial review over the same issue. As for the Private Law Reliefs, the plaintiffs are well entitled to bring any such civil claims against the defendant outside the purview of O 53, if they are of the view that any such claim is viable in law. However, to assert such private law claims under O 53 was simply untenable because there was no possibility of leave being granted for any of the plaintiffs to seek any form of prerogative relief.

The plaintiffs' counsel's liability for costs

36 In his reply submissions as to why he should not be made the subject of a personal costs order, Mr Ravi attempted to justify the seeking of the

Declarations under an O 53 application on the basis that he was taking a "cautious procedural approach" and that he did not wish to prejudice the plaintiffs' interests.[26] He explained that the defendant had, in other legal proceedings where he had also acted as counsel for the applicant and where only declarations were sought, argued that the applicant should have proceeded under O 53 and not tried to circumvent the need to obtain leave under that order.[27] On those occasions, the defendant had argued that what the applicant was asking for were "in substance" prerogative orders.[28] He cited the concluded case of *Mohan s/o Rajangam v Attorney-General* HC/OS 448/2020 ("*Mohan*") as one such example, where the application for declaratory relief was dismissed.[29]

37 Whatever the reasons were for the dismissal of the application for declaratory relief in *Mohan* (which are difficult for this court to ascertain given that there was no written judgment), what is clear is that each case must be determined on its own specific facts. In our case, what is troubling was that Mr Ravi had admitted that there was no basis for the Prohibitory Orders despite the fact that they had been prayed for in the OS. He also clarified that the "mandatory order" sought by the plaintiffs was not a prerogative order. That left only the Declarations and the Private Law Reliefs in the OS. Since that was the plaintiffs' position, they were in reality not seeking any form of prerogative relief by filing the OS, and it must follow that there had been absolutely no basis for them to file an application under O 53. In these circumstances, the defendant

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26 Plaintiffs' Reply to the Defendant's Submissions on Costs ("Reply Submissions") at para 2.21.

27 Reply Submissions at para 2.8.

28 Reply Submissions at paras 2.8–2.10.

29 Reply Submissions at paras 2.3–2.6.

could not have argued that the plaintiffs were "in substance" seeking prerogative orders.

38 I also reject Mr Ravi's submission that he was only taking a "cautious procedural approach" by filing the OS under O 53. An applicant for judicial review who seeks prerogative relief is limited to proceeding under O 53. On the other hand, an applicant who seeks declaratory relief is not so constrained – he may still proceed under O 53 if he wishes to also obtain prerogative relief by the same application, but if not, he may simply proceed under O 15 r 16 with less hassle (see *Vellama* ([30] above) at [53]). It would only have been open to the defendant to argue that the plaintiffs were circumventing O 53 if the relief which the plaintiffs were seeking leaves them with O 53 as the only available procedural option – that is, if they were seeking some form of prerogative relief in the OS. Conversely, if the plaintiffs were *only* seeking declarations but not any form of prerogative relief (as it was the case here, and which Mr Ravi well knew),[30] there would have been no basis for the defendant to make that same argument because the plaintiffs' procedural options would not have been similarly limited. If indeed Mr Ravi was genuinely in any doubt as to whether the defendant would take up any procedural objections about his preferred course of applying for the intended declaratory relief under O 15 r 16 rather than under O 53, he could have written to the defendant, before filing the OS, to seek clarification of the defendant's position. Regrettably, this was not done.

39 Another reason Mr Ravi raised to explain the plaintiffs making an application under O 53 was that he claimed that they considered the Prohibitory Orders to be necessary because of the defendant's "lack of contrition".

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30 Plaintiffs' Submissions for HC/OS 664/2021 at para 4; Mr Ravi's Affidavit at paras 20 and 42–43.

According to Mr Ravi, this made the plaintiffs doubt that "unlawful acts" in relation to their correspondence would not happen again.[31] I do not accept Mr Ravi's belated attempt to re-characterise what the plaintiffs were in substance seeking by filing the OS. This excuse plainly contradicted his earlier position in the supporting affidavit filed for the OS where he had stated that the Prohibitory Orders were not necessary (see [18] above). In any case, as I have explained earlier, there is no factual basis whatsoever for the Prohibitory Orders (see [26]–[27] above).

40 Further, the majority of the remedies sought in the OS (see [16(e)]–[16(i)] above) were based on some of the plaintiffs' private law claims, including a claim for substantive damages for breach of confidence. That much is confirmed by Mr Ravi in his two affidavits filed in the OS.[32] In such a situation, the proper course to take when one is not genuinely seeking any form of prerogative relief is not to file an application under O 53, but to proceed by way of a civil action against the defendant.

41 Finally, and this is a point I am reiterating, there was no necessity at all for the Declarations, given that legal proceedings preceding the OS have dealt with the issue of the correspondence of prisoners in the custody of the SPS, and so any controversy between the plaintiffs and the defendant in relation to the conduct of the defendant's chambers and/or the SPS which the plaintiffs have complained of in the Declarations has been resolved. This is a point that Mr Ravi did not adequately deal with in his reply submissions on the issue of costs. In those submissions, Mr Ravi argued that there were good grounds for seeking the Prohibitory Orders (given the plaintiffs' concerns about the "unlawful acts"

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31 Reply Submissions at paras 2.13–2.14.

32 Mr Ravi's Affidavit at paras 44–62; Mr Ravi's Reply Affidavit at para 10.

relating to their correspondence recurring due to the defendant's "lack of contrition", a point which I have already rejected: see [39] above), but did not explain why the Declarations remained necessary in spite of what had already been decided in the earlier legal proceedings.

42 In any case, I find that any such expressions of concerns by the plaintiffs are not sufficient to show that there still remains a controversy to render the Declarations necessary. The defendant is not only the guardian of the public interest, but also an officer of the court. He must be expected to comply with the law, and with all court decisions as to what the law requires of him and of the government. There is no reason to doubt that the decision in *Gobi* ([9] above) on the rights to prisoners' correspondence has been followed, as already confirmed by DAG Nair in his affidavit (see [19] above). As for the alleged "lack of contrition", that is an irrelevant consideration, even if it were true. The law demands compliance in action, and not merely in words, thoughts or feelings.

43 Applying the three-step approach in *Munshi Rasal* ([2] above), I first find that Mr Ravi's conduct was plainly unreasonable. Despite his recognition (and admission) that the plaintiffs had no basis for obtaining the Prohibitory Orders, and being well aware that the plaintiffs were in reality not seeking any prerogative reliefs in the OS, Mr Ravi filed the OS seeking leave to obtain the Declarations and the Private Law Reliefs. Given Mr Ravi's years of experience in dealing with judicial review matters, and the fact that he was also counsel in *Vellama* ([30] above), he would have known that the latter two sets of reliefs prayed for in the OS were procedurally unsustainable as a matter of law (see [30] and [33] above). A solicitor should not be held to have acted unreasonably simply because he acted for a client who has a bad case, but it would be quite different if a solicitor gives his assistance to proceedings which are an abuse of

process (*Tan King Hiang* ([3] above) at [20]). In my judgment, there is no doubt that the present case falls within the latter situation as the OS was a wholly ill-conceived application which Mr Ravi could have had no justification to file on behalf of the plaintiffs given its total absence of any legal foundation (see also *Prometheus Marine Pte Ltd v King, Ann Rita and another appeal* [2018] 1 SLR 1 at [76]).

44 Mr Ravi compounded his difficulties in the way he responded to Wong Partnership's letters sent on behalf of the defendant. He should have taken the opportunity to withdraw the OS unconditionally, and to leave the issue of costs to be argued before the court. He ignored the caution that, if he did not do so, the defendant would be seeking a personal costs order against him; a course of action, for reasons already explained, that was fully warranted.

45 Wong Partnership's letter of 26 October 2021 repeated the offer that, if Mr Ravi gave notice of his intent to withdraw the OS by noon of 27 October 2021, the defendant would not seek a personal costs order against him. Yet again, this was ignored. As a result, needless costs were incurred because Wong Partnership had to prepare for the hearing scheduled on 28 October 2021 on the basis that it would proceed. It was only at the start of the hearing on 28 October 2021 that Mr Ravi stated that the plaintiffs would be withdrawing the OS unconditionally.

46 Second, I find that Mr Ravi's conduct led to an unnecessary waste of costs and time by the defendant's counsel. That is unquestionable given that the defendant had to instruct counsel to respond to the OS and to defend him in those proceedings.

47 Third, I find that, in the circumstances of this case, it would serve the ends of justice that Mr Ravi be made to personally bear the costs of the defendant. It would not be fair for the plaintiffs to bear the costs of the OS. The issues raised in the OS were purely legal in nature, and the plaintiffs would have relied on the advice of their counsel in deciding to commence these proceedings. As already explained, Mr Ravi would have known that the OS was wholly unmeritorious in the first place. He was given a chance to ameliorate his situation when the possibility of a personal costs order against him was raised in the letters from Wong Partnership on 22 and 26 October 2021 (see [21] and [23] above). On both occasions, he spurned the opportunity to give timely notice that the plaintiffs would discontinue the OS unconditionally.

48 For the reasons set about above, I find that Mr Ravi should be made to bear costs personally, instead of the plaintiffs. The defendant has asked for the amount of $10,000, inclusive of disbursements. From my review of the work done, as set out in the defendant's submissions, and all the factors relevant to the question of costs, including the seniority of Mr Tan, who is lead counsel for the defendant, I find that the claimed quantum to be more than fair and reasonable. I therefore order Mr Ravi to pay the costs of the OS to the defendant fixed in the amount of $10,000, inclusive of disbursements.

Ang Cheng Hock
Judge of the High Court

Ravi s/o Madasamy (K K Cheng Law LLC) for the plaintiffs;
Tan Chee Meng SC, Leo Zhen Wei Lionel, Deya Shankar Dubey and
Vishi Sundar (WongPartnership LLP) for the defendant.
