PT Master Mandiri v Yamazaki Construction (S) Pte Ltd
[2000] SGCA 65

Case Number : CA 70/2000

Decision Date : 29 November 2000

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Lai Kew Chai J; L P Thean JA

Counsel Name(s) : Jeffrey Beh and Siow Hua Lin (Lee Bon Leong & Co) for the appellants; Thomas Lei (Engelin Teh & Partners) for the respondents

Parties : PT Master Mandiri — Yamazaki Construction (S) Pte Ltd

Contract – Remedies – Damages – Mitigation – Innocent party's duty to mitigate loss – Reasonableness of innocent party's conduct judged in circumstances prevailing at material time – Whether reasonable for innocent party to reject offer of part performance of contract

(delivering the judgment of the court): ***The parties***

The appellants, PT Master Mandiri (`PTMM`), were general contractors and suppliers of lubricants and spare parts of machines or equipment. The respondents, Yamazaki Construction (S) Pte Ltd (`Yamazaki`), operated a granite quarry in the island of Karimun, Indonesia. The quarry was owned by an Indonesian company known as PT Karimun Granite (`PTKG`).

The contract

By a tax invoice dated 26 November 1998, Yamazaki agreed to sell to PTMM 24 second hand or used machines for a lump-sum of $438,000. Although each of the 24 machines with the respective serial number was listed, no breakdown of the individual price for each machine was provided in the invoice. Under the invoice, the terms of payment were as follows: 50% of the purchase price was to be paid upon receipt of the invoice, and the remaining 50% to be paid upon approval of the export permits `by PTKG`. It was, however, common ground between the parties that export permits were to be granted by the Indonesian authorities. PTMM accepted the terms, and made the first payment of 50% of the purchase price amounting to S$219,000.

The 24 machines were then located at Karimun, and were registered under PTKG`s name. Having made the contract with Yamazaki, PTMM concluded separate sub-sale contracts with five other parties on 8, 9 and 11 December 1998 for the sale of all the 24 machines.

Repudiation of contract

The contract made between Yamazaki and PTMM was, however, short-lived. By a letter dated 14 December 1998, Yamazaki informed PTMM that they `would like to cancel` the contract but they gave no reason or explanation for the cancellation. In response, PTMM by a letter dated 18 December 1998 accepted the repudiation and demanded payment of the sum of $2.6m in damages for loss of profits on the ground that, as a result of Yamazaki`s repudiation of their agreement, they had to abort their sale contracts made with various third parties for the sub-sale of the machines. Although Yamazaki had cancelled the contract, they made no attempts to refund PTMM the 50% payment which the latter had made.

Negotiations

On 24 December 1998, the parties met in an attempt to resolve the matter amicably. There was some dispute as to what transpired at the meeting. According to Yamazaki, they informed PTMM that they were only able to deliver 18 units out of the 24 machines, as they did not have the export permits for the remaining six units. On the other hand, PTMM maintained that they were informed by Yamazaki that the latter were able to deliver all the 24 machines at first, and it was only subsequently that they were informed that Yamazaki could not deliver the six units due to the problem of obtaining export permits. The parties met again on 28 December 1998. At this meeting, Yamazaki confirmed that they were only able to deliver 18 machines and explained that they were unable to obtain export permits for the remaining six machines. They also informed PTMM that PTKG were interested in purchasing the remaining six machines and offered to act as the middleman in the re-sale of those machines to PTKG at no extra cost. PTMM indicated that they were willing to accept delivery of the 18 units subject to certain conditions, including the payment of legal costs and expenses incurred amounting to $15,000, the difference between the price at which PTMM had sold the six machines and the price at which PTKG were willing to purchase them, compensation for the loss in respect of their sub-sales of the six machines, and a refund of 40% of the deposit which had been paid to Yamazaki. Yamazaki, however, rejected this proposal as they were unwilling to compensate PTMM for their loss in relation to the sub-sales.

Yamazaki also wrote a letter to PTMM dated 24 December 1998, in which they confirmed that they would `proceed to sell` the 24 units of the machines at the same price of S$438,000 and on the same terms as previously agreed. Yamazaki claimed that they gave this letter to PTMM at their meeting on 24 December 1998, while Wiwik Wahyuningsih, the chairman of PTMM, claimed that PTMM only received the letter after their meeting on 28 December 1998. PTMM replied by a letter dated 28 December 1998 rejecting `the conditions` stated in Yamazaki`s letter of 24 December 1998. In the same letter PTMM also sought clarification as to the number of machines under discussion between them, as there was a discrepancy in the number of machines mentioned in the two meetings. In reply to PTMM, Yamazaki by a letter dated 29 December 1998 said that they `could now get approval only for 18 units for sale` to PTMM and the balance of the six units was still pending and further said that `as a matter of goodwill` they were prepared to act as the middleman to sell the six units of the machines to PTKG at reasonable price and pay PTMM all the proceeds from such sale.

On 4 January 1999, in response to PTMM`s query, Yamazaki provided the individual selling price of the six machines for the proposed sale to PTKG. This was followed by PTMM`s request of 11 January 1999 to inspect the 24 machines. Five days later, on 16 January 1999, a letter of demand was written by PTMM`s new solicitors to Yamazaki, seeking damages for breach of contract and offering to accept a sum of $1m to expedite the resolution of the dispute. In reply, the solicitors for Yamazaki by their letter dated 27 January 1999 denied liability for the claim and said that Yamazaki were prepared to deliver the 18 machines to PTMM. Following that, there was an exchange of correspondence between the two firms of solicitors which, however, did not lead to any resolution of the dispute between PTMM and Yamazaki. In the meanwhile, on 27 January 1999, PTMM commenced legal proceedings against Yamazaki claiming damages for breach of contract.

Proceedings below

Interlocutory judgement was entered against Yamazaki and the matter came before the assistant registrar for assessment of damages. Yamazaki disputed the authenticity of the sub-sale contracts and contended that the damages claimed by PTMM were too remote and not recoverable. They further contended that PTMM had failed to mitigate their losses by refusing to accept delivery of 18 machines and rejecting Yamazaki`s offer to act as the middleman in the sale of the remaining six

machines to PTKM. At the close of the hearing, the assistant registrar rejected both the contentions and awarded PTMM a sum of $612,000, representing the loss of profits for the 24 machines, after deducting certain transportation costs.

Against the decision of the assistant registrar, Yamazaki appealed to a judge-in-chambers. Two grounds of appeal were advanced. First, it was argued that the damages for loss of profit was too remote. The judge rejected this argument. She held that the damages sought by PTMM was not too remote. The second ground of appeal was that PTMM had failed to mitigate the loss. This ground succeeded. The judge held that PTMM had failed to mitigate their loss in respect of 18 machines and were not entitled to recover those losses from the defendants. The judge, after considering the evidence, said at [para] 31 and 32:

> *31 The evidence supports the inference that the real reason why the plaintiffs did not take up the defendants` offer was that they not only wanted the 18 machines but also wanted the defendants to agree to their other terms for a negotiated settlement. ... The defendants` failure to agree to the plaintiffs` conditions should not have been a stumbling block. The plaintiffs could have easily replied to the defendants` various offers by stating that they were willing to accept 18 machines without prejudice to their right to claim for the other damages inflicted by the breach.*
>
> *32 In my judgement, it was unreasonable on the part of the plaintiffs to refuse to accept delivery of the 18 machines. These were the exact machines they had agreed to buy originally, not substitute machines, and they had agreed to sell these same machines to their sub-purchasers. These were independent machines and there was no evidence that any of the 18 machines units could not have functioned without the presence of one or more of the six units which the defendants were withholding. Neither was there any evidence that any of the sub-purchasers could reasonably reject the tender of any of the machines on the basis that not all the machines they had contracted to buy were being delivered. There were also two sub-sales which were wholly unaffected by the defendants` breach in that none of the machines which the plaintiffs had agreed to sell under those two-sub-sales were among the machines which the defendants would not be delivering. Further, the defendants were offering an immediate delivery so that there was no significant delay which could have altered the plaintiffs` position vis-Ã -vis their sub-contractors.*

The judge, however, agreed that PTMM were entitled to recover the loss of profits in respect of six machines and accordingly remitted the case to the assistant registrar for re-assessment of damages.

The appeal

PTMM appealed against that part of the judge`s decision disallowing PTMM from recovering their losses in respect of the 18 machines. The only issue in this appeal is whether PTMM had failed to mitigate their losses, and this turns on whether in the circumstances PTMM had acted unreasonably in refusing to accept Yamazaki`s offer for the 18 machines.

It is settled law that an aggrieved innocent party is obliged to take all reasonable steps to mitigate

the loss consequent on the offending party`s wrong, and is not allowed to recover damages in respect of any part of the loss which is due to his neglect to take such steps. The innocent party is not entitled to sit back and suffer the loss to be incurred which could be avoided by reasonable efforts: see ***McGregor on Damages*** (16th Ed, 1997) at para 295; ***Benjamin`s Sale of Goods*** (5th Ed, 1997) at para 16-048; 12(1) ***Halsbury`s Laws of England*** (4th Ed Reissue, 1998) at para 1041. This duty is qualified by the rule that the innocent party is not under an obligation to do anything other than in the ordinary course of business: **Dunkirk Colliery Co v Lever** [1878] 9 Ch D 20 at p 25; **British Westinghouse Co v Underground Electric Rys** [1912] AC 673 at p 689. See generally ***McGregor on Damages*** (16th Ed, 1997) at paras 322-332.

In this regard, the onus of proof on the issue of mitigation lies on the defendant: ***McGregor on Damages*** (16th Ed, 1997) at para 299; ***Chitty on Contracts*** Vol 1 General Principles (28th Ed, 1999) at para 27-087. Hence, in this case, Yamazaki bore the burden of proving that PTMM had not acted reasonably in refusing to take delivery of the 18 machines offered by Yamazaki.

Offer of the 18 machines

We now turn to the crux of the appeal, which is whether PTMM had not acted reasonably in refusing to accept the 18 machines offered by Yamazaki. The judge`s decision on the issue rested entirely on the inferences she drew from the available material. In this connection, we are in as good a position as the judge to evaluate the evidence and to form our own opinion as to the correct inferences to be drawn.

In considering the reasonableness of PTMM`s conduct, it is important to bear in mind the circumstance prevailing at the material time. In **Payzu, Limited v Saunders** [1919] 2 KB 581 at p 588, Bankes LJ said:

> *... It is plain that the question what is reasonable for a person to do in mitigation of his damages cannot be a question of law but must be one of fact in the circumstances of each particular case. There may be cases where as matter of fact it would be unreasonable to expect a plaintiff to consider any offer made in view of the treatment he has received from the defendant.*

The importance of evaluating the innocent party`s conduct in the light of the circumstances of the particular case, which existed at the material time, cannot be underestimated. It is often tempting, when considering the eventual outcome in the clear light of day, to suggest that the party could have taken certain measures or acted differently in mitigating his loss. In this respect, we respectfully share the views expressed by Roskill J (as he then was) in **Harlow & Jones Ltd v Panex (International) Ltd** [1967] 2 Lloyd`s Rep 509 at p 530:

> *The defendants broke this contract. It is they who put the plaintiffs in this difficulty. Of course, a plaintiff has always to act reasonably, and of course he has to do what is reasonable to mitigate his damages. But he is not bound to nurse the interests of the contract breaker, and* ***so long as he acts reasonably at the time it ill lies in the mouth of the contract breaker to turn round afterwards and complain, in order to reduce his own liability to a plaintiff, that the plaintiff failed to do that which perhaps with hindsight he might have done****. [Emphasis added.]*

In ***Harlow & Jones Ltd v Panex (International) Ltd*** , the buyers refused to accept certain goods in breach of contract. The court accepted that the plaintiffs had taken all reasonable efforts to source for alternative buyers but were unsuccessful as the bottom had fallen out of the market, causing the goods to be unsaleable at any realistic price. Under these circumstances, Roskill J rejected the buyers` argument that the sellers ought to have accepted any offer they could get to avoid incurring further storage charges. The crux of Roskill J`s observation essentially reiterated the need for the innocent party to act reasonably at the material time.

So long as the innocent party acts reasonably, he will not be disentitled from recovering the losses incurred as a result of the breach, simply on the ground that with the benefit of hindsight he could have acted differently. It is helpful to bear in mind the following general principle adumbrated by Lord Macmillan in **Banco de Portugal v Waterlow & Sons, Ltd** [1932] AC 452 at p 506; [1932] All ER Rep 181 at p 204:

> *Where the sufferer from a breach of contract finds himself in consequence of that breach placed in a position of embarrassment, the measures which he may be driven to adopt in order to extricate himself ought not to be weighed in nice scales at the instance of the party whose breach of contract has occasioned the difficulty. It is often easy after an emergency has passed to criticise the steps which have been taken to meet it, but such criticism does not come well from those who have themselves created the emergency. The law is satisfied if the party placed in such a difficult position by reason of the breach of duty owed to him has acted reasonably in the adoption of remedial measures, and he will not be disentitled to recover the costs of such measures merely because the party in breach can suggest that other measures less burdensome to him might have been taken.*

The facts of that case were not directly applicable to the present appeal. There, the issue concerned the extent of certain positive remedial steps taken and expenses incurred by the plaintiffs, which the defendants criticised as being excessive. The court there held that the remedial measures taken by the plaintiffs were fully justified and were reasonable, and allowed the plaintiffs to recover the full costs of such measures.

We now turn to the material circumstances prevailing. First, Yamazaki repudiated the contract barely two weeks after it was concluded and after the payment of 50% was made by PTMM. No reason or explanation whatsoever was given for the sudden cancellation. The offer to deliver the 18 machines only emerged at the meetings of the parties held on 24 and 28 December 1998, and at these meetings there was clearly some uncertainty as to whether Yamazaki were offering to deliver 18 or 24 machines. By their letter of 24 December 1998, Yamazaki purported to offer the 24 machines on the same terms as previously agreed. This letter was written even though by 10 December 1998, Yamazaki were already informed by PTKG that export permits could not be obtained for six of the machines. It appeared to us that PTKG wanted not only six but 8 machines. In their letter to Yamazaki dated 29 December 1998, PTKG said:

> *We would like to point out that the only items of equipment we are interested to buy from Yamazaki Construction (S) Pte Ltd are the original six (6) pieces of equipment offered for sale to us vide your Mr M Goodman`s memo to us dated 16 November 1998, and the additional two (2) items of equipment (CAT 966E Plant Nos 14 and 15) as detailed in our counter offer to your Mr M Goodman, vide our Mr AL Baky`s letter dated 1 December 1998.*

Secondly, Yamazaki were not forthcoming with regard to the reasons for their inability to deliver the machines. Yamazaki informed PTMM that this was due to the absence of export permits, when in fact the export permits were available. The actual reason was that PTKG were interested in purchasing from Yamazaki at least six of the machines. According to PTKG`s letter of 29 December 1998 (referred to above), on or about 16 November 1998, Yamazaki offered to PTKG six units of the machines. Notwithstanding this offer, which presumably was still outstanding as at 26 November 1998, Yamazaki on or about that date were in the process of concluding the sale of all the 24 machines to PTMM.

Thirdly, at all material times, there existed a close relationship between PTKG and Yamazaki, and PTKG were the registered owners of the machines. The sale was obviously subject to PTKG`s cooperation. Yamazaki admitted that PTKG were not obliged to agree to the sale to PTMM. Wiwik Wahyuningsih testified that at the meeting on 28 December 1998, Yamazaki`s representatives informed her that they needed to ask PTKG before they could deliver the 18 machines. This was not denied by Yamazaki, who confirmed this position in their letter to PTKG dated 29 December 1998, seeking PTKG`s approval for the export of the 18 machines. In a letter to PTMM dated 29 December 1998, Yamazaki again reiterated that the sales were subject to obtaining export permits from PTKG while, at the same time, stating that approvals could be obtained for the 18 units. There was evidence (as shown above) that by 29 December 1998 or thereabouts, PTKG were interested in two additional machines. PTMM were thus understandably concerned that there was some uncertainty in the delivery of even the 18 machines, and that there was a risk that the transaction, if entered into, could be cancelled at any time. PTMM`s concerns were reflected in the conditions which they had imposed in the negotiation, which included a term for immediate delivery of 18 machines, a reduction of the deposit and refund of 40% of the deposit paid and provision for payment of the balance amount by means of a letter of credit.

In any case, there was never any firm or clear offer from Yamazaki, as they did not at any time, provide any pricing indication for the 18 machines. Yamazaki contend that the price for the 18 machines was never an issue, as they had offered the machines on the same terms and conditions as previously agreed, and in support they refer to the individual price of each machine as specified in the original purchase offer dated 7 November 1998 of PTMM. That contention is untenable. What was stated by PTMM was merely an offer which, at that time, formed the basis for the subsequent negotiations between PTMM and Yamazaki. The final agreement reached on or about 26 November, 1998 was for a lump sum of $438,000 which emanated from Yamazaki and which was $10,000 higher than the total purchase price stated in PTMM`s letter of 7 November 1998. Yamazaki were the party in breach, and it was for them to make a clear and definite offer to deliver the machines. We are unable to accept the suggestion that PTMM should have queried Yamazaki on the price or should have arrived at a calculated guess as to the new price, when the parameters of their original agreement had changed.

In seeking to persuade us that PTMM had acted unreasonably, it is submitted on behalf of Yamazaki that Wiwik Wahyunigsih had testified that PTMM did not want to accept delivery of the 18 machines because Yamazaki refused to agree to PTMM`s conditions proposed at the meeting on 28 December 1998. The short answer to this is that the parties were then negotiating, and PTMM were entitled to make a counter-offer to the proposal of Yamazaki. It should be borne in mind that Yamazaki were the defaulting party, having wrongfully repudiated their agreement with PTMM. PTMM was entitled to make a counter-proposal, and their counter-proposal had to be considered in that context and not in isolation. Clearly, they had valid concerns over the bona fides and reliability of Yamazaki`s offer. They set out certain conditions in order to protect their own interests. Admittedly, the terms relating to payment of costs and expenses and compensation were exaggerated, but then the parties were in the process of negotiation, and it was open to Yamazaki in turn to counter-propose. They never did.

They just rejected PTMM`s proposal. According to the affidavit evidence of Koji Matsunaga and Yusuff bin Abdul Rahman, Yamazaki rejected PTMM`s proposal as they were not prepared to compensate PTMM for their loss of profit or damages in relation to the sub-sales. We hardly think that Yamazaki could be allowed to rely on their own wrongful refusal to compensate PTMM to relieve them of their liability to pay damages.

The judge said that Yamazaki made several offers to PTMM with a view to reducing the loss the latter would incur by reason of the inability of Yamazaki to perform the contract. She said at [para] 29:

> *The plaintiffs` submissions on the issue of mitigation are not easy to accept. The defendants made several offers to the plaintiffs to try and reduce the losses that the latter would incur by reason of the defendants` inability to comply fully with the sale terms. They offered to sell the machines on the same terms and conditions as previously, they offered to make arrangements for the plaintiffs to inspect the machines again and they offered to act as brokers for the plaintiffs in respect of the six machines which PTKG wanted. The defendants were so keen to conciliate the plaintiffs that even after proceedings were commenced, they did not proceed with the sale to PTKG but held it back until April 1999 when it was clear that there could be no compromise. In my view the fact that PTKG eventually bought nine machines does not detract from the genuineness of the defendants` offer since there was evidence that the defendants had export permits for all 18 machines and the sale of the three additional machines was not effected until after it was clear that the plaintiffs had no intention of taking any of the remaining machines.*

With respect, we are unable to agree with these findings. First, as we have shown, the offers made at the meetings on 24 and 28 December 1998 were far from clear and definite. There was certainly some uncertainty in respect of their offer of the 18 machines. No price and terms for payment were given in such offer. Nor was any assurance given as to the approval for the export permits of these machines and as to the delivery of these machines. In view of their past conduct in repudiating a valid and binding contract without any reason or explanation, PTMM were entitled to something more concrete and definite in respect of such offer. Secondly, it is unclear from the evidence that this offer was made to help PTMM mitigate their loss. It seems to us that this offer was made by Yamazaki with a view to discharging their liability to PTMM. On the evidence, Yamazaki were not prepared to pay PTMM any compensation for the breach of contract. Such a stance was clearly not acceptable. It is manifestly clear to us that PTMM could not accept the offer simpliciter. They were entitled to stipulate other terms, which they did, but Yamazaki did not respond in any helpful way but simply rejected those terms.

The judge made a passing reference to the offers made by the then solicitors for Yamazaki in their open letters to the solicitors for PTMM and criticised PTMM for not taking up such offers. She said at [para] 30:

> *The defendants` offer to supply the 18 machines was not made only once. It was made several times starting from December 1998, first in the defendants` own letters and subsequently in several open letters from the defendants` solicitors to the plaintiffs` solicitors. If the plaintiffs had taken up this offer, they could have fulfilled some of the sub-sales as the evidence of at least two of the sub-purchasers was that they could price the machines individually and sell them separately. One of them expressly agreed that even if the plaintiffs could not deliver one out of the five units which he had contracted to the purchase, he would have accepted the other four.*

Let us examine these letters from Yamazaki`s solicitors. First, their letter dated 27 January 1999. In so far as relevant, it stated as follows:

> *We act for Yamazaki Construction (S) Pte Ltd.*
>
> *We refer to your letter to our client dated 16.1.99.*
>
> *We are instructed that our client is not liable to your client as claimed or at all.*
>
> *There may have been a misunderstanding previously over the purported `cancellation` of the sale of 24 machineries to your clients. Since then, that misunderstanding has been resolved and your clients have actually requested to re-inspect those machineries by their letters dated 11.1.99.*
>
> *A pre-condition of the sale to your client of the machineries is that export clearance and approval should first be obtained by PT Karimun Granite (`PTKG`). This pre-condition is expressed in your clients` quotation and our clients` sale invoice to your client. However PTKG has only obtained export approval and clearance for only 18 machineries.*
>
> *Our clients are prepared, able and willing to transfer these 18 units of the machineries to your clients even at this stage. In any event, our clients re-iterate their readiness and offer to deliver these 18 machineries to your clients.*
>
> *Please therefore let us know when your clients will take delivery of these 18 machineries and our clients will arrange for their delivery immediately.*
>
> *We trust that with this misunderstanding between our clients cleared, there will be no need for any litigation. If in the event however that your clients intend to take further legal action in this matter in the Singapore courts, we would require from your clients who are incorporated in Indonesia, security for our client`s cost of a minimum of S$60,000. The amount of security can be paid to us as solicitors and held by us as stakeholders pending the outcome of the trial.*
>
> *...*

We have two observations on the offer contained in this letter. First, it was not made with view to mitigating the loss of PTMM. The solicitors by this letter suggested that there had been a `misunderstanding` over the `purported "cancellation"` of the sale of the 24 machineries` to PTMM, and that since then `the misunderstanding had been resolved`. It is unclear to us what the `misunderstanding` was; but what is amply clear from the letter is that the solicitors were attempting to make out a case that there was no cancellation of the contract by attributing it to a `misunderstanding`. They treated the contract as still subsisting and the offer to deliver the 18 machines was made in purported performance of the contract. That letter (including the offer) was no more than a piece of clever fancy footwork seeking to undo the damage that had been done by their clients. Secondly, not a word was said as to compensation for the failure to deliver the remaining six

machines for which no offer was made. It is clear to us from the arrogant tone of the letter that the solicitors were taking a stand that their clients were not in breach of the contract. They denied that their clients were liable to PTMM as claimed or at all. We do not see how the solicitors for PTMM could really advise their clients to accept that offer.

Next, the second letter dated 29 January 1999 from Yamazaki`s solicitors. It is astonishing that even at this stage they still denied that Yamazaki had not repudiated the contract. The relevant part of the letter said:

> *Our clients deny that there was any repudiation of any contract. If so, which is not admitted, your clients have a duty to mitigate any alleged losses. Your clients will therefore have to consider taking delivery of the 18 machineries as their reasonable step towards mitigation. Please therefore let us hear from you on this score.*
>
> *We have also not heard from you as to para 8 of our letter on security for costs. We shall have to apply for it unless we hear from you soon.*

No price and payment terms were stated in this offer. It was as vague as that made by Yamazaki themselves. At any rate, however genuine the offer was, it came too late. PTMM had already aborted all their sub-sales on various dates between 16 December 1998 and 20 January 1999, and it certainly did not serve their interest to accept the 18 machines.

In our judgment, in all the circumstances PTMM had not acted unreasonably in refusing to accept Yamazaki`s offer for the 18 machines and had not failed to mitigate their loss. We allow PTMM`s appeal. We set aside the part of the judgment under appeal, and reinstate the order by the assistant registrar to award a sum of $612,000 to the appellants as damages. We award PTMM the costs here and below. The deposit in court, with interest, if any, as security for costs, is to be refunded to PTMM or their solicitors.

We understand that since the judgment below, a re-assessment of the damages in respect of the six machines was heard before the assistant registrar, and an award of damages was made. Yamazaki then appealed against the award to the judge below, and the judgement on the appeal was given on 25 October 2000, dismissing the appeal. In view of what we have decided, the award of damages on the re-assessment by the assistant registrar and the decision of the judge on the appeal should now be set aside, save and except their orders as to costs. We accordingly so order.

Outcome:

Appeal allowed.