Wee Soon Kim Anthony v The Law Society of Singapore (No 3)
[2001] SGCA 54

Case Number : CA 600018/2001

Decision Date : 21 August 2001

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; L P Thean JA

Counsel Name(s) : Yang Lih Shying (Khattar Wong & Partners) for the respondent; Yim Wing Kuan Jimmy SC and Siraj Omar (Drew & Napier) for the proposed interveners

Parties : Wee Soon Kim Anthony — The Law Society of Singapore (No 3)

Legal Profession – Rights – Dismissal of appellant's complaint against two solicitors – Application by appellant for order compelling Law Society to appoint disciplinary committee to investigate complaint – Application by two solicitors to intervene – Whether two solicitors have right to intervene – Whether court has reasons for court to exercise inherent jurisdiction under O 92 r 4 to allow intervention – O 15 r 6(2)(b) & O 92 r 4 Rules of Court

(delivering the judgment of the court): This appeal raises a point of procedure on the right of intervention of a solicitor in relation to an application made by a complainant who is dissatisfied with the decision of the Council of the Law Society of Singapore, pursuant to s 96 of the Legal Profession Act (`the Act`).

Background

By a letter dated 18 August 1999, the appellant in the present appeal (hereinafter referred to as `Mr Wee`) complained to the Law Society against two advocates and solicitors, namely, Davinder Singh SC and Hri Kumar (`the two solicitors`). The gist of the complaint relates to the preparation of affidavits for clients in relation to judicial proceedings and which affidavits allegedly contained false statements. The Council of the Law Society decided that the letter of complaint disclosed no information of misconduct that must be referred to the Chairman of the Inquiry Committees under s 85(1) of the Act.

Mr Wee was dissatisfied with the decision of the Council and commenced OS 37/2000 seeking a declaration that the Council should have referred the letter of complaint to the Chairman of the Inquiry Panel in accordance with s 85(1). In that application the High Court judge ruled that of the four alleged `falsehoods` set out in the letter, three were `baseless and frivolous` and did not fall within s 85(1). As for the fourth alleged `falsehood` he felt that it should be referred to the Chairman of the Inquiry Panel and accordingly so ordered.

An inquiry committee (`IC`) was constituted to investigate into the fourth alleged falsehood. After due inquiry, the IC submitted its report and recommended that it be dismissed. Pursuant to s 87, the Council, having considered the report, determined that there was no case for a formal investigation by a disciplinary committee (`DC`). It is against this determination of the Council that Mr Wee has applied, by way of OS 1573/2000, and pursuant to s 96(1), to a judge for an order compelling the Society to apply to the Chief Justice for the appointment of a DC to investigate that complaint. It is in relation to OS 1573/2000 that the two solicitors have applied to intervene. The assistant registrar granted the application. The judge on appeal affirmed that decision. Mr Wee has taken it further before us.

For completeness, we ought to mention that in relation to the other three alleged `falsehoods` in the

letter of complaint alluded to in [para]3 above, and which was dismissed by the High Court, the matter went on appeal before the Court of Appeal. The court allowed the appeal, directing that the complaint relating to the other three alleged falsehoods be also referred to the Chairman of the Inquiry Panel: see **Wee Soon Kim Anthony v Law Society of Singapore** [2001] 2 SLR 145 .

Basis of application to intervene

In the court below, counsel for the two solicitors argued that they were entitled to intervene pursuant to O 15 r 6(2)(b)(i), namely, that they are persons whose presence before the court is necessary to ensure that all matters in the cause or matter may be effectually and completely determined and adjudicated upon.

Decision below

The learned judge below was of the view that, in an application under s 96, one of the real substantive parties was the solicitor against whom the complaint was made. The application would be of serious consequence to the solicitor and if the matter could be `nipped` in the bud, namely, that the court was persuaded not to allow the complaint to go to a DC, the solicitor concerned would have avoided the inconvenience, expenses, and anxiety of a hearing before the DC and the risk of an adverse outcome against him. Therefore, the solicitors concerned would have, at least, as great an interest as the complainant has in a s 96 application.

However, without deciding whether O 15 r 6(2)(b)(i), or even (ii), was applicable, the judge held that the court had an inherent jurisdiction to allow a party to intervene if the justice of the case required and that the jurisdiction was not confined to the illustrations given in para 15/6/12 of the ***Supreme Court Practice*** 1999. He was of the opinion that this was a `just case` to allow the two solicitors to intervene.

Order 15 rule 6(2)(b)

Before us, the parties have submitted on the question of the applicability of O 15 r 6(2)(b)(i) and (ii) and on the inherent jurisdiction of the court, in determining whether the two solicitors should be allowed to intervene. We shall consider each of the bases in turn.

It may be convenient for us at this juncture to set out the provisions of O 15 r 6(2)(b)(i) and (ii):

> *Subject to the provisions of this Rule, at any stage of the proceedings in any cause or matter, the Court may, on such terms as it thinks just and either of its own motion or on application -*
>
> *(a) ...*
>
> *(b) order any or the following persons to be added as a party, namely:*
>
> *(i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in the cause or matter may be effectually and completely determined and adjudicated upon; or*

> *(ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.*

Mr Yim, counsel for the respondents (the two solicitors), submits that in this instance both limbs of r 6(2)(b) are applicable. In relation to the first limb he says that it is necessary for the solicitors to be joined as parties in the originating summons to ensure that all matters in that action may be effectually and completely determined and adjudicated upon. As an application to the High Court under s 96 is really a request to the court to review the decision of the Council and of the IC (where the Council has adopted the recommendation of the IC), allowing the intervention would enable the court to `obtain a more complete picture of the facts, circumstances and legal arguments of the case`.

In relation to the second limb, Mr Yim submits that there exists a question or issue between Mr Wee, the Law Society and the two solicitors. The allegation of misconduct in the complaint is a matter of concern to all three parties. It would be just and convenient for the two solicitors to be heard. There would be no prejudice to Mr Wee or the Law Society. In this regard, counsel refers to the expenses which would have to be incurred by the two solicitors before the DC and emotional trauma which the solicitors would have to go through even though they may eventually be vindicated before the DC. Thus, it is important that the court hearing the originating summons should have the fullest assistance from all concerned parties.

The scope and application of the first limb has been considered in numerous cases. It would suffice if we refer to only two. In **Pegang Mining Co v Choong Sam** [1969] 2 MLJ 52 , a decision of the Privy Council on appeal from Malaysia, the court was concerned with the then Malaysian O 16 r 11, the equivalent of the first limb. There, the Privy Council stated that one of the principal objects of the rule was to enable the court to prevent injustice being done to a person `whose rights will be affected by its judgment by proceeding to adjudicate upon the matter in dispute in the action without his being given an opportunity of being heard`. This being the object, flexibility of approach must be the order of the day. The Privy Council said that in determining whether a person should be joined as a party, the question to be asked was (at p 56):

> *Will his rights against or liabilities to any party to the action in respect of the subject matter of the action be directly affected by any order which may be made in the action?*

In **Gurtner v Circuit** [1968] 2 QB 587, a case which concerned the joinder of the Motor Insurers Bureau as a party, Lord Denning MR said (at p 595):

> *It seems to me that when two parties are in dispute in an action at law, and the determination of that dispute will directly affect a third person in his legal rights or in his pocket, in that he will be bound to foot the bill, then the court in its discretion may allow him to be added as a party on such terms as it thinks fit. By so doing, the court achieves the object of the rule. It enables all matters in dispute to "be effectually and completely determined and adjudicated upon" between all those directly concerned in the outcome.*

It is perhaps necessary for us to remind ourselves as to what is the scheme of things under Pt VII of the Act dealing with disciplinary proceedings against errant solicitors. The Act contemplates two stages of investigation pursuant to the receipt of a complaint. The first stage is before an inquiry committee, whose function is to sift out frivolous and wholly unmeritorious complaint. The nature of the inquiry before the IC was recently dealt with by this court in **Subbiah Pillai v Wong Meng Meng** [2001] 3 SLR 544 and we do not think there is a need for us to traverse that ground again. If the IC determines that there should be a formal investigation into the complaint, the Council shall then request the Chief Justice to appoint a DC to hear the case. However, if the IC should determine that a formal investigation is not necessary, and if the Council should agree with that determination, the complainant has the recourse of applying to the High Court to ask for a review of the decision of the Council and an order compelling the Society to apply to the Chief Justice for the appointment of a DC. This is what happened in the present case.

Here, we would like to make an observation on the remark of the judge below as to the idea of `nipping` in the bud. The very elaborate scheme set out in Pt VII of the Act is one that seeks to strike a balance between the interests of the public and that of the individual solicitor who is under complaint. As stated before, the proceeding before the IC is to ensure that clearly frivolous complaints should not be allowed to go further. But it is not the mandate of the IC to come to a firm view as to the merits where there is conflict as to the facts. That would be the task of the DC. Under s 87(2), if the IC recommends that a DC be appointed, the Council has no discretion in the matter, but if it recommends that a formal investigation by a DC is not necessary, the Council may disagree and approach the Chief Justice for the appointment of a DC. Where the alleged misconduct is trivial which does not warrant the appointment of a DC, the IC may recommend a penalty (not exceeding $5,000) be imposed by the Council. Here again, the Council is not obliged to affirm the recommendation. Thus, the entire scheme is one where primary consideration is the protection of the public. We thought we should say all these lest the idea of `nipping` in the bud might give the wrong impression.

Having regard to the nature of the first stage of the disciplinary process before the IC, and the object of the application by Mr Wee to the High Court under s 96, we do not think the two solicitors are persons who `ought to be joined` as parties. Neither is their presence before the court `necessary` to ensure that all matters in the cause may be effectually and completely determined. At the hearing, the Law Society would have to defend its decision, in the light of the report of the IC, why a formal investigation by a DC is not necessary. The hearing of the application could quite properly proceed without the presence of the two solicitors, even though they are the subject of the complaint. Having an interest in the outcome of the application in the originating summons, which the two solicitors no doubt have, does not mean that the persons should be joined as, or it is necessary to make him, a party to the application. An adverse decision by a judge in such an originating summons application does not mean that the solicitor`s rights are affected - no definitive decision has been taken. All it means is that the solicitor must explain himself formally (with the support of witnesses, if any) before the DC.

Turning to the second limb of r 6(2)(b), the court has the power, under that limb, to add a person as a party where a question or issue arising out of or relating to or connected with any relief or remedy claimed in the action may exist between him and a party to the action which the court thinks it would be just and convenient to determine between him and that party as well as between the parties to the action. This limb, in our view, is also inapplicable. In the originating summons application of Mr Wee there is only one issue, whether a prima facie case has been shown for the complaint to proceed forth to the DC. There is really no different issue existing between the two solicitors and either the

Law Society or Mr Wee.

Finally, it may be helpful if we turn our mind to the basic question: what are the objects of the two limbs of r 6(2)(b). In para 15/6/7 of the ***Supreme Court Practice*** , the learned authors summarise it as follows:

> *... the objects of para (2)(b) as to joinder of parties are broadly the same as the objects of the rules relating to third party proceedings, namely (a) to prevent multiplicity of actions and to enable the Court to determine disputes between all parties to them in one action, and (b) to prevent the same or substantially the same questions or issues being tried twice with possibly different results.*

None of these problems exist in the present matter.

Inherent jurisdiction

We now turn to the question of inherent jurisdiction of the court to allow the two solicitors to intervene. This was the basis upon which the court below granted the request of the two solicitors.

The inherent jurisdiction of the court to make such order as the justice of the case may require is set out in O 92 r 4 as follows:

> *For the removal of doubt it is hereby declared that nothing in these Rules shall be deemed to limit or affect the inherent powers of the Court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court.*

The judge below noted the following passage in the ***Supreme Court Practice*** para 15/6/8:

> *In addition to the powers contained in this rule or under O. 75, r. 17(1), the Court has an inherent jurisdiction to enable it to do justice in particular cases to allow a person not a party to intervene in proceedings if the effect of such proceedings has been, or is likely to be, to cause such a person serious hardship, difficulty or damage, e.g. a person whose property is adversely affected by the presence of an arrested vessel in an Admiralty action in rem even though he has no interest in the vessel to entitle him to intervene under O. 75, r. 17(1) (**The Mardina Merchant** (Unreported)).*

But, he did not think that the jurisdiction should only be invoked where `serious hardship, difficulty or damage` would be caused to the intended intervener.

In **The Mardina Merchant** [1974] 3 All ER 749, the court allowed, under its inherent jurisdiction, the intervention by the Port Authority in an admiralty action in rem because the continued presence of an arrested vessel was causing the authority `serious hardship, difficulty or danger`. The Port Authority sought the removal of the vessel to another location. It seems to us clear that those terms were used because they were apt descriptions in relation to the problems encountered by the Port Authority.

Indeed ***The Mardina Merchant*** (supra) is interesting. Our O 92 r 4 talks of preventing `injustice` or `abuse of process`. We have serious doubts that `preventing injustice` or `preventing abuse of process` arose in that case. What occurred was that because of the arrest of the vessel, serious practical problems were encountered by the Port Authority. Yet, Brandon J did not feel constrained to grant the application.

The applicable rule in that case was RSC O 75 r 17 and it provided:

> *Where property against which an action in rem is brought is under arrest or money representing the proceeds of sale of that property is in court, a person who has an interest in that property or money but who is not a defendant in the action may, with the leave of the Court, intervene in the action.*

Brandon J, while noting that the Port Authority did not have an `interest` in the vessel, and that the situation did not come within that rule, nevertheless felt that the rule was not exhaustive of the powers of the court to do justice in particular cases. He concluded:

> *there must be an inherent jurisdiction in the court to allow a party to intervene if the effect of an arrest is to cause that party serious hardship or difficulty or danger.*

It would appear that in England there was and is no equivalent rule to our O 92 r 4. Brandon J went on general principles. He certainly did not seek to lay down any general criteria as to how the inherent jurisdiction should be applied. We agree with the judge below that Brandon J`s pronouncement was just an instance of the application of the inherent jurisdiction.

It seems to us clear that by its very nature, how an inherent jurisdiction, whether as set out in O 92 r 4 or under common law, should be exercised should not be circumscribed by rigid criteria or tests. In each instance the court must exercise it judiciously. In his lecture on `The Inherent Jurisdiction of the Court` published in ***Current Legal Problems*** 1970, Sir Jack Jacob (until lately the General Editor of the ***Supreme Court Practice***) opined that this jurisdiction may be invoked when it is just and equitable to do so and in particular to ensure the observance of the due process of law, to prevent improper vexation or oppression and to do justice between the parties. Without intending to be exhaustive, we think an essential touchstone is really that of `need`. Bearing that in mind, one can easily understand why in ***The Mardina Merchant*** (supra) the court invoked its inherent jurisdiction.

As this court noted in **Wee Soon Kim Anthony v Law Society of Singapore** [2001] 2 SLR 145 , Pt VII of the Act sets out an elaborate scheme on how a complaint against a solicitor should be dealt with, with emphasis on objectivity and transparency and the need for maintaining the highest standards of professionalism and integrity. This can be seen from the fact that the Act allows the complainant, should the conclusion of the IC or the DC be in favour of the solicitor concerned, to apply to the High Court for a review of the decision. There is no corresponding facility accorded to the solicitor should the decision of the IC or DC be against him. But of course, if the IC should decide that the complaint warrants a formal investigation by the DC, the solicitor would have the opportunity to respond before the DC. Similarly, if the DC should find that cause of sufficient gravity for disciplinary action exists under s 83, the solicitors would have the opportunity to challenge that finding before the court of three judges.

It cannot be disputed that the solicitor complained against has an interest in the outcome of an application made by a complainant under s 96. It is also understandable why the solicitor may wish to intervene in that proceeding even though it is quite unnecessary for him to do so. But it is altogether another thing to say that there is a necessity for him to do so, a need of such a gravity that the court should invoke its inherent jurisdiction. The intervention in such a situation by the solicitor may or may not be of assistance to the court. After all, the report of the IC, with all the necessary annexes, would be before the court when it considers the application. Besides counsel for the complainant/applicant making submission, counsel for the Law Society would also be heard in response, the latter no doubt seeking to support the recommendation of the IC and the decision of the Council. Even if the solicitors should be allowed to intervene, what their counsel would seek to do would really be no more than what the Law Society`s counsel would be doing. Thus, we hold that the circumstances do not warrant the court invoking its inherent jurisdiction.

The question might well be asked, what prejudice would the intervention cause to the complainant/applicant. But we do not think that that is the correct approach upon which to invoke the court`s inherent jurisdiction. It may well be that the question of prejudice is relevant to determine whether intervention should be allowed in the circumstances of a case. But that is not to say that once no prejudice is shown, the court should invoke that jurisdiction. There must nevertheless be reasonably strong or compelling reasons showing why that jurisdiction should be invoked.

Judgment

Accordingly, we would allow the appeal and set aside the order of the assistant registrar, which was affirmed by the judge. The appellant shall have the costs of this appeal as well as those below (before the judge and the assistant registrar). The security for costs, together with accrued interest, shall be refunded to the appellant.

As in this appeal the Law Society has taken a neutral stand, and has not made a submission, the contest is really between the appellant and the proposed interveners. Thus, the costs ordered herein to be paid to the appellant shall be borne by the proposed interveners.

Outcome:

Order accordingly.