

Yeoh Poh San and Another v Won Siok Wan
[2002] SGHC 129

Case Number : Suit 12/2002, RA 129/2002

Decision Date : 17 June 2002

Tribunal/Court : High Court

Coram : Woo Bih Li JC

Counsel Name(s) : Kuppanchetti and Shanti Supramaniam (Alban Tay Mahtani & De Silva) for the plaintiffs; Andre Arul (Arul Chew & Partners) for the defendant

Parties : Yeoh Poh San; Another — Won Siok Wan

Civil Procedure – Judgments and orders – ‘Compromise order’ – Order requiring defendant to file defence on undertaking by plaintiff’s lawyer not to treat it as step in proceedings pending appeal on stay of proceedings – Application by defendant for extension of time to file defence until determination of such appeal – Policy considerations against granting of such orders

Civil Procedure – Pleadings – Defence – Extension of time to file defence pending appeal against dismissal of stay application – Whether right for plaintiff to insist on filing of defendant’s defence before conclusion of appeal – Relief available to defendant – Whether to allow such application for extension of time

by that day, the time for filing the Defence expired. The Plaintiff applied for judgment in default and the Defendant applied for an extension of time to file her Defence. Her application contained two alternative prayers: one sought an extension of 14 days from the date of the order to be made and the other which sought a stay until ‘final determination’ of the appeal. The Deputy Registrar granted the Defendant an extension of 14 days on the undertaking of the Plaintiffs’ counsel not to treat the filing of the Defence as a step taken by the Defendant in the proceedings in view of the appeal on the Defendant’s application for stay.

The Defendant filed this appeal against the Deputy Registrar’s order. Meanwhile, the appeal on the stay proceedings was dismissed by the judge-in-chambers. The Defendant had written to the judge to request further arguments, failing which she intends to appeal to the Court of Appeal. In this appeal, she sought for an extension of time to file her Defence until she exhausted all avenues of appeal.

Held

, allowing the appeal:

(1) When a plaintiff’s solicitor is aware that a defendant has filed an appeal against the refusal to order a stay, he should not insist on the filing of the Defence pending the hearing of the appeal. This principle applies to an application for a stay on any grounds and is not confined to a challenge based on an absence of jurisdiction. To insist on the filing of the Defence is wrong because it will defeat the very purpose of the appeal against the refusal to order a stay. (18)

(2) If the plaintiff’s solicitor insists on the filing of the Defence, the defendant’s solicitor should apply for an extension of time to file pending the outcome of the appeal. An extension of time should generally be granted so as not to render the appeal nugatory. (19)

(3) Compromise orders that order a defendant to file his Defence pending his appeal on the stay proceedings provided the plaintiff undertakes not to treat the filing of the Defence as a step in the proceedings should not be granted for the following reasons: First, no such compromise orders are granted before the original stay application is heard and the position should be the same for appeals

on stay applications. Secondly, to insist on the filing of a Defence while an appeal on the stay was pending is prejudicial to the defendant who has to meet the merits of the plaintiff's claim while seeking a stay. Thirdly, if the defendant succeeds in the appeal, he may never have to meet the plaintiff's claim on the merits as the plaintiff may abandon his claim in the alternate jurisdiction. Lastly until all avenues of appeal in relation to a stay application are exhausted, our courts are not properly seized of the matter. (24-29)

(4) On the facts, due to the peculiar words used in the Defendant's application for an extension of time and the fact that the Defendant orally requested for an extension of time and obtained it from the Plaintiffs, a compromise order was granted as an exception to the general rule that compromise orders should be granted.(30)

Judgment

GROUNDS OF DECISION

Background

1. The Plaintiffs Yeoh Poh San and Choo Lee Chin are husband and wife and are Malaysian citizens. They claim various sums of money from the Defendant Won Siok Wan who was a female companion of the First Plaintiff. She is also a Malaysian citizen. The claim is based on alleged wrongful withdrawals of monies by the Defendant from a joint bank account in Singapore in the name of the Second Plaintiff and the Defendant. The source of the monies is allegedly the First Plaintiff.
2. The Writ of Summons was filed in the High Court in Singapore and the Plaintiffs applied for and obtained leave to serve it, with a Statement of Claim endorsed thereon, on the Defendant at her residence in Malaysia.
3. After the Defendant was served, her Singapore solicitors entered an appearance on her behalf and applied for an order that the proceedings be stayed or dismissed or discontinued on the ground of multiplicity of proceedings or forum non conveniens. Apparently there were related actions in Malaysia and Thailand as well.
4. The stay application was heard by an Assistant Registrar on 17 April 2002 and was dismissed with costs. There was an alternative prayer in the stay application for extension of time to file a Defence but apparently this was not pursued and no order was made thereon.
5. The next day i.e on 18 April 2002, the Defendant filed a Notice of Appeal to the judge-in-chambers. This was fixed for hearing on 21 May 2002. It was served on the Plaintiffs' solicitors on 24 April 2002. In the meantime, the time for filing the Defence expired. Apparently, someone from the Defendant's solicitors' firm orally asked for and obtained an extension of time to file the Defence. The time for doing so expired at 4pm of 30 April 2002. Thereafter the Plaintiffs' solicitors applied for judgment in default of Defence and the Defendant's solicitors in turn applied for an extension of time. The Defendant's application was not aptly worded. It was couched in terms seeking an extension to file the Defence within 'fourteen (14) days from the date of the order herein or upon final determination of the Defendant's application for a stay of the action or its dismissal or discontinuance'. In other words, the first limb of the prayer only sought an extension of 14 days from the date of the order to be made and it was the second limb which sought a stay until 'final determination'.

6. Both applications were heard before the Deputy Registrar Mr Foo Chee Hock on 17 May 2002. He made one Order i.e to grant the Defendant an extension of time of 14 days to file her Defence on the undertaking of the Plaintiffs' counsel not to treat the filing of the Defence as a step taken by the Defendant in the proceedings in view of the pending appeal by the Defendant to the judge-in-chambers. However, he declined to require a broader undertaking from the Plaintiffs' counsel i.e for the undertaking to apply to all steps taken by the Defendant thereafter.

7. The Defendant then filed a Notice of Appeal against this order on the basis that what the Defendant really wanted was an extension of time to file the Defence until she exhausted all avenues of appeal.

8. When this appeal came up for hearing before me on 30 May 2002, the main appeal on the stay application had been heard by Belinda Ang JC and dismissed. However, the Defendant's solicitors had written to request further arguments and were awaiting a response. I was informed that if the request for further arguments was not successful, for whatever reason, the Defendant would then appeal to the Court of Appeal.

Arguments

9. Counsel for the Plaintiffs, Mr Kuppanchetti, submitted that unless the jurisdiction of the Singapore court was being challenged on the basis that the court did not have jurisdiction at all, as opposed to a forum non conveniens argument, the Defendant should file her Defence. He was prepared to broaden his undertaking below to apply to any other step which the Defendant may take in the proceedings. This would mean that pending the outcome of her request for further arguments and any appeal to the Court of Appeal, no step taken by the Defendant would be construed as being a submission to the court's jurisdiction since, after the filing of the Defence, the proceedings would carry on in the usual manner with pre-trial conferences and directions being given. Parties would probably be required to file list of documents, conduct inspection of the documents and file their affidavits of evidence-in-chief. There might also be requests for further and better particulars and/or interrogatories.

10. Counsel for the Defendant, Mr Andre Arul, submitted that the Defendant was not obliged to file a Defence pending the final determination of her stay application. By this, he meant pending the final appeal to the Court of Appeal if the Defendant was still unsuccessful before Ang JC.

11. Mr Arul stressed that if a Defence or any other step is taken by the Defendant then that would be a submission to the Singapore court's jurisdiction. His alternative argument was that the Deputy Registrar, in granting the Defendant an extension of time to file the Defence, should have done so on the basis of a broader undertaking from Plaintiffs' Counsel so as to apply to any other step that the Defendant might take after Defence.

12. In paras 26 to 30 of his written submissions, Mr Arul referred to certain passages from the judgment of Karthigesu JA in *The Jarguh Sawit* [1998] 1 SLR 648. That was a case in which the facts and issues were different from those before me. Nevertheless, certain parts of the judgment of Karthigesu JA are apposite and I cite them below:

'30 Firstly, whether or not a court has jurisdiction is, of necessity, a question logically prior to the substantive dispute of the parties. Unless and until a court is properly seized, it cannot adjudicate on the matter... Thus, our law provides that a party disputing jurisdiction may appear before the court to argue the question of jurisdiction (which we hold to be a procedural issue) without thereby submitting to the court's jurisdiction to determine substantive issues

34 The Rules of Court also contemplate that the matter of jurisdiction should be determined once and for all at the interlocutory stage. The Rules clearly suggest that jurisdiction is finally determined at the stage where an application is made under O 12 r 7 ...

35 A party to an action brought in Singapore may dispute jurisdiction after having first entered an appearance by an application made by summons under O 12 r 7. This does not amount to a submission to jurisdiction: O 12 r 7(5). Order 12 r 7(2) then prescribes that a defendant may dispute jurisdiction by making an interlocutory application by a summons in chambers.

36 If the application fails, the defendant may appeal against it without thereby submitting to the jurisdiction of the court. Once, however, it has been finally determined that either no order should be made on the application to dispute jurisdiction, or the application is simply dismissed, O12 r 7(5) provides that O 12 r 7(6) shall apply. Order 12 r 7(6) provides that a defendant who has entered an appearance is to be treated as having submitted to the jurisdiction of the court unless the appearance is withdrawn.

[Emphasis added.]

13. Mr Arul also referred to a decision of mine in Suit No 224 of 2001 where he was himself the plaintiff and Tunku Ibrahim Ismail Ibni Sultan Iskandar Al-Haj was the defendant. In that case, the defendant applied for a stay of proceedings before the Singapore court on the ground of forum non conveniens. He failed before a registrar and before the judge-in-chambers. Pending his appeal to the Court of Appeal, he applied for an extension of time to file his defence until after his appeal to the Court of Appeal had been heard and determined. He failed in this application before a registrar and appealed therefrom to a judge-in-chambers. That appeal was heard by me and I allowed the appeal i.e I extended the time for filing the defence to after the determination of the appeal by the Court of Appeal.

My decision in the present case

14. The very reason why a defendant is required to apply for a stay of proceedings before taking any step other than filing an appearance is because such an other step may be construed as a submission to the court's jurisdiction.

15. As a matter of practice, once the stay application is filed, the plaintiffs' solicitors will generally not insist on the filing of the Defence pending the hearing of the stay application.

16. For reasons which I shall elaborate below, the position has become unnecessarily complicated if the stay application is dismissed.

17. Once a stay application is dismissed. It is not uncommon for a plaintiff's solicitors to insist that the Defence be filed even though they are aware that the defendant has filed an appeal. When the plaintiff's solicitors do this, a helpless defendant is then compelled to apply for an extension of time to file the Defence. Quite often, this application is met by the argument that as there is no existing order for a stay, and the appeal does not operate as a stay, the Defence must be filed. A registrar hearing that application then seeks to balance that argument with the prejudice to the defendant if he is required to file his Defence notwithstanding his appeal. Accordingly there has developed a sort of compromise order which requires the Defence to be filed with the qualification, or undertaking from the plaintiff's solicitors, that the filing of the Defence will not be construed as a step in the proceedings. Sometimes the qualification, or undertaking, is in broader terms so as to apply to all other steps after the filing of the Defence as well, but sometimes it is not as was the situation in the

case before me.

18. I was of the view that when a plaintiff's solicitor is aware that a defendant has filed an appeal against the refusal to order a stay, he should not insist on the filing of the Defence pending the hearing of the appeal. Support for this proposition can be found in para 36 of the judgment of Karthigesu JA which I have cited in para 12 above. I also did not think that the view expressed by Karthigesu JA is confined to a challenge based on an absence of jurisdiction as such. It applies equally to an application for a stay whether based on forum non conveniens or some other ground. The very reason why a plaintiff's solicitor does not, and should not, insist on the filing of the Defence before the original stay application is heard is equally applicable to an appeal i.e to require the filing of the Defence will defeat the very purpose of the stay application, or, as the case may be, the appeal.

19. If, however, a plaintiff's solicitor insists on the filing of the Defence notwithstanding the appeal, then the defendant's solicitors should apply for an extension of time to file the Defence pending the outcome of the appeal. Indeed, to avoid any unnecessary aggravation or concern, this is a matter that the defendant's solicitors should consider from the very beginning when drafting the original stay application. In other words, the defendant's solicitors should consider then whether to include an alternative prayer that should the application be unsuccessful, the defendant be granted an extension of time to, say, 14 days after the outcome of his appeal or appeals that may be filed by him.

20. The primary prayer or the first limb of the prayer for such a relief should be for an extension of time pending the outcome of the appeal or appeals, as the case may be. That should not be left as an alternative prayer as was in the present case before me.

21. Mr Arul had sought to explain away the terms of the Defendant's application for an extension of time by submitting that he was approaching the matter chronologically. I did not accept such a submission. The point was not one of chronology but one of priority i.e what was the Defendant primarily seeking. However, he further submitted that during arguments before the Assistant Registrar he had made it clear that what the Defendant was primarily seeking was an extension of time pending the outcome of her appeals.

22. I was of the view that once an application for an extension of time to file a Defence pending the outcome of an appeal is made, the extension should, generally speaking, be granted so as not to render the appeal nugatory.

23. For various reasons, I was not in favour of the type of compromise order that I have mentioned.

24. First, if the concern about submission to jurisdiction can be so easily addressed by the compromise order, then there is no reason why the Defence should not be required to be filed on the basis of a similar compromise order, or a similar undertaking, even before the original stay application is heard. Yet, as I have mentioned, it has been the practice not to require the Defence to be filed pending the hearing of the original stay application.

25. Secondly, and more importantly, I was of the view that it was illogical to require the Defence to be filed, with all the follow-up steps which will be taken, when a defendant is exercising his right of appeal.

26. I was not persuaded by the argument, which I have heard before, that should a defendant succeed in his appeal, the plaintiff can be ordered to pay all the costs of the steps taken so far and hence there is no prejudice to the defendant.

27. In my view, there is prejudice to the defendant. The point is that while a defendant is seeking to stay the proceedings, whether by way of original application or an appeal, the defendant should not be required to meet the plaintiff's claim on the merits. A defendant is entitled to focus his attention on the appeal for a stay and not be distracted by running two contradictory courses of action at the same time.

28. Thirdly, should a defendant eventually succeed in his appeal, he may never be required to meet the plaintiff's claim on the merits as the plaintiff may, for his own reasons, then decide not to pursue his claim in the alternative jurisdiction.

29. Fourthly, until all avenues of appeal in relation to a stay application are exhausted, our courts are not properly seized of the matter (see again para 30 of the judgment of Karthigesu JA which I have cited in para 12 above).

30. If not for the oral request for an extension of time to file the Defence which was acceded to and the manner in which the Defendant's application for an extension of time was drafted, I would have granted the Defendant an extension of time to file her Defence until after the outcome of her appeals. However, in the light of these factors, I ordered her to file her Defence within a certain time frame on the undertaking of Plaintiffs' Counsel not to treat this as a submission to the jurisdiction of the Singapore court, but I ordered a stay of all other steps in the present action pending the outcome of her appeals. I also made a consequential order to ensure that she did not try to take undue advantage of her right to appeal to the Court of Appeal. If her request for further arguments was not successful, she was to file the Notice of Appeal, if any, within a shorter time frame than the usual period should she wish the stay order to continue to apply. This did not mean that the time to file the Notice of Appeal was reduced. The usual time frame remained, but if she wanted the stay order to continue to apply, she had to decide sooner, rather than later, whether she was going to appeal to the Court of Appeal.

31. I also granted the parties liberty to apply and made other consequential orders on costs.

Sgd:

Woo Bih Li

Judicial Commissioner

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