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

[2024] SGHC(A) 19

Civil Appeal No 88 of 2023 (Summonses No 46 of 2023 and No 5 of 2024)

Between

(1) Darsan Jitendra Jhaveri
(2) Singapore Star Holdings Pte Ltd
(3) Great Newton Properties Pte Ltd
(4) Capital Glory Investments Pte Ltd
(5) Newton Noble Properties Pte Ltd
(6) Sino Noble Asset Management Pte Ltd
(7) Singapore Star Investments Pte Ltd
(8) Singapore Star Shipping Pte Ltd
(9) Singapore Star Properties Pte Ltd
(10) Sino Ling Tao Resources Pte Ltd
(11) Millers Capital Investments Pte Ltd
(12) Nova Raffles Holdings Pte Ltd

… *Appellants*

And

(1) Lakshmi Anil Salgaocar (suing as the Administratrix of the Estate of Anil Vassudeva Salgaocar)
(2) Winter Meadow Capital Inc

… *Respondents*

In the matter of Suit No 821 of 2015

Between

(1) Lakshmi Anil Salgaocar (suing as the Administratrix of the Estate of Anil Vassudeva Salgaocar)
(2) Winter Meadow Capital Inc

… *Plaintiffs*

And

(1) Darsan Jitendra Jhaveri
(2) Jhaveri Jashma Darsan
(3) Pooja Darsan Jhaveri
(4) Singapore Star Holdings Pte Ltd
(5) Great Newton Properties Pte Ltd
(6) Capital Glory Investments Pte Ltd
(7) Newton Noble Properties Pte Ltd
(8) Sino Noble Asset Management Pte Ltd
(9) Singapore Star Investments Pte Ltd
(10) Singapore Star Shipping Pte Ltd
(11) Singapore Star Properties Pte Ltd
(12) Sino Ling Tao Resources Pte Ltd
(13) Millers Capital Investments Pte Ltd
(14) Nova Raffles Holdings Pte Ltd

… Defendants

And

Kwan Ka Yu Terence

… Third Party

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v
Lakshmi Anil Salgaocar (suing as the administratrix of the estate of Anil Vassudeva Salgaocar) and another

[2024] SGHC(A) 19

Appellate Division of the High Court — Civil Appeal No 88 of 2023
(Summonses No 46 of 2023 and No 5 of 2024)
Woo Bih Li JAD, Debbie Ong Siew Ling JAD and See Kee Oon JAD
3 April 2024

25 June 2024

Woo Bih Li JAD (delivering the grounds of decision of the court):

1 The parties are embroiled in a longstanding dispute before the Singapore courts regarding alleged breaches of trust committed by Mr Darsan Jitendra Jhaveri ("Mr Darsan") in respect of the equity and assets in special purpose vehicles ("SPVs") which he allegedly held on trust for Mr Anil Vassudeva Salgaocar ("Mr Salgaocar") pursuant to an agreement made in 2003 (the "2003 Agreement"). Mr Salgaocar had commenced action in Singapore as the first plaintiff in HC/S 821/2015 ("Suit 821"). He passed away on 1 January 2016 but his estate (the "Estate") continued his claim. The Estate was acting through his wife, Mdm Lakshmi Anil Salgaocar, who was the administratrix of the Estate. A company incorporated in the British Virgin Islands, Winter Meadow Capital Inc ("Winter Meadow"), was the second plaintiff. Mr Darsan and various companies were the defendants in Suit 821. AD/CA 88/2023 ("AD 88") was the

appeal of Mr Darsan and eleven Singapore-incorporated SPVs (collectively, "the Appellants") against the decision of a judge of the General Division of the High Court (the "Judge") on 28 February 2023 in *Lakshmi Anil Salgaocar (suing as the Administratrix of the Estate of Anil Vassudeva Salgaocar) & Anor v Darsan Jitendra Jhaveri & Ors* [2023] SGHC 47, where the Judge found in favour of the plaintiffs in respect of Suit 821.

2 On 30 October 2023, the Appellants filed AD/SUM 46/2023 ("SUM 46") which was an application for leave for the Appellants to admit fresh evidence in AD 88. They submitted that the fresh evidence was relevant to the issue of illegality which had been raised below. SUM 46 was dismissed by a two-member *coram* (the "Coram") of the Appellate Division of the High Court ("AD") on 17 January 2024. This was on the basis that the fresh evidence (which related to matters after the date of the Judge's decision) did not meet the requirement of relevance under the test in *Ladd v Marshall* [1954] 1 WLR 1489 ("*Ladd v Marshall*") as modified in *BNX v BOE and another appeal* [2018] 2 SLR 215 at [97]. On 24 January 2024, the Appellants requested in writing for SUM 46 to be reheard by the full *coram* of the AD pursuant to s 41(8) of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) ("SCJA").

3 The Appellants also filed AD/SUM 5/2024 ("SUM 5") on 2 February 2024. This was an application to amend SUM 46 to seek the court's permission to adduce another piece of evidence – an affidavit filed by the Indian tax authorities in proceedings commenced by Mr Darsan before the Delhi High Court – should the AD accede to the request for the full *coram* to rehear SUM 46.

4 On 3 April 2024, the full *coram* rejected the Appellants' request for SUM 46 to be reheard by the full *coram* of the AD and, accordingly, dismissed

SUM 5. Given that this case is, to our knowledge, one of the first cases involving such a request, we think it appropriate to provide guidance on this issue by way of our reasons in these written grounds.

Whether SUM 46 should be reheard by the full *coram*

5 The Appellants' request for SUM 46 to be reheard was founded on ss 41(8) and 41(11) of the SCJA, which provides as follows:

> **Hearing of appeals**
>
> **41.**—…
>
> (8) Where an application for permission to adduce further evidence in an appeal before the Appellate Division is heard and decided by a single Judge or 2 Judges, any party may request the full panel of the Appellate Division hearing the appeal to rehear arguments in respect of the application for permission to adduce further evidence.
>
> …
>
> (11) After rehearing arguments on a request mentioned in subsection (8), the Appellate Division may affirm, vary or set aside the decision on the application for permission to adduce further evidence.

They observed that these provisions empower the full *coram* of the AD to rehear applications to adduce further evidence on appeal but initially made no submission as to whether the power should be exercised simply when a request was made.

6 In response, the Estate and Winter Meadow (collectively, the "Respondents") submitted that the court would allow such a request "only in very exceptional circumstances". Specifically, they argued that the party making such a request must show that there are arguments which it did not make or did not properly previously make, that there are cogent reasons for a rehearing or that there are fundamental errors in the one or two-member panel's decision.

This test was allegedly borne out by the plain words and legislative purpose of s 41(8) and cases in other jurisdictions, such as Malaysia and Canada, which considered similar provisions.

7 In reply, the Appellants submitted that the appropriate test for the full coram to rehear an application is one of cogent reasons.

8 Having considered these arguments, we were of the view that the Appellants' request should be denied.

9 It was not clear from the available legislative material whether Parliament had intended for further requirements to be complied with before a request for a rehearing would be granted. Neither did the SCJA state what the applicable test would be. The Explanatory Statement to the Courts (Civil and Criminal Justice) Reform Bill in 2021 (which introduced the relevant provisions in s 41 of the SCJA pertaining to the rehearing of applications) stated only as follows:

> Clauses 63 and 65 amend sections 41 and 59, respectively, to provide a new procedure for an application for permission to adduce further evidence in an appeal before the Appellate Division of the High Court or the Court of Appeal. Where such application for permission is heard and decided by a single Judge or 2 Judges in the Appellate Division of the High Court or the Court of Appeal, *any party may request for a rehearing of arguments by the full panel of the Appellate Division of the High Court or the Court of Appeal hearing the appeal, as the case may be, subject to the new sections 41(9) and 59(9).* The full panel of the Appellate Division of the High Court or the Court of Appeal may affirm, vary or set aside the decision on the application for permission to adduce further evidence.
>
> [emphasis added]

10 As such, apart from a requirement in s 41(9) of the SCJA that a request cannot be made if (a) the application was heard at first instance by three or more judges or (b) the application was heard by two judges and the main appeal was

also to be heard by two judges, there was no guidance as to how the court should approach such a request. The parliamentary debates on the bill were also silent on this specific aspect.

11 That said, it would not be logical for a court to grant such a request as of right. Instead, a court must retain the discretion to allow or deny such a request. This was borne out by the plain meaning of the word "request", which indicated that parties are only entitled to ask the courts to *consider* rehearing the application. This reading of s 41(8) was supported by analogy with s 29B of the SCJA, which stated that parties may "request" for further arguments to be heard by a Judge hearing a matter before a notice of appeal is filed. The Court of Appeal in *ARW v Comptroller of Income Tax and another and another appeal* [2019] 1 SLR 499 observed at [96] that the discretion to allow or deny such requests rests with the Judge hearing the case. The same discretion must logically be accorded to the court hearing a request pursuant to s 41(8) of the SCJA.

12 Furthermore, if a request for a rehearing of an application under s 41(8) of the SCJA were granted as of right, this would defeat the statutory objective of having such an application dealt with at first instance by a one or two-member *coram* so as to "make better use of judicial resources". This was stated by then Senior Minister of State for Law Assoc Prof Ho Peng Kee on the Supreme Court of Judicature (Amendment) Bill in 2010 which expanded the types of applications that can be heard before a two-judge *coram* of the Court of Appeal (before the AD was established). This approach similarly applies to the AD: *Singapore Parliamentary Debates, Official Report* (5 November 2019) vol 94 (Mr Edwin Tong Chun Fai, Senior Minister of State for Law). Also, allowing such a request as of right would potentially open the floodgates as every party

who is dissatisfied with the decision of a one or two-member *coram* would be incentivised to apply for arguments to be reheard by the full *coram*.

13 Having established that the court possessed a discretion to allow or deny a request for a rehearing under s 41(8) of the SCJA, we turned to consider the considerations which are relevant to the exercise of such a discretion. To this end, we agreed with the Respondents that the case law in Malaysia and Canada was instructive.

14 The Respondents referred to two cases in support of their position.

15 The first was the Malaysian case of *Ng Hoe Keong & Ors v OAG Engineering Sdn Bhd & Ors* [2022] 3 MLJ 641. In that case, the applicants applied for leave to appeal against a Court of Appeal decision to the Malaysia Federal Court. This application was dismissed by a single Judge of the Federal Court. The applicants then applied under s 97(4) of the Courts of Judicature Act 1964 ("CJA") for a three-member panel of the Federal Court to "discharge" the single Judge's order. Sections 97(3) and (4) of the CJA provided as follows:

> **97.** […]
>
> (3) Notwithstanding section 74, an application for leave to appeal to the Federal Court may be heard by a Judge of the Court, and any direction or order that could be given or made by the Court on such application may be given or made by such Judge.
>
> (4) Any direction or order given or made under subsection (3) may, upon application by the aggrieved party made within ten days after the direction or order is given or made, be affirmed, varied or discharged by the Court.

16 The Federal Court dismissed the application and held that the applicants bore the burden of showing "cogent reasons" why the application should be

reconsidered by three Judges or that the single Judge had committed a fundamental error in her decision.

17 The Respondents next raised the Canadian case of *Young v Noble* [2016] NJ No. 360 ("*Young v Noble*"). In that case, the applicant applied for leave to appeal a Judge's decision to the Court of Appeal of Newfoundland and Labrador. A single Judge of the Court of Appeal dismissed the application. The applicant then applied under Rule 57.31(4) of the Rules of the Supreme Court 1986 for his application to be reheard by a full panel of the Court of Appeal. This rule stated: "Where an application is heard and disposed of by a single judge pursuant to Section 10 of the Judicature Act [1990], the matter may, with leave of the Chief Justice, be reheard by a panel of the Court." Section 10 of the Judicature Act 1990, in turn, provided as follows: "In a proceeding pending in the Court of Appeal, an application incidental to it, not including the final determination of the appeal, may be heard and disposed of by a single judge of the court."

18 The Chief Justice dismissed the application in *Young v Noble*, holding that the discretion to allow a rehearing by a panel of three Judges in relation to a matter already decided by a single Judge is not open-ended and must be exercised on the basis of proper principle; that there must be "some good reason for requiring the parties to suffer the delay and expense that would inevitably be associated with re-arguing a matter that has already been decided"; that there is a rebuttable presumption that the original decision is correct; and that the party seeking a rehearing has the burden of "raising questions as to the correctness of the original decision or must point to some other good reason as justification for having the issue re-examined".

19 Whilst these authorities pertained to applications for leave to appeal, they stand for the proposition that a request for a full *coram* to rehear an application should only be allowed if there are cogent reasons to do so. It is insufficient for parties to merely regurgitate their arguments made earlier. In other words, there must be some good reason to subject parties to the further delay and expenses which will inevitably be associated with the rehearing of a matter which has already been decided.

20 To this end, the Newfoundland and Labrador Supreme Court (Court of Appeal) provided further guidance in *Stacey v Stacey* [2009] NJ No. 247 ("*Stacey*") at [23] by summarising the relevant considerations for the question of whether a rehearing ought to be ordered as follows:

> (a) whether there can be said to be any realistic basis for saying that the original decision could:
>
> > (i) contain legal error; or
> >
> > (ii) involve discretion exercised on a wrong principle or otherwise improperly;
>
> (b) whether there is any practical utility in conducting another hearing, bearing in mind:
>
> > (i) the interests of all parties to the litigation;
> >
> > (ii) the time and expense involved in conducting a rehearing; and
> >
> > (iii) the degree to which the issues on the ultimate appeal, if proceeded with, may have become moot or overtaken by other

events such as the existence of other pending hearings that may effectively resolve the substantive issues in dispute.

21 While the application in *Stacey* was for the rehearing of an application to reinstate an abandoned appeal, the considerations set out above are also generally applicable to an application under s 41(8) of the SCJA. The only caveat we would add is that, given that s 41(8) of the SCJA pertains *only* to applications to adduce further evidence on appeal, the consideration stated above at [20(b)(iii)] will, in most cases, bear less relevance than in cases involving applications for permission to appeal or to reinstate abandoned appeals. This is because an application to adduce further evidence on appeal is made in view of an impending appeal involving live issues between the parties. Should such issues become moot for any reason, the basis for the application to adduce further evidence will cease to exist. The focus of the court in exercising its discretion under s 41(8) of the SCJA will therefore generally be on the other considerations set out at [20(a)] to [20(b)(ii)] above.

22 As such, an applicant requesting the full *coram* to rehear an application to adduce fresh evidence has to provide cogent reasons for the request. This means that the applicant is to establish that (a) there can be said to be a realistic basis for saying that the original decision contains a legal error or involves a discretion exercised on a wrong principle or otherwise exercised improperly and (b) there is practical utility in conducting another hearing.

23 Taking these considerations into account, we rejected the Appellants' request. Putting aside the additional piece of evidence which the Appellants sought to adduce by way of SUM 5, the Appellants were simply repeating the arguments which they had made before the Coram. In their letter of 24 January 2024, they did not indicate that there was any realistic basis for saying that the

Coram's decision contained any legal error or that their discretion had been exercised improperly or incorrectly.

24 For example, one of the pieces of fresh evidence that SUM 46 intended to introduce was an order of seizure under s 37A(1) of the Foreign Exchange Management Act in India ("FEMA") issued by the Directorate of Enforcement of the Government of India dated 8 August 2023. The Appellants' position was that this evidence would support its contention that the transactions undertaken pursuant to the 2003 Agreement were illegal under the laws in India and hence were unenforceable by Mr Salgaocar. The Coram was of the view that this order of seizure was not a final determination or finding that the FEMA had been breached. It constituted hearsay and was inadmissible. In other words, the order of seizure was at most the view of the relevant authority that there was a breach of the FEMA but that view was not binding on the Estate.

25 For the rehearing request, the Appellants argued that the order of seizure had set out the terms of the 2003 Agreement as pleaded by Mr Salgaocar and that by holding assets outside India, Mr Salgaocar had contravened s 4 of the FEMA. However, that was not the point. The relevant authority might be of the view that there was a breach of the FEMA but that was only its view. It did not necessarily mean that there was indeed such a breach by Mr Salgaocar. More importantly, it did not necessarily mean that Mr Salgaocar or the Estate was precluded from pursuing a claim.

26 The Judge had heard evidence on Indian law from experts and reached the conclusion that there was no breach of Indian law. It was not open to the Appellants to use the order of seizure as evidence in place of or to supersede the expert evidence that had been given. Hence, as indicated above, the Appellants did not show that there was a realistic basis that the Coram's decision contained

any legal error or that their discretion had been exercised improperly or incorrectly. There was also no indication that there would be any practical utility in having the arguments reheard.

27 In the circumstances, allowing the request for a rehearing would run counter to the principles underlying s 41(8) of the SCJA outlined at [12] above.

Whether SUM 5 should be allowed

28 Given our decision with respect to the Appellants' request for SUM 46 to be reheard, SUM 5 necessarily fell away. This was because SUM 46 would have already been finally decided by the AD on 17 January 2024, which meant that there could be no amendment of SUM 46 to speak of.

Conclusion

29 For the reasons above, we dismissed the Appellants' request to rehear SUM 46 as well as SUM 5. We reserved the costs of these applications to the hearing of AD 88.

Woo Bih Li
Judge of the Appellate Division

Debbie Ong Siew Ling
Judge of the Appellate Division

See Kee Oon
Judge of the Appellate Division

Tan Chee Meng SC, Lim Wei Lee, Daryl Wong, Victoria Yu, Chin Ming Fwu and Wee Min (WongPartnership LLP) (instructed), Narayanan Sreenivasan SC, Rajaram Muralli Raja and Eva Teh Jing Hui (K&L Gates Straits Law LLC) for the appellants;
Davinder Singh SC, Jaikanth Shankar, Jaspreet Singh Sachdev and Ng Shu Wen (Davinder Singh Chambers LLC) (instructed), Kanapathi Pillai Nirumalan and Ritesh Vaman (Niru & Co LLC) for the respondents.
