

Ricky Charles s/o Gabriel Thanabalan v Chua Boon Yeow
[2002] SGHC 87

Case Number : OS 46/2002
Decision Date : 25 April 2002
Tribunal/Court : High Court
Coram : Woo Bih Li JC
Counsel Name(s) : Perumal Athitham (Yeo Perumal Mohideen & Partners) for the applicant; Fazal Mohamed and Harpal Singh (B Rao & KS Rajah) for the respondent
Parties : Ricky Charles s/o Gabriel Thanabalan — Chua Boon Yeow

Courts and Jurisdiction – Jurisdiction – Application to transfer proceedings from district court to High Court – Interlocutory judgment made – Circumstances under which High Court can exercise power to transfer proceedings – Whether to allow application – s 38 Subordinate Courts Act (Cap 321, 1999 Ed) – Sch 1 para 10 Supreme Court of Judicature Act (Cap 322, 1999 Ed)

proceedings from District Court to High Court – Interlocutory judgment obtained before application – Whether proceedings can be transferred – Subordinate Courts Act (Cap 321) s 38 and Supreme Court of Judicature Act (Cap 322) s 18 & First Schedule para 10

Facts

On 18 July 2000, the applicant, Thanabalan, commenced an action against the respondent, Chua, in the District Court for damages for personal injury arising from a traffic accident. Thanabalan subsequently obtained an interlocutory judgment, by consent, with damages to be assessed. On 11 January 2002, Thanabalan filed an application to transfer the proceedings in the District Court to the High Court on the ground that in view of certain medical reports, the damages he sought might well exceed the \$250,000 jurisdictional limit of the District Court. Chua resisted the application on the ground that it was unlikely that Thanabalan's damages would exceed \$250,000.

Held

, dismissing the application:

(1) Paragraph 10 of the First Schedule to the Supreme Court of Judicature Act ("SCJA") and s 38 of the Subordinate Courts Act should be read together. Although the High Court had a wide power to transfer proceedings from the District Court to the High Court under para 10, the grounds for doing so should come under one of the limbs in s 38 (see 12).

(2) Thanabalan's claim did not involve some important question of law nor was it a test case. He therefore had to show that there was a sufficient reason for the transfer (see 13).

(3) That the damages sought might well exceed \$250,000 would usually constitute sufficient reason to transfer the proceedings to the High Court (see 13). However, it was doubtful whether the High Court had the power to transfer proceedings from the District Court to the High Court when interlocutory judgment had already been entered in the District Court. Notwithstanding the broad discretion and jurisdiction granted to the court in para 10 of the First Schedule to the SCJA, the limit of damages was fixed once interlocutory judgment was entered. To allow the transfer would not be a question of

increasing the jurisdiction of the District Court since the damages would then be assessed in the High Court. It would be a question of circumventing the limit under the interlocutory judgment of the District Court (see 21).

(4) The assessment of damages was circumscribed by the jurisdiction of the District Court. The parties proceeded on that basis and consent interlocutory judgment was entered on that basis. It was too late for Thanabalan to try and overcome this by applying to transfer the proceedings to the High Court (see 24).

Case(s) referred to

Australian Master Builders Co Pty Ltd v Ng Tai Tuan [1988] 1 MLJ 273 (distd)

Legislation referred to

Subordinate Courts Act (Cap 321) s 38

Supreme Court of Judicature Act (Cap 322) s 18, First Schedule para 10

Rules of Court O 89 r 2

Judgment

GROUND OF DECISION

Introduction

1. The Applicant Ricky Charles s/o Gopal Thanabalan claims against the Respondent Chua Boon Yeow for damages for personal injury arising from an accident on 25 December 1995 in which a car driven by the Respondent collided into a motorcycle which the Applicant was riding on.
2. On 18 July 2000, the Applicant filed an action in the District Court against the Respondent. Subsequently, the Applicant obtained an interlocutory judgment from the District Court against the Respondent, by consent, with damages to be assessed.
3. Thereafter on 11 January 2002, the Applicant filed the present application i.e Originating Summons No 46 of 2002/W to transfer the proceedings in the District Court to the High Court pursuant to s 18(2) of the Supreme Court of Judicature Act ('SCJA') and O 89 r 2 of the Rules of Court 1999.
4. The sole ground on which the application was made was that the damages sought by the Applicant may well exceed \$250,000 i.e the limit of the civil jurisdiction of the District Court in view of certain medical reports.
5. The application was initially resisted on the ground that it was unlikely that the Applicant's damages would exceed \$250,000 in view of a surveillance of the Applicant which the Respondent had caused to be undertaken and a medical report obtained by the Respondent. However, notwithstanding these two reports, it was not possible for me to say, at this stage, that the Applicant's damages would necessarily be less than \$250,000.
6. However, I had a concern. As interlocutory judgment had already been granted by the District Court, it seemed strange to me that there would be another judgment or order, this time from the

High Court, on the same cause of action but regarding the quantum of damages.

7. Eventually, after hearing arguments, I dismissed the application on 12 April 2002 with some costs to be paid to the Respondent in any event.

The legislation

8. Section 18 SCJA states:

'Power of High Court

18.(1) The High Court shall have such powers as are vested in it by any written law for the time being in force in Singapore.

(2) Without prejudice to the generality of subsection (1), the High Court shall have the powers set out in the First Schedule.

(3) The powers referred to in subsection (2) shall be exercised in accordance with any written law or Rules of Court relating to them.'

[Emphasis added.]

9. Clause 10 of the First Schedule to the SCJA states:

'Transfer of proceedings

10. Power to transfer any proceedings to any other court or to or from any subordinate court, and in the case of transfer to or from a subordinate court to give any directions as to the further conduct thereof, except that this power shall be exercised in such manner as may be prescribed by Rules of Court.'

[Emphasis added.]

10. Section 38 of the Subordinate Courts Act (Cap 321) states:

'General power to transfer from District Court to High Court

38. Where it is made to appear to the High Court, on the application of a party to any civil proceeding pending in a District Court, that the proceeding by reason of its involving some important question of law, or being a test case, or for any other sufficient reason, is one which should be tried in the High Court, it may order the record to be transferred to the High Court.'

11. I would add that in so far as the application also relies on O 89 r 2 of the Rules of Court, this provision is immaterial as it applies only where an order is made for the transfer of proceedings from the Subordinate Courts (which includes the District Court) to the High Court.

12. I was of the view that Clause 10 of the First Schedule to the SCJA and s 38 of the Subordinate Courts Act should be read together. Although the High Court has a wide power to transfer proceedings from the District Court to the High Court, under Clause 10, the grounds for doing so should come under one of the limbs in s 38.

13. It was not suggested that the Applicant's claim involved some question of law or was a test case. The sole ground for his application was, as I have said, that the damages may well exceed \$250,000. This would usually constitute sufficient reason to transfer the proceedings to the High Court.

14. However, in view of the Interlocutory Judgment granted by the District Court, I doubted that the High Court even had the jurisdiction to order the transfer at this stage of the proceedings.

15. Mr Perumal Athitham, Counsel for the Applicant, cited the case of Australian Master Builders Co Pty Ltd v Ng Tai Tuan [1988] 1 MLJ 273.

16. In that case, the plaintiffs had commenced an action in the High Court for \$65,215.25 for goods sold and delivered to the defendant. The plaintiffs obtained summary judgment for \$10,848 and the defendant was ordered to furnish security for the balance of the claim i.e \$54,367.25. The plaintiffs decided to reduce the quantum of the balance of the claim to \$50,000 by abandoning the excess so as to bring the balance within the then jurisdiction of the District Court which was \$50,000. The Defendant objected on the basis that since the plaintiffs had already obtained judgment for \$10,848, their overall claim, including the reduced balance of \$50,000 was still more than \$50,000.

17. Chan Sek Keong JC (as he then was) found this a rather perplexed form of argument as the \$10,848, having been adjudged in favour of the plaintiffs, could not possibly be regarded as a claim. He went on to consider the then s 38 of the Subordinate Courts Act (Cap 321) which stated:

'In any action commenced by way of writ of summons in the High Court in the exercise of its original civil jurisdiction, any party may for any sufficient reason at any time apply to the High Court for an order that the proceedings be transferred to a District Court, and the High Court may thereupon, if it thinks fits, order that the proceedings be transferred accordingly notwithstanding any other provisions of this Act.'

18. In Chan JC's view, this section was clear. It gave 'the High Court an unfettered discretion to transfer at any time any proceedings commenced by writ of summons to the District Court. The words "notwithstanding any other provisions of this Act" have the effect of vesting in the High Court the jurisdiction to increase the ordinary civil jurisdiction of the District Court'.

19. Having said that, he then went on to say that the next issue was whether the proceedings should be transferred to the District Court and it was not desirable to lay down specific rules as to when the court should exercise its discretion. 'Each application must be decided on its own merits'. He considered that a valid reason would be where the proceedings have come within the ordinary jurisdiction of the District Court whether by a change in the law, by consent or by a party reducing his claim. In the circumstances, he ordered a transfer to the District Court.

20. As can be seen, the facts in that case were different from those before me. There was no interlocutory judgment in favour of the plaintiffs there for the balance of their claim and the application was to transfer the High Court proceedings to the District Court with a corresponding reduction in the balance of the claim.

21. Ultimately, I still doubted whether the High Court does have the power to transfer proceedings from the District Court to the High Court if there is an interlocutory judgment from the District Court. This is notwithstanding the words in Clause 10 of the First Schedule SCJA 'and ... to give any

directions as to the further conduct thereof ...'. In my view, the limit of damages is fixed once interlocutory judgment is entered. It will not be a question of increasing the jurisdiction of the District Court since the damages will then be assessed in the High Court. It will be a question of circumventing the limit under the interlocutory judgment of the District Court.

22. Moreover, even if the High Court has the power to transfer the proceedings notwithstanding the interlocutory judgment, it was still for the Applicant to persuade me to exercise my discretionary power in his favour.

23. Mr Perumal submitted that had the action been initiated in the High Court, the Respondent would have consented to an interlocutory judgment from the High Court in any event. Hence the existence of the interlocutory judgment from the District Court should not deny the Applicant the transfer. I did not accept such an argument. While it may well be that the Respondent would have consented to an interlocutory judgment from the High Court, that is neither here nor there. The fact is that the interlocutory judgment was from the District Court.

24. If the assessment of damages is conducted without any transfer of the proceedings to the High Court, the damages to be awarded will, as I have said, be circumscribed by the jurisdiction of the District Court. The parties have proceeded on that basis and consent interlocutory judgment was entered on that basis. I was of the view that it was too late for the Applicant to try and overcome this by applying to transfer the proceedings to the High Court.

25. In the circumstances, I dismissed the application.

Sgd:

WOO BIH LI
JUDICIAL COMMISSIONER