

Eqita Insurance Bhd v Lim Teong Thye David
[2014] SGHC 211

Case Number : District Court Suit No 1366 of 2012 (Registrar's Appeal State Courts No 171 of 2014)
Decision Date : 23 October 2014
Tribunal/Court : High Court
Coram : Lee Kim Shin JC
Counsel Name(s) : Ramasamy s/o Karuppan Chettiar and Makalingam Rekha (Acies Law Corporation) for the appellant; Chen Xiao Ying and Chia Xin Hui (Eldan Law LLP) for the respondent.
Parties : Eqita Insurance Bhd — Lim Teong Thye David

Civil Procedure – Appeals – Leave

23 October 2014

Lee Kim Shin JC:

Introduction

1 The appeal before me raised an interesting question of law: does a party in an action in the District Court require leave to appeal to the High Court if the subject-matter of the appeal is limited solely to the issue of costs, and the amount of costs in question does not exceed \$50,000?

2 This question arose because an appeal from a decision of the District Court lies as of right (that is, leave is not required) under s 21(1)(a) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA") if the amount in dispute or the value of the subject-matter at the hearing before that District Court exceeds \$50,000.

3 As far as I am aware, there is no clear authority on this point. I therefore provide the written grounds for my decision.

4 The appeal before me was against costs orders awarded to the Respondent in two interlocutory applications arising from District Court Suit No 1366 of 2012 ("the DC Suit"):

(a) the first was the Respondent's application to strike out the appellant's Statement of Claim ("the striking out application"); and

(b) the second was the Appellant's application to amend its Statement of Claim ("the amendment application").

Both applications were heard in the State Courts at first instance by a Deputy Registrar in Chambers.

5 The Respondent succeeded in both applications, and costs were awarded to him at \$10,000 (excluding disbursements) for the striking out application, and \$1,000 (excluding disbursements) for the amendment application.

6 The Appellant chose not to appeal the substantive aspects of the Deputy Registrar's decision in relation to both applications. This was notwithstanding that the effect of the Deputy Registrar's decision was that the Appellant's claim against the Respondent was struck out. Instead, the Appellant only appealed the costs orders made.

7 The appeal was heard by a District Judge in Chambers on 30 July 2014. On the same day, the District Judge allowed the Appellant's appeal and reduced the costs awarded against the Appellant. The District Judge ordered that costs be fixed at \$3,500 (including disbursements) for the striking out application, and \$1,000 (including disbursements) for the amendment application.

8 The Appellant was dissatisfied with the decision of the District Judge and sought to further reduce the costs awarded against it by appealing the matter to the High Court Judge in Chambers, and accordingly filed a Notice of Appeal to the High Court on 11 August 2014.

9 The Appellant asked that the costs of the striking out application be reduced from \$3,500 to \$1,000 (including disbursements) and that the costs of the amendment application be reduced from \$1,000 to \$200 (including disbursements).

10 I heard the appeal on 25 September 2014. As a preliminary issue, the Respondent submitted that there was a defect in the Appellant's Notice of Appeal in that the Appellant was required to, but had not, obtained leave to appeal to the High Court. On that basis, the appeal should be dismissed without a hearing on the substantive merits, that is, the appeal against the District Judge's decision (see [7] above). The Appellant submitted that it did not require leave to appeal to the High Court.

11 After hearing submissions by the parties, I was satisfied that the Appellant required leave to appeal. Leave not having been obtained, I held that the appeal was not properly before me. I therefore dismissed the appeal with costs to the Respondent.

My decision

12 Before I address the preliminary issue proper, I set out the relevant statutory provisions concerning the regime for appeals from a District Judge in Chambers to a Judge of the High Court in Chambers.

The regime for appeals from the District Judge in Chambers

13 As a starting point, civil appeals from the District Court to the High Court are dealt with under s 47 of the State Courts Act (Cap 321, 2007 Rev Ed) ("SCA"). Section 47 reads as follows:

General provision relating to civil appeals

47. Subject to the provisions of the Supreme Court of Judicature Act (Cap. 322) relating to civil appeals from the State Courts to the High Court, Rules of Court shall regulate and prescribe the procedure on appeals from a District Court exercising civil jurisdiction to the High Court.

14 Section 47 of the SCA is subject to the SCJA. The SCJA in turn sets out specific rules concerning appeals from the District Court to the High Court which can be taken up as of right, appeals which require leave, and matters for which there is no right of appeal at all:

Appeals from District and Magistrates' Courts

21.—(1) Subject to the provisions of this Act and any other written law, an appeal shall lie to the High Court from a decision of a District Court or Magistrate’s Court —

(a) in any case where **the amount in dispute, or the value of the subject-matter**, at the hearing before that District Court or Magistrate’s Court (excluding interest and costs) **exceeds \$50,000** or such other amount as may be specified by an order made under subsection (3); or

(b) with the leave of that District Court or Magistrate’s Court or the High Court, in any other case.

...

(2B) No appeal shall be brought to the High Court in any case where a District Court or Magistrate’s Court makes an order specified in the Third Schedule, except in such circumstances as may be specified in that Schedule.

...

[emphasis added in bold]

15 The procedure for bringing an appeal from the District Judge in Chambers to the High Court in Chambers is in turn set out in O 55C rr 1 and 2 of the Rules of Court (Cap 322, R5, 2014 Rev Ed), which read as follows:

Appeals from decisions of District Judges or Magistrates in Chambers (O. 55C, r. 1)

1.—(1) Subject to section 21(2B) of the Supreme Court of Judicature Act (Cap. 322), an appeal shall lie to a Judge of the High Court in Chambers from —

(a) any judgment, order or decision of a District Judge in Chambers (not given or made in his capacity as the Registrar), including a judgment given, or an order or a decision made, on appeal from the Registrar; and

(b) any judgment, order or decision of a Magistrate in Chambers (not given or made in his capacity as the Registrar).

...

Leave to appeal (O. 55C, r. 2)

2.—(1) A party applying for leave under section 21(1) of the Supreme Court of Judicature Act (Cap. 322) to appeal against any judgment, order or decision of a District Judge or Magistrate in Chambers (not given or made in his capacity as the Registrar), must file his application —

(a) to the District Judge or Magistrate in Chambers within 7 days from the date of the judgment, order or decision; and

(b) in the event that leave is refused by the District Judge or Magistrate, to the High Court within 7 days from the date of the refusal.

(2) A party who has obtained leave to appeal under this Rule shall file and serve the notice of appeal within 14 days from the date on which such leave was given.

Whether the appeal was properly before the court

16 On the basis of the foregoing, the question of whether leave was required for the Appellant to appeal to the High Court depended on whether the case fell within s 21(1)(a) (leave not required) or s 21(1)(b) (leave required) of the SCJA. The main point of contention between the parties was whether “the amount in dispute, or the value of the subject-matter” in this case crossed the monetary threshold of \$50,000, upon which an appeal to the High Court would lie as of right.

17 Before I set out the parties’ respective arguments on this, I preface this by highlighting that their submissions were not entirely focused on the key aspect in the appeal, that is, that the subject-matter of the appeal related *only* to the issue of costs and how that would affect the determination of “the amount in dispute, or the value of the subject-matter” for the purposes of s 21(1).

The Appellant’s arguments

18 The Appellant submitted that “the amount in dispute, or the value of the subject-matter” was the value of the Appellant’s substantive claim, which was \$167,620.15, being the damages claimed by the Appellant against the Respondent for the negligence of subcontractors who had allegedly caused a fire to break out during construction works (the “Appellant’s substantive claim”). This exceeded the monetary threshold of \$50,000 under s 21(1)(a) and leave was therefore not required.

19 In support of its submission, the appellant sought to rely on the High Court decision in *Ong Wah Chuan v Seow Hwa Chuan* [2011] 3 SLR 1150, where the portions of the parliamentary debates concerning the 2010 amendments to s 21 of the SCJA (see *Singapore Parliamentary Debates, Official Report* (18 October 2010) vol 87 at col 1371) were cited by the court (at [41]):

It should also be observed that the new s 34(2)(a) SCJA has similarly had the phrase “at the trial” deleted and the phrase “at the hearing” substituted therefor. Sections 21(1)(a) and 34(2)(a) are now uniform in so far as the determination of the “amount in dispute” is concerned. At the second reading of the relevant amendment bill (see *Singapore Parliamentary Debates, Official Report* (18 October 2010) vol 87 at col 1371), the Senior Minister of State for Law explained that:

Currently, a party does not require leave of court to file an appeal to the High Court or the Court of Appeal, as the case may be, if the ‘amount in dispute or value of the subject-matter’ exceeds \$50,000 for appeals to the High Court; or \$250,000 for appeals to the Court of Appeal. Clauses 4(a) and 9(c) amend section 21 and section 34(2)(a) to clarify that the computation of this monetary threshold does not include interest or costs ordered by the court. The amendment also puts it beyond doubt that the respective monetary thresholds of the High Court and Court of Appeal is computed by reference to the original amount claimed in the lower court and not the judgment sum awarded by the court, or the amount in dispute on appeal. This is consistent with recent Court of Appeal decisions.

20 The Appellant submitted that the above passage supported his position for two reasons. First, the parliamentary debates made clear that the monetary threshold is calculated by reference to the “original amount claimed in the lower court”. Second, the parliamentary debates confirm what is stated in s 21(1)(a) of the SCJA, that is, interest or costs ordered by the court are not included in

the calculation.

The Respondent's arguments

21 The Respondent's submission, on the other hand, was that "the amount in dispute, or the value of the subject-matter" in this case was the quantum of the costs orders (that is, \$11,000 in total). The total costs ordered was lower than the monetary threshold of \$50,000 under s 21(1)(a), and leave to appeal was therefore required pursuant to s 21(1)(b).

22 The Respondent relied principally on the Court of Appeal decision in *Fong Khim Ling v Tan Teck Ann* [2014] 2 SLR 659 ("*Fong Khim Ling*"). The court held (at [21] and [26]) that:

21 ... The operative phrase in both ss 21(1)(a) and 34(2)(a) is now "the amount in dispute, or the value of the subject-matter, at the hearing before [the lower court]", and Parliament intended that this amount should be the original amount claimed in the lower court, in accordance with the *Tan Chiang Brother's Marble* line of Court of Appeal authorities.

...

26 ... [T]he plain words "amount in dispute, or value of the subject-matter" are nevertheless perfectly capable of meaning the sum in issue between the parties, *ie*, the sum of the claim which is before the lower court. ...

23 The Respondent argued that the lower court in this instance referred to the District Judge, and since the only issue before the District Judge concerned the quantum of costs awarded for the striking out application and the amendment application, the amount awarded in the costs orders (\$11,000) should be "the amount in dispute, or the value of the subject-matter" for the purposes of s 21(1)(a).

24 According to the Respondent, the determination of "the amount in dispute, or the value of the subject-matter" ought not to refer back to the proceedings before the Deputy Registrar. Implicit in this submission is the acknowledgment that if the determination of the amount in dispute or the value of the subject-matter ought to refer to the proceedings before the Deputy Registrar, the amount would be \$167,620.15 based on the Appellant's substantive claim.

25 The Respondent also submitted that because the substantive order made by the Deputy Registrar in relation to the striking out application was not appealed to the District Judge, the Appellant's substantive claim no longer exists. Therefore, it could not be said that the "amount in dispute" concerned the Appellant's substantive claim.

26 Despite the parties' attempts at relying on what they perceived as the relevant authorities, I was not sure that the authorities were directly relevant to the present issue. During the hearing, I asked parties if they knew of any authority which supported their respective positions on how "the amount in dispute, or the value of the subject-matter" should be computed when the subject-matter of the appeal related *only* to costs order(s). Both parties submitted that there were none, and admitted that the authorities they cited were not entirely on point.

How should the monetary threshold for an appeal solely on costs be calculated for the purposes of s 21(1)(a) of the SCJA?

27 It was not in dispute that the Appellant did not succeed in both applications heard before the

Deputy Registrar. The Appellant chose not to appeal against the substantive outcomes of the applications, and only appealed the costs orders made. The only live issue thereafter related to the costs orders made by the Deputy Registrar, and subsequently, the District Judge.

28 In my view, this was significant, and brought to the fore the crux of this appeal. As a matter of principle, it would not be correct to conflate the claim made in the DC Suit with the costs orders that resulted from the applications made in the DC Suit. It is trite law that costs orders are not awarded to vindicate the rights of parties as part of the underlying claim in an action, but are instead a form of compensation for the successful party in litigation for his legal expenses incurred (see *Then Khek Koon and another v Arjun Permanand Samtani and another and other suits* [2014] 1 SLR 245 (at [155]–[158]); and *Ng Eng Ghee and Others v Mamata Kapildev Dave and Others (Horizon Partners Pte Ltd, intervener)* [2009] 4 SLR(R) 155 (at [6]–[7])).

29 Therefore, where the subject-matter in dispute concerns only costs orders made in the lower court, the value of the main claim should, in my view, be irrelevant. In the present case, since the only matter that was on appeal from the District Court concerned the costs orders made, it follows as a matter of logic that “the amount in dispute, or the value of the subject-matter” must be the amount of costs ordered and *not* the amount claimed in the DC Suit.

30 I found indirect support for this view from the parallel provision in the SCJA concerning appeals from the High Court to the Court of Appeal at s 34(2)(b) which provides that:

(2) Except with the leave of a Judge, no appeal shall be brought to the Court of Appeal in any of the following cases:

...

(b) where the **only** issue in the appeal relates to costs or fees for hearing dates;

...

[emphasis added in bold]

31 Section 34(2)(b) suggests that costs orders arising from a claim are conceptually distinct from the claim, and more importantly, can exist independently of the claim. This is especially so where the *only* issue on appeal relates to costs, as was the situation in the present case.

32 Understood in this light, the Appellant’s submissions were, accordingly, mistaken. The costs orders were conceptually independent of the Appellant’s substantive claim in the DC Suit, and effectively took a life of their own when that was the *only* issue in dispute. Since the only issue in dispute between the parties related to the costs orders that were appealed, it would be incongruous to take the amount claimed in the DC Suit as being “the amount in dispute, or the value of the subject-matter in [the lower court]”. Instead, in considering whether the monetary threshold requirement in s 21(1)(a) of the SCJA had been satisfied, the amount of costs ordered is the relevant amount as that is what the parties are truly disputing.

33 The Appellant’s other argument that relies on the phrase “excluding interest and costs” contained in s 21(1)(a) (see [20] above), was also misconceived. Although not expressly mentioned in the parliamentary debates, the inclusion of the phrase “excluding interest and costs” was most likely a result of the recommendation of the *Report of the Law Reform Committee on the Rationalisation of Legislation Relating to Leave to Appeal* (October 2008), prepared by the Law Reform Committee of the

Singapore Academy of Law chaired by Judith Prakash J.

34 The basis for the recommendation was to give legislative effect to the High Court decision of *Abdul Rahman bin Sharif v Abdul Salim bin Syed* [1999] 3 SLR(R) 138, where Tay Yong Kwang JC (as he then was) held (at [24]–[25]) that:

24 In my opinion, the “amount in dispute or the value of the subject matter” in s 21 does not encompass the non-contractual interest and costs elements of a claim for a contractual amount or for damages. Interest would usually be awarded if a plaintiff is successful in his action and costs would, in the great majority of cases, follow the event. Nevertheless, they remain discretionary and, if awarded, may fluctuate in amount according to the period for which interest is given and depending on the discretion of the trial judge or the Registrar taxing the costs where the amount of costs is concerned. If interest and costs are to be included in computing the “amount in dispute or the value of the subject matter” in s 21, then it follows that they ought to be taken into consideration also when construing jurisdictional provisions such as s 20(1) Subordinate Courts Act (Cap 321, 1999 Ed) ...

Doing so would entail a plaintiff having to calculate the amount of interest and estimate the costs at the time of commencement of action to see whether the sum of the claim, interest and costs exceeds the monetary jurisdictional limit. With interest and costs increasing as the days pass, an action which was within the district court or the magistrates’ court limit when commenced could well breach the respective limits by the time the action is ready for trial, perhaps even during the course of the trial! Similarly, a matter which was within the District Court’s jurisdiction when heard by the Registrar there could be beyond that jurisdiction by the time an appeal goes before the district judge in chambers. The action would then have to be transferred to the High Court for hearing. It does not seem sensible to me to inject such uncertainties into something so fundamental as the court’s jurisdiction.

25 The reasoning for reading s 21 Supreme Court of Judicature Act as excluding interest and costs is even stronger in the case of costs. If costs are ordered to be taxed at the end of a trial, which is frequently the case, a party appealing to the High Court will not know whether he can appeal as of right or only with leave of court in a case where the amount of damages awarded was less than \$50,000. The answer will only be known after taxation and, if there is an application for review, only after review by the Registrar and the district judge in chambers. This unhappy and confusing state of affairs does not even arise if we exclude costs from consideration when deciding whether a matter is appealable as of right under s 21 Supreme Court of Judicature Act.

35 Therefore, it was clear that the exclusion of interest and costs from the calculation of “the amount in dispute, or value of the subject-matter” was meant to ensure that uncertainty and confusion would not be introduced in determining questions of jurisdiction. That, however, does not preclude “the amount in dispute, or the value of the subject-matter” from being calculated based on the amount of costs ordered where that is the only issue in dispute. Where “the amount in dispute, or the value of the subject-matter” is calculated based on the amount of costs ordered, the exclusion of interest and costs simply means that any subsequent costs awarded by the court as a result of the parties’ dispute on the earlier costs orders will be excluded from the calculation of “the amount in dispute, or the value of the subject-matter” for the purposes of s 21(1)(a).

36 For completeness, I have two further observations in relation to the submissions made by the Respondent.

37 As regards the Respondent's first submission (see above at [23]–[24]), his approach in interpreting the phrase "at the hearing before [the lower court]" as meaning the hearing before the District Judge (and not the hearing before the Deputy Registrar) was incorrect.

38 As explained by Chan Sek Keong J (as he then was) in *Herbs and Spices Trading Post Pte Ltd v Deo Silver (Pte) Ltd* [1990] 2 SLR(R) 685 at [11], the Deputy Registrar derives jurisdiction and power to hear matters through the District Judge, and therefore the District Judge when hearing "appeals" from the Deputy Registrar is merely exercising a form of confirmatory jurisdiction. Therefore, the hearings before the Deputy Registrar and the District Judge are effectively one hearing (see also *Fong Khim Ling* at [29]). To be clear, this is immaterial to the present case for the reasons stated earlier. The "amount in dispute, or the value of the subject-matter" in the present case should be calculated solely on the amount of the costs orders in dispute and the amount of the Appellant's substantive claim in the DC Suit has no bearing on that.

39 The Respondent's second submission, that the Appellant's substantive claim in the DC Suit no longer exists once the striking out application was not appealed, and therefore "the amount in dispute" could not be the sum claimed, was not incorrect, but irrelevant. Based on my earlier reasoning, whether the DC Suit was fully extinguished, or still exists (for example, if only part of the Statement of Claim was struck out) is, in my view, immaterial. What was material to my decision was that the *subject-matter of the appeal* related only to the costs orders made.

Should leave have been sought?

40 Since the amount of costs ordered by the Deputy Registrar in the total amount of \$11,000 was the sole matter in issue between the parties in the District Court, that was, in my view, "the amount in dispute, or the value of the subject-matter" for the purposes of ascertaining whether the monetary threshold requirement under s 21(1)(a) of the SCJA was satisfied. This requirement not being met, leave to appeal was therefore required pursuant to s 21(1)(b).

41 The Appellant should therefore have obtained leave from the District Judge within seven days from the date of the order made on 30 July 2014 (see O 55C r 2 cited at [15] above). It did not do so. Neither did the Appellant seek leave from the High Court. Therefore, I found that the Notice to Appeal filed on 11 August 2014 was defective, and consequently, the appeal was not properly before the court.

Conclusion

42 For the foregoing reasons, I dismissed the appeal with costs to the Respondent at \$1,000 (including disbursements).