

Sherman Wong v Lim Kian Eng Carol and Another
[2002] SGHC 63

Case Number : CA 6/2001/Q
Decision Date : 28 March 2002
Tribunal/Court : High Court
Coram : Lai Siu Chiu J
Counsel Name(s) : Morris Yow (David Chong & Co) for the appellant; Choi Yok Hung (Bih Li & Lee) for the respondents
Parties : Sherman Wong — Lim Kian Eng Carol; Oh Keng Hoe Edward (as executors of the Estate of Oh Helen Hing)

Judgment

FOUNDATIONS OF DECISION

The background

1. Sherman Wong (the appellant) was the defendant in Originating Summons No. 535 of 2000 (the OS), in proceedings taken out by Lim Kian Eng Carol and Oh Keng Hoe Edward (the respondents) as executors of the estate (the estate) of Oh Helen Hing (the deceased) who was their aunt, by reason of being married to their uncle (also deceased) Oh Thiam Hock. The deceased was also the maternal aunt of the appellant, being the younger sister of his mother May Wong.

2. In the OS, the respondents sought to recover from the appellant monies which they claimed belonged beneficially to the deceased as at the date of her death (18 March 1999); in particular they claimed three (3) sums of (i) \$5.3m, (ii) the balance of \$500,000 paid to the appellant on 27 October 1994 and (iii) \$251,347, together with interest. The OS was converted to a writ action and after a eleven (11) day trial, Prakash J delivered judgment (on 29 November 2001) in favour of the respondents and ordered the appellant to return to the deceased's estate the sums of \$5.3m (with interest since 14 December 1994), \$251,347 and \$15,061.80. The appellant filed a notice of appeal against Prakash J's decision on 27 December 2001, in Civil Appeal No. 6 of 2001 (the Appeal); the same has been fixed for hearing in the week commencing 20 May 2002.

3. On 4 March 2002, the respondents filed the above notice of motion (the application) requesting the following prayers:

1. that the Court exercise its powers under O 57 r 3(4) of the Rules of Court to order the appellant to give additional security for the respondents' costs in the Appeal to the satisfaction of the Court on the ground that the appellant is ordinarily resident out of the jurisdiction;
2. that further proceedings in the Appeal be stayed pending payment of the judgment debt in the OS by the appellant;
3. that the costs of and occasioned by the Motion be paid by the appellant to the respondents.

I heard and granted the application on 15 March 2002; the appellant has now filed a separate notice of appeal (in Civil Appeal No. 22 of 2002) against the following orders which I made:

- a. the appellant to provide additional security for costs of \$25,000;
- b. the appellant to pay the two (2) judgment sums of \$251,347 (plus lucky draw winnings relating thereto) and \$15,061.80 together with costs of the OS proceedings (when taxed);
- c. if the payments ordered were not paid by 13 May 2002, the Appeal would be stayed;
- d. costs of the motion reserved to abide the outcome of the Appeal unless it was stayed in which case costs would be paid to the respondents by the appellant fixed at \$1,250.

The affidavits

4. Three (3) affidavits were filed in relation to the application, two (2) by the respondents and one (1) by the appellant's solicitor; the appellant himself did not file any affidavit. In their joint affidavit filed with the application, the respondents deposed to the following facts:

- (i) the appellant resides in Petaling Jaya, Selangor, West Malaysia and had so informed Prakash J at the trial of the OS;
- (ii) the appellant was a beneficiary (of 1/9 share) of the estate of the deceased under the terms of her Will dated 18 October 1991;
- (iii) in matters relating to the estate of the deceased, they had communicated with the appellant through his Singapore solicitors Allen & Gledhill;
- (iv) on 3 January 2002, their solicitors had written to David Chong & Company, the appellant's solicitors acting for him in the OS and the Appeal, requesting additional security (of \$40,000) which request the appellant refused by way of his said solicitors' letter dated 4 January 2002;
- (v) the appellant had failed to any of the judgment sums ordered by Prakash J despite several demands.

5. In a subsequent affidavit filed only by one of the respondents namely Carol Lim, she deposed to the following additional facts:

- (i) no distribution had yet been made to any of the beneficiaries of the estate because the respondents were still in the process of ascertaining the tax obligations/liabilities of the deceased in the United States;
- (ii) if the tax issue in the United States was resolved favourably, it would mean that the estate could distribute about S\$3m to each of the residuary legatees;
- (iii) the appellant had been extremely uncooperative with the respondents as, he had sought to evade service of process of enforcement proceedings against him and had failed to abide by the order of Prakash J to provide information relating to the monies she had ordered him to return to the estate in particular on the

sum of \$5.3m;

(iv) if interest (or notional interest at 6% per annum) was computed on the sum of \$5.3m with effect from 14 December 1994 as per the judgment of Prakash J, the amount as at the date of judgment exceeded \$2.2m;

(v) the interest on the other judgment sum of \$251,347 at 6% per annum (for the same period) exceeded \$100,000;

(vi) taking into account the interest element, the total sums owed by the appellant to the estate exceeded \$7,866,000.

(vii) apart from his beneficiary interest in the estate, the appellant had disposed of all his other assets within the jurisdiction.

6. As earlier stated, the appellant did not file any affidavit to oppose the application or to challenge the allegations made by the respondents in their affidavits. Instead, his solicitor (Morris Yow) filed an affidavit wherein he merely exhibited a statutory notice of demand (under the Bankruptcy Act) dated 29 January 2002 issued to the appellant by the respondents' solicitors, claiming the sum of \$5,566,408.80 (the three [3] judgment sums). Morris Yow also exhibited copies of, the last Will of the deceased as well as the Grant of Probate for the estate showing that the net worth of the estate (less estate duty paid) is in excess of \$25m; he made no reference to either affidavit filed by the respondents.

7. At the hearing, Morris Yow confirmed that the appellant had not filed any application for nor had he obtained, a stay of execution on the judgment of Prakash J pending the Appeal. It is trite law that the filing of a notice of appeal does not operate automatically as a stay of execution on a judgment, pending hearing of the appeal. No affidavit was filed by or for the appellant to explain why he did not or could not pay any part of the judgment debt which sums were very substantial. His counsel did not deny that the appellant was ordinarily resident outside jurisdiction; indeed, he is a Malaysian citizen according to his particulars as stated in the OS.

8. It is equally trite law that a judgment creditor should not be deprived of the fruits of his judgment, where no stay of execution was granted. I had noted from Prakash J's judgment that essentially she disbelieved the appellant's claim that the deceased had made him a gift of the \$5.3m he had taken from her funds during her lifetime. The other two (2) judgment sums were the remaining funds in a joint bank account the appellant operated with the deceased during her lifetime. Essentially, the appellant gave me no grounds to exercise my discretion in his favour not to order payment of the judgment sums (which I understood he could well afford to pay) pending the Appeal. Even so, I did exercise my discretion and declined to order him to pay the first and the largest, judgment sum of \$5.3m. If the Court of Appeal allowed his appeal and reversed the judgment of Prakash J, it meant the sum was indeed a gift to him from his maternal aunt. Consequently, I did not order him to pay that amount. There was however no reason not to order the appellant to pay the other two (2) judgment sums.

9. Finally, counsel for the respondents informed me that the costs for a day's hearing in the Court of Appeal far exceeded the security for costs of \$10,000 which was required to be lodged with every notice of appeal. She estimated that the costs could range from \$35,000 to \$60,000. Accordingly, I ordered the appellant to furnish an additional sum of \$25,000 by way of security for the costs of the Appeal.

Sgd:

LAI SIU CHIU
JUDGE

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