

Rajaratnam Kumar v Estate of Rajaratnam Saravanamuthu, deceased and Another and
Another Suit
[2009] SGHC 261

Case Number : Suit 438/2008, 440/2008, RA 351/2009
Decision Date : 23 November 2009
Tribunal/Court : High Court
Coram : Woo Bih Li J
Counsel Name(s) : Manoj Nandwani (Gabriel Law Corporation) for the plaintiff/respondent; Second defendant/appellant in person
Parties : Rajaratnam Kumar — Estate of Rajaratnam Saravanamuthu, deceased; Bala Saravanamuthu Rajaratnam

Civil Procedure

23 November 2009

Woo Bih Li J:

Background

1 The subject matter of these two consolidated actions involve mutual wills executed by Saravanamuthu Rajaratnam and his wife P Rajaratnam nee Parameswari. The plaintiff, Kumar Rajaratnam @ Vairamuthu Rajaratnam ("Kumar"), is a son of the testators. The defendant, Dr Bala Saravanamuthu Rajaratnam ("Bala"), is his brother. I need not go into the details of the substantive dispute as the point before me was a narrow one. Suffice it for me to say that there is a counterclaim by Bala.

2 Summons No 1111 of 2009 was filed by Bala on 11 March 2009 to strike out the defence of Kumar to the counterclaim and for interlocutory judgment against Kumar for Kumar's failure to comply with his discovery obligations.

3 An Assistant Registrar ("the AR") heard the application and dismissed it on 16 September 2009 with costs to be paid by Bala. Bala filed an appeal on 22 September 2009. This is Registrar's Appeal No 351 of 2009. I heard the appeal on 19 October 2009 and dismissed it. I made no order on costs of the appeal and I set aside the order of the AR on the costs aspect and decided that there would be no order for costs of the hearing before the AR as well.

The court's reasons

4 The crux of Bala's application and also his appeal was that on 17 November 2008, a Senior Assistant Registrar ("the SAR") had directed Kumar to make general discovery by filing his lists of documents by 30 January 2009. However, Kumar failed to do so.

5 According to Mr Manoj Nandwani, counsel for Kumar, Kumar did not comply with this direction for general discovery for two reasons. First, Bala himself had been ordered to disclose specific documents under an earlier order of 3 October 2008. He was to comply by 31 October 2008 but he failed to do so. Mr Nandwani said that Kumar could not comply with his own discovery obligations unless and until Bala first complied with the 31 October 2008 order. Eventually an unless order was

made against Bala on 21 January 2009 to comply with the 31 October 2008 order by 4 February 2009. This meant that unless Bala complied with the 31 October 2008 order, certain consequences would follow. In the circumstances, Mr Nandwani was of the view that Kumar's obligation to make general discovery was deferred. Matters dragged on and there were various hearings before the SAR about Bala's obligation to make specific discovery. Eventually, the SAR discharged the unless order on 17 August 2009 because Bala had finally complied with his obligation for specific discovery.

6 Mr Nandwani submitted that Bala's application to strike out was filed only after the unless order had crystallised. He also pointed out that the 17 November 2008 order requiring Kumar to make general discovery was not an "unless" order.

7 I was doubtful as to the accuracy of the vague allegation that Kumar could not make general discovery until and unless Bala gave specific discovery. I would have thought that Kumar could give general discovery first subject to the qualification that more discovery might be given by him after Bala complied with his specific discovery obligation.

8 In any event, I was of the view that it was too late for counsel to say that Kumar's obligation to make general discovery was dependent on Bala first complying with his obligation to make specific discovery. Mr Nandwani should have taken that point when the 17 November 2008 direction for general discovery was made so that that order would be subject to Bala's compliance with the 31 October 2008 order. As Mr Nandwani did not do so, Kumar could not unilaterally impose a condition or qualification on his own obligation to make general discovery.

9 Secondly, while it was wrong of Bala to fail to comply with the 31 October 2008 order and the subsequent "unless" order, the fact of the matter was that Bala's defence and counterclaim had not been struck out. Until then, Kumar's obligation to make general discovery remained. As the adage goes "Two wrongs do not make a right".

10 Nevertheless, I was of the view that Kumar's conduct in the circumstances was not wanton even though Bala sought to rely on allegations of delay in other aspects by Kumar.

11 Bearing in mind Bala's own failure to comply with the specific discovery order until much later and the rest of all the circumstances, I was of the view that it was too draconian to grant the relief sought by Bala.

12 Accordingly, I dismissed his appeal and made the costs orders mentioned above.

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