

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2019] SGCA 79

Civil Appeal No 2 of 2019 (Summons No 91 of 2019)

Between

Pradepto Kumar Biswas

... Respondent/Appellant

And

(1) Sabyasachi Mukherjee

(2) Gouri Mukherjee

... Applicants/Respondents

In the matter of Suit No 1270 of 2014

Between

(1) Sabyasachi Mukherjee

(2) Gouri Mukherjee

... Plaintiffs

And

Pradepto Kumar Biswas

... Defendant

GROUND OF DECISION

[Civil Procedure] — [Judgments and orders] — [Enforcement]

[Civil Procedure] — [Rules of Court] — [Non-compliance]
[Civil Procedure] — [Striking out]

TABLE OF CONTENTS

INTRODUCTION.....1

PROCEDURAL HISTORY2

OUR DECISION5

 WHETHER THERE WAS A BREACH OF THE UNLESS ORDER.....6

 WHETHER THE UNLESS ORDER SHOULD BE ENFORCED6

CONCLUSION.....11

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher’s duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Pradepto Kumar Biswas
v
Sabyasachi Mukherjee and another

[2019] SGCA 79

Court of Appeal — Civil Appeal No 2 of 2019 (Summons No 91 of 2019)
Andrew Phang Boon Leong JA, Tay Yong Kwang JA and Quentin Loh J
25 November 2019

29 November 2019

Andrew Phang Boon Leong JA (delivering the grounds of decision of the court):

Introduction

1 On 12 September 2019, we administered an unless order (“the Unless Order”) to the appellant, Mr Biswas, in the following terms:

the [appellant] is to rectify the deficiencies in his record of appeal and core bundle, serve the relevant documents on the [respondents], and tender the relevant documents to the Registry by 30 September 2019, failing which the [appellant’s] appeal in [Civil Appeal No 2 of 2019] will be struck out.

2 On 3 October 2019, the respondents wrote to the Registry stating that the appellant had failed to comply with the Unless Order. We therefore directed that there be a hearing to decide whether Civil Appeal No 2 of 2019 (“CA/CA 2/2019”) should be struck out for breach of the Unless Order. This hearing was held on 25 November 2019. After considering the parties’

submissions, we ordered that CA/CA 2/2019 be struck out. We now give the detailed grounds for our decision.

Procedural history

3 We begin with the procedural history of this matter, which was crucial to our decision and warrants setting out in some detail. On 12 February 2019, the Registry served the parties with a notice that the record of proceedings was available. Pursuant to O 57 rr 9 and 9A of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) (“the ROC”), the appellant was required to file his Case, the record of appeal, a core bundle of documents, and a bundle of authorities by 12 April 2019.

4 On 9 April 2019, the appellant requested an extension of time to file his Case. The Registry replied that a formal application was required as the appellant did not indicate that the respondents had consented to his request. The appellant did not file such an application.

5 On 12 April 2019, the appellant filed his Case, form of record of appeal, and form of core bundle. The respondents wrote to the Registry on 18 April 2019, stating that the appellant’s form of record of appeal and form of core bundle were in contravention of the requirements of the ROC, and that the appellant had failed to file a bundle of authorities.

6 A case management conference (“CMC”) was held on 30 April 2019, during which the parties agreed that: (i) the appellant was to take out an application to remedy his non-compliance with the ROC by 10 May 2019, and (ii) pending any further directions, the respondents were to file their Case by 31 May 2019.

7 The appellant did not file any application by 10 May 2019, although he filed a bundle of authorities. On 15 May 2019, the respondents wrote to the Registry stating that the appellant had failed to file an application to remedy his non-compliance with the ROC by 10 May 2019. The appellant replied on 22 May 2019 saying that he had filed a revised form of record of appeal and form of core bundle, and a bundle of authorities on 10 May 2019, but that the revised form of record of appeal and form of core bundle were rejected as he did not have leave to file them. He proposed to file an application for leave by 31 May 2019. On 24 May 2019, the respondents communicated their disagreement to the extension of time requested by the appellant.

8 On 28 May 2019, this court directed that:

- (a) the appellant was to file by 4pm on 7 June 2019 such application as he deemed appropriate to rectify the defects in the record of appeal and his core bundle (“the appellant’s Application”);
- (b) if the appellant’s Application was filed, the respondents were to write to the court as soon as possible, but in any event by 4pm on 14 June 2019, to state if they consented to the appellant’s Application;
- (c) if the appellant failed to file the appellant’s Application by 4pm on 7 June 2019, the respondents were at liberty to proceed to file such application as they deemed appropriate (“the respondents’ Application”). The respondents’ Application was to be filed by 4pm on 19 June 2019; and
- (d) the timelines for the filing of the respondents’ Case were to be stayed to the later of (i) 21 June 2019 (if the respondents did not file any

application referred to above); or (ii) the time the appellant's Application or the respondents' Application (if filed) was determined.

9 A CMC was held on 31 May 2019, where assistant registrar James Low reiterated the court's directions to the appellant, and suggested that the appellant could provide the respondents with his revised form of record of appeal and form of core bundle for their comments, before filing them. The appellant stated that he was happy to do so, and would provide them with the documents by 4 June 2019. According to the respondents, the appellant did not provide them with the documents by 4 June 2019.

10 On 7 June 2019, the appellant filed Court of Appeal Summons No 66 of 2019 ("CA/SUM 66/2019") seeking leave to refile the form of record of appeal and form of core bundle. He was granted leave to refile the record of appeal and core bundle by 10 July 2019.

11 On 10 July 2019, the appellant filed a revised form of record of appeal and form of core bundle. On 19 July 2019, the respondents wrote to the Registry stating that the appellant remained in non-compliance with the ROC as, amongst other things, the appellant had failed to file and serve the relevant documents on the respondents. On 25 July 2019, the respondents were directed to file such application as they deemed appropriate by 31 July 2019.

12 A third CMC was held on 30 July 2019. At this CMC, the appellant indicated that he would file and serve all the required documents by the first week of August 2019. He did not do so.

13 On 1 August 2019, the respondents filed Court of Appeal Summons No 91 of 2019 ("CA/SUM 91/2019") seeking to strike out CA/CA 2/2019 on

the basis that the appellant had failed to comply with the requirements for the filing of his appeal documents for CA/CA 2/2019. We found that the appellant's failure to comply with the relevant requirements constituted contumelious conduct, but granted him one last opportunity to rectify his non-compliance by administering the Unless Order. Pursuant to the Unless Order, the appellant was to rectify the deficiencies in his record of appeal and core bundle, serve the relevant documents on the respondents, and tender the relevant documents to the Registry by 30 September 2019, failing which CA/CA 2/2019 would be struck out.

14 On 30 September 2019, the appellant duly tendered his appeal documents to the Registry. He then proceeded to the respondents' solicitors' office, arriving at 6:08pm, after it had closed for business. The appellant was thus unable to serve the documents on the respondents and sought to do so *via* e-mail, at 9:01pm. On 1 October 2019, one day after the deadline stipulated in the Unless Order, the appellant filed the forms of the record of appeal and his core bundle and served the relevant documents on the respondents at their solicitors' office.

15 On 3 October 2019, the respondents wrote to the Registry stating that the appellant had failed to comply with the Unless Order. We therefore directed that there be a hearing to decide whether CA/CA 2/2019 should be struck out for breach of the Unless Order.

Our decision

16 As indicated earlier, we reached the conclusion that CA/CA 2/2019 should be struck out.

Whether there was a breach of the Unless Order

17 We found that the appellant had breached the Unless Order, for the following reasons.

18 First, the appellant failed to meet the deadline stipulated in the Unless Order. The appellant only filed the forms of the record of appeal and his core bundle and served the relevant documents on the respondents on 1 October 2019, one day after the deadline of 30 September 2019 stipulated in the Unless Order. In his letter to the Registry dated 8 October 2019 and during the hearing on 25 November 2019, the appellant took the position that he had duly served the relevant documents on the respondents on 30 September 2019, *via* e-mail. We rejected this argument. The appellant’s alleged service by e-mail was invalid as: (i) service by e-mail is not one of the methods of service provided under O 62 r 6(1)(a)–(c) of the ROC; (ii) there was no indication that the respondents agreed to service *via* e-mail within the meaning of O 62 r 6(1)(d); and (iii) this court did not direct the appellant to effect service *via* e-mail within the meaning of O 62 r 6(1)(e).

19 Second, the appellant failed to rectify the deficiencies in his appeal documents. There were still numerous documents that were relevant to CA/CA 2/2019 which were not included in the appellant’s appeal documents. We do not propose to list all of these documents, and will instead highlight the key documents which were omitted by the appellant when we explain why we decided to enforce the Unless Order.

Whether the Unless Order should be enforced

20 As this court held in *Mitora Pte Ltd v Agritrade International (Pte) Ltd* [2013] 3 SLR 1179 (“*Mitora*”) at [35] and [39], a breach of an unless order will

automatically trigger its specified adverse consequences. The onus will then be on the defaulting party to demonstrate that the breach was not intentional and contumelious so as to avoid those consequences. In exercising its discretion to enforce an unless order, the court will be guided by considerations of proportionality.

21 We were satisfied that the appellant's breach of the Unless Order was contumelious and that it was not disproportionate to enforce the Unless Order for the following reasons.

22 First, the appellant's conduct suggested that his attempt to comply with the Unless Order was not made *bona fide*. When administering the Unless Order to the appellant, we highlighted the fact that the appellant had been afforded at least two opportunities to remedy his non-compliance with the relevant rules, but had failed to make use of them. The first opportunity was given at the CMC on 30 April 2019, where the parties agreed that the appellant was to take out an application to remedy his non-compliance by 10 May 2019. The appellant chose not to make use of this opportunity, and did not file any application by 10 May 2019. The second opportunity was given on 28 May 2019, when this court directed that the appellant was to take out an application to remedy his non-compliance by 7 June 2019. Although the appellant did take out CA/SUM 66/2019 by 7 June 2019 and was given leave to refile the appeal documents by 10 July 2019, the documents filed by the appellant continued to be in non-compliance with the relevant requirements. This was despite the respondents agreeing to provide their comments on the documents before the appellant was due to file them. Indeed, the appellant could not even be bothered to send the documents to the respondents for their comments. We further highlighted the fact that, as a result of the appellant's failure to comply with the relevant requirements, three CMCs were held, and the hearing of

CA/CA 2/2019 would be delayed by at least two months. We then made it extremely clear to the appellant that we were affording him one last opportunity to rectify his non-compliance with the relevant rules.

23 Despite all of this, the appellant chose to carry out his obligations under the Unless Order at the very last minute, on the day of 30 September 2019 itself, which led to him being unable to file and serve the relevant documents on time. In our view, the fact that the appellant chose to carry out his obligations under the Unless Order at the very last minute showed that his attempt to comply with the Unless Order was not made *bona fide*. This was especially so considering that, first, the deadline stipulated in the Unless Order was proposed by the appellant himself, and gave him ample of time to remedy his non-compliance. And second, as we have mentioned earlier, that we made plain to the appellant that he had already been given many opportunities to rectify his non-compliance which had caused significant delay and expenditure of judicial resources, and that the Unless Order would be the last opportunity given to him.

24 Further, in their submissions for CA/SUM 91/2019, the respondents listed in some detail the various deficiencies of the appellant's form of record of appeal and form of core bundle. However, the appellant only rectified some of these deficiencies in his form of record of appeal and form of core bundle filed on 1 October 2019, leaving many of them unaddressed. The fact that the appellant could not even be bothered to address the deficiencies that were clearly brought to his attention further led us to believe that the appellant did not genuinely attempt to comply with the Unless Order.

25 The appellant, in his letter to the Registry dated 8 October 2019 made much of the fact that he is unrepresented. But, as this court noted in *BNP Paribas SA v Jacob Agam and another* [2019] 1 SLR 83 at [103], while the

courts may show some greater indulgence to litigants in person, such indulgence is not to be expected as a matter of entitlement, and such indulgence also does not mean that a litigant in person can act without regard to the rules and procedures. To add to that, as outlined above at [22], we had shown the appellant significant indulgence in affording him at least three opportunities to remedy his non-compliance. Further, the relevant rules which the appellant was required to comply with under the Unless Order were in no way particularly complex such that the appellant would have had difficulty understanding or following them. We also note that the appellant is in the financial industry and is not unfamiliar with legal proceedings. As the appellant stated in his letter to the Registry dated 8 October 2019, he has been involved in proceedings in the High Court, the Family Justice Courts, and the District Courts. The appellant even acted in person in some of these proceedings. We were therefore of the view that the appellant was wholly capable of complying with the Unless Order, but chose not to do so.

26 Second, the appellant’s breach of the Unless Order was not a mere technical breach. The appellant omitted to include various documents that would have been key to his appeal. We highlight two categories of documents. The first encompasses the documents relating to High Court Summons No 6010 of 2014, the respondents’ application for a search order. And the second encompasses the documents relating to High Court Summons No 4 of 2015, the appellant’s application to strike out certain portions of the respondents’ statement of claim, including a portion referring to a claim known as the Free Zone Enterprise claim (“FZE claim”). In his Case, the appellant argued that the respondents fabricated the FZE claim in order to obtain the search order, and that this constituted an abuse of the process of the court which warranted a dismissal of all of the respondents’ claims. The documents relating to the search

order and the appellant's application to strike out the portion of the respondents' statement of claim relating to the FZE claim would thus have been relevant to the appellant's appeal. However, as a result of the appellant's failure to rectify the deficiencies in his appeal documents, these documents were not placed before the court.

27 Third, as was observed in *Hytec Information Systems Ltd v Coventry City Council* [1997] 1 WLR 1666 at 1674–1675 (which observations were cited by this court in *Mitora* at [42]):

[A] failure to comply [with an unless order] will ordinarily result in the sanction being imposed ... This sanction is a necessary forensic weapon which the broader interests of the administration of justice require to be deployed unless the most compelling reason is advanced to exempt his failure. ... The interests of justice require that justice be shown to the injured party for the procedural inefficiencies caused by the twin scourges of delay and wasted costs. The public interest in the administration of justice to contain those two blights upon it also weighs very heavily. Any injustice to the defaulting party, though never to be ignored, comes a long way behind the other two.

As a result of the appellant's failure to comply with the various directions and orders, there were four court hearings and three CMCs, and the hearing of CA/CA 2/2019 – if allowed to proceed – would have been delayed by at least four months. We were therefore of the view that the interests of justice leaned in favour of enforcing the Unless Order.

Conclusion

28 For these reasons, we ordered that CA/CA 2/2019 be struck out. Costs of \$15,000 (all-in) were awarded to the respondents. There will be the usual consequential orders.

Andrew Phang Boon Leong
Judge of Appeal

Tay Yong Kwang
Judge of Appeal

Quentin Loh
Judge

The appellant in person;
Ng Ka Luon Eddee, Muk Chen Yeen Jonathan, Chan Yi Zhang and
Toh Zhen Teck Jeremy (Tan Kok Quan Partnership) for the
respondents.
