IN THE APPELLATE DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2024] SGHC(A) 20

Civil Appeal No 88 of 2023 (Summonses Nos 2, 12 and 16 of 2024)

Between

(1) Darsan Jitendra Jhaveri
(2) Singapore Star Holdings Pte Ltd
(3) Great Newton Properties Pte Ltd
(4) Capital Glory Investments Pte Ltd
(5) Newton Noble Properties Pte Ltd
(6) Sino Noble Asset Management Pte Ltd
(7) Singapore Star Investments Pte Ltd
(8) Singapore Star Shipping Pte Ltd
(9) Singapore Star Properties Pte Ltd
(10) Sino Ling Tao Resources Pte Ltd
(11) Millers Capital Investments Pte Ltd
(12) Nova Raffles Holdings Pte Ltd

… *Appellants*

And

(1) Lakshmi Anil Salgaocar (suing as the Administratrix of the Estate of Anil Vassudeva Salgaocar)
(2) Winter Meadow Capital Inc

… *Respondents*

In the matter of Suit No 821 of 2015

Between

(1) Lakshmi Anil Salgaocar (suing as the Administratrix of the Estate of Anil Vassudeva Salgaocar)
(2) Winter Meadow Capital Inc

… *Plaintiffs*

And

(1) Darsan Jitendra Jhaveri
(2) Jhaveri Jashma Darsan
(3) Pooja Darsan Jhaveri
(4) Singapore Star Holdings Pte Ltd
(5) Great Newton Properties Pte Ltd
(6) Capital Glory Investments Pte Ltd
(7) Newton Noble Properties Pte Ltd
(8) Sino Noble Asset Management Pte Ltd
(9) Singapore Star Investments Pte Ltd
(10) Singapore Star Shipping Pte Ltd
(11) Singapore Star Properties Pte Ltd
(12) Sino Ling Tao Resources Pte Ltd
(13) Millers Capital Investments Pte Ltd
(14) Nova Raffles Holdings Pte Ltd

… *Defendants*

And

Kwan Ka Yu Terence

… *Third Party*

GROUNDS OF DECISION

[Civil Procedure — Extension of time]
[Civil Procedure — Striking out]

TABLE OF CONTENTS

SUM 2 AND SUM 16 3

SUM 12 6

CONCLUSION.....13

Version No 2: 23 Sep 2024 (15:55 hrs)

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.

Darsan Jitendra Jhaveri and others
v
Lakshmi Anil Salgaocar (suing as the administratrix of the estate of Anil Vassudeva Salgaocar) and another

[2024] SGHC(A) 20

Appellate Division of the High Court — Civil Appeal No 88 of 2023
(Summonses Nos 2, 12 and 16 of 2024)
Woo Bih Li JAD, Debbie Ong Siew Ling JAD and See Kee Oon JAD
3 April 2024

25 June 2024

Woo Bih Li JAD (delivering the grounds of decision of the court):

1 These grounds of decision pertain to three applications which were filed in relation to AD/CA 88/2023 ("AD 88"). For context, AD 88 is the appeal of Mr Darsan Jitendra Jhaveri ("Mr Darsan") and eleven Singapore-incorporated special purpose vehicles ("SPVs") (collectively, the "Appellants") against the decision of a judge of the General Division of the High Court (the "Judge") on 28 February 2023 in *Lakshmi Anil Salgaocar (suing as the Administratrix of the Estate of Anil Vassudeva Salgaocar) & Anor v Darsan Jitendra Jhaveri & Ors* [2023] SGHC 47. The Judge held that Mr Darsan had committed breaches of trust in respect of the equity and assets of SPVs which he allegedly held on trust for Mr Anil Vassudeva Salgaocar ("Mr Salgaocar"), who had commenced a claim in HC/S 821/2015 ("Suit 821"). Mr Salgaocar passed away on 1 January 2016. His claim in Suit 821 was continued by his estate (the "Estate"), the

administratrix of which is Mr Salgaocar's wife, Mdm Lakshmi Anil Salgaocar ("Mdm Lakshmi"). The Estate and a British Virgin Islands-incorporated company, Winter Meadow Capital Inc, were the plaintiffs in Suit 821 and the respondents in AD 88 (collectively, the "Respondents").

2 The three applications were as follows.

3 First, AD/SUM 2/2024 ("SUM 2") was the Respondents' application for permission to adduce further evidence at the hearing of AD 88. This application, which was filed on 5 January 2024, pertained primarily to the documents relating to the various applications brought by the parties before the Singapore and Indian courts and the relevant orders made.

4 Second, AD/SUM 12/2024 ("SUM 12") was brought by the Respondents on 21 February 2024 to strike out AD 88 and for an extension of time to be granted for the filing of this summons.

5 Third, AD/SUM 16/2024 ("SUM 16") was the Respondents' application for permission to adduce further evidence at the hearing of AD 88. SUM 16 sought to introduce, *inter alia*, documents pertaining to further developments before the Indian courts which were filed between January and March 2024. The application was filed on 20 March 2024.

6 On 3 April 2024, we made no order on SUM 2 and SUM 16 and dismissed SUM 12. We now provide our reasons.

Version No 2: 23 Sep 2024 (15:55 hrs)

SUM 2 and SUM 16

7 We turn first to our decision on SUM 2 and SUM 16. Both of these summonses sought an order for the Estate to be at liberty to adduce and rely on various documents at the hearing of AD 88.

8 To begin with, we observed that these summonses were poorly worded as they gave the misleading impression that these documents which were sought to be adduced at the hearing of AD 88 were to be employed in respect of the *merits* of AD 88. This was, however, not the case.

9 Mdm Lakshmi stated at para 5(a) of her supporting affidavit in SUM 2 that the further evidence sought to be adduced in that application "concern[ed] the question whether a Court should hear a party who is in contempt or whose conduct is part of a campaign to intimidate or harass the other party or impedes the delivery of justice or where there is an element of challenge to the Court's authority". In the Respondents' written submissions for SUM 16, they referred to this same paragraph in Mdm Lakshmi's affidavit to explain the materiality of the documents sought to be adduced in SUM 16.

10 It was therefore clear that the documents which SUM 2 and SUM 16 sought to adduce were to be relied on by the Respondents *only* in relation to their argument that the court should not hear the Appellants in AD 88 on the basis of the *Hadkinson* principle (which originates from the case of *Hadkinson v Hadkinson* [1952] P. 285). This principle, according to the Respondents, states that the court may exercise its discretion to refuse to hear a party in contempt unless and until he has purged his contempt. Counsel for the Respondents confirmed at a case management conference ("CMC") on 31 January 2024 that

Version No 2: 23 Sep 2024 (15:55 hrs)

the documents mentioned in SUM 2 (SUM 16 had yet to be filed) were to be relied on *only* in relation to the point on the *Hadkinson* principle.

11 In addition to the poor wording of the summonses, para 5(c) of Mdm Lakshmi's supporting affidavit in SUM 2 added to the confusion. This paragraph stated that the further evidence in SUM 2 was "therefore relevant and material to the [issue on the *Hadkinson* principle], [was] credible and would have a perceptible impact on the Appellate Division's decision in [AD 88]". The wording of para 5(c) appeared to be an attempt to meet the requirements in *Ladd v Marshall* [1954] 3 All ER 745 ("*Ladd v Marshall*"). However, these requirements are only relevant if the additional evidence is to be admitted for the purposes of determining the *merits* of an appeal, which was not the case with SUM 2 or, for that matter, SUM 16.

12 Generally speaking, no leave is required to rely on documents for the purpose of persuading the court not to hear an appeal. This was borne out, firstly, by the context in which *Ladd v Marshall* was decided. In that case, the plaintiff and the defendant entered into a contract for the sale and purchase of a bungalow and two plots of land for £2,500. The parties' wives were present when the contract was signed. When the defendant subsequently decided not to proceed with the sale, the plaintiff brought an action for the return of £1,000 which he had allegedly paid the defendant when they signed the agreement. The defendant's wife was called as a witness but testified that she did not remember any money being passed between the parties. The judge at first instance dismissed the action as he was not persuaded that this sum was paid to the defendant. After the judge's decision, the defendant's wife divorced the defendant and told her solicitors that she had lied at the hearing. The plaintiff then applied for leave to adduce further evidence on appeal to show that the judge had erred in making a finding of fact. It was therefore clear that the *Ladd*

Version No 2: 23 Sep 2024 (15:55 hrs)

v Marshall requirements relate to the admission of evidence which goes toward the determination of the substantive issues on appeal.

13 This conclusion was also apparent from a perusal of the *Ladd v Marshall* requirements themselves. For example, the fresh evidence must not have been obtainable with reasonable diligence for use *at the trial* and it must have an important influence on the *result* of the case. These requirements suggest that the evidence sought to be adduced on appeal must pertain to the substantive issues of contention between the parties at trial which have subsequently been taken up on appeal.

14 It also bore noting that the underlying rationale behind these requirements was that of finality in litigation, where parties are incentivised to advance their full case at trial and not resort to strategic ploys to gain unfair advantages (*Anan Group (Singapore) Pte Ltd v VTB Bank (Public Joint Stock Co)* [2019] 2 SLR 341 at [23]–[24]). This is the reason why the *Ladd v Marshall* requirements are not applied to new points or claims raised on appeal, where such interests are engaged to a lesser degree (see *Yee Heng Khay (alias Roger) v Angliss Singapore Pte Ltd and another matter* [2022] 2 SLR 521 at [13]). Accordingly, and *a fortiori*, evidence pertaining to a matter which was neither an issue at trial nor a substantive issue on appeal against the Judge's decision will not attract the application of these requirements.

15 As such, while the relevance and credibility of the documents listed in SUM 2 and SUM 16 would have a perceptible impact on the Respondents' argument on the *Hadkinson* principle, no leave was required to use them for this purpose as this argument simply did not relate to the substantive issues in AD 88. Instead, this argument pertained only to the issue of whether the court

Version No 2: 23 Sep 2024 (15:55 hrs)

should exercise its discretion not to hear the Appellants until Mr Darsan's alleged acts of contempt, intimidation or harassment had ceased.

16 We therefore made no order on SUM 2 and SUM 16. This also meant that even though SUM 12 had referred to certain documents which the Respondents only sought the court's permission to adduce in SUM 16 (which was filed later), such references were permissible.

SUM 12

17 We now turn to SUM 12. In this summons, the Respondents sought to strike out AD 88 and for an extension of time to do so. As the issue on the extension of time was logically anterior to the striking out application, we dealt with that issue first.

18 Under O 19 r 35(14) of the Rules of Court 2021, an application to strike out a notice of appeal must be filed and served by the applicant on the parties to the application within 14 days after service of the notice of the appeal on the applicant. In this case, the notice of appeal was served on 14 August 2023 and the application to strike out AD 88 should have therefore been filed by 28 August 2023. Instead, SUM 12 was only filed on 21 February 2024, about six months later.

19 In deciding if an extension of time should be granted for the filing of a striking out application, the court must have "some material" upon which it can exercise its discretion. This encompasses an assessment of: (a) the length of the delay, (b) the reason for the delay, (c) the merits of the "proceeding" in question, and (d) the question of prejudice: see *Aathar Ah Kong Andrew v OUE Lippo Healthcare Ltd* [2021] SGCA 48 at [24].

Version No 2: 23 Sep 2024 (15:55 hrs)

20 The Respondents, in their bid to provide an explanation for the delay, argued that the grounds for SUM 12 included matters which occurred after 28 August 2023. In particular, SUM 12 was precipitated by Mr Darsan's filing of a Writ Petition (Civil) No 14567 ("No 14567") in the High Court of Delhi on 6 November 2023 and his conduct thereafter.

21 On 28 November 2023, the Respondents filed HC/OA 1197/2023 ("OA 1197") for an anti-suit injunction ("ASI") to restrain Mr Darsan from pursuing prayer (iii) of No 14567 and any variation of it or any reliefs which have similar or like effect. This prayer was for "the court [to] direct [the Estate] to not proceed with the execution proceedings before the Singapore Court in view of the present proceedings". HC/SUM 3643/2023 ("SUM 3643") was also filed by the Respondents on the same day, which sought an *ex parte* interim ASI pending the final disposal of OA 1197. The interim ASI was granted on 28 November 2023.

22 On the same day, *ie*, 28 November 2023, Mr Darsan's lawyers in Delhi asked the High Court of Delhi to make an interim order directing that the "status quo be maintained *qua* the subject monies/shares" (the "Status Quo Order"). This was despite the fact that by the time of the hearing in Delhi, Mr Darsan's lawyers in Singapore would have allegedly informed his Indian lawyers about the interim ASI granted against Mr Darsan by the Singapore court. The Status Quo Order was uploaded on the website of the High Court of Delhi on 30 November 2023 but was dated 28 November 2023. The parties disagreed on the sequence in which the orders, *ie*, the interim ASI in Singapore and the Status Quo Order in Delhi, were granted.

23 On 5 December 2023, Mr Darsan filed an application to amend prayer (iii) of No 14567. This application was mentioned in a letter to the Singapore

Version No 2: 23 Sep 2024 (15:55 hrs)

court dated 11 December 2023 from Mr Darsan's former Singapore solicitors. The amended prayer asked for Mdm Lakshmi to be directed to "handover immediately to [the Indian Commissioner of Income Tax] any assets (in any form whatsoever) obtained by her pursuant to the execution Proceedings before the Singapore court in view of the present proceedings". The Respondents pointed to this application to argue that Mr Darsan was acting in contempt of court because the amended prayer (iii) did not comply with the Singapore court's order in SUM 3643. They were also of the view that this application to amend was not made *bona fide* for reasons which presently require no further elaboration.

24 In the light of Mr Darsan's conduct, the Estate's Singapore solicitors, on 1 December and 17 December 2023, wrote to ask the Singapore court not to hear AD/SUM 41/2023 ("SUM 41") filed by the Appellants for a stay of execution of the Judge's orders based on Mr Darsan's alleged misconduct and the *Hadkinson* principle. In any event, the court dismissed SUM 41 on 11 January 2024 but did not rely on the *Hadkinson* principle in doing so.

25 In the meantime, SUM 2 was filed on 5 January 2024. Although its terms were poorly drafted, it was, as mentioned above at [9]–[10], in fact an application to use documents to persuade the court not to hear AD 88. This was the first formal application by the Respondents in support of their reliance on the *Hadkinson* principle. That said, Mdm Lakshmi's written submissions dated 5 February 2024 for SUM 2 stated (at para 15) that Mdm Lakshmi had already relied on the *Hadkinson* principle in her Respondent's Case in AD 88 on 1 December 2023 to argue that the court should not hear AD 88 as Mr Darsan's conduct amounted to an abuse of process.

Version No 2: 23 Sep 2024 (15:55 hrs)

26 In these circumstances, Mdm Lakshmi argued that there was no delay in filing SUM 2. She had already mentioned the *Hadkinson* principle in her Respondent's Case on 1 December 2023 where she mentioned that an application would be filed for permission to adduce evidence to the court to pursue this point. However, there was no explanation as to why SUM 2 was filed more than one month later on 5 January 2024. SUM 12 was filed even later on 21 February 2024. This may have been in response to an observation made by the court at the CMC on 31 January 2024 that there was no formal application seeking to persuade the court not to hear AD 88. SUM 16 was filed on 20 March 2024 to adduce more documents in support of the Respondents' case on the *Hadkinson* principle.

27 On the other hand, Mr Darsan argued that the Estate had ample opportunity to file SUM 12 since No 14567 was filed on 7 November 2023 and had failed to provide any explanation for the delay in filing SUM 12. He also maintained that his actions were simply in accordance with his desire to comply with the orders of the Singapore courts as well as the Indian tax authorities. Specifically, the tax notices issued by the Indian tax authorities against Mr Darsan indicated that compliance with the Judge's orders would result in various penalties on Mr Darsan's part. He was therefore "compelled" to commence No 14567 before the High Court of Delhi as the Indian authorities would only be bound by orders of the Indian courts.

28 Against this backdrop, we took the view that no extension of time should be granted for the filing of SUM 12.

29 The length of delay in this case was not a short one. We accepted the Respondents' submission that the factual basis which SUM 12 was founded upon included matters which occurred *after* 28 August 2023. This did not,

Version No 2: 23 Sep 2024 (15:55 hrs)

however, necessarily mean that there was no delay. The Respondents failed to seek an extension of time even on 1 December 2023, when they had indicated in their Respondent's Case that they intended to pursue the issue on the *Hadkinson* principle based on, *inter alia*, the commencement of No 14567 and the obtaining of the Status Quo Order. By the Respondents' own position, 1 December 2023 was the date that the Estate made its position – that it would be an abuse of process for the Appellants to be permitted to pursue AD 88 – expressly clear. This must mean that the factual substratum underlying SUM 12 had been available to the Respondents from this date, even if subsequent events may have served to strengthen this application. As such, any delay should be assessed from 1 December 2023. On this basis, there was a substantial delay of more than two and a half months before SUM 12 was filed on 21 February 2024. Even if we considered SUM 2 as being an active step taken by the Respondents to persuade the court that Mr Darsan's conduct was an abuse of process, the delay between 1 December 2023 and 5 January 2024, when SUM 2 was filed, could not be characterised as insubstantial.

30 There were also no good reasons which were provided for the delay. As observed in the preceding paragraphs, it was open to the Respondents to have filed an application at any time following 1 December 2023.

31 That said, the striking out application was not entirely without merit. To this end, we mention the following matters.

32 First, Mr Darsan had failed in his multiple attempts at a stay of execution for the orders made against him by the Judge below – first in HC/SUM 1897/2023 and then in SUM 41. In addition, after SUM 41 was filed on 5 October 2024 (and before it was dismissed on 17 January 2024), Mr Darsan commenced No 14567 and obtained the Status Quo Order. His subsequent

Version No 2: 23 Sep 2024 (15:55 hrs)

application to amend prayer (iii) of No 14567 was ostensibly an attempt to "allay" the concerns of the Estate and to comply with the order in SUM 3643. Yet, he did not explain why an amendment (as opposed to a withdrawal) was necessary. Taken as a whole, the conduct of Mr Darsan suggested that he was only paying lip-service to the court's order in SUM 3643 and was simply looking to avoid complying with the Judge's orders below.

33 Second, it was telling that Mr Darsan had decided to involve the High Court of Delhi on his own accord even when all related proceedings had hitherto taken place in Singapore. While Mr Darsan claimed that he had "no choice but to request for ministerial intervention" because he faced conflicting orders from the Singapore courts and the Indian tax authorities, this was not persuasive. At that point, Mr Darsan had only received tax notices from the Indian tax authorities. Mr Darsan could have surfaced these notices to the Singapore courts and requested for, *eg*, a variation of the Judge's order such that no violations of Indian tax laws would result. Instead, Mr Darsan sought to obtain the Status Quo Order directly from the Indian courts, which ensured that he would not breach Indian tax laws but also, rather conveniently, that no enforcement of the Judge's orders by the Respondents could take place.

34 On the other hand, Mr Darsan alleged that Mdm Lakshmi was in breach of the Status Quo Order by proceeding with the application in SUM 3643 for the interim ASI on 28 November 2023. Conversely, Mdm Lakshmi argued that it was Mr Darsan's Indian lawyers who had proceeded to ask the High Court of Delhi for the Status Quo Order on 28 November 2023 despite the fact that his Singapore lawyers were already aware of the Singapore court's order in SUM 3643 by the time of the hearing in Delhi. In the absence of conclusive evidence as to the timing at which the respective orders were made in Singapore and Delhi, we were unable to make any findings as to whether either party was in

Version No 2: 23 Sep 2024 (15:55 hrs)

breach of each court's orders simply by way of proceeding with the respective hearings.

35 Accordingly, while there was *some* basis for the Respondents to argue that Mr Darsan's conduct amounted to an abuse of process, it was unsafe to conclude that this was so. Indeed, we noted that issues relating to whether Mr Darsan's conduct breached the Singapore court's order in SUM 3643 and/or was vexatious or oppressive were set to be considered in OA 1197 at a later date with the aid of expert evidence. Furthermore, we did not think that the circumstances warranted a striking out of AD 88 (see [38]–[39] below) or a refusal to hear AD 88.

36 As a final point, we did not see any prejudice which would be caused to the Appellants if the extension of time was granted that could not be remedied in costs but this was just one of various factors to be taken into account.

37 All things considered, we were of the view that the application for an extension of time for the filing of SUM 12 should be dismissed and we exercised our discretion accordingly. There was therefore no need for us to deal with the Respondents' striking out application as it had been filed out of time.

38 In any event, and for completeness, we were not persuaded that even if the alleged conduct of Mr Darsan constituted contempt of court and/or intimidation or harassment of Mdm Lakshmi, it reached the high threshold which warranted a striking out of AD 88.

39 Even if Mr Darsan's conduct was intended to frustrate the Estate's enforcement of the Judge's orders, this did not necessarily mean that his appeal should be dismissed. The situation would be akin to one where an unsuccessful

Version No 2: 23 Sep 2024 (15:55 hrs)

litigant simply refused to pay or transfer assets to a successful litigant and was taking steps to avoid doing so. While such conduct was not to be condoned, it did not yet warrant the striking out of an appeal.

40 For the avoidance of doubt, we stressed that our dismissal of SUM 12 did not mean that we were of the view that Mr Darsan had *not* acted in contempt of court or that he had *not* intimidated or harassed Mdm Lakshmi. The point was simply that even if he had done so, we took the view that, in the circumstances, AD 88 should be heard and should not be struck out peremptorily. Neither should the court decline to hear AD 88 pursuant to the *Hadkinson* principle. Whether Mr Darsan should suffer other consequences as a result of his conduct was a separate matter.

Conclusion

41 For the reasons above, we made no order on SUM 2 and SUM 16 and dismissed SUM 12. We reserved the costs of these applications to the hearing of AD 88.

Woo Bih Li
Judge of the Appellate Division

Debbie Ong Siew Ling
Judge of the Appellate Division

See Kee Oon
Judge of the Appellate Division

Version No 2: 23 Sep 2024 (15:55 hrs)

Tan Chee Meng SC, Lim Wei Lee, Daryl Wong, Victoria Yu, Chin Ming Fwu and Wee Min (WongPartnership LLP) (instructed), Narayanan Sreenivasan SC, Rajaram Muralli Raja and Eva Teh Jing Hui (K&L Gates Straits Law LLC) for the appellants;
Davinder Singh SC, Jaikanth Shankar, Jaspreet Singh Sachdev and Ng Shu Wen (Davinder Singh Chambers LLC) (instructed), Kanapathi Pillai Nirumalan and Ritesh Vaman (Niru & Co LLC) for the respondents.

Version No 2: 23 Sep 2024 (15:55 hrs)