IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[1997] SGCA 47

CA 38/1997

Between

Oriental Insurance Co Ltd

… Plaintiff

And

Bhavani Stores Pte Ltd

… Defendant

GROUNDS OF DECISION

Conflict of Laws — Choice of jurisdiction; Conflict of Laws — Choice of jurisdiction

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Oriental Insurance Co Ltd v Bhavani Stores Pte Ltd

[1997] SGCA 47

CA 38/1997
Karthigesu JA; L P Thean JA; Yong Pung How CJ
29 October 1997

1 **Judgment:**

2 **YONG PUNG HOW CJ**

3 (delivering the grounds of judgment of the court):

4 This was an appeal against an order of Goh Joon Seng J affirming the assistant registrar`s decision not to grant the appellants a stay of Singapore proceedings. The appellants are defendants to an action initiated by the respondents in Singapore for moneys allegedly owed to them by the appellants under various insurance policies. The appellants argued that Singapore proceedings should be stayed on the basis that India was clearly the more appropriate forum.

5 2. **Facts**

6 The respondents are a trading company and shippers based in Singapore. They arranged for 5,742.521 metric tons of raw cashew nuts (packed in bags)

to be shipped from Bissau, Guinea Bissau to Tuticorin, India, to be delivered thereafter to various consignees in India.

7 3.The appellants are an insurance company incorporated in India. They insured the shipment from Bissau to Tuticorin and the discharge of the shipment at Tuticorin under various policies (each relating to a different consignee).

8 4.5,768.216 metric tons of raw cashews contained in 81,942 gunny and polypropylene bags were loaded on MV Bahania Reefer at Bissau from 17 July to 2 September 1995. The ship sailed on 6 September 1995 and arrived at Tuticorin on or about 30 September 1995.

9 5.The goods were inspected on ship by surveyors Seascan Services Pvt Ltd of Tuticorin on 1 October 1995.

10 6.The discharge of the shipment was effected from 1 October to 8 October 1995. Offloading was done by stevedores using hooks and rope lines. Delivery was thereafter made to the various consignees.

11 7. **The dispute**

12 It was alleged that in the process of offloading, the hooks used by the stevedores tore the bags containing the nuts and some spillage took place. The appellants said that they arranged for the spillage to be swept up, packaged in 1802 bags and delivered to the consignees in their respective proportions.

13 8.The respondents alleged that as a consequence of the spillage, there was a shortfall of 408.315 metric tons of nuts which was worth, at the contract price, US$536,803.45. They claimed that as spillage was an insured risk, the appellants were liable under the insurance policies to compensate them for their

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loss. The amount asked for by the respondents was US$461,541.70, being the value of the shortfall less 1% the total value of the bills of lading. This computation was based on the terms of the contract. The respondents brought a suit in the High Court. The appellants filed a defence and then applied for a stay of proceedings on the basis that the action was more suitably tried in India.

14 9.The appellants` defence was two-pronged. They said firstly that the shortfall was not attributable to the spillage as the spilt nuts were swept up and delivered to the consignees. As a consequence, any spillage not swept up was minimal. Secondly, they claimed that the shortfall was attributable to drying of the nuts in transit and storage. The appellants claimed that the nuts lost weight because they lost moisture. Loss of weight through loss of moisture content was not insured under the policy and the appellants disputed liability on that basis. The parties` dispute therefore concerned the factual question of whether the loss was insured (spillage) or not insured (drying).

15 10. **Forum non conveniens**

16 We were asked to reconsider the lower judge`s decision not to grant a stay. The principles governing this matter are clear and established. The approach suggested by Lord Goff in ***The Spiliada*** [1987] 1 Lloyd`s Rep 1 has since been approved and applied by the Court of Appeal in **Brinkerhoff Maritime Drilling Corp & Anor v PT Airfast Services Indonesia and another appeal** [1992] 2 SLR 776 . We set out the relevant passages from the judgment of Lord Goff:

> *In my opinion, the burden resting on the defendant is not just to show that England is not the natural or appropriate forum for the trial, but to establish that there is another available forum which is clearly or distinctly more appropriate than the English forum. In this way, proper regard is paid to the fact that jurisdiction has been founded as of right*

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> *Since the question is whether there exists some other forum which is clearly more appropriate for the trial of the action, the court will look first to see what factors there are which point in the direction of another forum and these will include not only factors affecting convenience or expense (such as availability of witnesses), but also other factors such as the law governing the relevant transaction and the places where the parties respectively reside or carry on business.*
>
> *If the court concludes at that stage that there is no other available forum which is clearly more appropriate for the trial of the action, it will ordinarily refuse a stay*
>
> *If however the court concludes at that stage that there is some other available forum which prima facie is clearly more appropriate for the trial of the action, it will ordrinarily grant a stay unless there are circumstances by reason of which justice requires that a stay should nevertheless not be granted.*

17 11.These `circumstances by reason of which justice requires that a stay should nevertheless not be granted` are sometimes referred to as a `legitimate personal or juridical advantage` (per Lord Diplock in **MacShannon v Rockware Glass Ltd** [1978] AC 795 at p 812 and adopted by Lord Goff in ***The Spiliada***). However, the mere fact that the plaintiff has such a legitimate advantage for proceeding in Singapore is not decisive and the interests of all the parties and the ends of justice must be taken into consideration.

18 12.The ***Brinkerhoff*** case concerned an action for damages arising out of the crash of an airplane in Indonesia. An action brought in Singapore was sought to be stayed by the defendants. The defendants failed before the assistant registrar but succeeded before the High Court judge, a decision which was affirmed on appeal. The Court of Appeal adopted ***The Spiliada*** without qualification.

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19 13.More recently, in **Eng Liat Kiang v Eng Bak Hern** [1995] 3 SLR 97 at p 107 we affirmed our decision in the ***Brinkerhoff*** case. The judgment of the court was delivered by my brother judge LP Thean JA, who summarised the relevant principles as follows:

> *A stay will only be granted on the ground of forum non conveniens, where the court is satisfied that there is some other available and appropriate forum for the trial of the action. The burden of proof rests on the defendant, and the burden is not just to show that Singapore is not the natural or appropriate forum but to establish that there is another available forum which is clearly or distinctly more appropriate than the Singapore forum. The natural forum is that with which the action has the most real and substantial connection, and the court will consider what factors there are which point in that direction. If the court concludes at that stage that there is no other available forum which is clearly more appropriate for the trial of the action, it will ordinarily refuse a stay. If, however, the court concludes at that stage that there is some other available forum which prima facie is clearly more appropriate for the trial of the action it will ordinarily grant a stay, unless there are circumstances by reason of which justice requires that a stay should nevertheless be refused. The court in this respect will consider all the circumstances of the case.*

20 14.It is clear that in so pronouncing, this court followed its earlier decision in the ***Brinkerhoff*** case and the endorsement in that case of Lord Goff`s judgment in ***The Spiliada*** .

21 15.It was argued before us by the respondents that this test underwent a transformation following the decision of Judith Prakash JC (as she then was) in **The Hooghly Mills Co Ltd v Seltron Pte Ltd** [1995] 1 SLR 773 . The judgment was delivered on 31 October 1994 (it preceded the decision in ***Eng Liat Kiang*** by about ten months). This was an action brought in Singapore on a dishonoured bill of exchange drawn to effect payment for a shipment of hessian sugar bags which the purchasers, upon delivery of the bags, considered to be in non-conformity with specifications and consequently unmerchantable. The

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defendants had commenced proceedings in India against the plaintiffs for loss of profit from a sub-sale. The assistant registrar stayed proceedings in Singapore. The plaintiffs appealed and succeded before the learned judicial commissioner. Judith Prakash JC, stating in her judgment that she was applying ***The Spiliada*** and ***Brinkerhoff*** , made the following comments:

> *once the court is satisfied that there is another available forum which is, prima facie, the appropriate forum for the trial of the action, the burden shifts to the plaintiff to show the existence of special circumstances justifying a trial here. However, where the plaintiffs have, as in this case, founded jurisdiction here as of right in accordance with Singapore law, the defendants` burden is not just to show that Singapore is not the natural or appropriate forum for the trial but to establish that there is another available forum which is clearly or distinctly more appropriate than the Singapore court.*

22 16.It was argued before us that the substance of this passage was that where a plaintiff has established jurisdiction as of right, a higher burden is demanded of the defendant than where jurisdiction is granted other than of right. This was a confusing argument for more reasons than one. Firstly, it is patently clear that where the court has jurisdiction as of right, the burden of proving that another forum is more appropriate always falls on the defendant. Where, however, the court`s jurisdiction is premised on O 11, the burden of proving that Singapore is the appropriate forum falls on the plaintiff and this remains the case even when the defendant (served out of jurisdiction) comes to Singapore to contest the jurisdiction of the Singapore court. If the burden falls in one type of case on the defendant and in the other type of case on the plaintiff, we fail to appreciate the respondent`s argument that the defendant has a `higher` burden where jurisdiction is founded as of right. Where jurisdiction is not founded as of right, the burden falls on the plaintiff, not the defendant - it would thus be a nonsense to say that the defendant has a `lesser` burden in such cases.

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23 17.If at all, what the respondents` counsel might have relied on Judith Prakash JC`s dicta for is the proposition that the burden of proving forum non conveniens on a defendant is greater than the burden of proving forum conveniens on a plaintiff. If this were correct, it would make the appellants` task in the present appeal more difficult than say, the respondents` task would have been had they sought to serve the writ out of jurisdiction. However, this brings us to the second difficulty, for, if at all, the English cases only supply dicta in support of the opposite contention - that the burden where jurisdiction is founded on O 11 is higher than cases where the burden is founded as of right. Some suggestion of this may be found in the judgement of Lord Templeman in ***The Spiliada*** , in which he stated (at p 3) that:

> *Where the plaintiff is entitled to commence his action in this country, the court, applying the doctrine of forum non conveniens, will only stay the action if the defendant satisfies the court that some other forum is* ***more appropriate****. Where the plaintiff can only commence his action with leave, the court, applying the doctrine of forum conveniens will only grant leave if the plaintiff satisfies the court that England is the* ***most appropriate*** *forum to try the action. [Emphasis supplied.]*

24 18.The supposed difference in standards is signified by the italicised words. Even if we were to accept that this passage suggests that there is a lesser burden on a defendant to show that a foreign forum is `more appropriate` as contradistinct to a greater burden on a plaintiff to show that the Singapore court is `the most appropriate forum`, this would not have helped the respondents as such reasoning ran directly against the proposition for which they relied on ***The Hooghly Mills Co Ltd*** . However, we do not think that Lord Templeman was attempting to draw a distinction between the cases. Indeed, it is possible to read Lord Templeman`s dicta without concluding that a distinction in the standards was intended by him.

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25 19.Let us assume that there are three possible forums in an application for a stay - Singapore, Malaysia and Thailand. Let us assume further that the Singapore courts have jurisdiction as of right but that Malaysia is `more appropriate` than Singapore and Thailand `more appropriate` than Malaysia. The proper, indeed, `most appropriate` forum would be Thailand. But even if, for some reason, the factors pointing to Thailand were not highlighted to the court or purposely concealed from it, the court must as long as Malaysia is still `more appropriate` than Singapore, grant a stay. Thus the use of the phrase `more appropriate` in the context of applications for a stay. Whether the plaintiff then proceeds in Malaysia or Thailand is at his option, though if he were to proceed in Malaysia he would run the risk of having the proceedings stayed yet again in favour of Thailand.

26 20.The converse is true of an O 11 application. If either Malaysia or Thailand were `more appropriate` than Singapore, then Singapore would not be the `most appropriate` and the court should not exercise its discretion to grant leave. If, however, Singapore is `more appropriate` than Malaysia and Thailand, it would also logically be the `most appropriate` forum and leave should be granted - thus the use of that phrase in the context of O 11 cases. This is obviously just a matter of semantics. Equally obviously, the problem would never even arise where the choice is between two jurisdictions only, as the `more appropriate` jurisdiction would always be the `most appropriate` one.

27 21.We are therefore of the view that the true position is that stated by Lord Goff in ***The Spiliada*** , where he made the following observations concerning the standard of proof which a court should have reference to in exercising its discretion in an application for leave under O 11:

> *in the O 11 cases the burden of proof rests on the plaintiff, whereas in the forum non conveniens cases that burden rests on*

> *the defendant the effect is, not merely that the burden of proof rests on the plaintiff to persuade the court that England is the appropriate forum for the trial of the action, but that he has to show that this is clearly so. In other words, the burden is, quite simply, the obverse of that applicable where a stay is sought of proceedings started in this country as of right.*

28 22.We agree. There is no reason why there should be any distinction in the standard of proof between cases where the court is exercising a discretion to grant jurisdiction over a foreign defendant and cases where the court is deciding whether to grant a stay where jurisdiction has been founded as of right. Lord Templeman did not dissent from this view. This is apparent from his endorsement of the decision of Lord Goff, with whom the remaining Lords (Lords Keith of Kinkel, Griffiths and Mackay of Clashfern) agreed. To the extent that the passage cited from Judith Prakash JC`s judgment in ***The Hooghly Mills*** suggests that there is a bifurcation in the standards of proof required depending on whether jurisdiction is founded as of right or pursuant to leave granted under O 11, we think that it is misleading. We think that the correct interpretation of her dicta is that she was emphasising that it is not enough that a foreign forum may be more appropriate because there are factors favouring it. She was reiterating that, where a Singapore court has jurisdiction as of right, it must be convinced that the foreign court is so clearly and distinctly more appropriate that it would justify the court`s decision to deny the plaintiffs their day in a Singapore court. The same standard applies where the plaintiff seeks to persuade a Singapore court to exercise `exorbitant` jurisdiction over a foreign defendant.

29 23.Finally, though we recognise that considerations of comity dictate that the court be more circumspect where jurisdiction is founded other than of right, these considerations have already been fully incorporated into the ***Spiliada*** formulation. This appears from Lord Goff`s pronouncement that full

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and proper consideration of the fact that a court`s jurisdiction may be founded as of right is already self-contained in the first stage of the test:

> *In my opinion, the burden resting on the defendant is not just to show that England is not the natural or appropriate forum for the trial, but to establish that there is another available forum which is clearly or distinctly more appropriate than the English forum.* ***In this way, proper regard is paid to the fact that jurisdiction has been founded as of right*** *[Emphasis supplied.]*

30 Conversely, where (as in O 11 cases), the burden falls on the plaintiff to prove that Singapore is the more (or `most`) appropriate forum, the requirement that Singapore be proved to be `clearly and distinctly` so pays proper regard to the fact that jurisdiction is not founded as of right.

31 24.In summary, therefore, the appellants had the burden of proving that India is the forum with which the dispute has the most `real and substantial connection`. They had to show that Singapore is not the natural or appropriate forum and that India is the forum clearly or distinctly more appropriate than Singapore. Once it has discharged that burden, the court must grant a stay unless the respondent can highlight some personal or juridical disadvantage which would result. We now propose to discuss the relevant considerations.

32 25. **Governing law of the contract**

33 The policy was stipulated to be governed by English law and practice. This was a neutral factor and comity dictated that it should, in the absence of very strong evidence to the contrary, be assumed that English law would be applied fairly in both Singapore and India.

34 26. **Choice of jurisdiction clause**

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35 There was no express choice of jurisdiction clause. It was, however, provided that claims are payable in India or Singapore in US dollars. Two interpretations of this clause were possible. The first, suggested by the respondents, was that this amounted to a jurisdiction clause, with exclusive jurisdiction to India and Singapore. In that event, with the Singapore courts already being seized of jurisdiction and there being no pending proceedings in India, the normal course of action would have been to refuse a stay.

36 27.We were, however, not impressed by this argument. Adjacent to the clause stipulating that `Claims [are] payable at India or Singapore in US dollars`, the contract clearly states that

> *In the event of loss or damages which may involve a claim under this insurance, immediate notice thereof and application for survey should be given to: Survey Settling Agents, The Oriental Insurance Co Ltd, AVM Building, North Cotton Road, Tuticorin.*

37 Though falling short of a stipulation that claims are to be made to The Oriental Insurance Co Ltd in India, we were prepared to infer from this that, even if the parties had not gone so far as to contemplate that a claim would be settled (or rejected) by the appellants in India, the initial stages in processing a claim (notification of damage and survey) were to be set in motion in India.

38 28.We therefore took the view that the second interpretation of the provision that claims are payable in India or Singapore is the better one, namely, that the effect of that clause is simply that, wherever the claim is processed, amounts payable, if any, may be paid in India or Singapore at the parties` convenience. As the place of payment clause did not amount to a jurisdiction clause it did not have the effect of limiting the processing of a claim to India or Singapore. The question of what was the proper forum to dispute a claim was

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therefore still an open question to be determined in accordance with established principles.

39 29. **Place of business of parties**

40 The respondents are a Singapore incorporated company. The appellants suggested that the respondents do have a place of business in India and put a name and address to it: Bhavani Stores Pte Ltd at 76 MH Road, Madras, India. This was a bare assertion, unsupported by documentation, but curiously not denied by the respondents. The appellants, based on this, submitted that it would not be adverse to have the claim tried in India owing to the respondents` presence there. However, it would appear that even if we were to have accepted this evidence of the respondents` presence in Madras, evidence for the respondents would still have had to be given by a representative in Singapore as there was no indication that the India office of the respondents` company was involved in the transaction.

41 30.As for the appellants, it was evident from the contract that they operate out of Dubai but are incorporated in India. The policy was issued and underwritten in Dubai. The appellants` correspondence address in Dubai is a post office box. However, the survey settling agents (to whom claims are, under the policy, to be notified) are in India.

42 31.It was undisputed that the appellants have also had a registered office in Singapore since 1961. It was on this office that the respondents served their writ to establish jurisdiction as of right in accordance with s 387 of the Companies Act (Cap 50). However, this registered office has not been operative since 1988 save to the extent of handling claims made on policies issued before 1988. The claims are handled by the India Insurance Co. The appellants

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therefore argued that, notwithstanding their presence within the jurisdiction, this alone should not weigh heavily against their application as their presence here was a mere formality and they would, in the event a stay was not granted, have to convey their own representatives from India to Singapore.

43 32.On balance, these considerations favoured neither forum as the appellants` solicitors would still have to be instructed from India if the litigation took place here; if a stay was granted, the respondents` Indian solicitors would have to be instructed from Singapore. Similarly, representatives from either side would have to travel to give evidence whatever the result of the appeal.

44 33. **Performance of the underlying contract and witnesses to breach**

45 We were of the view, however, that as regards the relationship between the underlying transaction for the shipment of the goods and the contract insuring losses arising out of that transaction, the majority of the factors pointed to India. The policy insured goods delivered to India and offloaded in India by Indian stevedores. The goods were surveyed on ship by Indian surveyors. The goods were delivered thereafter to Indian consignees. Payment for the shipment was made by letter of credit in India issued by an Indian bank.

46 34.This was also the case as regards the two central issues surrounding the issue of liability, namely, the amount of spillage and the extent of the recovery thereof, and secondly, the condition of the nuts upon delivery and whether or not there was significant drying of the nuts in passage.

47 35.Concerning the first dispute, most of the relevant factors suggested India as the natural forum - the witnesses to the offloading, spillage, recovery and delivery of the nuts to the consignees are all based there. The appellants

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indicated they would be calling numerous witnesses based in India, including: (a). the survey settling agent (to prove that no immediate notice was given of the claim);

48 (b). stevedores from Tuticorin (who discharged the goods);

49 (c). the surveyors (Seascan);

50 (d). security personnel from the port of Tuticorin and the Tuticorin police (to prove that the lost goods were not stolen);

51 (e). investigators appointed by themselves to investigate whether the goods were stolen;

52 (f). witnesses to prove that the number of bags loaded was equivalent to the number of bags offloaded and further that 1082 bags of swept nuts were shipped to consignees.

53 Of these, the appellants stressed that (b), (d) and (f) were not only not compellable (being out of the jurisdiction), but would be virtually impossible to persuade to come to Singapore to give evidence. Concerning (d) and (e), the learned judge rightfully considered that these were not necessary as there was no allegation of theft in the pleadings. We therefore excluded this from our consideration. The learned judge also considered that (a) was not necessary because notice would be given in writing. It was not clear if the learned judge thought that the evidence could be given by the parties` representatives. However if this was his understanding, we failed to see how it answered the objection that the appellants` representatives would have to come to Singapore

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from India to give evidence (or at least to be cross-examined) as to the date and manner notice was given.

54 36.As regards the second issue, namely, the condition of the nuts, in an ideal case witnesses would be obtained from Guinea Bissau (to testify as to condition upon shipment) and India (to testify as to condition upon delivery). However, no pre-shipment and post-shipment quality surveys were performed in this case and hence the precise condition of the nuts (in terms of scientific measurements of moisture content) were not easily ascertainable. The appellants indicated they would rely on expert evidence to prove that the nuts were likely to have lost weight through loss of moisture. They indicated that they wished to appoint experts in India, but suggested no reason why they would not be able to appoint experts in Singapore.

55 37.Although we accepted the respondents` argument that experts may be procured in Singapore, we were also aware that it would be harder to get a local expert to testify as to the weather conditions in India prevailing at the time of delivery and the effect of those conditions on drying and moisture content. At best this was a neutral factor and heavily counterweighted by the consideration that the witnesses of fact were based in India.

56 38. **What is the natural forum?**

57 This left us with the question what was the natural forum, or the forum with which the claim had most real and substantial connection? Most of the factors pointed to India. The only connections to Singapore suggested by the respondents were that it was the place of business of the respondent shippers, claims were payable optionally in Singapore under the policy, and the appellants had a registered office in Singapore. None of these factors were conclusive and

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were, by and large, neutral in character. The persuasive factors, namely, that the place of discharge of the goods was India and the basis for the plaintiffs` claim was that defective discharge of the goods in India was an insured risk, pointed away from Singapore.

58 39.Most of the witnesses of fact were based in India. The only witness based in Singapore was the representative of the respondent company. Although the respondents argued that they would have the burden of proving their case and so the expense of bringing in witnesses to Singapore would be theirs, we were conscious that the appellants would also have to bring in witnesses to rebut the respondents` witnesses` evidence. The learned judge held that

> *the need for the defendant to rebut the plaintiff`s evidence by itself is no reason to compel the plaintiff to litigate in India (at para 14(2) of his grounds).*

59 With all due respect to the judge in the court below, the location of the witnesses was critical in this case as the dispute involved questions of fact, as we will elaborate in the paragraph that follows.

60 40. **Classification of dispute as question of fact or law**

61 The main dispute was whether or not the respondents had an insurable interest - loss of weight through spillage was insured, loss through drying was not. The learned judge seemed to accept the respondents` submission that this was a pure question of law. The learned judge reasoned that, as such, disputes of fact were less significant, the consequence of which was that the location of witnesses became a subsidiary factor and so a stay was not in order. The appellants contended that this was a mixed question of law and fact, with which we agreed. The question of law was what was covered by the policy and what was not - this was a matter of pure construction and was relatively

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straightforward. On a plain reading, the policy prima facie, covered loss through spillage but not loss through drying. The main dispute, however, was over a question of fact, namely, whether there was spillage (in which event the appellants were liable to the proven extent of the spillage) or whether there was drying (in which event the appellants were not liable under the policy). The witnesses who would be able to establish which version of the facts was correct were predominantly in India.

62 41.In the light of the above considerations, we were of the view that the learned judge should have granted a stay of proceedings, subject to the plaintiff proving he would suffer an undue disadvantage as a consequence.

63 42. **Personal or juridical disadvantage**

64 The respondents argued that they would be put to extra cost and expense if litigation was in India and that they had no place of business in India. These matters alone could not assist the respondents because the same factors would work against the appellants if a stay was refused. They would also have to bear the cost of bringing to Singapore substantially all their witnesses.

65 43.We were also aware of the fact that whereas some of the appellants` witnesses would not have been compellable if the matter was tried in Singapore, no similar disadvantage would be suffered by the respondents, who thus far had indicated only one witness who would have to travel to India. That witness, being the respondents` representative in court, would naturally not refuse to give evidence. Furthermore, it was clear that the appellants` instructions originated in India and the respondents` instructions in Singapore. Therefore no matter which jurisdiction the matter was tried in, one party`s solicitors would have to take instructions from overseas, and this was a neutral factor.

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66 44.The respondents also said they might have to put up security for costs, and that a speedier resolution could be had in Singapore. However, no evidence was raised to suggest the likely delay (if any). In the absence of such evidence, we were unable to give credence to the respondents` assertion. Furthermore, even if we were to accept that there would be substantial delay if proceedings were stayed, this consideration, though valid, was not so weighty as to merit a stay of proceedings.

67 45.Ultimately, any delay which might be occasioned by a stay, in our view, would not represent a substantial injustice to the respondents. The overall effect would be to cause them inconvenience. However, this was not a case, to borrow a phrase from the judgment of Lord Brandon of Oakbrook in **The Abidin Daver** [1984] 1 All ER 470, in which there was an overwhelming balance of convenience in favour of the respondents.

68 46.On the matter of enforcement, there would be no disadvantage to the respondents if a stay was granted for, should they win, the contract states that the claim is payable in India or Singapore. They may enforce judgment directly against the appellants in India (their place of incorporation). Costs can be recovered directly against the appellants in India. On the issue of costs, the only disadvantage would be suffered by the appellants: if they win and cannot recover costs from the respondents in India, they will have to come to Singapore to recover costs (or more accurately, to enforce the costs order).

69 47.The respondents argued that they would be prejudiced by a stay because their claim was time-barred in India. Although this would, if proven, have represented a valid juridical disadvantage in that a stay would have deprived the respondents of their remedy, the respondents did not prove that their claim was so barred. Counsel for the appellants submitted that the time-

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bar only applied to claims on the underlying contract, ie a claim against the stevedores or carriers, but a claim against the insurance company would not be time-barred. Similarly, however, no evidence was put forth in support of this contention. In any event, the appellants indicated that they would be prepared to undertake to refrain from raising the limitation issue as a condition of the stay of Singapore proceedings. This obviated the respondents` objection on this point.

70 48. **Conclusion**

71 In conclusion, we were of the view that the respondents had not highlighted any disadvantage which was so significant that it could justify importing the whole body of evidence from India to Singapore for trial. The natural forum was India. We therefore allowed the appeal and ordered a stay of proceedings.

Karthigesu JA
L P Thean JA
Yong Pung How CJ

Danny Chua and Magdalene Chew (Khattar Wong & Partners) for the appellants
Lawrence Quahe (Harry Elias & Partners) for the respondents

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