IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[1999] SGCA 68

CA 23/1999, NM 239/1999

Between

Spandeck Engineering (S) Pte Ltd

… *Appellant*

And

Yong Qiang Construction

… *Respondent*

GROUNDS OF DECISION

Civil Procedure — Appeals — Leave; Statutory Interpretation — Construction of statute — Purposive approach; Words and Phrases

Version No 1: 20 Nov 2026 (01:16 hrs)

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Spandeck Engineering (S) Pte Ltd v Yong Qiang Construction

[1999] SGCA 68

CA 23/1999, NM 239/1999
Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ
07 September 1999

1 (delivering the grounds of judgment of the court): ***Introduction***

2 This was a motion by the respondents to strike out CA 23/99 filed by the appellants on the ground that leave to appeal was required under s 34(2)(a) of the Supreme Court of Judicature Act (Cap 322, 1999 Ed) (`the SCJA`) and that no such leave had been obtained by the appellants. We agreed with the respondents that leave to bring this appeal was required, and as no leave had been obtained, we allowed the motion and struck out the appeal. We now give our reasons.

3 ***The facts***

4 The appellants were the main contractors for the Housing and Development Board`s building project known as `Kallang Whampoa`. The respondents were appointed the sub-contractors of the appellants for the same project by an agreement made between them. In relation to that subcontract, a dispute subsequently arose between them. On 7 March 1998, the respondents took out a writ of summons in Suit 1219/98 in the District Court, claiming against the appellants the sum of $62,275.51, representing the retention sum

under the subcontract. The writ was served on the appellants on 17 March 1998. On 19 March 1998, the appellants entered an appearance. The appellants then took out an application for an extension of time to file and deliver their defence, and at the hearing of that application, an order was made giving the appellants an extension of time to 29 April 1998 to file their defence. The appellants` solicitors, however, were still unable to finalise the defence by the extended time. On 30 April 1998, the appellants` solicitors asked the respondents` solicitors for a further extension of time to file their defence. The latter replied that the respondents had applied to enter judgment in default of defence against the appellants. The default judgment was duly entered against the appellants on 30 April 1998.

5 On 4 May 1998, the appellants filed an application to set aside the default judgment. The application was heard before the deputy registrar, who granted the appellants` application and set aside the default judgment. The respondents appealed to the District Judge against the deputy registrar`s decision. The District Judge allowed the appeal and reinstated the default judgment. Against the decision of the District Judge the appellants appealed to the High Court. The High Court dismissed the appeal. The appellants then appealed to this court against the decision of the High Court refusing to set aside the default judgment.

6 ***The issue***

7 It was not in dispute that the amount or value of the subject matter involved in the appeal was $62,275.51. That was the amount claimed by the respondents for which the judgment in default was entered, and that was the judgment the appellant sought to set aside. The issue before us was whether, in view of the amount or value of the subject matter being less than $250,000, the

Version No 1: 20 Nov 2026 (01:16 hrs)

appellants were required to obtain leave to appeal under s 34(2)(a) of the SCJA. Section 34(2), in so far as relevant, provides as follows:

> *Except with the leave of the Court of Appeal or a Judge, no appeal shall be brought to the Court of Appeal in any of the following cases:*
>
> (a) where the amount or value of the subject-matter at the trial is $250,000 or such other amount as may be specified by an order made under subsection (3) or less;
>
> …

8 Counsel for the respondents submitted that where the amount or value of the subject matter was $250,000 or less, an appeal cannot be brought unless leave under s 34(2)(a) has been obtained. That precisely was what happened here. The amount or value of the subject matter in this case was much less than the jurisdictional limit, and as no leave had been obtained, the appellants` appeal was not sustainable and ought to be struck out. Counsel for the appellants, on the other hand, submitted that in view of the wording in s 34(2)(a), namely: `the amount or value of the subject-matter at the trial is $250,000 ... or less`, that provision is applicable only where there has been a trial in the court below, whether it be the High Court or the District Court. In this case, there had not been a trial, and therefore the appellants were not required to obtain leave under s 34(2)(a) of the SCJA to bring the appeal before this court.

9 The issue really turned on the interpretation of the word `trial` in para (a) of sub-s (2) of s 34. On this issue, both counsel appeared to have accepted the following definition of `trial` as given in the following passage of ***Jowitt`s Dictionary of English Law*** (2nd Ed) at p 1805:

> *Trial, the hearing of a cause, civil or criminal, before a judge who has jurisdiction over it, according to the laws of the land. A trial is the finding out by due examination the truth of the point in*

Version No 1: 20 Nov 2026 (01:16 hrs)

> *issue or question between the parties, whereupon judgment may be given (Co Litt 124b).*
>
> *A trial is that step in an action, prosecution or other judicial proceeding, by which the questions of fact in issue are decided.*

10 Counsel for the respondents relied essentially on the first paragraph of this passage and submitted a broad meaning for the word `trial`. In his submission, a trial need not necessarily involve the calling of witnesses and the taking of oral evidence. A trial may be based on the evidence as given in affidavits. In this case, to set aside the default judgment, the appellants had to show that their defence had a real prospect of success and carried some degree of conviction. At the hearing below the court duly considered the affidavit evidence tendered by both parties and found, on the facts, that the appellants` defence had not satisfied the test. Counsel submitted that the court made a `finding` of `the truth` of the matters in issue by due examination of the affidavits, and that the hearing was one involving a decision on the facts in issue and therefore fitted in with the definition of a `trial`.

11 Counsel for the appellants also relied on the same definition, but he submitted a narrower meaning for the word `trial`. He suggested that a trial meant a hearing before a court at which evidence is adduced, arguments are canvassed and heard and questions of fact and/law are finally decided. There was in this case no such hearing. In support, counsel referred to O 33 to 36 of the Rules of Court which deal with the various modes of trial, and the modes of trial described there are consistent with the definition of a `trial`. In this case, none of these modes of trial took place below. What took place was a hearing in chambers where only arguments were heard based on the affidavits filed. In the ordinary sense of the word `trial` as commonly understood, there had not been a trial for the purpose of s 34(2)(a) of the SCJA.

Version No 1: 20 Nov 2026 (01:16 hrs)

12 We were unable to accept the meaning of the word `trial` in s 34(2)(a) in the sense as contended by counsel for the appellants. Such a meaning, if accepted, would lead to anomalous results. For instance, an interlocutory or final judgment is given in the District Court (in which there has not been a trial) in a suit in which the value of the subject matter exceeds $50,000 but not $250,000, as in the present case. From such judgment, whether it be interlocutory or final, an appeal may be taken to the High Court as of right. Now, if the appellants` contention is accepted, the decision of the High Court on that appeal may be taken further on appeal, as of right, to this Court (without leave) on the ground that s 34(2)(a) of the SCJA is not applicable as there has been no `trial` before either the District Court or the High Court. On the other hand, if the suit is finally disposed of by the District Court at a trial resulting in a final judgment being given, that judgment may be taken on appeal to the High Court, but from the decision of the High Court on that appeal, there would be no further appeal to this court, unless leave under s 34(2)(a) is obtained.

13 Applying that example to the facts of this case, the result would precisely be the same. If we were to hold, as urged by the appellants, that no leave is required on the ground that s 34(2)(a) is not applicable, the appeal would be heard. In such an event, assuming that the appellants succeeded in the appeal, the default judgment would be set aside and the matter would then proceed to trial. Assuming further that at the trial, the respondents obtained judgment for the same amount, ie $62,275.51, that judgment may be taken on appeal, as of right, to the High Court, but from the decision of the High Court on that appeal, there would be no right of appeal to this court, unless leave is obtained under s 34(2)(a).

14 Similarly, the same anomaly would arise if, instead of a default judgment, the respondents obtained a summary judgment for the same amount

Version No 1: 20 Nov 2026 (01:16 hrs)

against the appellants. From that judgment an appeal lies, as of right, to the High Court. Now, if the appellants` contention is accepted, there would be a further appeal, as of right, to this court (without leave). On the other hand, if the respondents obtained not summary judgment but judgment at the trial for the same amount against the appellants, the end result, as regards appeals, would be different: there would a right of appeal from that judgment to the High Court but there would be no further appeal from the High Court, as of right, to this court without leave. In our opinion, such incongruous results cannot be correct.

15 Further, counsel for the appellants relied on s 21(1) of the SCJA which provides as follows:

> *Subject to the provisions of this Act or any other written law, an appeal shall lie to the High Court from a decision of a District Court or Magistrate`s Court in any suit or action for the recovery of immovable property or in any civil cause or matter where the amount in dispute or the value of the subject-matter exceeds $50,000 or such other amount as may be specified by an order made under subsection (3) or with the leave of a District Court, a Magistrate`s Court or the High Court if under that amount.*

16 Comparing this subsection with sub-s (2) of s 34, counsel submitted that the absence of the words `at the trial` after the words `the value of the subject-matter` in s 21(1) indicates that leave is required to bring an appeal to the High Court, so long as the amount in dispute or the value of the subject matter does not exceed $50,000. Unlike s 34(2)(a) (in which the words `at the trial` appear after the words `the amount or value of the subject-matter`), a trial in the court below is not a prerequisite for the application of s 21(1).

17 Again, we were unable to accept this submission. If that submission was correct, the operation of those two sections would give rise to the following anomaly. Where a judgment, whether interlocutory or final, is given by the District Court (in which there has been no trial) in a suit in which the amount in

Version No 1: 20 Nov 2026 (01:16 hrs)

dispute or the value of the subject matter does not exceed $50,000, leave will be required under s 21(1) of the SCJA for an appeal to be taken to the High Court; yet on a subsequent appeal to this Court from the order of the High Court disposing of that appeal from the District Court, no leave is required under s 34(2)(a), as there has been no `trial` on the matter before the court below. Surely that cannot be right. In our opinion, apart from the difference in the monetary limits in s 34(2)(a) and s 21(1), in principle there is no difference in the scope of application of these two provisions.

18 In construing the word `trial` in s 34(2)(a), we have to adopt a purposive approach and give it a meaning so as to avoid a result which Parliament could not possibly have intended. Counsel for the respondents pointed out that the limit of $250,000 in s 34(2)(a) of the SCJA is also the upper limit of the District Court`s jurisdiction under the Subordinate Courts Act (Cap 321, 1999 Ed), and submitted that the objective of s 34(2)(a) of the SCJA is to ensure that where appeals from the decisions of the District Court have been heard and disposed of by the High Court, there should be no further appeals therefrom to this court unless (on sufficient grounds shown) leave of this court or a judge of the High Court is given. It acts as a process for screening appeals to be brought to this court; otherwise the court would be clogged up by all kinds of appeals. Section 34(2)(a) effectively limits the right of appeal from the District Court to only one tier, ie the High Court, and further appeal to this court may only proceed with leave. We agreed with this submission.

19 Prior to the amendments made by the Supreme Court of Judicature (Amendment) Act 1998, s 34(2)(a) read as follows:

Version No 1: 20 Nov 2026 (01:16 hrs)

> (2) Except with the leave of the Court of Appeal or a Judge, no appeal shall be brought to the Court of Appeal in any of the following cases:
>
> (a) where the amount or value of the subject-matter at the trial is $30,000 or less;

20 The amending Act of 1998 amended para (a) by deleting the sum of `$30,000` and substituting therefor the words `$250,000 or such other amount as may be specified by an order made under subsection (3)`. All that the amendment did was to increase the monetary limit from $30,000 to $250,000 and no other changes were made. However, the underlying purpose of this amendment was to bring it in line with the jurisdiction of the District Court. The jurisdiction of the District Court had, as from 1 August 1997, been increased to $250,000 and the amendment made to s 34(2)(a) in 1998 was to bring it in line with the increased jurisdiction of the District Court and to allow an appeal to be brought to this court only where leave to appeal is obtained from this court or a judge of the High Court. This was evident from the speech of the Minister for Law, Professor Jayakumar, when he moved the Second Reading of the Supreme Court of Judicature (Amendment) Bill on 26 November 1998. He said:

> *On 1 August 1997, the District Courts` jurisdiction in civil matters was raised from $100,000 to $250,000 ... In view of the enhanced District Courts` jurisdiction to $250,000 in civil matters, the Chief Justice has proposed that the existing $30,000 limit in s 34(2)(a) be raised to $250,000. In other words, bring its limit in line with the enhancement. If the limit is not raised to $250,000, District Court cases of less than $250,000 can first go on appeal to the High Court and then Court of Appeal. This would strain the limited resources of the Court of Appeal.*

21 It seemed to us abundantly clear that the intention of Parliament in making the amendment to s 34(2)(a) of the SCJA was to limit the right of appeal to this court. Hence, in any appeal from the decision of the High Court, in which the value of the subject matter involved does not exceed $250,000, leave to appeal must be obtained either from this court or a judge of the High Court.

Version No 1: 20 Nov 2026 (01:16 hrs)

22 Adopting a purposive approach, we are of the opinion that the word `trial` in s 34(2)(a) means a hearing, whether in open court or in chambers, in which the judge determines the matter in issue before him, whether it be an issue of fact or law. Such a meaning is consistent with the meaning as given in Jowitt. In addition, the following definition of a `trial` as given in ***Black`s Law Dictionary*** (6th Ed) at p 1504 is also helpful:

> ***Trial***. *A judicial examination and determination of issues between parties to action, whether they be issues of law or of fact, before a court that has jurisdiction. Tittsworth v Chaffin, Mo App, 741 SW 2d 314, 317. A judicial examination, in accordance with law of the land, of a cause, either civil or criminal, of the issues between the parties, whether of law or fact, before a court that has proper jurisdiction.*

23 ***Conclusion***

24 In our judgment, s 34(2)(a) of the SCJA applies to any appeal from an order or judgment given at a hearing in a suit or matter in which the amount or value of the subject matter does not exceed $250,000. For the reasons given, we were unable to accept the appellants` contention that no leave was required under s 34(2)(a) of the SCJA for them to bring this appeal. We therefore allowed the motion with costs and struck out the appeal.

25 **Outcome:**

26 Motion allowed.

Version No 1: 20 Nov 2026 (01:16 hrs)

Chao Hick Tin JA
L P Thean JA
Yong Pung How CJ

Ravi Chelliah and Soh Lip San (Cooma Lau & Loh) for the appellants
N Sreenivasan (Derrick Ravi & Partners) and Ramalingam Kasi (Raj Kumar & Rama) for the respondents

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Version No 1: 20 Nov 2026 (01:16 hrs)