Abex Centre Pte Ltd v Public Prosecutor
[2000] SGHC 48

Case Number : MA 246/1999

Decision Date : 28 March 2000

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Mahendra S Segeram (Segeram & Co) for the appellants; Norul Huda Rashid (Deputy Public Prosecutor) for the respondent

Parties : Abex Centre Pte Ltd — Public Prosecutor

Criminal Procedure and Sentencing – Compensation and costs – Costs of prosecution – Whether appellants should be ordered to pay costs of prosecution – Principles applicable in court's exercise of discretion – s 401(1) Criminal Procedure Code (Cap 68, 1985 Rev Ed)

Criminal Procedure and Sentencing – Compensation and costs – Costs of appeal – Whether appellants should be ordered to pay costs of appeal to prosecution – Principles applicable in court's exercise of discretion – s 262(1) Criminal Procedure Code (Cap 68, 1985 Rev Ed)

Criminal Procedure and Sentencing – Compensation and costs – Costs of prosecution and appeal – Test in determining whether accused should pay costs – Whether accused conducts defence or appeal "extravagantly and unnecessarily"

: This appeal arose in relation to a warrant for dispossession obtained by the Collector of Land Revenue against the appellants, Abex Centre Pte Ltd, pursuant to ss 2 and 4(1) of the State Lands Encroachments Act (Cap 315) (the `Act`). The warrant for dispossession was obtained as the appellants were found to be in unlawful occupation of certain State lands, to wit, Lot 65 TS 19, on which stands a three-storey building known as No 2 Adis Road, Singapore 229974 (the `State land`).

The appellants filed a notice of appeal and petition of appeal against the issue of the warrant for dispossession. This appeal, however, was withdrawn on the day of the hearing. The prosecution sought costs under ss 262(1) and 401(1) of the Criminal Procedure Code (Cap 68) (`CPC`) and I ordered the prosecution`s costs in this appeal and in the court below to be borne by the appellants. I now give my reasons.

The facts

The appellants entered into a tenancy agreement (the `agreement`) with the State in respect of the State land on 18 July 1998. Clause 1(1) of the agreement stated that the State land was to be held in accordance with the terms and conditions therein and subject to the provisions of the State Lands Rules 1993 (the `State Lands Rules`), including r 29(1), for a term of three years from 9 May 1998. Rule 29(1) states:

> *The Collector of Land Revenue may at any time cancel or revoke any licence issued or terminate any tenancy agreement entered under these Rules.*

From September 1998 onwards, the appellants fell into arrears of rental. The Collector of Land Revenue sent several letters of demand but the appellants still failed to settle the outstanding amount. On 9 March 1999, the appellants paid $50,000 of the outstanding amount. On the same day, the Collector of Land Revenue proposed an instalment scheme to settle the remaining amount but

there was no response from the appellants.

On 22 March 1999, the Collector of Land Revenue issued a letter to the appellants together with a notice to remove. The letter stated:

> *2 Clause 2(1) of the tenancy agreement you entered into with the Government of the Republic of Singapore for the State property at No 2 Adis Road requires you to pay the rental on a monthly basis. You, however, did not comply with this requirement and failed to pay up the rental arrears despite ample time being given to you to do so.*
>
> *3 I am to inform you that I have terminated the tenancy agreement with immediate effect. Notice is hereby given that you are required to vacate and deliver vacant possession of the premises at No 2 Adis Road to me within 1 month from the date of this letter. If you fail to comply, I will take out summons against you under the State Lands Encroachments Act (Cap 315) thereafter without further notice.*

On 4 June 1999, a complaint was filed against the appellants under s 2 of the Act in order to obtain a warrant for dispossession under s 4(1) of the Act. As of 24 August 1999, a site inspection revealed that the appellants were still in occupation of the State land. As at 31 August 1999, the total outstanding amount owed by the appellants was $600,057.49.

On 8 September 1999, district judge Eddy Tham found that the agreement had been validly terminated under r 29(1) of the State Lands Rules. The appellants were thus in unlawful occupation of the State land. The district judge issued a warrant for dispossession against them under s 4(1) of the Act.

The appeal

On 17 September 1999, the appellants lodged a notice of appeal against the order of the district judge granting the warrant for dispossession. Thereafter, as the appellants did not apply for a stay of the warrant for dispossession pending the appeal, the State Lands Office obtained the warrant and served it on the appellants with 28 days` notice to vacate the State land. However, on 10 December 1999, just two days before the expiry of the 28 days` grace period, the appellants applied for and obtained a stay of execution of the warrant for dispossession pending the appeal. On 17 January 2000, the appellants filed their petition of appeal.

The appellants` case, essentially, was that in the light of cll 1(2) and 4(2) of the agreement, the district judge erred in holding that the agreement was validly terminated under r 29(1) of the State Lands Rules. The appellants contended that cll 1(2) or 4(2) should have applied instead of r 29(1) and that since the agreement was not validly terminated under cll 1(2) or 4(2), they were not in unlawful occupation of the State land. Clauses 1(2) and 4(2) provide:

> *1(2) The tenancy may be terminated by either party on three (3) calendar months` notice in writing to the other party. Such termination shall be without prejudice to the rights and remedies of the Landlord against the Tenant in respect of any antecedent breach of this Agreement by the Tenant.*

4(2) Notwithstanding Clause 1(1) of this Agreement if the rent herein reserved or any part thereof shall remain unpaid for fourteen (14) days after becoming due (whether formally demanded or not) or if any of the conditions or stipulations herein contained on the Tenant`s part to be performed or observed shall not be so performed or observed ... then and in any such cases it shall be lawful for the Landlord at any time thereafter to re-enter upon the said property or any part thereof in the name of the whole and thereupon the tenancy hereby created shall absolutely determine but without prejudice to any right of action accrued to the Landlord in respect of any antecedent breach of this Agreement by the Tenant.

Withdrawal of appeal

On 11 March 2000, just three days before the hearing of the appeal, the prosecution received news that the appellants` counsel had been instructed to withdraw the appeal at the hearing. At the hearing, the appellants` counsel requested for leave to withdraw the appeal. The prosecution did not object to the appellants` request and I therefore granted leave to withdraw the appeal. The prosecution, however, proceeded to address the court on the issue of costs. After hearing arguments from both sides, I ordered costs of the appeal and costs below to be awarded to the prosecution.

Costs

Under s 262(1) of the CPC, this court has the power to order the costs of this appeal to be paid by or to the parties involved. Section 262(1) provides:

The High Court shall have the full power in all proceedings under Part VII to award such costs to be paid by or to the parties thereto as the Court thinks fit.

This appeal falls under Part VII of the CPC.

Apart from the costs of this appeal, this court also has the power and discretion to award to the prosecution their costs incurred in prosecuting the appellants in the court below. Section 401(1) of the CPC provides:

The court before which a person is convicted of any crime or offence may, in its discretion, make either or both of the following orders against him:

(a) an order for the payment by him of the costs of his prosecution or such part thereof as the court directs.

...

The principle governing the exercise of the court`s discretion under s 401(1) of the CPC was

enunciated by this court in **Oh Cheng Hai v Ong Yong Yew** [1993] 3 SLR 930 and affirmed in the recent case of **Arts Niche Cyber Distribution Pte Ltd v PP** [1999] 4 SLR 111 . The principle warrants repetition here. In ***Arts Niche Distribution Pte Ltd v PP*** (supra at p 127), it was said:

> *... The court has a wide discretion to order costs under this section (s 401(1) of the CPC). In exercising its discretion, the court is entitled to take all the circumstances into account, including the strength of the prosecution`s case, the accused`s knowledge of this, and his conduct of his defence. In particular, where the accused loses his case and the court is of the view that his defence has been conducted `extravagantly and unnecessarily`, he may be ordered to pay some of the costs which he has caused the prosecution to incur (**Oh Cheng Hai v Ong Yong Yew** [1993] 3 SLR 930 at 937). One way of determining whether the accused`s defence has been conducted `extravagantly and unnecessarily` would be to consider whether the line of defence mounted has advanced his case: **Jasbir Kaur v Mukhtiar Singh** [1999] 2 SLR 349 ...*

As for s 262(1) of the CPC, this court has held in **Wee Soon Kim Anthony v PP** [1993] 1 SLR 372 and affirmed in ***Arts Niche Cyber Distribution Pte Ltd v PP*** (supra) that the provision has been framed in very wide terms and leaves entirely to the High Court the question of costs of a criminal appeal under the CPC, and the manner in which such costs should be assessed. It was also held in ***Arts Niche Cyber Distribution Pte Ltd v PP*** (supra at p 127) that the principles governing the court`s exercise of its discretion under s 401(1) of the CPC are equally applicable.

It should be emphasised that although the strength of the defence, whether at trial or on appeal, is a relevant factor to be considered by the court in awarding costs, it is by no means conclusive. The important test is whether the accused had conducted his defence or appeal `extravagantly and unnecessarily`. In applying this test, the facts of the case, the strength of the defence and course of conduct of the defence must be closely scrutinised.

In this case, looking at the appellants` petition of appeal and their defence in the court below, it appears that the dispute turns on a single issue of law, ie whether the Collector of Land Revenue had legitimately exercised his power to terminate the agreement under r 29(1) of the State Lands Rules.

In my view, it was clear that the appellants` case, both in the court below and in this appeal, was devoid of merit. The agreement was expressly stated to be subject to the State Lands Rules and the termination under r 29(1) was thus lawful. It was plain to see that this was a straightforward summons case to which the appellants had no defence.

That was not all. In my mind, there was no doubt that the appellants had conducted their defence and appeal in an `extravagant and unnecessary` manner. In particular, the fact that the appellants instructed their counsel to withdraw the appeal just three days before the hearing showed that they were abusing the appeal system as a means of avoiding payment of rental and delaying eviction from the premises. The appellants had financially benefited from this delay as, pending the appeal, they had continued to stay on the premises as unlawful occupiers without paying rent to the Government. Further, they were sub-letting the premises and collecting rental from sub-tenants. The prosecution showed that the appellants had the financial resources to pay their rental as, at the relevant time, they were still conducting their business and collecting rental from sub-letting the premises.

In the circumstances, it was clear that the appellants were aware that they had no legal basis to justify their continued occupation of the premises. Thus, they should not have proceeded to challenge the prosecution in the first place on such unmeritorious grounds and their conduct of the

defence and the appeal was `extravagant and unnecessary`. On the other hand, I was satisfied that the prosecution had, as far as possible, conducted their case in a reasonable and expedient manner.

For the above reasons, I ordered the appellants to pay the prosecution`s costs incurred in the court below under s 401(1) of the CPC and also the prosecution`s costs in this appeal under s 262(1) of the CPC. The parties will proceed to taxation to assess these costs.

Outcome:

Order accordingly.

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