Ong Pang Wee and Others v Chiltern Park Development Pte Ltd
[2003] SGCA 9

Case Number : CA 72/2002

Decision Date : 13 March 2003

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Judith Prakash J; Yong Pung How CJ

Counsel Name(s) : Roderick E Martin , Gerald Sim (Martin & Partners) for Appellants; Tan Yeow Hiang (Khattar Wong & Partners) for respondents

Parties : Ong Pang Wee — Chiltern Park Development Pte Ltd

Civil Procedure – Jurisdiction – Transfer of proceedings – Whether proceedings can be transferred directly from Magistrate's Court to High Court – Subordinate Courts Act (Cap 321, 1999 Rev Ed), Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed)

Delivered by Judith Prakash J

1 This appeal is centred on whether the High Court has power under the relevant legislation to transfer proceedings started in the Magistrate's Court to itself.

2 The action which gave rise to this issue was a Magistrate's Court case ('the MC Suit') brought by Chiltern Park Development Pte Ltd ('the developer'), the respondent in this appeal against the appellants, three individuals ('the purchasers') who had bought an apartment from the developer. The developer's claim was for $13,433.47 being maintenance fees allegedly due from the purchasers. The MC Suit was started in July 2000. In September 2000, the purchasers filed a defence and counterclaim for damages for defects in the apartment and loss of use and/or rental. By May 2002, the purchasers had quantified their damages at around $353,900, a sum that is far in excess of the jurisdiction of the Magistrates' Courts.

3 The purchasers then took out an originating summons in the High Court applying for the action to be transferred from the Magistrates' Courts to the High Court. Their application was heard by Woo Bih Li JC (as he then was) in June 2002 and was dismissed with costs.

The decision of the court below

4 In coming to his decision, Woo JC had to interpret and deal with provisions in the Supreme Court of Judicature Act (Cap 322) ('the SCJA'), in the Subordinate Courts Act (Cap 321) ('the SCA'), and in the Rules of Court. In the SCJA the relevant provisions are s 18 and paragraph 10 of the First Schedule. These respectively read as follows:

> **Powers of High Court**
>
> 18. (1) The High Court shall have such powers as are vested in it by any written law for the time being in force in Singapore.
>
> (2) Without prejudice to the generality of subsection (1), the High Court shall have the powers set out in the First Schedule.
>
> (3) The powers referred to in subsection (2) shall be exercised in accordance with any written

law or Rules of Court relating to them.

...

FIRST SCHEDULE

ADDITIONAL POWERS OF THE HIGH COURT

Transfer of proceedings

10. Power to transfer any proceedings to any other court or to or from any subordinate court, and in the case of transfer to or from a subordinate court to give any directions as to the further conduct thereof, except that this power shall be exercised in such manner as may be prescribed by Rules of Court.

5 The relevant sections of the SCA considered at first instance are ss 24(1) and (2), 37 and 38. Sections 24(1) and 38 deal with the transfer of proceedings from the District Court to the High Court whilst s 37 deals with the transfer of an action from the High Court to the District Court.

6 The heading appearing above s 24 states 'Transfer of counterclaim from District Court to High Court' and ss(1) of the section provides that 'where, in an action founded on contract or tort in a District Court, any counterclaim or set off and counterclaim of any defendant involves a matter beyond the jurisdiction of the District Court' any party to the action is entitled to apply to the High Court for the whole proceedings or the counterclaim alone to be transferred to the High Court. By sub-s (2) when such an application is made the High Court may order either (a) that the whole proceedings be transferred to it or (b) that the whole proceedings be tried in the District Court or (c) that the proceedings on the counterclaim be transferred to the High Court and the proceedings on the plaintiff's claim be tried in the District Court. By s 38 the High Court can order a civil proceeding pending in the District Court to be transferred to the High Court because it involves an important question of law or is a test case or because for some other sufficient reason it is one that should be tried in the High Court.

7 The argument of the purchasers before the judge was that the power given by paragraph 10 of the First Schedule was a very wide power that gave the High Court the ability to transfer **any** proceedings from **any** subordinate court to **any** other court and that this must mean that the High Court had the power to transfer a proceeding from the Magistrate's Court which is a subordinate court to the High Court itself. Woo JC, however, took the view that paragraph 10 had to be read subject to s 18(3) of the SCJA which specifically provided that the powers referred to in s 18(2) which in turn referred to the First Schedule 'shall be exercised in accordance with any written law or Rules of Court relating to them'. He also noted that s 18(2) was consistent with the wording of s 18(1) which states that the High Court's powers are those which are 'vested in it by any written law'. Thus, the High Court could not transfer proceedings between courts except as it was permitted to do by legislative provisions.

8 Woo JC held that the written law that was relevant for the purpose of the application before him was the SCA. He examined ss 24, 38 and 41 of the SCA and came to the conclusion that the scheme under the SCA envisaged a transfer of proceedings only from a District Court to the High Court and not from a Magistrate's Court to the High Court. He also considered O 89 r 11 of the Rules of Court

1996 which states that any application to the High Court for transfer of proceedings under the SCA must be made by originating summons and noted that this rule did not state specifically that a transfer from a subordinate court to the High Court was restricted to District Court proceedings. The fact that it referred to ss 24 and 38 of the SCA which deal with a transfer from the District Court to the High Court and to s 37 which deals with a transfer from the High Court to the District Court, however, was to the judge a reinforcement of the scheme that he had found in the SCA. Further, although the rule referred generally to the transfer of 'any proceedings from the Subordinate Courts to the High Court' the judge held that it had to be interpreted in a manner consistent with, and not contrary to, the scheme under the SCA.

The issues on appeal

9 In the Appellants' Case, the purchasers frame the issues arising in the appeal as follows:

(1) whether the High Court has, under the provisions of the SCJA, the power to transfer proceedings commenced in the Magistrates' Courts to the High Court; and

(2) if the answer to issue (1) is in the affirmative, whether the provisions of the SCA limit that power conferred by the SCJA only to proceedings commenced in the District Courts.

Issue (1) – Are the High Court's powers curtailed by the SCA?

10 The first issue is a reiteration of the argument made below that the power given to the High Court under the SCJA to transfer proceedings from any court to any other court could not be limited or curtailed by the provisions of the SCA. The second issue, however, is based on s 52 of the SCA and is to the effect that, by virtue of this provision, s 24 of the SCA is applicable to proceedings commenced in the Magistrates' Courts as well as to those commenced in the District Courts. This is a new contention, not raised at first instance.

11 When it came to the hearing of the appeal, the purchasers did not pursue the first issue to its full extent. Instead, they appeared to accept that s 18(3) did exert some restraint on the exercise of the powers conferred on the High Court by s 18(2). They did not, however, accept that that provision allowed for these powers to be cut down by the provisions of the SCA. Instead, they contended that from a plain reading of s18(3) of the SCJA, all that it provides is for the powers in s18(2) and paragraph 10 of the First Schedule to be 'exercised' in accordance with 'any written law or Rules of Court'. As the word 'exercised' means the manner in which the power is used, s18(3) must be referring to the procedure in 'any written law or Rules of Court'. If that sub-section had been intended to allow the SCA to cut down the powers granted in s18(2) and the First Schedule of the SCJA, there would have been no necessity to have s18(3). The draftsman could have achieved this simply by having as the opening words of s18(2) the words, 'Subject to any other written law or Rules of Court, the High Court shall have the powers set out in the First Schedule'.

12 In our view, this argument of the purchasers is a non-starter. It is not possible to infer from the use of the word 'exercised' that all that the phrase 'written law' refers to is procedural law. The phrase 'written law' is defined by the Interpretation Act (Cap 1) to mean, amongst other things, 'all Acts, Ordinances and enactments by whatever name called and subsidiary legislation made thereunder for the time being in force in Singapore'. The provisions of the SCJA must be read in concert with the provisions of the Interpretation Act and, where the legislature has chosen to use in one statute a term which it has specifically defined in the Interpretation Act, then, unless the context clearly

provides to the contrary, such term must be understood in accordance with its definition in the Interpretation Act. There is nothing in the context of s 18 of the SCJA which would justify limiting the meaning of 'written law' to only procedural law especially since there is a specific mention after 'written law' of the 'Rules of Court' which themselves deal with procedure. The phrase 'written law' must thus be intended to bear its full meaning and not any truncated meaning. The word 'exercised' is not sufficient to effect such a truncation.

13 As this Court noted in paragraph 10 of its judgment in *Ricky Charles s/o Gabriel Thanabalan v Chua Boon Yeow* (Civil Appeal 50 of 2002, unreported), which dealt with the interaction of s 18(3) of the SCJA and s 38 of the SCA, s 18(3) provides very clearly that the powers set out in the First Schedule of the SCJA are to be exercised in accordance with any written law relating to them and although paragraph 10 of the First Schedule gave the High Court very wide powers to transfer proceedings from the District Court to the High Court, it had to be read subject to the applicable written law. In the *Ricky Charles* case, that written law was s 38 of the SCA which set out the circumstances in which a transfer could be made. This Court went on in paragraph 13 of the *Ricky Charles* decision to express the view that the very reason in the first place for the existence of s 38 of the SCA was to place some restriction on the very wide powers generally conferred by paragraph 10 of the First Schedule. It is not in every case of an application to transfer proceedings from a District Court to the High Court that such a transfer can and will take place.

14 At first instance, the judge rejected the purchasers' argument that the power conferred on the High Court by s 18(2) and paragraph 10 of the First Schedule could not be fettered in any way. His interpretation accorded with the decision in *Ricky Charles*. The purchasers have not been able to put forward an argument capable of undermining that interpretation. When the legislation is read in its entirety it is plain that, as submitted by the developer, the scope of the High Court's power to transfer proceedings from a lower court to itself cannot be determined by looking only at the SCJA. In fact it would be wrong to do so as s 18(3) provides that the powers 'shall be exercised' in accordance with written law. Parliament had therefore intended the High Court to have regard to other applicable written laws before exercising the power to transfer proceedings to itself and to act in a manner that was 'in accordance with' or consistent with those provisions in so doing. In this case, the applicable written law is the SCA and the High Court can only exercise its powers of transfer of proceedings as provided for in this Act.

Issue (2) – Does s 24 of the SCA apply to proceedings in the Magistrates' Courts?

15 We now turn to the purchasers' other ground which was the main one propounded by them in the appeal. This ground is based on the recognition that the SCA constrains the power of the High Court to transfer a case to itself from the Subordinate Courts.

16 Section 24 of the SCA, as stated earlier, deals on the face of it with the transfer to the High Court of proceedings in the District Court based on contract or tort. The proposition put forward by Mr Martin is that this section also encompasses the transfer of contract and tort cases from the Magistrates' Courts to the High Court because of the operation of s 52(2) of the SCA. To fully assess the strength of this argument, one must consider both s 52 (1) and 52 (2). These read:

Civil jurisdiction of Magistrates' Courts

(1) Subject to Rules of Court, a Magistrate's Court shall have the jurisdiction and powers

conferred on a District Court by sections 20 (except 20 (1) (b)), 21, 29, 31 (1), 32 and 43 in any proceedings where the amount claimed or the value of the subject-matter in dispute does not exceed the Magistrate's Court limit.

(2) In exercising its jurisdiction under subsection (1), a Magistrate's Court shall be subject to the same limitations and provisions as are applicable to a District Court under this Act.

17 The purchasers' argument proceeded in the following manner. They submitted that the purpose of s 52(2) is to make applicable all provisions relating to a District Court to a Magistrate's Court exercising the jurisdiction mentioned in s 52(1). The rationale for this course was that instead of reproducing or expressly referring to all the various sections in the SCA that would be applicable to proceedings commenced in a Magistrate's Court, which would be repetitive and somewhat risky as provisions may be left out, the draftsman must have thought that it was more efficient and safer to state in s 52(2) that 'a Magistrate's Court shall be subject to the same limitations and provisions as are applicable to a District Court'. Those words would subject a Magistrate's Court to s 24 of the SCA as that section is a provision applicable to a District Court. Further, as all those provisions applicable to a District Court would obviously not contain the words 'Magistrate's Court', those provisions, if s 52(2) is to be given effect to, must be read as if the words 'a Magistrate's Court' are substituted for 'a District Court'.

18 The purchasers agreed that the application of District Court provisions to a Magistrate's Court was not entire or unrestricted and that such application must relate to the jurisdiction or powers mentioned or given to a Magistrate's Court by s 52(1). As the purchasers' counterclaim here is a claim founded on contract or tort it would fall within s 20(1)(a). That section gives a District Court jurisdiction to hear and try any action founded on contract or tort and is one of the sections which s 52(1) specifically makes applicable to a Magistrate's Court. The purchasers concluded that their counterclaim fell within s 52(1) and would attract s 52(2) and consequently s 24.

19 Further, they said this contention on the applicability of s 24 to a Magistrate's Court proceeding is reinforced by the express provision in s 52(1) that a Magistrate's Court shall have the powers conferred on a District Court by s 31(1) as this section specifically mentions the application of s 24. The relevant part of s 31(1) reads:

A District Court, as regards any action within its jurisdiction, shall in any proceedings before it –

(a) grant such relief, redress or remedy or combination of remedies, either absolute or conditional; and

(b) give such and the like effect to every ground of defence or counterclaim equitable or legal (subject to section 24), as ought to be granted or given in the like action by the High Court and in as full and ample a manner.

20 In the purchasers' view, the words appearing in parenthesis in sub-paragraph (b) of the sub-section are a clear expression of the legislative intent that s 24 is applicable to Magistrate's Court proceedings. If the draftsman did not intend for this to be so, he would have provided for that exclusion in s 52(1) or s 31(1) itself or would have left out s 31(1) from the string of sections mentioned in s 52(1). As s 31(1)(b) deals with counterclaims, what the draftsman had in mind must have been s 24(2)(c) and (3) of the SCA which deal with the situation where the High Court orders that only the defendant's counterclaim be transferred to the High Court, leaving the plaintiff's claim in the District Court.

21 Having said this, the purchasers proceeded by way of a rather circular argument to emphasise their view that for such an order (ie to transfer a counterclaim to the High Court under s 24(2)(c)) to have been made, there must have been in the first place an application to transfer a counterclaim in a Magistrate's Court to the High Court. The purchasers submitted that this constituted clear acknowledgement that a defendant in proceedings commenced in the Magistrates' Courts, who has a counterclaim exceeding the jurisdiction of the Magistrates' Courts, can apply for a transfer of his counterclaim to the High Court under s 24.

22 The purchasers also submitted that ss 22, 23 and 24 of the SCA were essential to a District Court's exercise of the jurisdiction conferred by s 20(1)(a). Thus if the jurisdiction in s 20(1)(a) is to be grafted elsewhere (ie onto the Magistrates' Courts by way of s 52(1)), ss 22, 23 and 24 must go along as an integral part of the jurisdiction so that the grafted jurisdiction is not handicapped in its operation or exercise.

23 The purchasers submitted that there is a scheme binding ss 20(1)(a), 22, 23 and 24 of the SCA in relation to actions founded on contract and tort because the latter 3 sections are integral to the smooth working of the jurisdiction conferred on the District Court by the first. They were enacted to provide alternative solutions for the situation in which a claim started in the District Court or a counterclaim filed therein was for an amount which exceeded the District Court limit. Therefore, when the legislature introduced s 52(1) of the SCA in 1970 to give the Magistrates' Courts the same jurisdiction (subject to the Magistrates' Courts limit) as conferred on the District Court by s 20(1)(a), the legislature must have intended s 52(2) to operate so as to make the provisions connected to s 20, ie ss 22, 23 and 24 apply *mutatis mutandis* to the Magistrates' Courts.

24 The purchasers' contentions appear to us to be far-fetched and a strained reading of the relevant statutory provisions. Section 52 comes under the heading 'Civil jurisdiction of Magistrates' Courts' and the wording of its sub-sections bear out the natural inference from that heading that the provisions prescribe the limits within which Magistrates' Courts can deal with civil proceedings. The section is concerned with the jurisdiction and powers of the Magistrates' Courts and not with the jurisdiction or powers of the High Court. By virtue of s 52(1) a Magistrate's Court would have the jurisdiction to hear and try the following types of cases where the amount claimed or the value of the subject matter in dispute does not exceed the Magistrate's Court limit (currently fixed at $60,000):

(1) any action founded on contract or tort (this being the jurisdiction imported by the reference to s 20);

(2) any action for the recovery of a sum recoverable under any written law as long as that or any other written law does not expressly provide for the sum to be recoverable only in some other court (this being the jurisdiction under s 21);

(3) cases in which relief is asked for by way of interpleader summons (this being the jurisdiction under s 29).

Additionally, by reason of the extension to the Magistrate's Court of ss 31(1), 32 and 43, in exercising the civil jurisdiction conferred on it, a Magistrate's Court has the power to:

(1) grant such relief, redress or remedy or combination of remedies, and give the same effect to every ground of defence or counterclaim, as ought to be granted or given in the like action by

the High Court and in as full and ample a manner (s 31(1));

(2) in any civil proceedings pending in the Magistrates' Courts, make any order or to exercise any authority or jurisdiction which, if it related to a proceeding pending in the High Court, might be made or exercised by a judge of the High Court in chambers (s 32); and

(3) order a judgment sum to be paid in a lump sum or by way of instalments, or, in appropriate circumstances, to suspend or stay any judgment or order if any party to any proceeding is unable to make payment of any sum under a judgment granted against him (s 43).

25 By virtue of s 52(2) the 'provisions' and 'limitations' which are applicable to a District Court when exercising its jurisdiction under ss 20, 21 and 29 or when exercising its powers under ss 31(1), 32 and 43 are also applicable to a Magistrate's Court exercising the same type of jurisdiction or power. We agree that the word 'provisions' carries a different meaning from the word 'limitations' and that both words must be given effect to in order to carry out the intention of the legislature. As far as 'limitations' are concerned, these may be found in various sections including ss 19(4) and (5) which contain express limitations on the exercise of civil jurisdiction. It has been contended that for the word 'provisions' to be effective, it must be read as referring to ss 22 to 24. We do not agree. The word 'provisions' obviously encompasses sections such as s 19(3) which provides for jurisdiction to be established when the defendant has been properly served or has submitted to the jurisdiction and s 21(2) which explains that the jurisdiction conferred by s 21(1) does not apply to a fine to which any person is liable on conviction.

26 It is clear that ss 22 to 24 of the SCA are not among those sections directly made applicable to the Magistrates' Courts by virtue of s 52(2). They do not relate to the exercise by a Magistrate's Court of its jurisdiction since, as s 52(1) provides, such jurisdiction can only be exercised in respect of civil proceedings where the amount claimed or the value of the subject matter in dispute is within the Magistrate's Court limit. Sections 22 to 24 deal with the different solutions available when a claim or counterclaim filed in the District Court is for an amount in excess of the District Court limit. Such solutions are not necessary to a Magistrate's Court which is hearing proceedings within its limit. Also, there is no good reason why if such solutions were to be made available for excessive claims filed in a Magistrate's Court, they could not have been directly provided for instead of in the roundabout manner propounded by the purchasers. Sections 22 to 24 could also have been specifically enumerated within s 52(1) in the same way as the other sections listed there. That this was not done is, in our view, telling.

27 Whilst ss 22, 23 and 24 of the SCA do give parties with claims or counterclaims outside the District Court limited ways to have these cases either heard in the District Court or transferred to the High Court without the necessity of terminating the District Court proceedings and beginning a new action in the High Court, we do not agree that their presence is essential for the smooth exercise of the civil jurisdiction conferred on the District Court by s 20(1)(a). The District Court could exercise its civil jurisdiction over proceedings within the District Court limit in the absence of such sections. Claims or counterclaims for sums above the limit would just have to be started in the High Court. In the same way, the Magistrate's Court is not hampered from exercising its civil jurisdiction by the absence of provisions equivalent to ss 22 to 24. The fact that the legislature has, by s 52(1), given the Magistrates' Courts jurisdiction in contract or tort cases within the Magistrates' Courts limit, does not therefore mean that those courts must also have the solutions provided by ss 22, 23 and 24 for excessive claims. It is a misreading of the very clear wording in ss 52(1) and 52(2) to include s 24

into s 52(1) such that the Magistrate's Court sits in the shoes of the District Court and can therefore have proceedings in it transferred to the High Court.

28 Plainly s 24 was not written into s 52(1) of the SCA. The legislature only wanted the Magistrate's Court to have jurisdiction and powers parallel to those of the District Court as were conferred on it specifically by the sections enumerated in s 52(1). The search must end at s 52(1). To use, as the purchasers do, s 52(2) as a proactive vehicle to somehow introduce the idea that s 24 ought to have been included into s 52(1) is ill-founded. The main purpose of s 52(2) is to make it known that when the Magistrate's Court is exercising the jurisdiction conferred on it by s 52(1), it must be subject to the same limitations that would limit the District Court when the latter is exercising its jurisdiction as conferred by the specified sections.

29 The purchasers' argument that because s 52(1) refers to s 31(1) and s 31(1)(b) states that when a District Court gives effect to a defence or counterclaim this must be subject to s 24, s 24 is therefore incorporated into s 52(1) is also untenable. Section 31(1) has been included in s 52(1) because it makes plain that when a District Court exercises its civil jurisdiction it has the same powers as the High Court in a like case and such clarification is equally necessary for a Magistrate's Court hearing a proceeding in contract or tort. Section 31(1)(b) is in the case of the District Court subject to s 24 because, under that section, a defence and counterclaim may be transferred in toto to the High Court or the counterclaim may be transferred to the High Court with the defence remaining in the District Court. In those situations, the District Court would not be able to give full effect to the counterclaim. As far as the Magistrate's Court is concerned, the reference in s 31(1)(b) to s 24 can be disregarded without in any way adversely affecting the powers conferred on the Magistrate's Court by that section. We think that the mention of s 24 in s 31(1)(b) and the omission of the draftsman to specifically delete that reference in relation to s 52(1) cannot provide a strong enough rope to drag s 24 into s 52(1) in the face of the clear intention of the legislature regarding the separate and distinct transfer regimes for Magistrate's Court cases and District Court cases as expressed in various sections of the SCA.

30 Finally, we would like to refer to O 89 r 11 of the Rules and the role of the Rules Committee. The Rules Committee constituted under s 80(3) of the SCJA has the power to make Rules of Court regulating and prescribing the procedure and practice to be followed in the High Court and the Court of Appeal. Section 80(2) sets out specific purposes for which Rules of Court may be made. By sub-paragraph (d) of s 80(2) one of these purposes is to prescribe 'the procedure in connection with the transfer of any proceedings from any subordinate court to the High Court'. The restrictive wording of this sub-paragraph must be compared with the expansive wording of s 69(3) of the SCA.

31 Read with s 69(1), s 69(3)(b) of the SCA gives the Rules Committee appointed under the SCJA the power to make Rules of Court regulating and prescribing the procedure and practice to be followed in the District Courts and the Magistrates' Courts in the exercise of their civil jurisdiction and among these is the power to make Rules 'prescribing *the circumstances* and procedure by which proceedings may be transferred from one court to another' (emphasis ours). Thus, it can be seen that whilst in respect of transfers to the High Court the Rules Committee only has the power to prescribe the *procedure* for it, in the case of proceedings within the regimes of the District Courts and Magistrates' Courts, the primary legislation has given the Rules Committee power to make secondary legislation setting out the circumstances in which transfers of cases between those two regimes inter se can be made.

32 The Rules Committee has, in exercise of its power under s 69 of the SCJA, made provision by way of O 89 r 4(1) for a subordinate court to transfer proceedings from it to any other subordinate court where it is satisfied that those proceedings ought to be tried in that other court. This first sub-rule is the one dealing with the circumstances of transfer. The procedure for transfer is dealt with by sub-rules 4(2) and 4(3).

33 As regards the transfer of cases from the subordinate courts to the High Court, this has been taken care of by O 89 r 1 and 2. Order 89 r 1(1) is entitled 'Application under sections 24, 37 and 38' and provides that an application under those sections of the SCA must be made by originating summons. Rule 2 sets out the procedure to be adopted by the registries of the respective courts when a transfer order has been made by the High Court. It is clear that neither rule sets out the circumstances in which an application may be initiated. That is governed by the sections of the primary legislation. Woo JC considered that the reference in r 1(1) to sections in the SCA dealing with transfers between the High Court and the District Court and vice versa was a reinforcement of the scheme in the SCA which provides only for such transfers and not for transfers between the Magistrate's Court and the High Court. We agree. Further, as Woo JC rightly stated at first instance 'Subsidiary legislation cannot override primary legislation'. So, even though O 89 r 2(1) refers generally to the transfer of 'any proceedings from the subordinate courts to the High Court' it must be interpreted in accordance with the specified provisions in the SCA, ie ss 24, 38 and 41 which themselves state expressly that they deal with the transfer of cases from the District Court to the High Court.

Conclusion

34 In the result, we dismiss this appeal with costs. The security deposit shall be released to the respondents' solicitors to account of their costs.

Judgment reserved **Chao Hick Tin JA**

Introduction

35 The facts of the case giving rise to this appeal are straightforward. In July 2000, the respondents commenced an action in the Magistrate's Court to claim for maintenance fees against the three appellants, who are the purchasers/owners of an apartment. The appellants bought the apartment from the respondents. In September 2000, the appellants filed a defence and counterclaim for damages on account of defects and for loss of use and/or rental. By May 2002, the amount of the counterclaim exceeded the jurisdictional limit of even the District Court. Thus, the appellants applied for the entire action, including their counterclaim, to be transferred for trial in the High Court. This application was refused by the High Court on the ground that it has no such power to effect the transfer. Thus, this appeal to us. The sole issue that arises for the determination of this Court is whether the High Court has the power to transfer a case instituted in the Magistrate's Court for hearing in the High Court.

36 Having given the issue considerable thought, I have come to a conclusion different from that of the other members of the quorum. Thus, this separate opinion from me.

Applicable provisions

37 I shall first identify the applicable statutory provisions and the Rules of Court. Section 18(2) of the Supreme Court of Judicature Act (SCJA), read with ¶10 of the First Schedule, confers upon the High Court the –

"Power to transfer any proceedings to any other court or to or from any subordinate court, and in the case of transfer to or from a subordinate court to give any directions as to the further conduct thereof, except that this power shall be exercised in such manner as may be prescribed by Rules of Court."

38 Section 18(3) provides that this power, as well as the other powers set out in the First Schedule, "shall be exercised in accordance with any written law or Rules of Court relating to them." The expression "written law", is defined in the Interpretation Act to include statute law and subsidiary legislation. Thus, where in any written law or Rules of Court it is prescribed how this power of the High Court relating to the transfer of cases between the High Court and the Subordinate Courts etc is to be exercised, it must be complied with.

39 I now turn to ss 24 and 38 of the Subordinate Courts Act (SCA), which contain provisions on the transfer of proceedings from the District Court to the High Court. Section 24(1) provides that –

> "Where, in an action founded on contract or tort in a District Court, any counterclaim or set-off and counterclaim of any defendant involves a matter beyond the jurisdiction of the District Court, any party to the action may apply to the High Court, within such time as may be prescribed by Rules of Court, for an order that the whole proceedings, or the proceedings on the counterclaim or set-off and counterclaim, be transferred to the High Court."

40 However, the power to transfer a case from the District Court to the High Court under s 38 is of a different nature from that laid down in s 24(1) because it does not rest on the fact that the counterclaim exceeds the District Court jurisdiction but on the ground that the proceeding involved "some important question of law" or it is a "test case" or for "some other sufficient reason".

41 Thus, where an action is commenced in the District Court and a counterclaim is filed exceeding the jurisdictional limit of the District Court, any party may apply to have the entire proceeding transferred to be heard in the High Court.

42 The civil jurisdiction of the Magistrate's Court is set out in section 52 of SCA. There, Parliament renders specific provisions in SCA on the jurisdiction and powers of the District Courts to be applicable to the Magistrate's Court. As the issue of this appeal centres mainly on the interpretation of this section, I shall set it out in full:-

> (1) Subject to Rules of Court, a Magistrate's Court shall have the jurisdiction and powers conferred on a District Court by sections 20 (except 20[1][b]), 21, 29, 31(1), 32 and 43 in any proceedings where the amount claimed or the value of the subject-matter in dispute does not exceed the Magistrate's Court limit.
>
> (2) In exercising its jurisdiction under subsection (1), a Magistrate's Court shall be subject to the same limitations and provisions as are applicable to a District Court under this Act."

Construction of s 52

43 It would be seen that the Magistrate's Court's jurisdiction and powers are confined to those of the District Court as set out in ss 20 [except 20(1)(b)], 21, 29, 31(1), 32 and 43, provided that the amount in question in the action does not exceed the Magistrate's Court jurisdictional limit of $50,000.

44 What then is meant when s 52(2) says that a Magistrate's Court in exercising its jurisdiction "shall be subject to the same limitations and provisions as are applicable to a District Court". It could not possibly refer only to those sections identified in s 52(1). It must mean something more. The respondents concede that. Does it also include s 24? The respondents contend that it could not mean that ss 22-24 also apply to a Magistrate's Court.

45 Section 19 deals generally with the civil jurisdiction of the District Court. Section 20 deals with its jurisdiction in actions on contract or tort which do not exceed the District Court limit of $250,000. Section 21 deals with its jurisdiction in an action to recover money under any written law which, again, does not exceed the District Court limit. Section 22 permits the District Court to hear a claim exceeding the District Court's limit provided the plaintiff abandons the excess. Section 23 permits the District Court to hear a case even where the claim exceeds the District Court limit provided that the parties sign a memorandum agreeing to the same. Section 24 enables a party to apply to the High Court to have a District Court action in contract or tort, where the counterclaim or set-off exceeds the District Court limit, transferred for hearing in the High Court. It seems clear that these three provisions supplement the jurisdictional provisions of ss 20 and 21. Sections 22 and 23 enable the parties to have the case heard in the District Court even where the claim exceeds the District Court limit. Section 24 assists the parties to get the case heard in the appropriate forum. Sections 25 to 29 deal with other specific jurisdictions of the District Court.

46 By providing in s 52(2) that a Magistrate's Court, in exercising its jurisdiction conferred under s 52(1), is subject to "the same limitations and provisions as are applicable to a District Court", Parliament must have intended that all those provisions in Part IV of SCA which concern the jurisdictions conferred upon the Magistrate's Court are also applicable to it. I would emphasise in particular the word "provisions". Effect must be given to that word. Ordinarily, in an action in contract or tort, a plaintiff would commence his action in either the High Court, the District Court or the Magistrate's Court, depending on the estimated quantum of his claim. But sometimes, subsequent events may occur which render the original estimation too conservative. Thus, the usefulness of ss 22 and 23. Otherwise, it would mean that a plaintiff would have to discontinue the action and start afresh. Section 24 is also such a facilitative provision. I am unable to see any cogent reasons why these very useful provisions should be denied to litigants in the Magistrate's Court. In my view, s 52(2) renders ss 22-24 applicable to the Magistrate's Court. Why should a litigant in the Magistrate's Court be so discriminated against and handicapped? There is no logic in it.

47 It may be asked, if it was the intention of Parliament that ss 22-24 should apply to the Magistrate's Court, why did it not so provide directly instead of doing it in such a seemingly roundabout manner. While I agree that the draftsman could have been more explicit, like identifying the specific provisions which are intended to be rendered applicable by s 52(2) instead of just using the terms "limitations" and "provisions", but this is really a matter of drafting style. Effect must be given to the two words "limitations" and "provisions" and, moreover, these two words must mean different things. It may be said that s 52(2) enables provisions, such as s 19(3) which provides for jurisdiction to be established when the defendant has been properly served or has submitted to the jurisdiction, ss 19(4) and (5) which contain express limitations on the exercise of jurisdiction and s

21(2) which explains that the jurisdiction conferred by s 21(1) does not apply to a fine to which any person is liable on conviction, to be applicable to the Magistrate's Court. But s 52(2) nowhere says that the "limitations and provisions" are restricted to these.

48 It seems to me that the word "provisions" would cover all provisions in Part IV which relates to how the civil jurisdiction of the District Court set out in ss 20, 21 and 29 (which sections are extended to the Magistrate's Court) should be exercised.

49 I should add that there is an interesting provision in s 24. Subsection (4) provides that where there is no application made to effect a transfer of the case to the High Court where the counterclaim exceeds the jurisdictional limit of the District Court, the latter shall have the jurisdiction to try the proceeding notwithstanding that the counterclaim may exceed the monetary limit of $250,000. The spirit of this provision is certainly in line with that in s 23, i.e., where no party makes an application to transfer the case to the High Court, they are deemed to have agreed to the District Court hearing the case.

50 Earlier, I touched on the question as to why Parliament did not in s 52(1) and (2) expressly refer to s 24. In a sense Parliament has. Section 52(1) confers upon the Magistrate's Court the powers of the District Court set out in s 31(1). Section 31(1) provides, inter alia, that the District Court, and in turn, the Magistrate's Court, is empowered to give the appropriate relief "to every ground of defence or counterclaim equitable or legal (subject to section 24)." These words in parenthesis could be considered to be an express reference or is, at least, an indication that Parliament intended s 24 to apply to the Magistrate's Court. It is an established principle of statutory interpretation that express words in a statute should not be disregarded unless they are clearly redundant or the application of those words would plainly give rise to an absurdity.

51 I think I am fortified in my view that s 24 does apply to the Magistrate's Court by virtue of the fact that the Rules Committee had prescribed rules enabling a case pending in the Magistrate's Court to be brought up to the High Court. Order 89 rr 1 and 2 of the Rules of Court ("the Rules") provide:-

> "1 – (1) Any application to the High Court under sections 24, 37 and 38 of the Subordinate Courts Act (Chapter 321) must be made by originating summons in Form 7.
>
> (2) The High Court hearing such an application may order the proceedings in the Subordinate Courts to be stayed until after the final determination of the application.
>
> 2 – (1) Where an order is made by the High Court for the transfer of any proceedings from the Subordinate Courts to the High Court, the Registrar of the Subordinate Courts must send to the Registrar of the Supreme Court the file of the proceedings, …"

52 If a transfer is only possible from the District Court to the High Court, and not also from the Magistrate's Court, the Rules Committee would have referred only to the "District Court", as is done in s 24, instead of using the generic expression "Subordinate Courts" which would encompass both the District Court and the Magistrate's Court. In my humble opinion, the Rules Committee had correctly recognised that a case in the Magistrate's Court, where appropriate, may also be transferred to be heard in the High Court. This is wholly in line with the provisions in ¶10 of the First Schedule of SCJA.

53 It is also of relevance to note the other rules in Order 89. Rule 3 sets out the procedure for the transfer of High Court cases to the "Subordinate Courts" and rule 4 provides for the transfer of cases between Subordinate Courts. When one considers O 89 as a whole what one sees is a flexible scheme of things where cases may be transferred from the Subordinate Courts to the High Court and vice-versa and cases may be transferred between one Subordinate Court and another, all of which is to ensure that cases are heard in the appropriate forum.

54 The rules in O 89 were made by the Rules Committee pursuant to explicit powers conferred upon it by SCJA and SCA. Under s 80(2)(d) of SCJA, the Committee is empowered to make rules –

> "regulating and prescribing … the procedure in connection with the transfer of any proceedings from any Subordinate Court to the High Court or from the High Court to a Subordinate Court."

55 As regards transfer of cases within the Subordinate Courts, the Rules Committee is empowered by s 69(3)(b) of SCA to lay down rules "prescribing the circumstances and procedure by which proceedings may be transferred from one court to another." Thus, there can be no question that the rules in Order 89 are *intra vires* the powers conferred on the Committee.

56 The argument is made that with s 53 of SCA, a case in the Magistrate's Court may only be transferred to be heard by the District Court where "some important question of law or fact is likely to arise". I do not think the existence of s 53 means that in no other circumstances may a case before the Magistrate's Court be transferred to be heard in the District Court or the High Court. Section 53 is essentially a specific power given to the Magistrate's Court, as a transfer under that section can be made even in a case which falls squarely within the Magistrate's Court jurisdiction. It can be exercised whenever the case involves an important question of law or fact. To say that a case in the Magistrate's Court can only be transferred to the District Court in the circumstances set out in s 53 would render r 4 of O 89 nugatory.

57 I should add that there is a similar kind of provision in s 38 of SCA, which reads:-

> "38. Where it is made to appear to the High Court, on the application of a party to any civil proceeding pending in a District Court, that the proceeding by reason of its involving some important question of law, or being a test case, or for any other sufficient reason, is one which should be tried in the High Court, it may order the record to be transferred to the High Court."

It will be seen that section 38 can apply even in a case where the amount in dispute does not exceed the District Court limit. It can hardly be argued that the existence of s 38 curtails or restricts the operation of s 24.

58 There are also two other provisions in SCA which may have a bearing on the issue under consideration. Section 37 provides that a party to a High Court writ action may "for any sufficient reason" apply for the proceedings to be transferred to a District Court. No mention is made about a transfer being made to a Magistrate's Court. In s 29, jurisdiction is conferred upon a District Court to grant interpleader relief and which jurisdiction is also extended to the Magistrate's Court by virtue of s 52(1). In subsection (2) of s 29, it is provided that the High Court may, in an interpleader proceeding in that Court, transfer that proceeding to the District Court if the subject matter does not exceed the District Court limit. An interesting question that arises is whether, by virtue of s 52(1) or otherwise,

the High Court may in an appropriate case transfer the interpleader proceeding to a Magistrate's Court. I have no doubt that the answer must be in the affirmative. There is no reason why if the subject matter of the interpleader proceeding should fall within the Magistrate's Court limit, it should not be sent down to that court. Reverting to s 37, can the High Court transfer a case to a Magistrate's Court, if the quantum of the claim falls within the jurisdiction of the latter? It seem to me to be wholly illogical to imagine that the answer has to be in the negative. All the more so when it is noted that O 89 r 3 assumes that such a transfer to the Magistrate's Court is permissible.

59 In my opinion, s 52(2), and indeed those provisions in Part IV of SCA dealing with the civil jurisdiction of the District Court and Magistrate's Court, should be given a purposive interpretation. Otherwise it would mean that Parliament has left a clear gap in the procedure for civil proceedings in the courts.

Alternative basis

60 Even if I am wrong, or there is a doubt, as to the interpretation of s 52(2) of SCA, there is an alternative basis to hold that the High Court possesses the power to transfer a case from the Magistrate's Court to the High Court and vice versa. This is by virtue of s 18(2) and (3) (and ¶10 of the First Schedule) of SCJA, read with O 18 rr 1, 2 and 3 of the Rules.

61 Section 18(3) provides that the power of the High Court to transfer cases as set out in ¶10 of the First Schedule shall be "exercised in accordance with any written law or Rules of Court." There is nothing in SCA which expressly, or by necessary implication, provides or suggests that a case pending in the Magistrate's Court cannot be transferred to the High Court or vice versa. Moreover, O 18 rr 1, 2 and 3, by referring to "Subordinate Courts" instead of "District Courts", clearly contemplate that a case pending in the Magistrate's Court may be transferred to the High Court and vice versa. As mentioned in ¶¶ 54 and 55 above, there can be no question that the rules in O 89 are *intra vires* the powers of the Rules Committee.

62 The point that I am making is that if the present application is granted, as I think it should be, it would not be an exercise of the power (under ¶10 of the First Schedule) in contravention of s 18(3). The exercise would have been in accordance with O 89 rr 1 and 2, and thus would have complied with s 18(3).

63 I am aware that there is, to some extent, an overlap as to what is provided in s 18(3) and ¶10 of the First Schedule. Section 18(3) provides that the powers in the First Schedule shall be exercised "in accordance with any written law or Rules of Court." Paragraph 10 of the First Schedule (quoted in full in ¶37 above) also requires that the power be exercised in the manner prescribed by the Rules of Court. There seems to be an overlap. But they are consistent. I do not think this overlap alters the position I have sought to advance.

Conclusion

64 It is apparent from the scheme of things set out in s 18 of SCJA, ss 24, 37, 38 and 53 of SCA and O 89 of the Rules, that flexibility is really the order of the day. I do not think the statutory scheme is intended to penalize a litigant for instituting an action or counterclaiming in the wrong forum (or more

likely to be the case, rendered to be so by subsequent events). It seems to me that the scheme of things is really to enable the litigants to have the action or counterclaim heard in the appropriate forum so that justice will be done as between them. And I cannot think of any good reason why rigidity should prevail in essentially a procedural matter such as this.

65 An incongruous consequence of holding that the High Court has no such power to transfer is that, in a case which is commenced in the Magistrate's Court, and where the counterclaim by the defendant is instituted as a separate suit in the High Court because of the amount of the claim, and where the claim and counterclaim are connected, there is no way in which either party could apply to have the claim in the Magistrate's Court transferred to be heard together with the counterclaim action in the High Court, running the risk of two trials with possibly differing results, not to mention the waste in terms of time and costs. The respondents' counsel in his submission stated that the parties can "thereafter apply for a consolidation of the two sets of proceedings." The question is, how do you consolidate a High Court case with a Magistrate's Court case without bringing the Magistrate's Court case up to the High Court?

66 I would finally add that if this appeal is not allowed what it means is that more time and costs would have to be incurred to enable the case to come up to the High Court. Two steps would have to be taken instead of one. First, a party would have to apply under O 89 r 4 to have the case transferred from the Magistrate's Court to the District Court. Then he would have to apply again to have the case transferred from the District Court to the High Court. The same double steps would have to be taken if a High Court case should have to be transferred to a Magistrate's Court pursuant to s 37 of SCA. Should a litigant be required to go through such a tortuous route to obtain justice instead of being allowed to come, in an appropriate case, straight up to the High Court, or straight down to the Magistrate's Court, as is provided for in O 89?

67 For myself, I would have allowed the appeal and granted the application to have the entire case transferred from the Magistrate's Court to the High Court.

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