Chinese Chamber Realty Pte Ltd and Others v Samsung Corp (No 2) [2003] SGHC 215

Case Number : Suit 428/2003, SIC 5392/2003

Decision Date : 22 September 2003

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Latiff Ibrahim and Yeo Khung Chye (Harry Elias Partnership) for the plaintiffs; C.R. Rajah SC, Gerald Ng and Christine Lee (Wong & Leow LLC) for the defendants

Parties : Chinese Chamber Realty Pte Ltd; China Square Holdings Private Limited; Church Street Properties Private Limited — Samsung Corp (No 2)

Civil Procedure – Judgments and orders – Defendants applying for stay of order pending appeal on stay of proceedings – Whether circumstances warranted stay of order

1 This was an application by the defendant for a stay of the order made by Rajendran J that they file their defence. This application was made on the ground that the defendants have filed an appeal against the orders made by Rajendran J. The facts relevant to this matter are more fully set out in the grounds of judgement of Rajendran J dated 27 August 2003. But briefly, this matter arose from the action filed in this suit by the plaintiffs. The defendants entered appearance but did not file its defence because it applied for a stay of proceedings on account of an arbitration clause in the contract. That application was heard by the assistant registrar on 28 May 2003. The plaintiffs meanwhile applied for summary judgment. A procedural problem emerged as follows. The defendants could not file a defence and still maintain that they had not taken a step in the proceedings for the purposes of their application for a stay of proceedings. The plaintiffs, on the other hand, could not proceed with their application for summary judgment because after 1 December 2002 the Rules of Court provided that a plaintiff may only apply for summary judgment after the defence had been filed. The assistant registrar permitted the application for summary judgment to proceed. However, she made an order deferring the defence until after the application for a stay of proceedings had been disposed of. She further ordered that affidavit filed pursuant to the O 14 application shall not be regarded as a step in the action. The defendants filed an appeal against the orders of Rajendran J to the Court of Appeal. In the meantime, they applied to me for a stay of the orders of Rajendran J. Mr Latiff, counsel for the plaintiffs objected strongly to the interim stay of the orders of Rajendran J.

2 Mr Latiff's main objection was premised on the settled principle that an appeal does not operate as a stay of execution. (see *Lee Sian Hee (t/a Lee Sian Hee Pork Trader) v Oh Kheng Soon (t/a Ban Hong Trading Enterprise)* [1992] 1 SLR 77). Counsel argued that the way he perceived the defendants' case on appeal, the issue concerned the question whether the defence ought to be filed, which concerned O 18 r 2, and would not be a dispute order O 14 r 1. I do not think that that would be defendants' entire case on appeal. It is clear that the incongruity between O 14 r 1 and the rule prohibiting a party from taking a further step in the action (in the case where that party has applied to stay proceedings) must be reconciled. That would be the matter before the Court of Appeal. It is indeed a novel situation and that is sufficient to incline me to grant a stay of Rajendran J's orders pending the appeal to the Court of Appeal.

3 Mr Latiff also argued that ordinarily, 'the successful party should not be deprived of the fruits of his success'. I agree with that principle, but fruit harvested before the rigour of trial is sometimes less valuable than that harvested after. On the contrary, to correct errors at the interlocutory stage is an important consideration, and part of that importance is the avoidance of compounding the error by proceeding before the alleged fault at the interlocutory stage can be adjudged to be in need of redress or rectification. There are, of course, interlocutory matters which are comparatively trivial

and no substantial prejudice may arise by allowing the matter to proceed before the hearing of the appeal. The case before me is not such a case. It involves a novel point of procedure that affects not only the present parties but others as well. Balancing the extent of prejudice between the parties, and the balance of convenience, I am of the view that they lean in favour of a stay of all proceedings pending the appeal which I am told, is due within a month or two. If the defendants are right, then the plaintiffs would have no right of having their summary judgment application before the court at all.

For the above reasons the orders of Rajendran J will be stayed pending appeal before the Court of Appeal.

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