Hua Sheng Tao v Welltech Construction Pte Ltd and Another and Another Application [2003] SGHC 28

Case Number : OS 1744/2002, OS 1766/2002

Decision Date : 24 February 2003

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Adeline Chong Seow Ming [Harry Elias Partnership] for Welltech Construction Pte Ltd and Transbilt Engineering Pte Ltd; N Srinivasan and G Prasanna Devi [Hoh & Partners] for Hua Sheng Tao

Parties : Hua Sheng Tao — Welltech Construction Pte Ltd; Transbilt Engineering Pte Ltd

Civil Procedure – Appeals – Leave – Plaintiff appealing to High Court – Whether leave to appeal required – Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) s 21(1)

1. There were two applications before me both of which were for leave to appeal to the High Court against the judgment of a District Court judge in a suit brought there by the plaintiff against the first and second defendants. The plaintiff was a semi-skilled worker employed to plaster the walls of a building under construction. The first defendants were the main contractors of the building project and it was they who supplied the scaffolding, including a metal deck, for the workers such as the plaintiff. The second defendants were the sub-contractors and the immediate employers of the plaintiff.

2. While he was climbing down the scaffolding in the course of his work, the plaintiff stepped on a metal deck which the trial judge found as a fact to be inherently defective. The deck gave way and the plaintiff fell from a height of about 1.7m to the ground, injuring his ankles. He sued for damages which his solicitors quantified at $188,872.89. The trial judge dismissed the plaintiff's claim against the first defendants but allowed the claim against the second defendants. However, he found that the plaintiff had contributed to the accident to the extent of 40%. The judge then assessed damages at $59,872.39. 60% of that sum is $35,923.43. Neither party was pleased with the decision of the court. It was not disputed that by virtue of s 21(1) of the Supreme Court Of Judicature Act, Ch 322 the second defendants required leave to appeal. They maintained however, that the plaintiff also required leave under the same provision to appeal because the amount in dispute was less than the sum of $50,000 stipulated in s 21(1). I am setting out below the text of s 21(1), for convenience:

> "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." (my emphasis)

3. Miss Chong, counsel for the defendants, submitted on the authority of a Malaysian High Court case, *Lein Tiam Hock v Arumugam a/l Kandasamy* [1999] 6 MLJ 129, that the "amount in dispute or value of the subject matter" in the present case is $35,923.43. The court in *Lein Tiam Hock* also had to consider a statutory provision containing the same words "amount in dispute or value of the subject matter". In that case, the court was of the view that the emphasis should be on the word "decision" in the Malaysian equivalent of our s 21(1) and, placing his emphasis there, the learned judge concluded that "the amount in dispute or the subject-matter provided for under s 28 [our s 21],

must relate to the decision of the subordinate court, and not to any sum claimed either by the plaintiff or the combined sum of the claim and counterclaim submitted by the defendant, if any". Further on, the learned judge analysed the effect of the statutory words in this way: a plaintiff who does not appeal against the award is, in principle, not prejudiced by it. In "real terms", the plaintiff would have abandoned any larger claim that he might originally have made. The defendant, on the other hand, believing that he was wrongly judged, would be the one to file the appeal. The court then said, "In practical terms when an aggrieved party files an appeal he must be disputing the judgment sum awarded against him. Therefore, shorn of all the legal niceties, that judgment sum must be the amount in dispute". With respect, I do not agree that the "amount in dispute" in s 21(1) necessarily means the "judgment sum". It may well be a larger sum, namely, the amount claimed by the plaintiff at first instance. That is because his dissatisfaction with the judge's decision may stem from his belief that the judge ought to have granted him the full amount originally claimed. For my part, I would place emphasis on the "amount in dispute" rather than on the word "decision" in s 21(1). The relevant portion of s 21(1) in present context would read as follows,

> "an appeal shall lie to the High Court from a decision of a District Court or Magistrate's in any civil cause or matter where the amount in dispute exceeds $50,000".

Read in plain English, the meaning seems clear enough. The only question one need ask is whether the plain reading will result in an absurdity. The answer plainly, is no.

4. Mr Srinivasan, counsel for the plaintiff, also drew my attention to *Augustine & Anor v Goh Siam Yong* [1992] 1 SLR 767 and wondered whether the statutory limit should be pegged to the difference between the amount claimed by the plaintiff and the amount awarded by the judge rather than just the amount as originally claimed by the plaintiff. He expressed the fear that if it was to be the latter, then s 21(1) would be rendered impotent and of no effect since it would lead every plaintiff to claim in excess of $50,000 in the first instance. I do not think that the consequence is as severe as counsel feared. Often, the quantum of damages may only become evident after the judge has assessed damages. The quantum awarded may be $10,000 and the plaintiff though dissatisfied with $10,000 may nonetheless accept that it would not be more than $50,000. Conversely, the plaintiff may be awarded $60,000 and does not appeal, but the defendant, on the other hand may say that the award should not be more than $30,000. That is why the Court of Appeal in the *Augustine* case alluded to the point that it may depend on who the party appealing is, and on that basis, distinguished *Anthony s/o Savarimuthu v Soh Chuan Tin* [1989] SLR 607. The relevance of the party intending to appeal is that the amount in dispute so far as one party is concerned may not be the same as regards the other party who may, on his own accord or in the circumstances, limit the amount to less than $50,000. One such case is Originating Summons No. 50 of 2003 which was heard by me immediately after this present originating summons.

5. Miss Chong augmented her submissions with three other arguments. The first was based on the purpose of s 21(1) which she rightly said was to discourage what the Minister had referred to as "non-serious" appeals. She said that what is a serious appeal should not be a matter left to be decided by the plaintiff. The trial judge, she said, had heard all the evidence and must be the best person to decide what is serious and what is not. If Miss Chong is correct, and I do not think that she is, it means that the trial judge's decision becomes the definitive declaration as to what is serious. The problem with this view is that the decision of the trial judge is itself the problem in the sense that it is precisely that decision that the plaintiff wishes to appeal against. Some plaintiffs may overstate their claim, but that is the duty of the trial judge - to determine not only as to whether the plaintiff has a case, but also whether he had exaggerated it. The right of appeal incorporates the right to

argue that the trial judge was wrong on all counts. I therefore do not see any merit in Miss Chong's first argument.

6. Counsel's second argument against the idea of pegging the $50,000 limit to the plaintiff's claim is made on the assumption that "claimants quantify their claims on a higher scale", and drawing from that assumption, the conclusion that the parliamentary aim of s 21(1) would thereby be defeated. Sometimes the whole and true picture emerges only when we take a step or two backwards. This is one such instant. Section 21(1) has the immediate and obvious effect of limiting the right of appeal from the District Court to the High Court under the avowed aim of weeding out "non-serious appeals". We ought to begin by reminding ourselves that the provision in question has the effect of limiting a broader and more fundamental right - the right of a litigant in the District Court and Magistrate's Court to appeal to the High Court. The limitation ought therefore be applied strictly within the ambit permitted by the statutory language. What has to be avoided is an interpretation that curtails more than what the Parliamentary words intend. It would not be right, therefore, to say that an appeal is not serious merely because the trial judge had held that the award should be less than $50,000 since the root complaint in such cases is precisely that that decision was wrong. If the appellant succeeds then he is right and if he fails, the trial judge is right. A non-serious appeal, without specific qualification by the legislature, in my view, must refer to appeals in which it is obvious that the subject matter of the suit that resulted in the trial judge's decision (the amount in dispute), and, consequently therefore, also the subject matter of the appeal, is not more than $50,000. Thus where it is clear that the plaintiff has quantified his claim to be less than $50,000 in the trial, then it follows that his appeal is unlikely to be for a larger sum. Those are the sort of cases that Parliament wishes to discourage on appeal; and even so, a discretion is left to the court to grant leave notwithstanding that the sum involved was less than the statutory figure. Hence, for these reasons I am of the view that the defendants' second argument is not persuasive.

7. In her third argument Miss Chong relied on "the need for certainty" and expressed the view that by pegging the amount adjudged as the amount in dispute, it would eliminate all uncertainties as to what the amount in dispute is. I am unable to see the merit in this argument. The amount must clearly be shown to be below $50,000 so that s 21(1) would otherwise apply. Thus, this third argument is circuitous because it depended on the assumption that the trial judge's decision is definitive.

8. In her submissions, Miss Chong anticipated a case that Mr Srinivasan, might rely, namely *Sethuraman v Star Industries Pte Ltd*, Originating Summons 7004 of 1999 (unreported). The relevant portion of that judgment is found in [18] and here reproduced:

> "It can be argued that in keeping with that reason, the threshold limit should apply to the amount in dispute in the appeal, rather than the amount in dispute in the original claim. A strict construction of s 21(1) can lead to anomalous results. When a claim for $30,000 is dismissed, leave to appeal is required before the High Court will hear the appeal because the High Court will be dealing with a dispute involving a claim of $30,000. When $30,000 is allowed on a claim for $60,000, an appeal will also involve a sum of $30,000 whether the plaintiff or defendant appeals, but on a strict construction, no leave is required. *As leave is required in the first situation, leave should also be required in the second situation. The object of setting the threshold limit is not promoted when appeals involving sums below the limit are allowed to proceed without leave*." (counsel's emphasis).

Miss Chong believes that a on close reading of the above passage one would get a hint that the judge was disinclined to apply the strict construction, and she therefore, urged me to follow suit. I am unable to agree with Miss Chong. I think that on a close reading no anomaly exists and it follows, therefore, that the hint that caught counsel's attention would have lost all relevance. In any event, the judge made it clear that the decision there rested on its own facts. The relevant fact in that case was that the amount in dispute as well as that adjudged by the trial judge was above $50,000. It will not be right to take the difference between the amount claimed and the amount awarded to see if the figure exceeds $50,000 because that goes against the plain reading of s 21(1) and is inconsistent with the Court of Appeal's decision in *Tan Chiang Brother's Marble (S) Pte Ltd v Permasteelisa Pacific Holdings Ltd* [2002] 2 SLR 225. Furthermore, on appeal, the entire dispute may have to be re-examined and the amount in dispute that is being re-examined must obviously be the amount in dispute at the trial below.

9. Miss Chong referred very briefly to the Court of Appeal case of *Spandeck Engineering (S) Pte Ltd v Yong Qiang Construction* [1999] 4 SLR 401 merely to say that the purposive approach to interpretation was adopted. The issue that arose in the *Spandeck* case is not the same as that before me. In *Spandeck* the issue concerned an interpretation of s 34(2)(a) of the Supreme Court Of Judicature Act. The wording of s 34 is similar but different from s 22(1). The former reads: "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);" (my emphasis). The question in that case was whether a decision of the High Court on an appeal from the District Court can be considered "a trial". The Court of Appeal in the subsequent case, *Tan Chiang Brother's Marble (S) Pte Ltd v Permasteelisa Pacific Holdings Ltd* explained the import of *Spandeck*. *Tan Chiang Brother's Marble* was also concerned with the interpretation of s 34(2)(a). The Court of Appeal ruled that the statutory limit must be read as a reference to the amount at trial. Although the two sections in the same Act differs in that s 21(1) refers to the amount in dispute while s 34(2)(a) refers to the amount at trial, it seems to me that there is no justification in applying a diametrically opposite principle on account of such difference. It must not be forgotten that the words "amount in dispute" in s 21(1) qualify the preceding words, "in any civil cause or matter". So, insofar as one examines the purposive approach taken by the Court of Appeal, it only reveals that the court in the two cases just mentioned did not regard the amount adjudicated by the trial judge to be the pivotal sum for the purposes of determining whether leave to appeal is required. Chao JA cited the Malaysian Federal Court case of *Yai Yen Hon v Teng Ah Kok & Sim Huat* [1997] 1 MLJ 136 with implicit approval. There the Federal court held that the right to appeal depended on the value of the claim and not the value of the award given by the trial judge. Chao JA went on to address the very point that counsel before me feared, namely that a plaintiff would exaggerate his claim to get himself over the threshold. Chao JA referred to the English case of *Dreesman v Harris* (1854) 9 Exch 485 in which the very same argument (that a plaintiff may exaggerate his claim) was rejected, and then continued with the reminder that "a party who unreasonably inflates his claim may be penalised when the question of costs arises for consideration. This would undoubtedly act as a deterrence." *Ibid* at [23], [24].

10. For reasons above I declare that the plaintiff does not require leave to appeal and that his Notice of Appeal filed on 10 September 2002 be proceeded with. In the circumstances, no further order is required but I should address the plaintiff's alternative arguments although they have, in effect, have been rendered otiose in view of my decision in his favour in respect of the preliminary point. The plaintiff's intended appeal is against both defendants. The trial judge had dismissed the claim against the first defendant entirely and held that the second defendant was only 60% to blame. This is an industrial accident claim in which Mr Srinivasan has persuaded me that there are questions of mixed fact and law of some importance arising from the decision below including the question whether the

first defendant would have been liable for breach of statutory duty under the Factories Act, that merit argument. It would not be right for me to give any hint, let alone express an opinion, as to the merits of the appeal, and I therefore decline to do so. I need only say that there is room for argument both ways, and as such, had leave been required of the plaintiff, I would have granted it.

11. The second application was the application of the second defendant whose case was that the accident was caused entirely by the fault of the plaintiff with no contribution whatsoever on the part of the defendants. I am of the view that although it does not follow that where leave is granted or proceeded as a matter of right by one party, leave ought to be granted as a matter of course. In this case, however, there is a sufficiently strong nexus between the two intended appeals that a tug on one side pulls the other and vice versa. In such circumstances, fairness requires that leave be granted to the second defendant to appeal so that the full picture can be examined from both angles. I therefore granted leave to the second defendant to appeal.

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