Compaq Computer Asia Pte Ltd v Computer Interface (S) Pte Ltd (No 2) [2004] SGCA 28

Case Number : CA 130/2003

Decision Date : 28 June 2004

Tribunal/Court : Court of Appeal

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

Counsel Name(s) : Philip Tay (Rajah and Tann) for appellant; Harpal Singh (Harpal Mahtani Partnership) for respondent

Parties : Compaq Computer Asia Pte Ltd — Computer Interface (S) Pte Ltd

Civil Procedure – Offer to settle – Appellant made offer to settle – Respondent failed to accept offer – Respondent lost on appeal – Whether appellant entitled to indemnity costs from date of offer – O 22A r 9 Rules of Court (Cap 322, R 5, 1997 Rev Ed)

28 June 2004

Chao Hick Tin JA (delivering the judgment of the court):

1 In our judgment dated 28 May 2004 at [2004] SGCA 23, we allowed the defendant-appellant's appeal and thereby dismissed the plaintiff-respondent's claim for breach of contract against the appellant. We also awarded costs to the appellant in respect of the appeal and the trial below.

2 Further to our judgment, on 10 June 2004, the solicitors for the appellant wrote to inform us that the appellant had, on 4 September 2002, made an offer to settle ("OTS") (*ie* to pay to the respondent the sum of S$60,000, with each party to bear its own costs). The validity of the OTS was not restricted as to any period of time. It was never withdrawn and was still on the table as at the date of our judgment. The solicitors for the appellant thus sought indemnity costs pursuant to O 22A r 9 of the Rules of Court (Cap 322, R 5, 1997 Rev Ed).

3 Counsel for the appellant also informed us that at the date the OTS was made, the parties had only completed discovery. The affidavits of evidence in chief were only filed by the respondent on 11 November 2002, more than two months later. So, costs in that regard could not have been incurred yet. The solicitors for the respondent have not written in to dispute the foregoing.

4 In the light of the circumstances outlined above, and bearing in mind the views expressed by this court in *Man B&W Diesel S E Asia Pte Ltd v PT Bumi International Tankers (No 2)* [2004] SGCA 22 as to the application of O 22A r 9, we are of the opinion that the appellant should be entitled to indemnity costs as from the date of the OTS. In the circumstances of this case, the OTS was a serious and genuine offer. We accordingly modify our earlier order on costs and grant indemnity costs to the appellant.

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