

Skading Anne v Yeo Kian Seng
[2005] SGHC 48

Case Number : MC Suit 22561/2002, RAS 61/2004

Decision Date : 08 March 2005

Tribunal/Court : High Court

Coram : Belinda Ang Saw Ean J

Counsel Name(s) : Wong Chai Kin (Wong Chai Kin) for the plaintiff; Brij Raj Rai and Ramesh Appoo (Just Law LLC) for the defendant

Parties : Skading Anne — Yeo Kian Seng

Courts and Jurisdiction – Magistrates' courts – Plaintiff applying to transfer action commenced in Magistrate's Court to District Court – Value and extent of claim exceeding Magistrate's Court's monetary limit – Whether plaintiff entitled to transfer – Order 89 r 4 Rules of Court (Cap 322, R 5, 2004 Rev Ed), ss 53, 69 Subordinate Courts Act (Cap 321, 1999 Rev Ed)

8 March 2005

Judgment reserved.

Belinda Ang Saw Ean J:

1 This appeal, which concerns the transfer of proceedings from the Magistrate's Court to the District Court, involves matters of procedure that are of general interest. On 7 August 2002, the plaintiff commenced proceedings in the Magistrate's Court in respect of her claim for damages for personal injuries sustained on 8 August 1999 as a pillion rider on the defendant's motorcycle. On 14 July 2004, the plaintiff applied for her action to be transferred from the Magistrate's Court to the District Court on the ground that the value and extent of her claim for damages were likely to exceed the Magistrate's Court monetary limit of \$60,000. On 9 November 2004, the district judge affirmed the decision of the deputy registrar who, on 7 September 2004, allowed the plaintiff's application. The defendant has appealed against the decision of the district judge.

2 Both sides drew my attention to two opposing High Court decisions on the very same narrow point that is now on appeal. They are *Tan Kok Ing v Tan Swee Meng* [2003] 1 SLR 657 ("*Tan Kok Ing*") and *Rightrac Trading v Ong Soon Heng* [2003] 4 SLR 505 ("*Rightrac*"). In both cases, the respective actions were commenced in the Magistrate's Court and a transfer of proceedings to the District Court was duly sought on account of an increase in the quantum of the claim beyond the monetary limit of the Magistrate's Court, which is, currently, \$60,000.

3 Counsel for the plaintiff, Ms Wong Chai Kin, argues that *Rightrac* should be followed whereas the defendant favours *Tan Kok Ing*. I gather from counsel for the defendant, Mr Brij Rai, that the deputy registrar and district judge, when faced with two conflicting decisions of courts of co-ordinate jurisdiction, applied the general rule of *stare decisis* and followed *Rightrac*, a later decision which had considered *Tan Kok Ing*: see *Minister of Pensions v Higham* [1948] 2 KB 153.

4 It is convenient to refer to ss 53 and 69 of the Subordinate Courts Act (Cap 321, 1999 Rev Ed) ("SCA") and O 89 r 4(1) of the Rules of Court (Cap 322, R 5, 2004 Rev Ed). Section 53 provides:

A Magistrate's Court may, either of its own motion or on the application of a party to an action, transfer the action to a District Court on the ground that some important question of law or fact is likely to arise.

Section 69 reads:

(1) The Rules Committee appointed under section 80(3) of the Supreme Court of Judicature Act (Cap. 322) may make Rules of Court regulating and prescribing the procedure and the practice to be followed in the District Courts and the Magistrates' Court in the exercise of their civil jurisdiction and any matters incidental to or relating to any such procedure or practice.

...

(3) Without prejudice to the generality of subsections (1) and (2), the power to make Rules of Court shall extend to —

...

(b) prescribing the circumstance and procedure by which proceedings may be transferred from one court to another;

...

Order 89 r 4(1) reads:

Where a Subordinate Court is satisfied that any proceedings in that Court ought to be tried in some other Subordinate Court, it may order the proceedings to be transferred to the other Court.

5 In *Tan Kok Ing*, Woo Bih Li JC (as he then was) held that to transfer an action commenced in the Magistrate's Court to the District Court, the plaintiff had to meet the requirements in s 53 of the SCA, *ie*, that the proceedings were likely to raise an important question of law or fact. A transfer of proceedings based purely on the quantum of the claim could not constitute an "important question of law or fact". As O 89 r 4(1) was subsidiary legislation, it could not override s 53 of the SCA. Order 89 r 4(1) was to be read subject to s 53 of the SCA. Woo JC did not say that O 89 r 4(1) was *ultra vires*, but said that it had no application when the reason for transfer did not involve an important question of law or fact. There was no inherent jurisdiction in the Magistrate's Court outside of s 53 of the SCA to transfer an action commenced in the Magistrate's Court to the District Court.

6 A year later, Lai Siu Chiu J in *Rightrac* reviewed the decision of *Tan Kok Ing*. Lai J, differing from Woo JC, came to the conclusion that an application to transfer proceedings from the Magistrate's Court to the District Court on account of the quantum of the claim exceeding the Magistrate's Court limit of \$60,000 should be granted under O 89 r 4(1) as of right with the appropriate costs orders. It was noted that Woo JC had not considered s 69 of SCA. To Lai J, s 69(3) (b) of the SCA empowered the Rules Committee to prescribe the circumstances and procedure by which proceedings might be transferred within the regime of the subordinate courts and the circumstances for transfer were found in O 89 r 4(1). Above all, s 69 of the SCA was not made subject to s 53 or any other provisions of the SCA. Order 89 r 4(1) would be rendered nugatory if that sub-rule were to be read subject to s 53 of the SCA.

7 On Woo JC's reasoning that O 89 r 4(1), being subsidiary legislation, must be read subject to the provision of s 53 of the SCA, Mr Rai referred me to s 19(c) of the Interpretation Act (Cap 1,2002 Rev Ed), which states that "no subsidiary legislation made under an Act shall be inconsistent with the provisions of any Act". Counsel also criticises the decision of *Rightrac*. He points out that *Rightrac* did not spell out the grounds or factors that must be satisfied under O 89 r 4(1) for the action to be transferred. Moreover, Lai J's explanation on when s 53 applies was difficult to follow. The holding (at

[33]) was that s 53 applied only “where an application is made to transfer a Magistrate’s Court claim to a District Court when the amount is *below the current jurisdiction of a District Court*” [emphasis added]. Mr Rai submits that it is not clear when a claim will be considered to be “below the current jurisdiction of a District Court” in view of the current practice (and the practice is not disputed by Ms Wong) that even though the claim amount is less than \$60,000, a claimant can commence proceedings in the District Court upon payment of the requisite stamp fee. On this second criticism, I understand Lai J as saying that s 53 applies to a case where the claim amount is within the Magistrate’s Court limit of \$60,000, but a transfer to the District Court is nonetheless necessary as the real controversy between the parties involves an important question of law or fact which is best determined by the District Court. Interpreted in this way, there is no conflict between O 89 r 4(1) and s 53 of the SCA.

8 I should first consider the general approach to the transfer of proceedings from the Magistrate’s Court to the District Court and the statutory powers on such transfers. At first sight and on the face of it, the transfer is formally provided for by s 53 of the SCA. I agree with Woo JC that the rule-making body has no power to override or modify the express provisions of s 53 of the SCA. At the same time, I can attach to s 69(3) the same importance to which Lai J gave to it in *Rightrac*. It is under the statutory power drawn from s 69(3) of the SCA that O 89 r 4(1) is made. Whilst s 69(1) of the Act gives the Rules Committee appointed under s 80(3) of the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed), a wide power to make rules of procedure or practice in any case within the cognisance of the district courts and magistrates’ courts, sub-s (3) of s 69 expressly grants power to the Rules Committee to *prescribe the circumstances* by which proceedings may be transferred within the subordinate courts and to make rules of procedure relating to the transfer. This additional power was highlighted by Judith Prakash J in *Ong Pang Wee v Chiltern Park Development Pte Ltd* [2003] 2 SLR 267 (“*Chiltern Park*”).

9 While *Chiltern Park* is not a decision on O 89 r 4(1), the observations of Prakash J and Chao Hick Tin JA on the sub-rule are instructive and were referred to by the district judge. Prakash J at [30] noted the “expansive wording” of s 69(3) and in [31] said, *obiter*, that “the primary legislation [*ie* s 69(3)] 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”. In exercise of its power, provision is made in O 89 r 4(1) dealing with the circumstances of transfer, namely where the court hearing the transfer application is satisfied that the proceedings initiated in a subordinate court ought to be tried in another subordinate court. Chao JA, who delivered the dissenting judgment in *Chiltern Park*, expressed the view, *obiter*, that O 89 r 4 (1) was not *ultra vires* s 69(3)(b) of the SCA. Lai J in *Rightrac* agreed with his further observations at [56] of *Chiltern Park*:

The argument is made that with s 53 of the 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 ... 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.

10 The drafting style adopted by the Rules Committee for O 89 r 4(1) did away with the need to enumerate the grounds or criteria for transfer. It chose to use in O 89 r 4(1) broad and general words granting jurisdiction to transfer proceedings within the subordinate courts whenever it is necessary to do so. Consequently, the words “important question of law or fact” are not repeated or reproduced in O 89 r 4(1) and, in my view, it is quite unnecessary to do so as the wording of O 89 r 4(1) is capable of admitting this as a ground for transfer. It is the combined effect of s 53 of the SCA and O 89 r 4(1) that is important. The applicant has to satisfy the court that an important question of law or fact is

likely to arise for determination of the real controversy between the parties and the proceedings ought to be tried in another subordinate court. Hence, I respectfully depart from Woo JC in his holding that O 89 r 4(1) must be read subject to s 53.

11 Order 89 r 4(1) provides for the transfer of the proceedings in the Magistrate's Court to another subordinate court in which the proceedings *ought to be tried* and that could also mean the court in which the proceedings ought to have been commenced. So, if the wrong court (so to speak) was chosen in which to initiate proceedings, the plaintiff having overreached the provisions of s 52(1) of the SCA, the court has jurisdiction to entertain an application made under O 89 r 4(1) to transfer the proceedings to another subordinate court. Order 89 rr 4(2) and 4(3) set out the procedure to be followed.

12 The power to transfer is discretionary. The onus under O 89 r 4(1) is on the party seeking the transfer to satisfy the court that it is a fit and proper case for transfer so that the action is tried in an appropriate court. In other words, the court has to be satisfied on the application that the transfer is necessary. In this regard, I am unable, with respect, to agree with Lai J that when an application for transfer is based purely on an increase in the quantum of damages claimed, the applicant is entitled as of right to a transfer of proceedings instituted in the Magistrate's Court to the District Court.

13 I agree with Woo JC that the plaintiff is not required to justify, at the hearing of the application for transfer, the quantum claimed. But it by no means follows that a transfer will be granted in all cases with the singular feature that the claim amount is likely to exceed the Magistrate's Court limit. As the application involves an exercise of discretion, there must be some valid reason for ordering the transfer. The court's decision as to transfer will turn on the interests of justice and the interests of the parties as well. That means not only balancing the interests of the plaintiff who wants to continue to pursue her action in the District Court but also the interests of the defendant who wants to have his liability determined in the Magistrate's Court. The court has to take account of any prejudice to the defendant if the action is transferred.

14 Turning to the facts and matters advanced on this particular application, there is nothing in the supporting affidavit to tell the court the cause of the trouble in this case. The plaintiff has not explained why there is a need, and what has created the situation, for a transfer. The plaintiff applied to transfer the proceedings almost five years after the accident. She sued the defendant just short of three years of the accident and for a further two years, she was content to have the claim tried in the Magistrate's Court. Ms Wong did not refute Mr Rai's contention that nothing new appeared to have surfaced or developed from looking at the same material that was available to the plaintiff at the time of issuance of the proceedings in the Magistrate's Court. Mr Rai submits that the defendant would be prejudiced if the action is transferred to the District Court as the claim is already time barred. There is also no explanation as to why the claim was not initially brought in the District Court.

15 To conclude, whilst the court has the jurisdiction to entertain the plaintiff's application made under O 89 r 4(1), in the particular circumstances of this case, the discretion should not be exercised to transfer the proceedings to the District Court. Accordingly, the appeal is allowed with costs here and below.

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