OK Property Pte Ltd v Heng Siew Ang
[2007] SGHC 115

Case Number : OS 778/2007

Decision Date : 13 July 2007

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Francis Tee Hong Boon (in person) for the plaintiff; Defendant in person

Parties : OK Property Pte Ltd — Heng Siew Ang

Civil Procedure – Jurisdiction – Whether order by referee in Small Claims Tribunal can be set aside on application to High Court – Section 38 Small Claims Tribunals Act (Cap 308, 1998 Rev Ed)

13 July 2007

Choo Han Teck J:

1 The plaintiff was a company carrying on the business of a real estate agent. On 24 May 2002 it was awarded the sum of $1,900 being part of the commission claimed against the defendant arising from a lease transaction. It was also awarded $50 for disbursements incurred. The order was made by Miss Vivienne Ong, a referee in the Small Claims Tribunal. On 9 May 2007, the defendant applied and obtained an order from the senior referee, Mr Ernest Lau, setting aside the order of 24 May 2002.

2 In the present proceedings, the plaintiff contended that Mr Lau had no jurisdiction to set aside Miss Ong's order. Both the plaintiff and defendant were unrepresented before me and apart from the fact that the 24 May 2002 order was set aside five years later, and in the interim the quarrel between the plaintiff and defendant continued in the courts in criminal and civil proceedings, the details were unclear.

3 By this originating summons, the plaintiff prayed that the order of Mr Ernest Lau setting aside Miss Vivienne Ong's order be set aside. The proceedings in question before Miss Ong and Mr Lau were brought under the Small Claims Tribunals Act (Cap 308, 1998 Rev Ed) ("the Act"). Under s 23 of the Act, each party presented its own case since no advocate and solicitor was permitted to argue as counsel on either party's behalf in the hearing before the Small Claims Tribunal. The parties were entitled to counsel on appeal. The Act provides for the procedure and right of appeal in Part III. The relevant provision is s 38 which provides as follows –

> **Appeal on point of law**
>
> **38.** —(1) Any party to proceedings before a tribunal may appeal to the High Court against an order made by the tribunal under section 35(1) or 37(3) —
>
> (a) on any ground involving a question of law; or
>
> (b) on the ground that the claim was outside the jurisdiction of the tribunal.
>
> (1A) An appeal shall lie to the High Court under this section only if leave to appeal is given by the District Court.

(1B) For the avoidance of doubt, leave of the District Court is necessary even if one of the grounds stated in subsection (1) is shown to exist.

(2) Rules may be made under section 47 to regulate and prescribe the procedure to be followed on appeals from a tribunal to the High Court.

4 It is apparent that the correct procedure was for the plaintiff to appeal against the order of Mr Lau by way of an appeal to the High Court instead of applying afresh by way of an originating summons. If the procedure was followed, the plaintiff would first have to obtain leave from the District Court pursuant to s 38(1A) of the Act.

5 It is ironic in a way that the defendant obtained an order from the senior referee when she too ought to have obtained leave from the District Court to appeal to the High Court against Miss Ong's order. Indeed, s 40 of the Act provides that an order of a tribunal shall be final and binding on all parties to the proceedings and, except as provided by s 38, no appeal shall lie in respect thereof.

6 For the reasons above, I dismissed the plaintiff's application under this originating summons. He has since written for further arguments. I do not think I can create a process of appeal outside that provided by the legislature and have, therefore declined to hear any further arguments.

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