

Bin Hee Heng v Ho Siew Lan (acting as executrix and trustee in the estate of Gillian Ho Siu Ngin)
[2020] SGCA 4

Case Number : Civil Appeal No 119 of 2019 (Summons No 129 of 2019)
Decision Date : 06 February 2020
Tribunal/Court : Court of Appeal
Coram : Sundaresh Menon CJ; Steven Chong JA; Woo Bih Li J
Counsel Name(s) : The applicant in person; Goh Kok Yeow and Lim Huiling, Naomi (De Souza Lim & Goh LLP) for the respondent.
Parties : Bin Hee Heng — Ho Siew Lan — (acting as Executrix and Trustee in the Estate of Gillian Ho Siu Ngin)

Civil procedure – Extension of time

6 February 2020

Woo Bih Li J (delivering the judgment of the court):

Introduction

1 In CA/SUM 129 of 2019 (“SUM 129”), the Applicant, Bin Hee Heng (“BHH”), is seeking an extension of time to file certain documents connected with his appeal to the Court of Appeal in CA 119 of 2019 (“CA 119/2019”) in order to maintain that appeal.

2 To facilitate a better understanding of what his main appeal in CA 119/2019 is all about, we set out below the background leading to CA 119/2019 and consequently his application for an extension of time to file those documents therein.

Background

3 BHH was the husband of Gillian Ho Siu Ngin who executed a last Will and Testament on 11 August 2012 (“the 2012 Will”). She passed away on 17 September 2013. We will refer to her as “the Deceased”. Grant of Probate was issued on 3 July 2014.

4 Ho Siew Lan (“HSL”), the respondent in this summons, is the sister of the Deceased. She is also the executrix and trustee of the Estate of the Deceased.

5 On or about 20 September 2016, BHH filed an action in HCF/S 8/2016 in the Family Division of the High Court naming HSL as defendant in her capacity as executrix and trustee of the Estate of the Deceased.

6 On or about 25 November 2016, BHH filed his Statement of Claim (“SOC”). According to HSL, the SOC was exceedingly prolix and convoluted. The gist of the claims was that the Deceased’s 2012 Will was null and void as the Deceased lacked mental capacity and the 2012 Will was made under undue influence. BHH claimed compensation and/or a share of the Deceased’s estate in the SOC.

7 On 20 January 2017, HSL filed an application by way of HCF/SUM 27/2017 to strike out portions

of the SOC as being irrelevant, scandalous, frivolous, and/or vexatious.

8 This application was heard by Assistant Registrar Jonathan Lee Zhong Wei ("AR Lee") on 24 May 2017. On 14 June 2017, AR Lee ordered that various portions of the SOC be struck out and gave his reasons for doing so.

9 On 27 June 2017, BHH filed an appeal against AR Lee's decision. This is HCF/RAS 12/2017.

10 BHH's appeal was heard on 2 October 2017 by JC Foo Tuat Yien ("JC Foo"). After hearing arguments, she dismissed his appeal.

11 BHH then filed an appeal to the Court of Appeal. This is CA 186/2017.

12 This appeal was heard by a three-judge coram on 6 September 2018. After hearing arguments, the Court of Appeal dismissed BHH's appeal and gave directions for BHH to re-file his SOC as amended according to AR Lee's decision.

13 According to HSL, there were two minor discrepancies in the extracted Order of Court arising from AR Lee's decision. She filed HCF/SUM 334/2018 to correct the extracted Order of Court and her application was allowed by another Assistant Registrar on 14 November 2018. The Assistant Registrar also directed BHH to file a correctly amended SOC by 28 November 2018.

14 However, BHH did not do so. Instead, on or about 6 December 2018, he filed a second action in the High Court by way of OS 1496 of 2018. He sought a judicial review of the decision of the Court of Appeal of 6 September 2018. He wanted the review to be conducted by a coram which was different from the coram which made that decision. In his supporting affidavit, he alleged that the Court of Appeal did not give any grounds for its decision on 6 September 2018 except to say that it agreed with AR Lee's decision, and that AR Lee's decision itself was untenable as it was against the weight of various authorities. He alleged that in upholding AR Lee's decision, the coram in the Court of Appeal were in breach of their oath/affirmation of office to "... do right to all manner of people after the laws and usages of the Republic of Singapore without fear or favour, affection or ill-will ..." pursuant to the First Schedule (Form 6) of the Constitution of the Republic of Singapore. The coram had also breached Art 12(1) of the Constitution as they had discriminated against him by failing to treat him equally before the law.

15 The second action was heard by Justice Choo Han Teck on 24 May 2019. Choo J dismissed this second action on the basis that the High Court has no jurisdiction to re-constitute a fresh coram in the Court of Appeal to re-hear the first appeal to the Court of Appeal, *ie*, CA 186/2017.

16 On or about 31 May 2019, BHH filed an appeal to the Court of Appeal against the decision of Choo J. This is CA 119/2019. Pursuant to O 57 r 5(2) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC"), the Registrar of the Supreme Court ("the Registrar") notified the parties on 7 August 2019 that the Record of Proceedings was available. Pursuant to O 57 r 9(1) of the ROC, BHH had to file (a) one copy of the record of appeal, (b) the appellant's case and (c) a core bundle of documents, within two months from 7 August 2019 (*ie*, by 7 October 2019).

17 On 7 October 2019, BHH filed his appellant's case. However, he did not file the record of appeal and core bundle by 7 October 2019. He attempted to file some documents on 11 October 2019 but the documents were rejected as his appeal had been deemed withdrawn by then. BHH's appeal in CA 119/2019 had been deemed withdrawn pursuant to O 59 r 9(4) of the ROC.

18 On 17 October 2019, an Assistant Registrar conducted a case management conference and informed the parties that BHH's appeal had been deemed withdrawn.

19 On 18 October 2019, a Notice of Deemed Withdrawal of Appeal was issued by the Registrar to notify parties of the deemed withdrawal.

20 Consequently, on 24 October 2019, BHH filed SUM 129 for an extension of time to file his record of appeal and core bundle. His position was that the extension of time would not prejudice the hearing of his second appeal to the Court of Appeal which was originally scheduled to be heard between 17 February 2020 and 6 March 2020.

21 This application for an extension of time was opposed by HSL. We add that at all material times, BHH was and is acting in person while HSL was and is represented by solicitors.

22 Pursuant to s 34A of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA"), we decided to hear this application without oral arguments as written submissions had been tendered by the parties and oral arguments were unnecessary. Indeed, BHH himself suggested that the written submissions would suffice.

23 The usual factors to be considered in an application for such an extension of time are (*Sun Jin Engineering Pte Ltd v Hwang Jae Woo* [2011] 2 SLR 196 at [29]):

- (a) the length of the delay;
- (b) the reasons for the delay;
- (c) the merits of the intended appeal; and
- (d) whether there was undue prejudice to the respondent if the extension of time were granted.

24 If there were clearly no merits in the intended appeal, then the other factors will not be relevant.

25 In the present case, it is clear to us that there is no merit in BHH's intended appeal to the Court of Appeal against the decision of Choo J.

26 First, as Choo J observed, the High Court has no jurisdiction to order that a new coram be constituted in the Court of Appeal, which is higher in the hierarchy than the High Court, to re-hear the first appeal in CA 186/2017. This defect is not cured by an appeal to the Court of Appeal against the decision of Choo J.

27 Secondly, there is no question of judicial review of a decision of the Court of Appeal. It is not an administrative tribunal. Its decision is final and binding and there is no further avenue of appeal.

28 Thirdly, there is no substantive merit in the second action in OS 1496 of 2018 alleging that AR Lee's decision was a nullity and that the Court of Appeal's decision of 6 September 2018 (which effectively upheld AR Lee's decision) was also a nullity.

29 BHH stressed that there are numerous authorities which make AR Lee's decision untenable. That is not the point. AR Lee's decision may be correct or incorrect but it is not a nullity. It is still a

decision which stands unless it is set aside on appeal.

30 BHH did appeal but, as mentioned, his appeal was dismissed by JC Foo. He then appealed to the Court of Appeal and that appeal was also dismissed.

31 It is not open to BHH to argue that because the initial decision of AR Lee was against the weight of authorities, it must also mean that the Court of Appeal's decision, which effectively upholds AR Lee's decision, was unconstitutional.

32 There is simply no valid basis for BHH to make the scandalous allegations that the coram in the Court of Appeal had not acted in accordance with their oath of office or had denied him equal protection of the law just because BHH thinks that there are numerous authorities which support his case.

33 It is common for each side to believe that he or she has a good case whether on the law or on the facts or on both the law and facts. That does not mean that he or she will win. That is why a court has to make the decision. A decision may be given orally or by way of a written judgment. The absence of a written judgment does not make a valid decision invalid.

34 Furthermore, a decision which appears to a litigant to be contrary to the authorities does not in itself mean a breach of constitutional rights. Also, an oral decision may expand on reasons given below or it may not. There is no necessity to repeat reasons already given or to expand on reasons if the expansion serves no useful purpose.

35 If BHH were right, every litigant who is unhappy with a court decision, based on his own perception of the law and/or the facts, will be able to seek another hearing until he gets the result that he wants even though he has exhausted his avenues of appeal. That cannot be right.

36 Accordingly, CA 119/2019 is doomed to fail and we dismiss SUM 129 for an extension of time for BHH to file his record of appeal and core bundle for CA 119/2019.

37 It follows that since SUM 129 has been dismissed, the appeal in CA 119/2019 is still deemed withdrawn. We order BHH to pay HSL the costs of the application and of the appeal fixed at \$3,000, inclusive of disbursements, forthwith with the usual consequential orders.

38 As mentioned at [13] above, BHH was to file a correctly amended SOC by 28 November 2018. Apparently he has not done so. We direct him to file and serve it within 14 days from the date of this decision.