Goel Adesh Kumar *v* Resorts World at Sentosa Pte Ltd
[2020] SGCA 40

Case Number : Originating Summons No 12 of 2020

Decision Date : 24 April 2020

Tribunal/Court : Court of Appeal

Coram : Judith Prakash JA; Tay Yong Kwang JA; Steven Chong JA

Counsel Name(s) : The applicant in person; Narayanan Sreenivasan SC, Shankar s/o Angammah Sevasamy and Eva Teh Jing Hui (K&L Gates Straits Law LLC) for the respondent.

Parties : Goel Adesh Kumar — Resorts World at Sentosa Pte Ltd

Civil Procedure – Costs

Civil Procedure – Offer to settle

24 April 2020

Steven Chong JA (delivering the judgment of the court):

1 The applicant, Mr Goel Adesh Kumar, filed CA/OS 12/2020 seeking to vary this court's orders in CA/CA 21/2018 ("CA 21/2018") pursuant to its inherent jurisdiction. The applicant submitted that the costs orders made against him in CA 21/2018 were in error. Having considered the parties' submissions, we find that although the costs orders against the applicant in CA 21/2018 were in fact premised on two incorrect assumptions, ultimately they would not affect the basis on which the costs orders were made. We therefore dismiss the application. We now explain our reasons for doing so.

2 In HC/S 484/2013 ("the Suit"), the applicant brought a claim against the respondent, Resorts World at Sentosa Pte Ltd, for false imprisonment, assault and battery. Alleged participants in these torts included auxiliary police officers employed by SATS Security Services Pte Ltd ("SATS"). As such, the respondent joined SATS as a third party. In [2015] SGHC 289 ("the Liability Judgment"), the High Court Judge ("the Judge") found in favour of the applicant, and awarded him damages in the sum of $45,915.74. The Judge, however, rejected the majority of the sums the applicant claimed, which were for loss of earnings and aggravated and exemplary damages. It should be stated that the applicant's aggregate claim was for the sum of $484,196.16. The Judge found the respondent liable for 80% of the award of damages, and SATS liable for 20%. However, since the applicant did not bring any claim against SATS, he could only recover against the respondent for its 80% share of the award, which amounted to $36,732.59. The applicant's appeal in CA/CA 215/2015 to increase the award of damages was dismissed by this court.

3 The Judge set out his decision on costs in [2017] SGHC 43. We allowed the respondent's appeal against the Judge's costs orders in CA/CA 127/2017 and dismissed the applicant's appeal against those orders in CA/CA 21/2018. We did not disturb the costs orders relevant to the present application. They are (see *Resorts World at Sentosa Pte Ltd v Goel Adesh Kumar and another appeal* [2018] 2 SLR 1070 ("the CA Costs Judgment") at [38]):

(a) The respondent shall pay the applicant's costs incurred in the Suit on a standard basis on the Magistrate's Court scale up to 2 July 2014.

(b) The applicant shall pay the respondent's costs incurred in the Suit on an indemnity basis on the High Court scale from 2 July 2014.

4 The reason for these orders was the offer to settle made to the applicant by the respondent and SATS jointly on 2 July 2014 ("the First Offer"). The First Offer was for $62,000 with parties to bear their own costs. Subsequently, on 17 September 2014, the respondent and SATS made another joint offer to settle for $100,000, but with no provision for costs ("the Second Offer"). The applicant did not accept either offer, and the Suit proceeded for trial on 30 June 2015.

5 The costs consequences of the applicant's rejection of the offers to settle are set out in O 22A r 9(3) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed), which provides:

> (3) Where an offer to settle made by a defendant —
>
> (*a*) is not withdrawn and has not expired before the disposal of the claim in respect of which the offer to settle is made; and
>
> (*b*) is not accepted by the plaintiff, and the plaintiff obtains judgment not more favourable than the terms of the offer to settle,
>
> the plaintiff is entitled to costs on the standard basis to the date the offer was served and the defendant is entitled to costs on the indemnity basis from that date, unless the Court orders otherwise.

6 As we explained in the CA Costs Judgment, the costs orders set out at [3] above followed from the application of O 22A r 9(3) to the facts:

(a) It was undisputed that the applicant had rejected the First Offer, and that the offer was not withdrawn before the end of the Suit on liability (at [18]).

(b) The judgment sum of $45,915.74 would not be more favourable than the First Offer of $62,000, even taken together with the costs incurred by the applicant up to the date of the First Offer (at [19]).

(i) These costs should be calculated on the Magistrate's Court scale by virtue of s 39(1)(*b*) of the State Courts Act (Cap 321, 2007 Rev Ed), since the award in the applicant's favour was below the Magistrate's Court limit, and there were no additional grounds for commencing the Suit in the High Court (at [19(a)]).

(ii) The relevant costs would be unlikely to exceed $16,084.26 (being the difference between $62,000 and $45,915.74), since the scale of costs for completed Magistrates' Court cases leading to an award of $40,000 to $60,000 was between $5,000 and $18,000, and as of 2 July 2014, the Suit was far from being close to completion (at [19(b)]).

(c) There was no reason to depart from the general rule in O 22A r 9(3) since the First Offer was reasonable, serious and genuine (at [20]–[25]).

7 Following the CA Costs Judgment, the costs to be paid by the respondent to the applicant (*ie*, the costs at [3(a)] above) were taxed in HC/BC 59/2019 ("BC 59/2019"). On 7 February 2020, the Assistant Registrar awarded the applicant costs as follows:

(a) Section 1 (legal costs): $15,000

(b) Section 2 (costs of taxation): $2,500

(c) Section 3 (disbursements): $3,882.22

To date, there has been no application to review this decision.

8 The upshot of BC 59/2019 is that the costs incurred by the applicant up to the date of the First Offer were in fact $18,882.22 (the sum of the legal costs and disbursements awarded). That this sum should be included in the calculation of the "judgment" obtained by the plaintiff for the purposes of O 22A r 9(3)(*b*) of the Rules of Court, in relation to an "all-in" offer to settle inclusive of costs, was established by this court in *NTUC Foodfare Co-operative Ltd v SIA Engineering Co Ltd and another* [2018] 2 SLR 1043 (see [25(c)(i)] and [29(a)]). As such, our earlier assumption that such costs would not exceed $16,084.26 (see [6(b)(ii)] above) turns out to be inaccurate.

9 This is a potentially significant inaccuracy, owing to the fact that "once it was shown that the offer was less than the judgment sum no matter how slightly, O 22A r 9(3) did not apply" (*Singapore Airlines Ltd v Tan Shwu Leng* [2001] 3 SLR(R) 439 at [30]). As such, the applicant argues that we should revisit our decision in CA 21/2018 because its very foundation has been destroyed, such that the future performance of the court order would lead to injustice (citing *Harmonious Coretrades Pte Ltd v United Integrated Services Pte Ltd* [2020] 1 SLR 206 at [40]).

10 On the other hand, the respondent points out that the actual judgment sum recovered by the applicant was only $36,732.59, or 80% of $45,915.74, contrary to the other assumption we made in the CA Costs Judgment (see [6(b)(ii)] above). Thus, even taking into account the costs recovered by the applicant, the judgment he obtained within the meaning of O 22A r 9(3)(*b*) was still significantly less than the First Offer.

11 Arising from the applicant's and the respondent's submissions on the foregoing points, the correct comparison for the purposes of O 22A r 9(3)(*b*) should instead have been as follows:

	First Offer	**Judgment obtained by the applicant**	
		Calculation in the CA Costs Judgment	***The correct calculation***
Judgment sum	–	$45,915.74	$36,732.59
Costs up to 2 July 2014		not more than $16,084.26	$18,882.22
Total	*$62,000*	*not more than $62,000*	*$55,614.81*

12 Since the judgment obtained by the applicant remains less favourable than the First Offer, the foundation of our costs orders in the CA Costs Judgment is not undermined, and there is no reason to disturb those orders.

13 The applicant also took advantage of the situation and sought to revisit a number of submissions which had previously been considered and rejected. He argued, *inter alia*, that the First Offer should not be taken as a genuine offer to settle, and that the costs order in his favour at [3(a)]

above should be on the basis of the High Court scale. However, these were the precise arguments which had been addressed in the CA Costs Judgment at [19]–[25]. We regard these submissions by the applicant to be an impermissible attempt to relitigate those issues.

14 We therefore dismiss the application. We award the respondent costs for the application fixed at $5,000 inclusive of disbursements. There will be the usual consequential orders for payment out.