IN THE APPELLATE DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2023] SGHC(A) 25

Appellate Division / Civil Appeal No 8 of 2023

Between

Ramesh Vangal

… *Appellant*

And

Indian Overseas Bank

… *Respondent*

Originating Application No 6 of 2023

Between

Ramesh Vangal

… *Applicant*

And

Indian Overseas Bank

… *Respondent*

In the matter of Originating Summons No 1054 of 2019 (Summonses Nos 2662 of 2021 and 4456 of 2022)

Between

Indian Overseas Bank

… *Applicant*

And

(1) Seabulk Inc. (formerly known as Seabulk Systems Inc.)
(2) Ramesh Vangal
(3) Sidney Sridhar

… *Respondents*

JUDGMENT

[Civil Procedure — Foreign judgments — Registration]

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Ramesh Vangal
v
Indian Overseas Bank and another matter

[2023] SGHC(A) 25

Appellate Division of the High Court — Civil Appeal No 8 of 2023 and Originating Application No 6 of 2023
Woo Bih Li JAD, Debbie Ong Siew Ling JAD and Valerie Thean J
14 March 2023

10 July 2023

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

Introduction

1 The court must undertake a balancing exercise when invoking its discretion to adjourn an application to set aside the registration of a foreign judgment. It must strive to make a just order having regard to the interests of the judgment creditor in obtaining the well-earned fruits of litigation, as well as the interests of the judgment debtor that an appeal in the foreign court is not rendered nugatory. But in that process, it should not pass judgment on the merits of the appeal pending before the foreign court. These principles assume central importance in this case.

2 The present case arose out of HC/OS 1054/2019 ("OS 1054"), which was an *ex parte* application by the respondent, Indian Overseas Bank ("IOB"), to register a judgment from the Hong Kong Special Administrative Region

(“Hong Kong”) in Singapore. The registration order was successfully obtained by way of HC/ORC 5731/2019 (“ORC 5731”). Thereafter, the appellant, Mr Ramesh Vangal (“Mr Vangal”), filed an application to set aside ORC 5731 in HC/SUM 2662/2021 (“SUM 2662”). SUM 2662 was heard by an assistant registrar (“AR”) of the Singapore Supreme Court who decided to adjourn the hearing of SUM 2662 pending the disposal of an appeal in Hong Kong.

3 IOB appealed against the AR’s decision and a Judge of the General Division of the High Court (the “Judge”) varied the period of adjournment of SUM 2662 to sometime after an application in Hong Kong to stay execution of the Hong Kong judgment was disposed of (instead of after the appeal in Hong Kong was disposed of). When that initial stay application was dismissed by the Hong Kong court, Mr Vangal filed a renewed application in Hong Kong once more to stay the execution of the Hong Kong judgment. Thereafter, Mr Vangal filed another application in Singapore by way of HC/SUM 4456/2022 (“SUM 4456”) for a further adjournment of SUM 2662 and a stay of execution of ORC 5731.

4 The Judge heard SUM 4456 and SUM 2662 together, and decided to dismiss both applications. The Judge’s grounds of decision are found in *Indian Overseas Bank v Seabulk Inc (formerly known as Seabulk Systems Inc) and others* [2023] SGHC 42 (the “GD”) where he explained his refusal to exercise his discretion to set aside ORC 5731, or to grant a further adjournment of SUM 2662 or a stay of execution of ORC 5731. Mr Vangal then filed the present appeal in AD/CA 8/2023 (“AD 8”) against the dismissal of SUM 2662; and also filed an application for permission to appeal in AD/OA 6/2023 (“OA 6”) against the dismissal of SUM 4456. It is these two matters which concern us and which we deal with collectively in this judgment.

The factual background

The Hong Kong proceedings

5 IOB is a nationalised bank under the ownership of the Indian Ministry of Finance and incorporated under the laws of the Republic of India. It operates branches in Hong Kong and Singapore.

6 The underlying case is a long-running one beginning more than a decade ago to recover loans advanced. Sometime after August 2007, IOB (through its Hong Kong branch) granted credit facilities to a company which were guaranteed by two individuals, including Mr Vangal. On 21 May 2012, IOB commenced an action in the Hong Kong Court of First Instance ("HKCFI") against the borrower company and the two guarantors. On 29 January 2018, that court held the defendants jointly and severally liable to IOB for the sum of about CAD$9.6m and about US$137,000 with interest on those sums (the "HK Judgment").

7 On 26 February 2018, the defendants filed an appeal to the Hong Kong Court of Appeal (the "HK Appeal").

8 On 20 August 2019, IOB filed OS 1054 in Singapore to register the HK Judgment under the Reciprocal Enforcement of Foreign Judgments Act (Cap 265, 2001 Rev Ed) (the "REFJA"). On 21 August 2019, the HK Judgment was registered in Singapore by ORC 5731 which was granted by an AR. Thereafter, IOB attempted to serve a Notice of Registration on Mr Vangal in May 2021.

9 On 18 May 2021, Mr Vangal filed an application in the HKCFI to stay the execution of the HK Judgment (the "First HK Stay Application") pending the HK Appeal being determined.

Procedural background to SUM 2662 and SUM 4456

Proceedings before the AR

10 On 8 June 2021, Mr Vangal filed SUM 2662 in Singapore to set aside ORC 5731. It was heard by an AR on 10 May 2022. The prayers sought in SUM 2662 were as follows:

> 1. The Order of Court No. HC/ORC 5731/2019 dated 21 August 2019 (as amended on 28 January 2020), ordering the registration of the Judgment dated 29 January 2018 of the High Court of the Hong Kong Special Administrative Region Court of First Instance in HCA 846/2012 and the Notice of Registration issued pursuant thereto dated 18 May 2021, be set aside.
>
> 2. The costs of this application be paid by the Applicant to the 2nd Respondent.
>
> 3. Such further and/or other Order(s) and/or Direction(s) as this Honourable Court deems fit and/or necessary.

11 Mr Vangal relied on procedural and substantive grounds to set aside ORC 5731. There were two procedural grounds. The first was that IOB had failed to comply with O 67 r 3(4) of the Rules of Court (2014 Rev Ed) (the "ROC 2014"). This provision required IOB to adduce evidence of the enforceability by execution of the HK Judgment in its country of origin, *ie*, Hong Kong, in its affidavit to support the application for registration under the REFJA in Singapore. IOB had omitted to do this at the time when ORC 5731 was obtained.

12 Second, Mr Vangal contended that IOB had breached its duty to make full and frank disclosure when it applied *ex parte* to register the HK Judgment

in Singapore. IOB had not disclosed that Mr Vangal had, on 1 February 2019, successfully set aside a statutory demand dated 28 September 2018 issued by IOB in Singapore because IOB had not yet registered the HK Judgment in Singapore under the REFJA at that time.

13 The substantive ground of challenge was that ORC 5731 should be set aside or stayed pursuant to s 6(1) of the REFJA on the basis that the HK Appeal and also the First HK Stay Application were pending in Hong Kong. Alternatively, Mr Vangal argued that the hearing of SUM 2662 should be adjourned pending the determination of the HK Appeal.

14 On 31 May 2022, the AR gave his decision. The AR rejected the two procedural grounds. On the first ground, he was of the view that the omission to adduce evidence of the HK Judgment's enforceability in Hong Kong was a curable defect. Furthermore, the experts from each side had subsequently confirmed that the HK Judgment was enforceable in Hong Kong at the time of registration.

15 Second, as for the omission to disclose the setting aside of the statutory demand, the AR was of the view that this was not a material non-disclosure. The statutory demand was set aside only because the HK Judgment had not yet been registered in Singapore (and not because it could not be registered). It did not affect the validity of IOB's subsequent application to register the HK Judgment.

16 As for the substantive grounds, the AR considered that justice would best be achieved by invoking s 6(1)(*b*) of the REFJA to adjourn the hearing of SUM 2662 pending the disposal of the HK Appeal. The AR also granted a stay of execution of ORC 5731.

17 The extracted orders of the AR stated as follows:

> 1. There be no order made on Prayer 1 of HC/SUM 2662/2021 (the 'Application').
>
> 2. The Application be adjourned for a reasonable period. Such reasonable period shall be until after the determination of the [HK Appeal].
>
> 3. There be a stay of execution of [ORC 5731] made on 21 August 2019 for the reasonable period described in Paragraph 2 of this Order.
>
> 4. The parties be at liberty to write to the Court to restore the Application for an earlier hearing in the event that the [HK Appeal] and/or [the First HK Stay Application] do not proceed or are not prosecuted with diligence.
>
> 5. [Mr Vangal] is to write to the Court by 31 August 2022 with an update on the status of the proceedings in Hong Kong in the [HK Appeal] and [the First HK Stay Application].
>
> 6. The Costs of the Application be reserved.

In other words, there were two parts to the AR's decision. The first part was to reject the procedural grounds raised by Mr Vangal. The second part was to adjourn SUM 2662 pending the outcome of the HK Appeal.

Proceedings before the Judge

18 On 13 June 2022, IOB appealed against the decision of the AR to the Judge sitting in chambers in HC/RA 192/2022 ("RA 192"). IOB challenged the second part of the AR's decision and argued that the court should dismiss SUM 2662 instead of granting an adjournment. Notably, Mr Vangal did not file any appeal against the first part of the AR's decision which Mr Vangal should have done if he wanted to contest that aspect of the decision. The decision by the AR (see above at [17]) not to make an order on prayer 1 of SUM 2662 (which was the prayer seeking to set aside ORC 5731, see above at [10]) was still a decision which effectively rejected Mr Vangal's procedural grounds of challenge.

19 On 29 July 2022, the Judge heard IOB's appeal in RA 192. The Judge varied the period of adjournment of SUM 2662 so that SUM 2662 would be adjourned until after the First HK Stay Application was disposed of, rather than until the HK Appeal was disposed of. If the First HK Stay Application was allowed, then the adjournment and stay of execution of ORC 5731 would be extended until the HK Appeal was determined. If the First HK Stay Application was dismissed, then SUM 2662 would proceed for hearing. The Judge also granted Mr Vangal liberty to file a fresh application to adjourn SUM 2662 and stay ORC 5731 should the First HK Stay Application be dismissed. However, the Judge also mentioned that the outcome of any fresh application for adjournment would include the consideration of partial security for the judgment sum:

> Ct: … In such eventuality you [*ie*, Mr Vangal] are at liberty to file a fresh adjournment and stay application in Singapore but I would anticipate that of considerable relevance to the outcome of such a fresh application would be consideration of terms, including partial security for the judgment sum.

Mr Vangal did not appeal against the decision of the Judge in RA 192 to adjourn SUM 2662 until the outcome of the First HK Stay Application.

20 On 8 November 2022, the First HK Stay Application was dismissed by the HKCFI. On 5 December 2022, Mr Vangal filed a renewed application in Hong Kong, this time to the Hong Kong Court of Appeal, to stay the execution of the HK Judgment pending the determination of the HK Appeal (the "Second HK Stay Application").

21 On 16 December 2022, Mr Vangal then filed SUM 4456 in Singapore as a fresh application for an adjournment of SUM 2662 and stay of execution of ORC 5731 based on the Second HK Stay Application.

22 On 16 January 2023, the Judge heard SUM 4456 and SUM 2662 and dismissed both applications.

23 Consequently, Mr Vangal filed AD 8 on 30 January 2023 in the Appellate Division of the High Court to appeal against the Judge's decision in SUM 2662. On the same day, Mr Vangal also filed OA 6 seeking permission to appeal against the Judge's decision in SUM 4456.

Our decision on OA 6 and AD 8

24 Having considered the submissions of the parties, we dismiss both OA 6 and AD 8. Before explaining our decision, we make some preliminary observations on what transpired below.

Preliminary observations

25 SUM 2662 should not have been fixed for hearing before the Judge. It was already part-heard by the AR and, as mentioned (see above at [17]), there were two parts to his decision. The second part related to the period of adjournment granted for the application. The Judge varied the period to a time after the outcome of the First HK Stay Application, rather than after the outcome of the HK Appeal. After the First HK Stay Application was dismissed by the HKCFI, SUM 2662 should then have been refixed for hearing before the AR to complete the rest of the hearing of that application. SUM 2662 should not have been fixed before the Judge. The parties should have highlighted to the Singapore Supreme Court Registry at the pre-trial conference on 14 December 2022 that SUM 2662 was already part-heard by the AR, but apparently this was not done.

26 When SUM 2662 was fixed before the Judge instead, Mr Vangal in fact obtained the advantage of a second hearing on the procedural grounds which had *already been canvassed* before the AR and decided upon even though there was no appeal filed by Mr Vangal against the first part of the decision of the AR.

27 Further, as SUM 2662 was part-heard by the AR, then SUM 4456, which was a fresh application for an adjournment of SUM 2662 and a further stay of execution of ORC 5731, should have been fixed for hearing before the AR and not the Judge.

28 Be that as it may, both summonses were fixed for hearing before the Judge, and both summonses were eventually dismissed.

29 While the appeal in AD 8 pertains to SUM 2662 rather than SUM 4456 (which is the subject of OA 6), there is an overlap between the two summonses and the arguments raised. Therefore, we will address both summonses together.

30 It is apposite that OA 6 (which deals with SUM 4456) be addressed first, before dealing with AD 8. This is because, if permission to appeal against the dismissal of SUM 4456 is granted in OA 6, then that appeal should be appropriately filed first, and then heard before or together with AD 8.

31 We add that SUM 4456 sought a fresh adjournment of SUM 2662 and a further stay of execution of ORC 5731. In turn, SUM 2662 was initially brought by Mr Vangal to set aside ORC 5731 only (as there was no prayer for an adjournment, see above at [10]). However, during the hearing on 10 May 2022, this application was later supplemented with an oral application before the AR for an alternative relief, *ie*, that the summons be adjourned and execution of

ORC 5731 be stayed. Consequently, the alternative oral application overlaps with SUM 4456. However, we will refer to SUM 2662 simply as the application to set aside ORC 5731.

32 Having set out the factual background and procedural history, we now proceed to deal with the issues proper and begin with the application in OA 6 before turning to address the appeal in AD 8.

Permission to appeal application in OA 6

33 The relevant legal principles governing an application for permission to appeal are trite. In the present case, Mr Vangal relies on two of the three grounds for permission to appeal as set out in *Lee Kuan Yew v Tang Liang Hong and another* [1997] 2 SLR(R) 862 at [16]:

(a) there is a *prima facie* case of error, or

(b) a question of importance upon which further argument and a decision of a higher tribunal would be to the public advantage.

We deal with each of these grounds in turn.

Whether there is a prima facie case of error by the Judge

34 On the first ground of *prima facie* error, Mr Vangal argues that a few errors were made. Before we continue, we note that generally the error should be one of law and not an error of fact, although an error of fact that is obvious from the face of the record may in exceptional circumstances suffice (see *Rodeo Power Pte Ltd and others v Tong Seak Kan and another* [2022] SGHC(A) 16 at [10]).

35 Mr Vangal submits that there is an error of law when the Judge said he did not know how long it would take for the Second HK Stay Application to be heard. Second, there was an exceptional error of fact when the Judge refused to grant an adjournment although there was some evidence from IOB that the Second HK Stay Application would be heard in about six months. The core of Mr Vangal's arguments is that the decision made by the Judge was inconsistent with international comity. There are also various sub-arguments which Mr Vangal raises, which we elaborate upon below at the appropriate juncture.

The applicable law on s 6(1) of the REFJA

36 In dismissing SUM 4456, the Judge was invoking the discretionary power of the court (GD at [24]) to adjourn the application to set aside the registration of a foreign judgment found under s 6(1) of the REFJA:

> **Power of registering court on application to set aside registration**
>
> **6.**—(1) If, on an application to set aside the registration of a judgment, the applicant satisfies the registering court either that an appeal is pending, or that he is entitled and intends to appeal, against the judgment, the court, if it thinks fit, may, on such terms as it may think just —
>
> > (*a*) set aside the registration; or
> >
> > (*b*) adjourn the application to set aside the registration until after the expiration of such period as appears to the court to be reasonably sufficient to enable the applicant to take the necessary steps to have the appeal disposed of by the competent tribunal.

In essence, the provision states that if there is an appeal pending in the foreign court against the registered judgment, the Singapore court may, "if it thinks fit", exercise its discretion either to: (a) set aside the registration; or (b) to adjourn the application to set aside the registration until after the "expiration of such

period as appears to the court to be reasonably sufficient" to have the appeal disposed of in the foreign court.

37 The default position is that once a foreign judgment has been successfully registered in Singapore under the REFJA (and treated as if it was a Singapore judgment), then enforcement of the registered judgment can proceed. Indeed, s 3(5) of the REFJA provides that a judgment is taken to be final and conclusive *even though* an appeal is pending against it in the foreign court.

38 The Judge considered that in exercising the discretion under s 6(1) of the REFJA, the court must have regard to the interests of the judgment creditor in the fruits of its success, balanced against the interests of the judgment debtor that the appeal is not rendered nugatory (GD at [25]). A number of non-exhaustive factors were highlighted: (a) the court should be satisfied that the foreign appeal is a *bona fide* one that is prosecuted with due diligence; (b) the court should consider any offer by the judgment debtor to provide security, as a term of any adjournment sought; and (c) the court should consider how readily the judgment debtor will be able to recover the judgment sums paid over *if* the registered judgment is enforced and the foreign appeal is then subsequently allowed. The Judge was also cognisant that the HK Appeal had been outstanding for almost five years, and that the Second HK Stay Application might not be heard for quite some time (GD at [27]) – which suggests that the delay occasioned to the judgment creditor (*ie*, IOB) in enforcement was also relevant to the Judge's consideration in the exercise of his discretion.

39 As the Judge's decision below is the first published decision in Singapore detailing the factors going towards the Singapore court's exercise of discretion under s 6(1) of the REFJA, we also find it appropriate to supplement

a few observations extracted from the relevant foreign case law in interpreting the equivalent provision.

40 Beginning with the position in New Zealand, it appears that the seminal decision is that of *Hunt v BP Exploration Company (Libya) Ltd* [1980] 1 NZLR 104 ("*Hunt v BP*"). In that case, judgment had been entered in the English High Court for a substantial sum against Mr Hunt. The judgment was registered in New Zealand (under the New Zealand equivalent of the REFJA). As the case was later brought under appeal before the English Court of Appeal, Mr Hunt applied to set aside registration. The Auckland Supreme Court decided to adjourn the setting aside application until after the determination of the appeal pending before the English Court of Appeal. In coming to its decision, the court made the following observations (*Hunt v BP* at 114):

(a) It would not be appropriate for the New Zealand court to predict the outcome of the English appeal on complex points of law and fact by assessing the merits.

(b) The English appeal was not brought merely for the purpose of buying time for the judgment debtor or one with little prospects of success, and clearly, it was *bona fide*.

(c) It was an appropriate exercise of discretion to restrain enforcement in New Zealand until after the determination of the appeal in England.

41 The position adopted in Hong Kong is similar to that in New Zealand. In the HKCFI decision of *Re Shiamas International Ltd* [2014] HKCFI 1601 ("*Re Shiamas*"), the court had to grapple with the issue of whether a petition to

recognise a French judgment that was pending appeal in the French Court of Cassation, should be adjourned (under the Hong Kong equivalent of the REFJA) to after the determination of the appeal. The HKCFI stated (at [8]) that if the court was "satisfied that the appeal is brought *bona fide* and will be prosecuted with reasonable diligence, enforcement should normally be withheld pending determination of the appeal" and this was because it would be "very difficult for a Hong Kong Court to assess the merits of an appeal in a foreign jurisdiction and this is all the more so if the jurisdiction is, as in the present case, a civil law jurisdiction and does not use English". However, the HKCFI also took into account that the appeal "will not be determined for some time and quite possibly a year" (at [10]) and that even if the appeal was successful, the matter would be remitted for further consideration which would lead to further delays. On balance, this was not an appropriate case to stay the petition pending the determination of the appeal in France (at [12]).

42 Looking then to the position in England, there is the High Court decision of *State Bank of India and others v Mallya and others* [2018] 1 WLR 3865 ("*State Bank of India*"). There, the judgment debtor had applied to stay the enforcement of a judgment of the Bangalore Debt Recovery Tribunal in England (under the English equivalent of the REFJA), and further, that the application to set aside the registration to be adjourned for a sufficient period to enable the appeal in India to be determined. In deciding the case, the English court considered the following relevant principles (at [92]):

(a) The proper approach is to make the order which best accords with the interests of justice. The court has to balance the alternatives to decide which is less likely to cause injustice.

(b) Where in doubt, the perceived strength of the appeal is relevant to consider.

(c) It is relevant that the appellant may be unable to recover from the respondent the sum awarded in the event of judgment being set aside on appeal in the foreign court.

(d) The court will consider if there is some form of irremediable harm caused if no stay is granted. But it is unusual to grant a stay to prevent the kind of temporary inconvenience that any appellant is bound to face because they have to live, at least temporarily, with the consequences of an unfavourable judgment.

43 It is germane to observe that there is some divergence between the approaches taken in New Zealand and Hong Kong, when compared to the English position. In New Zealand and Hong Kong, the courts are unwilling to assess the merits of the appeal that is pending in the foreign jurisdiction, whilst the English courts are open to considering the perceived strength of the foreign appeal. In our view, the Singapore courts should not endeavour to consider the merits of the foreign appeal, and the New Zealand and Hong Kong approaches should be preferred for a few reasons. First, as was the case in *Re Shiamas*, there may be situations where the foreign judgment comes from a civil law jurisdiction and the Singapore courts would not be sufficiently adept at assessing the merits of the appeal. Indeed, this issue is compounded if, as was the case in *Hunt v BP*, the case involved complex issues of law and fact. Second, in line with international comity, the Singapore court should not put itself in the unenviable position of critiquing the decision of a foreign court as that would be contrary to the principle underlying the REFJA to treat foreign judgments as "final and conclusive" even if there is a pending appeal (see s 3(5) of the

REFJA). It is well-established that the Singapore courts are often slow to pass judgment on the quality of justice in a foreign court for reasons of comity (see *Rappo, Tania v Accent Delight International Ltd and another and another appeal* [2017] 2 SLR 265 at [110]; *The "Hung Vuong-2"* [2000] 2 SLR(R) 11 at [27]), and by extension, should be slow to examine the merits of an appeal pending before a foreign court concerning the registered foreign judgment. It must be borne in mind that the enforcement forum is not an appellate tribunal *vis-à-vis* the foreign judgment (see *Hong Pian Tee v Les Placements Germain Gauthier Inc* [2002] 1 SLR(R) 515 at [28]).

44 Drawing the threads together from the foreign authorities, and also considering the factors applied by the Judge below, we derive the following principles on how a Singapore court should exercise its discretion under s 6(1) of the REFJA to either set aside the registration of the foreign judgment or adjourn the setting-aside application:

(a) The court must have regard to the interests of the judgment creditor in the fruits of its success, balanced against the interests of the judgment debtor that the foreign appeal is not rendered nugatory (GD at [25]). The proper approach is to make the order which best accords with the interests of justice (*State Bank of India* at [92]).

(b) The court should examine whether there would be excessive delays occasioned to the judgment creditor in enforcement and obtaining the well-earned fruits to litigation, if an adjournment were granted (GD at [27]; *Re Shiamas* at [10]). The time taken for foreign proceedings to conclude is relevant.

(c) The court should factor in any offer by the judgment debtor to provide security, as a term of any adjournment sought (GD at [25]).

(d) The court should consider how readily the judgment debtor will be able to recover the judgment sums paid over *if* the registered judgment is enforced and the foreign appeal then subsequently allowed (GD at [25]; *State Bank of India* at [92]). The court should consider if there is some form of irremediable harm caused if the registration is not set aside or an adjournment is not granted (*State Bank of India* at [92]).

(e) The court should be satisfied, in relation to the foreign appeal, that it is a *bona fide* one that is or will be prosecuted with due diligence (GD at [25]; *Hunt v BP* at 114; *Re Shiamas* at [8]).

(f) It is inappropriate for the Singapore court to assess the merits of the appeal pending in the foreign court, especially when foreign law or complex issues of law and fact are involved (*Hunt v BP* at 114; *Re Shiamas* at [8]).

Having set out the applicable law, we proceed to apply it to the facts at hand.

Application to the facts

45 The Judge first dismissed SUM 4456, which was the fresh application for a further adjournment of SUM 2662. The Judge noted that Mr Vangal did not offer any security in his application to adjourn SUM 2662. On the other hand, Mr Vangal would be able to recover any sum he paid to IOB if the HK Appeal was eventually successful because IOB is a bank with a presence in Hong Kong (GD at [26]). Furthermore, the Judge acknowledged that the HK Appeal had been outstanding for almost five years and the First HK Stay Application had already been dismissed (GD at [27]). Lastly, the Second HK Stay Application might not be heard for quite some time. On the basis of these

observations, the Judge declined to exercise the discretion under s 6(1) of the REFJA to adjourn the matter further.

46 Mr Vangal first argues that the Judge's dismissal of SUM 4456 amounted to a prejudgment in that it assumed that the Second HK Stay Application would fail before the Hong Kong Court of Appeal, even though it had not yet been ruled upon. Further, the Judge's decision was likely to be utilised by IOB to unduly influence the Hong Kong Court of Appeal's future decision in respect of the outcome of the pending Second HK Stay Application. Hence, the Judge's decision was inconsistent with international comity and amounted to an error of law.

47 Second, Mr Vangal argues that there was evidence that the Second HK Stay Application would be heard in about six months. He therefore considers it an exceptional error by the Judge to refuse to grant a six-month adjournment for three main reasons (amongst others):

> (a) If the Second HK Stay Application is allowed later on, it might be rendered otiose as IOB would already have been entitled to execute on ORC 5731 by then.
>
> (b) The Judge's decision overlooks IOB's *alleged* 40-month delay in pursuing registration of the HK Judgment in Singapore.
>
> (c) The principle of international comity is undermined.

48 We disagree with Mr Vangal's arguments. These are largely made on one primary basis, *ie*, that just because there is a pending application for a stay in the foreign jurisdiction, then the Singapore court ought to adjourn any application to set aside ORC 5731 or to stay its execution. Further, the failure

to adjourn, according to Mr Vangal, would imply a prejudgment or undue interference with the Hong Kong Court of Appeal's decision or might render its eventual decision nugatory as IOB would already be allowed to execute on ORC 5731.

49 That cannot be right. It is incorrect to assume that the Judge should have granted an adjournment simply because the Second HK Stay Application was pending, and that the failure to grant the adjournment amounted to prejudging the Second HK Stay Application. Mr Vangal conveniently omits to highlight that the First HK Stay Application was *already* dismissed in Hong Kong, and that this should be given weight in the exercise of discretion. This was precisely what the Judge considered as part of his decision (see above at [45]). Effectively, Mr Vangal is attempting to argue that the Judge should have instead disregarded this outcome and focused solely on the pending Second HK Stay Application. Ironically, whilst advocating for the preservation of international comity, Mr Vangal was simultaneously quite content to ignore the result of the First HK Stay Application. It appears to us that whilst Mr Vangal acknowledges that the Judge has a discretion under s 6(1) of the REFJA on whether to grant an adjournment, Mr Vangal is, *in effect*, attempting to argue for an undue restriction of the Judge's exercise of that discretion.

50 It is also pertinent to note that if IOB is allowed to execute on ORC 5731, that is the consequence of *not just* a refusal to adjourn SUM 2662, but is also contingent on an unfavourable decision being reached on SUM 2662 itself. As such, that consequence (*ie*, of IOB being allowed to execute on ORC 5731) cannot be used as an adequate reason to justify the adjournment. Otherwise, an adjournment will invariably be granted so long as there is some risk of execution against the judgment debtor.

51 Regarding the alleged 40-month delay by IOB in pursuing registration, that was a point which Mr Vangal had already raised with the Judge below. The Judge had considered this, and had *already permitted* one prior adjournment of SUM 2662 pending the outcome of the First HK Stay Application (see above at [19]). There was no good reason for the Judge to grant *another adjournment* pending the Second HK Stay Application when no new reasons were provided beyond the mere existence of the renewed application, and especially when Mr Vangal had failed to give any assurance to the Judge that that application would be heard soon. Any indication that the Second HK Stay Application would be heard in six months was merely a rough estimate which did not come from Mr Vangal. Lastly, we would add that there is no interim stay granted by any court in Hong Kong pending the hearing of the Second HK Stay Application.

52 It is our view that Mr Vangal has failed to show that when the Judge decided not to grant an adjournment of SUM 2662, there was an error of law or an exceptional error of fact. As the Judge found (see above at [45]): (a) Mr Vangal made no offer of security – despite the Judge mentioning this as a factor to be considered in any fresh application for a further adjournment for SUM 2662 (see above at [19]); (b) Mr Vangal would have no difficulty in recovering any sum paid to IOB as IOB is a well-established bank with a presence in Hong Kong; and (c) there will be significant delays occasioned to IOB in enforcement as the HK Appeal has been outstanding for a few years and the Second HK Stay Application may not be heard for quite some time. We expand on these points later below (see [70]–[83]), as these were also raised in AD 8.

Whether there is a question of importance which would benefit from further argument and a decision from a higher tribunal

53 Mr Vangal's second main ground is that there exists a question of importance upon which further argument and a decision of a higher tribunal would be to the public advantage. First, he posits that the question is what cognisance the local court ought to give to the fact that legal proceedings in a foreign jurisdiction may:

(a) take longer to resolve than in Singapore; and

(b) be less precise in providing a timeline for resolution.

54 Second, Mr Vangal also suggests that if a Singapore court were to impose Singapore-type timelines on a foreign court in exercising its discretion under s 6(1) of the REFJA, this might be judicial chauvinism and contrary to international comity.

55 We may dispose of the second point swiftly. This argument implies that the Judge only considered the uncertainty surrounding when the Second HK Stay Application would be heard (despite the suggestion that it may take only six months) and the length of time for the HK Appeal to be determined. However, that is simply not true. As mentioned earlier (see above at [45]), the Judge also noted that Mr Vangal had already failed in attempting one stay application in Hong Kong (*ie*, the First HK Stay Application) and had not offered any security for the judgment sum when he was making a second attempt in Singapore to adjourn the hearing of SUM 2662.

56 The same applies to the first point which also erroneously assumes that the Judge had only considered that it was uncertain when the Hong Kong proceedings would be resolved or that these would take a longer time than in

Singapore to be heard. The question is therefore incorrectly framed as the Judge considered other factors beyond the uncertainty or time factor.

57 We also do not think that there is any issue of judicial chauvinism arising from the Judge's decision that needs to be addressed, and we do not see how, as Mr Vangal alleges, the Judge was attempting to impose Singapore-type timelines on a foreign court. In arriving at the decision to dismiss SUM 4456, there was simply no comment made by the Judge which criticised the efficacy of the court processes of the Hong Kong judiciary. Instead, it appears that the Judge was more concerned with the *prejudice occasioned* to IOB if it was made to wait for an indefinite period (until after the disposal of the Second HK Stay Application) to continue enforcement in Singapore, given that the Judge had already granted a previous adjournment to Mr Vangal and the First HK Stay Application was thereafter dismissed (GD at [27]). When exercising the discretion under s 6(1) of the REFJA, the court is entitled to take into account the consequential delays caused to the judgment creditor in enforcement (see above at [44(b)]) who is likely to be out of pocket in the meantime (with the concomitant risk that the judgment debtor's assets might deteriorate). If Mr Vangal were otherwise correct, it means that a Singapore court must not have regard to the point as to when a foreign appeal may be heard because that is judicial chauvinism. We disagree. Mr Vangal was really asking the Singapore court to ignore a relevant factor.

58 Ultimately, the Judge's decision was based on the facts before him. We find that OA 6 is without merit and dismiss it.

The appeal against the dismissal of SUM 2662 in AD 8

59 We now come to AD 8 and begin by setting out the decision of the Judge below. On the substantive issue concerning the Judge's exercise of discretion

under s 6(1) of the REFJA (albeit now in the context of seeking to *set aside* ORC 5731 instead of just *adjourning* SUM 2662), the same reasons given by the Judge in dismissing SUM 4456 also applied to the dismissal of SUM 2662. We have already outlined these above (see [45]). Mr Vangal relied on largely the same arguments in both SUM 4456 and SUM 2662 (GD at [16]) and also in the present appeal of AD 8, but there are some slight modifications which we will come to later.

60 Regarding the procedural grounds of challenge to set aside ORC 5731, there are two that Mr Vangal raises. First, there was a non-compliance with O 67 r 3(4) of the ROC 2014 regarding the enforceability of the HK Judgment in Hong Kong and hence ORC 5731 should be set aside. Second, IOB failed in its duty to make full and frank disclosure when seeking *ex parte* registration of the HK Judgment. These are the same grounds that he raised before the AR, who had rejected them.

61 We address the two procedural challenges first, before turning to address the substantive issue concerning the Judge's exercise of discretion under s 6(1) of the REFJA in the context of setting aside ORC 5731.

Whether the non-compliance with O 67 r 3(4) of the ROC 2014 is a basis to set aside ORC 5731

62 The first procedural ground of challenge pertains to IOB's omission to adduce evidence that the HK Judgment was enforceable in Hong Kong at the time of applying for registration of the HK Judgment in Singapore. Mr Vangal has two sub-arguments. First, the omission was not a curable defect as O 67 r 3(4) of the ROC 2014 does not state that the missing information may be provided subsequently after registration. Second, even if the omission was curable, the omission indicates that IOB's desire to register the HK Judgment

was fleeting and perfunctory. It casts doubts on IOB's *bona fides* and assertions that execution is urgent. This is thus a strong ground for setting aside ORC 5731.

63 We reject Mr Vangal's arguments. Regarding the first sub-argument, the technical non-compliance with O 67 r 3(4) of the ROC 2014 is curable and should not be a basis for setting aside the registration order.

64 There does not appear to be any direct authority bearing upon this point. However, we agree with the views of the AR hearing SUM 2662, that guidance may be taken from the observations of the court in *Madihill Development Sdn Bhd and another v Sinesinga Sdn Bhd (transferee to part of the assets of United Merchant Finance Bhd)* [2012] 1 SLR 169 ("*Madihill Development*"). In that case, it was similarly contended that there was an incurable defect to the registration of a foreign judgment under the Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed) as the supporting affidavit to the registration application contained an incorrect averment that the foreign judgment sought to be registered was not the subject of any pending appeal (when it in fact was). Nevertheless, the court held that there was no utility or practical consideration in setting aside the registration just for the applicant to reapply once more to register the judgment, and such "overemphasis on technicalities no longer [had] any place in modern civil procedure" (*Madihill Development* at [28]). It was also relevant that the court was satisfied on balance that the misstatement was not a deliberate one made to mislead the court (*Madihill Development* at [26]).

65 Likewise in the present case, there is nothing to suggest that there was any bad faith on the part of IOB in failing to provide evidence of the enforceability by execution of the HK Judgment in Hong Kong at the time of

registration. It was not as if IOB was attempting to hide something that was adverse to its interests. Additionally, as mentioned, the experts for both IOB and Mr Vangal were *in agreement* that the HK Judgement was in fact enforceable in Hong Kong at the time ORC 5731 was obtained, as noted by the Judge (GD at [9] and [30]). Thus, this was likely an inadvertent mistake, and there was no utility to be gained in setting aside ORC 5731 only to require IOB to apply once more to register the HK Judgment, especially when both sides do not dispute its enforceability.

66 Turning our attention then to Mr Vangal's second sub-argument on this issue, and flowing from our observations above, IOB's omission to provide evidence that the HK Judgment was enforceable in Hong Kong at the time of registration in Singapore did not reflect any lack of *bona fides* on IOB's part. IOB would not have intentionally made an error which was against its own interest and the error was more likely to be a mere oversight. The error did not suggest that IOB's intention to register was not serious.

Whether there are material non-disclosures which warrant the setting aside of ORC 5731

67 With respect to the second procedural ground of challenge concerning IOB's duty to make full and frank disclosure in an *ex parte* application, Mr Vangal submits that the duty was breached due to material non-disclosures: (a) IOB failed to disclose that Mr Vangal had successfully set aside a statutory demand issued by IOB on the premise that IOB had not applied to register the HK Judgment first; and (b) IOB failed to disclose that its counsel had previously informed the court hearing the setting aside of the statutory demand on 1 February 2019 that IOB would apply to register the HK Judgment within two weeks (instead of seven months) – suggesting that there was some delay.

68 On the first contention concerning the statutory demand, we are of the view that this was not a *material* non-disclosure. The seminal case on material non-disclosures is *The "Vasiliy Golovnin"* [2008] 4 SLR(R) 994 ("*Vasiliy Golovnin*"). In an *ex parte* application, the applicant must disclose to the court all matters within his knowledge which might be material even if they are *prejudicial* to the applicant's claim (*Vasiliy Golovnin* at [83]). However, it cannot be said that the non-disclosure of the setting aside of the statutory demand issued by IOB was *so material* that it justified the court setting aside the registration order in ORC 5731. As the AR rightly noted (and this reasoning was endorsed by the Judge (GD at [31])), the outcome of the setting aside of the statutory demand did not impugn upon the validity of the underlying HK Judgment. Neither was it the case that the HK Judgment could not be registered in future. Thus, it was not as if IOB was trying to hide an adverse fact prejudicial to its application. Instead, the court, in setting aside the statutory demand, previously alluded to the fact that registration of the HK Judgment was a necessary prior step. This was what IOB eventually did in seeking registration and addressing the deficiency highlighted. The omission to inform the court hearing the application to register the HK Judgment in Singapore that IOB's previous statutory demand against Mr Vangal had been set aside was thus not a material omission.

69 In relation to the second contention, we also do not find this non-disclosure to be a material one. The time at which IOB had applied for registration of the HK Judgment, relative to the date on which the same was obtained (which would have indicated any delays and dilatory conduct), would have been plain and apparent to the AR who decided OS 1054 on 21 August 2019 (see above at [8]). The AR would have been cognisant of this and taken it into account. Furthermore, even if IOB's counsel had said that IOB would apply within two weeks to register the HK Judgment in Singapore and this was instead

filed seven months later, the delay is neither here nor there. The remark by IOB's counsel did not constitute an obligation, and none was suggested by Mr Vangal. The delay did not preclude IOB from subsequently seeking to register the HK Judgment in Singapore although it might reflect poorly on the efficiency of its internal processes.

Whether the Judge erred in not setting aside ORC 5731 under s 6(1) of the REFJA

70 We now come to the substantive issue of whether there is any basis to challenge the Judge's exercise of discretion under s 6(1) of the REFJA to dismiss SUM 2662, and to not grant an adjournment (see above at [13] and [59]).

Prejudgment and criticism of foreign proceedings

71 As previously observed (see above at [29]), there is some overlap in the arguments raised in OA 6 and AD 8. In so far as Mr Vangal reiterates his argument that by refusing any further adjournment, the Judge had prejudged the Second HK Stay Application and that was contrary to international comity, we have already explained above (at [49]) that we do not agree with this.

72 We also reject Mr Vangal's assertion that the Judge had implicitly criticised the Hong Kong court system on the time it takes for matters to be heard, and had held this against Mr Vangal. In deciding whether to adjourn the setting aside application or to set aside the registration of a foreign judgment, the court is entitled to consider the time required for proceedings in a foreign jurisdiction to be determined. That is part of the consideration of relevant factors in the exercise of the court's discretion under s 6(1) of the REFJA (see above at [44(b)]) and does not constitute an unwarranted criticism of foreign

proceedings. Unfortunately, Mr Vangal seeks to elevate it to an unmerited attack on a foreign jurisdiction's court processes in a misguided attempt to criticise the Judge's decision. Further, taking into account the duration of foreign proceedings is a legitimate consideration and does not amount to penalising Mr Vangal or holding the length of time against Mr Vangal. Every judgment debtor who seeks an adjournment or a setting aside has to address this factor even if he has himself not caused any delay in the hearing of the foreign appeal. On the other hand, this does not necessarily mean that a Singapore court will necessarily refuse an adjournment solely based on the protracted timeframe that it may take for foreign proceedings to conclude. That is just one aspect to be considered in the overall evaluation.

Merits of the HK Appeal and whether it was brought bona fide

73 Next, Mr Vangal argues that the Judge had made an assessment of the merits of the HK Appeal that was pending, and concluded that the appeal was weak. Therefore, the Judge improperly exercised his discretion under s 6(1) of the REFJA as this was contrary to comity. We do not agree with this submission. It is plain to us that the Judge did not consider the strength of Mr Vangal's appeal in making his decision (GD at [26]–[28]). In our view, Mr Vangal's continued insistence that there may have been some prejudgment involved does not hold water and we will not repeat our analysis above (see [49]). We reiterate that it is inappropriate for the Singapore court to assess the merits of the appeal pending before the foreign court (see above at [43] and [44(f)]) in exercising the discretion under s 6(1) of the REFJA, and the Judge was correct in not expressing any views on the merits of the HK Appeal.

74 Mr Vangal then contends that the Judge had erroneously thought that the borrower and the other guarantor (*ie*, the other two defendants in the HK

Judgment) had decided against pursuing the HK Appeal (perhaps alluding once more to the argument that, as a result, the Judge wrongly perceived that the merits of the HK Appeal were weak). According to Mr Vangal, this misunderstanding stemmed from the Judge's misreading of his affidavit, in which he merely stated that the defendants were "not agree[d] about pursuing [the HK Appeal] jointly" – and not that the other defendants had abandoned their respective appeals. It is our view that even if the Judge had misread Mr Vangal's affidavit on this point, it is of no real consequence. The Judge's comment was a fleeting remark embedded within the background facts of the decision (GD at [5]). It certainly did not suggest that the Judge had any negative perception of the merits of the HK Appeal and this was never part of the Judge's reasoning in arriving at the conclusion to dismiss SUM 2662. It is only Mr Vangal who seeks to make something more out of it.

75 While Mr Vangal emphasises the legitimacy of his appeal that was brought *bona fide*, he himself acknowledges that this alone is not determinative. This must be so. Otherwise, the mere existence of a *bona fide* appeal in the foreign court would mean that a Singapore court should necessarily grant an adjournment or set aside a registration order, without consideration of the other circumstances and the prejudice that may be occasioned to the judgment creditor (see above at [44] for the other factors).

Provision of security

76 On the issue of providing security, Mr Vangal criticises the Judge for not asking his counsel for Mr Vangal's position on whether he was willing to offer any security for the judgment sum. Mr Vangal asserts that had this been done, he would likely have provided security and this would have been favourable for his case. In our judgment, it is instead the responsibility of

Mr Vangal to make the offer of security if he is sincere about it. There is no duty on the Judge to raise this question directly with Mr Vangal's counsel. This is particularly so when the Judge had already mentioned and foreshadowed during his decision on 29 July 2022 that the provision of security would be a relevant consideration in any application for a further adjournment (see above at [19]).

77 Regardless, even at this late stage, all Mr Vangal says is that had the Judge asked for and specified a sum which the Judge considered to be fair as security, Mr Vangal "*might* have responded positively" [emphasis added]. This is telling. It is for Mr Vangal to initiate the process of providing security rather than being non-committal and coy about making any such offer. Consequently, the Judge was justified in taking into account the absence of any offer of security in denying to grant a further adjournment and also in refusing to set aside ORC 5731.

78 As no security was offered by Mr Vangal, there would be prejudice occasioned to IOB if a further adjournment was granted by the court. On the other hand, Mr Vangal would in all likelihood have no difficulty in recovering from IOB any sum paid over in the event of the HK Appeal succeeding. IOB is a major Indian nationalised bank under the ownership of the Indian Ministry of Finance with branches in Hong Kong (see above at [5]), and it would be able to reimburse the sum to Mr Vangal should he succeed in the HK Appeal subsequently.

Irremediable harm caused by alleged bankruptcy

79 Concerning the Judge's view that any payment by Mr Vangal to IOB could be easily recovered by Mr Vangal if he subsequently succeeds in the HK Appeal, Mr Vangal argues that the Judge should also have considered that Mr Vangal might be made bankrupt before the resolution of the HK Appeal.

Such an outcome would allegedly cause irreparable harm to his reputation, business and personal finances. Therefore, it was not solely a matter of whether IOB would be in a position to repay Mr Vangal.

80 While it is indeed relevant for the court to consider whether the judgment debtor may suffer irremediable harm if no adjournment is granted, Mr Vangal has not demonstrated what prejudice he would face other than the usual consequences of having to face enforcement. Neither did he elaborate on his assets and means. The burden of proof is on Mr Vangal, as the party seeking a stay of execution of the HK Judgment, to show evidence of his financial means and impecuniosity (*Ayaz Ahmed and others v Mustaq Ahmad (alias Mushtaq Ahmad s/o Mustafa) and others and other suits* [2022] SGHC 161 at [812]). Mr Vangal has chosen not to adduce any evidence of his assets and apparent inability to meet the HK Judgment to substantiate his assertion that he would suffer irreparable financial ruin – both in the proceedings in Hong Kong and in Singapore. We reproduce an excerpt from the HKCFI's decision dismissing the First HK Stay Application delivered on 8 November 2022 where the HKCFI found that there were only bare assertions:

> 17 D2 [*ie*, Mr Vangal] has not denied what was said … There is no documentary evidence or financial documents produced by D2 to substantiate his assertion that he will suffer irreparable financial ruin or his current financial position. D2's allegations were bare assertions. There is no reason why D2 cannot simply pay the Judgement Debt to avoid a bankruptcy order made against him.

There was also no such evidence put before the Judge during the hearing of RA 192 when the initial adjournment and stay were granted, or during the subsequent hearing of SUM 2662. Given the paucity of evidence before this court, the allegation that Mr Vangal would suffer irremediable harm if the HK Judgment is allowed to be enforced as he would be made bankrupt must be

dismissed. Given the circumstances, the alleged dire consequences of bankruptcy are more apparent than real, and the Judge did not err in the overall exercise of his discretion under s 6(1) of the REFJA when dismissing SUM 2662.

81 We add that even if Mr Vangal had given full disclosure of his assets and means to establish that he is unable to pay the entire sum due and payable under the HK Judgment, it would still be for him to suggest security for part of the sum in the circumstances. He did not do this.

Delay in hearing of HK Appeal

82 Lastly, Mr Vangal argues that the delay in the hearing of the HK Appeal is attributable to IOB. He outlines alleged instances of delay caused by IOB in the conduct of the HK Appeal, such as IOB declining to cooperate in preparing the appeal bundles. These allegations were disputed by IOB below and IOB asserted that it was instead Mr Vangal who was delaying the hearing and it is clearly not in IOB's interest to delay the hearing of the HK Appeal.

83 At this stage of appellate intervention, it is not possible for this court to determine who is responsible for delaying the hearing of the HK Appeal. Nonetheless, we make some observations. First, it would not have been in the interest of IOB to delay the hearing of the HK Appeal. So long as the HK Appeal remains in the way, Mr Vangal can exploit its existence to obstruct or impede any steps which IOB may wish to take to enforce the HK Judgment. Second, it is for Mr Vangal to deploy any argument that IOB is intentionally delaying the hearing of the HK Appeal in the First HK Stay Application and/or the Second HK Stay Application before the courts in Hong Kong. However, Mr Vangal has already been unsuccessful in the First HK Stay Application. Third, Mr Vangal does not claim that he is unable to obtain the assistance of the Hong Kong courts

if IOB is indeed delaying the hearing of the HK Appeal. The issues of delay should thus be appropriately addressed there.

84 In summary, Mr Vangal fails to demonstrate that the Judge erred in dismissing SUM 2662. As a result, we dismiss the appeal in AD 8 as well.

Conclusion

85 For the abovementioned reasons, both the application in OA 6 and the appeal in AD 8 are accordingly dismissed. That leaves us with the issue of costs.

86 We order that Mr Vangal is to pay IOB's costs of OA 6 and AD 8 fixed at S$20,000 inclusive of disbursements. The parties are to agree how any security for costs provided by Mr Vangal for OA 6 and/or for AD 8 is to be applied, failing which either party may write in within four weeks of this decision to seek an order from the court on the application of the security.

Woo Bih Li
Judge of the Appellate Division

Debbie Ong Siew Ling
Judge of the Appellate Division

Valerie Thean
Judge of the High Court

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