Leong Mei Chuan v Chan Teck Hock David
[2001] SGCA 9

Case Number : CA 71/2000

Decision Date : 08 February 2001

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; L P Thean JA

Counsel Name(s) : Tan Hin Tat, Janaine Ong and V Kanyakumari (Sim Hill Tan & Wong) for the appellant; Anamah Tan and Veronica Ann Joseph (Ann Tan & Associates) for the respondent

Parties : Leong Mei Chuan — Chan Teck Hock David

Civil Procedure – Appeals – Notice – Amendment – Whether application to amend notice of appeal should be allowed – O 55C Rules of Court

(delivering the grounds of judgment of the court): ***Facts***

The appellant, Leong Mei Chuan (`Madam Leong`), married the respondent, David Chan Teck Hock (`Mr Chan`) on 21 September 1983 in Singapore. They have three children from this marriage. In 1997 their marriage broke down. On 21 November 1997, Madam Leong filed divorce proceedings in DP 3777/97 against Mr Chan on the ground that the marriage had irretrievably broken down, alleging that Mr Chan had behaved in such a way that she could not reasonably be expected to live with him. A supplemental petition was later filed on 29 July 1998 alleging further that Mr Chan had committed adultery and that Madam Leong found it intolerable to live with him. Mr Chan did not contest the petition, and a decree nisi was granted to Madam Leong on 24 September 1998. The ancillary issues in respect of the custody of children, maintenance of Madam Leong and the children and division of matrimonial assets were adjourned to be heard in chambers. They were subsequently heard in chambers by District Judge Emily Wilfred in November and December 1999. Amongst the issues canvassed before the district judge was the division of certain stock options in Dell Corporation in which Mr Chan was an employee at the material time. These options fell into three broad categories, namely, (1) those that had vested in Mr Chan and had been exercised by him; (2) those that had vested in him but had not been exercised; and (3) those that had not as yet vested.

On 20 January 2000, the district judge delivered her decision on the ancillary issues, and made, among others, the following orders:

> ...
>
> *5 The petitioner shall be entitled to 15% of the respondent`s Dell stocks, namely:*
>
> *(a) 111,100 shares purchased from the open market and valued at US$4,575,986.80 as at 4 November 1999;*
>
> *(b) 10,821 shares bought from the Employee Stock Purchase Plan valued at US$445,695 as at 4 November 1999;*
>
> *(c) gains of Dell shares vested and exercised by respondent under the Non-Statutory Option Agreement Scheme, amounting to US$2,573,328 less tax to be paid on such gains (proof of demand of payment from IRAS);*

6 There shall be no division of Dell stocks in the Non-Statutory Stock Option Agreements which have yet to be vested in the respondent.

Thus, in relation to Mr Chan`s stock options, the district judge dealt with those stock options that had vested in him and had been exercised by him and those that had not vested. No order, however, was made by her for a division of those stock options that had vested in Mr Chan but had not been exercised by him.

Both Mr Chan and Madam Leong appealed against the decision of the district judge. In the notice of appeal filed by or on behalf of Madam Leong (in RAS 720013/2000) she sought, among other things, an order for the following:

2 The petitioner be entitled to a greater share than 15% of the respondent`s Dell stocks itemised at Order 5 of the order of court dated 20 January 2000.

3 There be a division of Dell stocks in the Non-Statutory Option agreements which have yet to be vested in the respondent.

Thus, by this notice of appeal, Madam Leong sought only a greater share in the stock options that had vested in Mr Chan and had been exercised by him, and a share in the stock options that had not vested in him. She did not seek an order giving her a share in those stock options that had vested in him but had not been exercised.

Both appeals were set down to be heard by Judith Prakash J on 13 April 2000. However, on 6 April 2000, subsequent to the filing of the notice of appeal, Madam Leong instructed new solicitors to represent her in the appeal. A few days later, on 11 April 2000, the district judge released her grounds of decision. At the hearing before Prakash J on 13 April 2000, Madam Leong`s newly appointed solicitors sought an adjournment of the hearing of the appeal. Prakash J granted the adjournment, but she directed the parties to file appellant`s and respondent`s cases for the appeal and these were to be filed before the appeal was to be heard.

On the same day, by a letter dated 13 April 2000, Madam Leong`s solicitors wrote to Mr Chan`s solicitors informing the latter that they intended to amend the notice of appeal and to raise the arguments pertaining to the division of the stock options that had vested in Mr Chan but had not as yet been exercised by him. This was met with swift riposte from Mr Chan`s solicitors that they would object to such amendment.

In compliance with Prakash J`s direction, both Madam Leong and Mr Chan filed the appellant`s case and the respondent`s case respectively. In the appellant`s case, there was included, among other things, a contention pertaining to the stock options that had vested in Mr Chan but had not been exercised by him. On 9 May 2000, Mr Chan`s solicitors applied by way of SIC 750843/2000 to expunge those parts of the appellant`s case that did not relate to the orders sought for in the notice of appeal filed on 1 February 2000. On the same day, Madam Leong`s solicitors filed an application, SIC 750847, to amend the notice of appeal to include in the orders sought a division of those stock options that have vested in Mr Chan but have not been exercised by him.

Both these applications and the two appeals proper (namely: the appeals filed by Madam Leong and

Mr Chan in RAS 720013 and RAS 720014 respectively) came on for hearing before a judge-in-chambers on 22 May 2000. The judge heard first Madam Leong`s application to amend the notice of appeal, and at the conclusion he dismissed it. Madam Leong`s counsel then indicated his client`s intention to appeal against the dismissal, and the judge adjourned the hearing of Mr Chan`s application to expunge and the two appeals proper, RAS 720013 and RAS 720013, pending the outcome of the appeal.

Madam Leong duly filed her appeal which came on for hearing before us. We allowed her appeal, and now give our reasons.

The appeal

It would be helpful at this stage to say a word concerning the procedures governing appeals from the Subordinate Courts to the High Court, as apart from other considerations taken into account by us in arriving at out decision, this appeal was also considered in the context of the relevant procedure governing the appeal filed by Madam Leong from the decision of the district judge in chambers to the judge of the High Court. In an ordinary appeal to the High Court from the Subordinate Courts, O 55D of the Rules of Court applies and r 3(2) provides that such appeal shall be by way of rehearing and `must be brought by a notice of appeal in Form 114A`, and every notice of appeal must state, among other things, `whether the whole or part only, and what part, of the judgment or order is complained of`. Consistent with this rule, Form 114A which sets out the format for the notice of appeal requires the appellant, if the appeal is against the whole of the decision, to state that he appeals against the whole of it or, if the appeal is against part of the decision only, to state that part of the decision with which he is dissatisfied. After filing the appeal, the appellant has to file the record of appeal and the appellant`s case and serve a copy each on the respondent within certain times under O 55D r 6, and the respondent in turn has to file the respondent`s case and serve a copy thereof on the appellant within a certain time under r 7. In respect of such appeal, it is only at the stage of filing the appellant`s case that the appellant is required to set out (i) his grounds for impugning the decision or the part thereof under appeal, and (ii) the order he seeks in the appeal. Similarly, the respondent is only required to set out his arguments resisting the appeal only at the stage when he files the respondent`s case.

On the other hand, in the case of an appeal from the decision of a district judge in chambers, such as the appeal filed by Madam Leong, such appeal lies to a judge of the High Court in chambers, and the procedure for such appeal is governed by O 55C, and is quite different from that prescribed by O 55D. First, the appellant is not required to state in the notice of appeal whether he is appealing against the whole or part of the judgment he complains of. In other words, it does not have the equivalent of O 55D r 3(2) (briefly set out above). The rules prescribing the form of notice of appeal and the time for issue thereof are rr 1(3) and (4), which are as follows:

> *(3) The appeal shall be brought by serving on every other party to the proceedings, in which the judgment, order or decision was given or made, a notice in Form 114F to attend before the Judge of the High Court in Chambers on a day specified in the notice.*
>
> *(4) Unless the Court otherwise orders, the notice must be issued within 14 days after the judgment, order or decision appealed against was given or made and served on all other parties within 7 days of it being issued.*

The form of notice of appeal, Form 114F, is also different from Form 114A. Unlike Form 114A, Form 114F does not require an appellant to state whether the whole or part, and what part of the judgment or order, is under appeal. On the other hand, Form 114F requires the appellant to state in full the order appealed against and further to state the order or orders the appellant seeks in the appeal. Neither the appellant nor the respondent is required to file any case in support of or in resisting the appeal. In effect, the procedure prescribed by O 55C is an accelerated process of appeal from the Subordinate Courts to the High Court.

The appeal filed by or on behalf of Madam Leong was one pursuant to O 55C, ie an appeal from the judgment or order of the district judge ***in chambers*** to a judge of the High Court ***in chambers*** . In her notice of appeal as originally filed, Madam Leong sought, in so far as relevant here, only an order increasing her share of (i) the stock options that had vested in Mr Chan and had been exercised by him, and (ii) an order giving her a share in the stock options that had not vested in him. No order, however, was sought for a share of the stock options that had vested in Mr Chan but had not been exercised by him. By the application made before the court below, Madam Leong sought the following amendments to be made to the notice of appeal:

> *3 There be a division of Dell stocks in the Non-Statutory Stocks Option agreements which **have vested but yet to be exercised by the Respondent and which** have yet to be vested in the Respondent.*

The highlighted portion was the amendment sought by Madam Leong.

There was no direct authority pertaining to the issue in the present appeal, namely, under what conditions an appellant may be allowed to amend a notice of appeal with a view to seeking a new order in the appeal. The closest case is **Huang Han Chao v Leong Fook Meng & Anor** [1991] SLR 286 [1991] 3 MLJ 337 , which was heard by this court prior to the amendments to the Rules of Court removing the requirement that the appellant file a petition of appeal setting out the grounds of appeal. There, the appellant amended his petition of appeal to include a new point which was not pleaded or canvassed below. This court refused to hear the appellant on that point, because it was not in the pleadings upon which the case had been argued and decided below. The decision, however, did not address what considerations should be taken into account when considering an application to amend a petition of appeal. In fact, leave to amend the petition of appeal was granted primarily because the appellant, having discharged his original solicitors, had drafted and filed the petition himself in an unsuitable form, and his newly appointed solicitors had to put it right by amending the form, and the amendments made included the point that was not raised below.

In the instant case, the judge below treated the application to amend the notice of appeal substantially as an application for an extension of time to file an appeal. He held that Madam Leong was seeking to appeal, out of time, against that part of the order of the district judge concerning the stock options, and that Madam Leong had not satisfied the requirements in order for the court to exercise its discretion to allow the amendments. He said at [para] 15-17:

> *15 ... I am of the view that the appellant must satisfy not only the rules for amendments, she must also satisfy the rules for extending time to file notices of appeal out of time.*
>
> *16 The law governing applications to extend time for filing notices of appeal was*

set out by Chan Sek Keong JC (as he then was) in ***Hau Khee Wee & Anor v Chua Kian Tong & Anor*** *[1986] SLR 484 at p 488 when he said:*

`The factors to be taken into account in deciding whether to grant an extension of time to file a notice of appeal are:

(1) the length of the delay;

(2) the reasons for the delay;

(3) the chances of the appeal succeeding if time for appealing is extended; and

(4) the degree of prejudice to the would be respondent if the application is granted.`

17 These factors were referred to and approved by the Court of Appeal in ***Pearson v Chen Chien Wen Edwin*** *[1991] SLR 212 where Chief Justice Yong Pung How stated `(i)n particular, the chances of the appeal succeeding should be considered, as it would be a waste of time for all concerned if time is extended when the appeal is utterly hopeless`.*

The judge next turned to consider the four factors, namely: (1) the length of the delay; (2) the reasons for the delay; (3) the chances of the appeal succeeding if the extension was granted; and (4) the degree of prejudice to the respondent if the application was granted. On the question of delay, the judge held that there was a delay of more than three months after the deadline for filing the notice of appeal. As for the reason for the delay, the reason offered by Madam Leong that the grounds of decision were not released until 11 April 2000 bore little merit, as it was very clear from the district judge`s orders that there was no division in respect of the options that had vested in Mr Chan but had not been exercised by him. As for the prospect of success, the judge held that there was little chance of the appeal succeeding, because the `basis of the claim` appeared to be flawed. Of this, more will be said in a moment. The issue as to prejudice was not addressed by the judge, as apparently neither party argued that issue before him.

In our opinion, the stringent standards required in an application for extension of time to file an appeal are not absolute and applicable to all cases where an extension of time is sought. In this regard, we respectfully adopt the words of Sir Thomas Bingham MR (as he then was) in **Costellow v Somerset County Council** [1993] 1 All ER 952[1993] 1 WLR 256, and say that the resolution of problems such as the present application for leave to amend a notice of appeal cannot be governed by a single universally applicable rule of thumb. A rigid, mechanistic approach is inappropriate.

In at least two other situations, this court has not applied the stringent standards. First, in **The Tokai Maru** [1998] 3 SLR 105 , this court allowed an extension of time to a party to file the affidavit of evidence in chief. Tan Lee Meng J, delivering the judgment of the court, said at [para] 20:

It would therefore appear that the court adopts a more stringent approach with respect to applications to appeal out of time as compared to other applications to extend time. The instant case does not involve an application to appeal out of time. It concerns an application by the appellant to file an affidavit out of time, coupled with an application by the respondents to strike out the appellants` defence. As such, the approach taken in Ratnam v Cumarasamy

should not have been adopted.

Later, he said at [para] 23:

> *We note that the instant case involves an application to extend time coupled with an application to strike out the defence ... we are of the view that similar principles should apply in both cases, and these principles are as follows:*
>
> *(a) ...*
>
> *(b) The rules of civil procedure guide the courts and litigants towards the just resolution of the case and should of course be adhered to. Nonetheless, a litigant should not be deprived of his opportunity to dispute the plaintiff`s claims and have a determination of the issues on the merits as a punishment for a breach of these rules unless the other party has been made to suffer prejudice which cannot be compensated for by an appropriate order as to costs.*
>
> *(c) Save in special cases or exceptional circumstances, it can rarely be appropriate then, on an overall assessment of what justice requires, to deny a defendant an extension of time where the denial would have the effect of depriving him of his defence because of a procedural default which, even if unjustified, has caused the plaintiff no prejudice for which he cannot be compensated by an award of costs.*

Secondly, in **Lim Hwee Meng v Citadel Investment Pte Ltd** [1998] 3 SLR 601 , the respondents filed and served their case out of time and applied for leave to be heard at the hearing of the appeal. The respondent did not give any reason for the delay in filing the case apart from saying that the belated filing was due to an administrative oversight. The appellant objected to the application, and against the objection this court granted leave to the respondent to be heard. Lai Kew Chai J, delivering the judgement of the court, said at [para] 20:

> *Counsel for the appellant submitted that the respondents` application should be refused as the respondents had not offered any satisfactory explanation for the delay. Counsel for the appellant sought to rely on the following cases:* ***Ratnam v Cumarasamy & Anor*** *[1965] 1 MLJ 228 ,* ***Tan Chai Heng v Yeo Seng Choon*** *[1981] 1 MLJ 271 and* ***Pearson v Chen Chien Wen Edwin*** *[1991] 3 MLJ 208 . We do not intend to deal with these cases in detail. Suffice it to say that these cases concern applications by the appellants to file either the record of appeal or the notice of appeal out of time, and that the upshot of these cases is that the court will not grant an extension of time to the appellant unless the appellant provides a satisfactory explanation for the delay; in the words of Lord Guest in* ***Ratnam****, there must be some material upon which the court can exercise its discretion. The principles enunciated in these cases are, however, restricted to applications by* ***an appellant*** *to extend time and have no relevance to the instant case which concerns an application by* ***the respondents*** *to be heard despite having filed their case out of time. The court has always adopted a more stringent approach with respect to applications to appeal out of time as compared to other applications to extend time:* ***The Tokai Maru*** *[1998] 3 SLR 105 .*

The judge then referred to the decision of Sir John Donaldson MR in **VCS Ltd v Magmasters Ltd** [1984] 3 All ER 510, where an extension of time to serve the respondent`s notice in an appeal was allowed, and the court held that time was not so important where the notice was merely to add further arguments to an appeal which was already extant. Reverting to the case before him, Lai Kew Chai J said at [para] 22:

> *Similarly, a respondent`s application to be heard does not re-open a judgment or order which would otherwise be final. The respondent is merely asking for leave to present, in an existing appeal, arguments which he has, through his own default, lost the right to present. In that sense, a respondent`s application to be heard does no more than to add further arguments to an appeal which is already extant. The application should therefore be granted unless it can be shown that granting it would cause significant prejudice to the appellant.*

We find most apt the following salutary observations of Sir Thomas Bingham MR (as he then was) in **Costellow v Somerset County Council** [1993] 1 All ER 952[1993] 1 WLR 256:

> *As so often happens, this problem arises at the intersection of two principles, each in itself salutary. The first principle is that the rules of court and the associated rules of practice, devised in the public interest to promote the expeditious dispatch of litigation, must be observed. The prescribed time limits are not targets to be aimed at or expressions of pious hope but requirements to be met. This principle is reflected in a series of rules giving the court a discretion to dismiss on failure to comply with a time limit ... This principle is also reflected in the court`s inherent jurisdiction to dismiss for want of prosecution.*
>
> *The second principle is that a plaintiff should not in the ordinary way be denied an adjudication of his claim on its merits because of procedural default, unless the default causes prejudice to his opponent for which an award of costs cannot compensate. This principle is reflected in the general discretion to extend time conferred by O 3 r 5, a discretion to be exercised in accordance with the requirements of justice in the particular case. It is a principle also reflected in the liberal approach generally adopted in relation to the amendment of pleadings.*
>
> *Neither of these principles is absolute. If the first principle were rigidly enforced, procedural default would lead to dismissal of actions without any consideration of whether the plaintiff`s default had caused prejudice to the defendant. But the court`s practice has been to treat the existence of such prejudice as a crucial, and often a decisive, matter. If the second principle were followed without exception, a well-to-do plaintiff willing and able to meet orders for costs made against him could flout the rules with impunity, confident that he would suffer no penalty unless or until the defendant could demonstrate prejudice. This would circumscribe the very general discretion conferred by O 3 r 5, and would indeed involve a substantial rewriting of the rule.*
>
> *The resolution of problems such as the present cannot in my view be governed by a single universally applicable rule of thumb. A rigid, mechanistic approach is inappropriate.*

In that case, the plaintiff failed to file and serve his statement of claim in spite of repeated reminders from the defendants. In view of the continuing default, the defendants applied to strike out and dismiss the action for want of prosecution. The district judge made the order sought, and on appeal his decision was affirmed by the judge of the High Court. Before the judge, the plaintiffs applied for leave to file and serve the statement of claim out of time. That application was dismissed. The plaintiff appealed and the Court of Appeal allowed an extension of time to the plaintiff to file his statement of claim and set aside the orders below. The Master of the Rolls said at [1993] 1 All ER 952, 960:

> *Save in special cases or exceptional circumstances, it can rarely be appropriate, on an overall assessment of what justice requires, to deny the plaintiff an extension (where the denial will stifle his action) because of a procedural default which, even if unjustifiable, has caused the defendant no prejudice for which he cannot be compensated by an award of costs. In short, an application under O 3 r 5 should ordinarily be granted where the overall justice of the case requires that the action be allowed to proceed.*

Turning to the case before us, we did not think that it was appropriate to apply the stringent standards required in an application for extension of time for filing notice of appeal to a situation such as the present one, which is an application to amend a notice of appeal. First, what Madam Leong sought by the amendment had been raised in the affidavit or argument below before the district judge. The appeal to a judge in chambers is by way of rehearing, and probably the arguments to be advanced in the appeal would be substantially the same arguments addressed to the district judge below. Secondly, the appeal procedure in this case is, as we have said, an accelerated process. The appeal had to be initiated by Madam Leong filing a notice of appeal within 14 days from the date of the judgment of the district judge under appeal and the notice had to state, inter alia, the order Madam Leong sought in the appeal. In such appeal, she did not have the luxury of time as she would have in an appeal from the judgment or order of a Subordinate Court to the High Court. Thirdly, the rationale underlying the stringent requirements as to time with respect to an application for an extension of time to file an appeal is that there should be certainty and finality to the decision of a court, and that recourse to the appellate tribunal should not be open-ended. Therefore, a party who is dissatisfied with a decision may appeal but he must do so promptly. Bearing in mind these considerations, a less stringent approach should be adopted in considering an application for leave to amend the notice of appeal.

In the present case, the notice of appeal was filed timeously. The only question was whether leave should be given to amend that notice. It is true that the amendment sought was not inconsequential; it was of a substantive character. Be that as it may, the relevant considerations surely ought to be whether the opposing party had been given reasonable notice of the amendment and afforded a sufficient opportunity to address the substance of the amendment, and whether the amendment sought is consistent with the pleadings or the points raised below. Short of grave prejudice or hardship to the opposing party that cannot be addressed by an order as to costs, the court should lean in favour of allowing the amendment.

It was not disputed there was a delay of about three months in making an application for amendment, and clearly there was an oversight by Madam Leong`s then solicitors in failing to state in the notice of appeal that she sought an order for a division of the stock options that have vested in Mr Chan and have not been exercised by him. This procedural default, on an `overall assessment of what justice requires`, ought not to have precluded Madam Leong from obtaining leave to make the

necessary amendment to the notice of appeal to raise a point concerning her entitlement of a share to the stock options that had vested but had not been exercised for determination before the High Court judge hearing the appeal. No prejudice had been occasioned to Mr Chan which could not be compensated by an award of costs.

Turning to the merits of her claim, with respect, we were unable to agree with the judge that there was no merit in Madam Leong`s claim that she was entitled to a share of those stock options. The question really turns on whether such stock options were matrimonial assets falling within s 112 of the Women`s Charter, and if they were, it could well result in a substantial increase in the division of matrimonial assets in favour of Madam Leong. We express no opinion on this issue at this moment other than to say that there are merits in her claim.

For the reasons given, we allowed the appeal, and in view of the strong view expressed by the judge below on the absence of any merit in Madam Leong`s claim we directed that the appeal be heard before another judge.

Outcome:

Appeal allowed.

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