Hailisen Shipping Co Ltd v Pan-United Shipyard Pte Ltd
[2003] SGCA 46

Case Number : CA 70/2003, NM 88/2003

Decision Date : 06 November 2003

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Lai Kew Chai J; Yong Pung How CJ

Counsel Name(s) : Michael Lai Kai Jin and Ms Wendy Tan (Haq and Selvam) for respondent; Jude P Benny and Gerald Yee (Joseph Tan Jude Benny) for appellant

Parties : Hailisen Shipping Co Ltd — Pan-United Shipyard Pte Ltd

Civil Procedure – Appeals – Leave – Whether leave to appeal to Court of Appeal required – Section 34(2)(a) Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed)

Delivered by Chao Hick Tin JA

1 This motion that came before us raised once again the question as to the proper interpretation of 34(2)(a) of the Supreme Court of Judicature Act (Cap 322) ("SCJA") in a setting which is different from those dealt with in previous cases.

2 The applicant, Hailisen Shipping Co Ltd ("Hailisen"), sought to have an appeal to the Court of Appeal, lodged by Pan United Shipyard (PUS), struck out on the ground that the latter did not obtain the required leave of court before filing the notice of appeal. We heard the motion and dismissed it, and allowed the appeal to proceed. We now give our reasons.

The background

3 In October 1999, PUS contracted with Castle Shipping Company ("Castle") to repair and supply equipment to the vessel "DILMUN FULMAR" (the vessel). The job was done. The total bill came to $770,822.28. As Castle failed to pay the bill, on 12 August 2001, PUS caused the vessel to be arrested. Pursuant to negotiations, a Settlement Agreement was reached on 14 August 2001 where it was agreed that Castle would pay PUS $310,000 in three instalments in full and final settlement of the debt. It was also agreed that this settlement was without prejudice to PUS' right to re-arrest the vessel should Castle default on any of the instalments. Following the payment of the first instalment of $140,000, the vessel was released. The second and third instalments of $85,000 each were to be paid on 14 September and 14 October 2001 respectively.

4 Shortly after the first instalment was paid, on 21 September 2001, the vessel was sold by Castle to Hailisen. The name of the vessel was changed to "HAILISEN". Castle did not make any further instalment payment after the sale. As a result, PUS commenced an *admiralty in rem* action against Castle claiming for the balance sum of $170,000. On 29 July 2002, a warrant of arrest was also issued against the vessel.

5 Following the arrest, the new owner, Hailisen, furnished security in the sum of $260,000. On 10 August 2002, the vessel was released from arrest. Having obtained leave of court to intervene in the *in rem* action, Hailisen applied to set aside the warrant of arrest on the ground that the breach of the Settlement Agreement did not give rise to an *in rem* right against the vessel. On 7 April 2003, the Assistant Registrar set aside the warrant of arrest but did not grant Hailisen's prayer for damages for wrongful arrest.

6 Both PUS and Hailisen appealed against the Assistant Registrar's order – the former against the

Assistant Registrar's decision to set aside the warrant of arrest and the latter for dismissing their prayer for damages for wrongful arrest.

7 Belinda Ang J dismissed PUS' appeal and affirmed the decision below setting aside the warrant of arrest. In addition, she allowed Hailisen's appeal and ordered that Hailisen was entitled to damages for wrongful arrest which should be assessed.

8 PUS appealed against the whole decision of Ang J, which effectively has two parts:-

(i) that the warrant of arrest be set aside;

(ii) that the arrest was wrongful and for which PUS was to pay damages to Hailisen to be assessed.

9 By the present motion, Hailisen argued that PUS was not entitled as of right, without leave, to appeal against the decision of Ang J because the claim in the *in rem* action was only for the sum of $170,000, which was below the limit set by s 34(2)(a) of the SCJA. No leave of court was obtained by PUS.

Section 34(2)(a)

10 Section 34(2)(a) of the SCJA provides that except with the leave of the Court of Appeal or a Judge, no appeal shall be brought to the Court of Appeal in any of the following cases:-

"(a) where the amount or value of the subject matter at the trial is $250,000 … or less;"

11 This threshold limit of $250,000 is also the jurisdictional limit of the District Court. Effectively, it means that a decision of the District Court could be appealed against to the High Court. But there is no automatic right of appeal to the Court of Appeal unless leave is obtained.

12 A number of cases have in recent years arisen in relation to the interpretation and application of this provision. In *Spandeck Engineering (S) Pte Ltd v Yong Qiang Construction* [1999] 4 SLR 401, this court held that the word "trial" in the provision should be construed purposively and it meant –

"… a hearing, whether in open court or in chambers, in which the judge determines the matter in issue before him, whether it be an issue of fact or law."

It was not confined to a "trial" where evidence was adduced, arguments canvassed and issues being finally decided.

13 In *Tan Chiang Brother's Marble (S) Pte Ltd v Permasteelisa Pacific Holdings Ltd* [2002] 2 SLR 225, this court held that the term "at the trial" should not be interpreted to mean "at the appeal".

14 In *Teo Eng Chuan v Nirumalan v Kanapathi Pillay* [2003] SGCA 40 (a decision of 8 October 2003 which is yet to be published) this Court was confronted with the question as to the interpretation of the phrase "subject matter at the trial". There, it was a claim for personal injuries and liability had been admitted with the entering of an interlocutory judgment. What was outstanding was the assessment of damages, which was carried out by an Assistant Registrar. The total damages claimed by the plaintiff were more than $1.5 million. The Assistant Registrar awarded only a total of $135,361. On appeal, the judge increased the total award to $265,361. The defendant, being dissatisfied, appealed to the Court of Appeal. The plaintiff filed a motion to have the appeal struck out on the ground that the "subject matter of the trial" was less than $250,000. This court dismissed

the motion. It held that the assessment before the Assistant Registrar and the "appeal" to the judge-in-chambers were effectively one hearing. The subject-matter before the judge-in-chambers, which was the entire claim of the plaintiff there, was very much more than $250,000. In the alternative, even if the assessment before the Assistant Registrar was to be treated as separate from the "appeal" hearing before the judge-in-chambers, we held that the "subject matter" before the judge was not just the items in dispute, but the entire claim of the plaintiff, inclusive of the items allowed by the Assistant Registrar and which were not disputed before the judge.

15 Reverting to the instant case, the question to ask is what was the "subject matter" before Ang J. Here, we must observe that while PUS was only claiming for $170,000, which ordinarily should have been commenced in a District Court, it had to be commenced in the Singapore High Court because it was an *in rem* action. What was before Ang J was not the claim of $170,000 of PUS but the questions of whether the warrant of arrest of the vessel should be set aside and, if so, whether there should be an order for an assessment of damages. Both these questions were the "subject-matter" before Ang J which she answered in the affirmative. Neither of them bore any specific value. Indeed, the damages to be assessed was wholly at large. The claim of PUS in the main action could in no way limit the damages suffered by Hailisen due to the wrongful arrest. Therefore, the matter did not fall within s 34(2)(a) and no leave was required.