Ting Kang Chung John v Teo Hee Lai Building Construction Pte Ltd and Others [2008] SGHC 84

Case Number : OS 1807/2006, SUM 855/2008

Decision Date : 05 June 2008

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : Ng Yuen (Ng & Koh) for the plaintiff; Thulasidas s/o Rengasamy Suppramaniam (Ling Das & Partners) for the first defendant; Second defendant in person; Raman Gopalan (G R Law Corporation) for the third defendant

Parties : Ting Kang Chung John — Teo Hee Lai Building Construction Pte Ltd; Anwar Siraj; Khoo Cheng Neo Norma

Civil Procedure

5 June 2008

Woo Bih Li J:

Background

1 Summons No 855 of 2008 ("Summons 855/08") was filed by the Second Defendant, Anwar Siraj ("Mr Siraj"), to seek an extension of time to request for further arguments in respect of a decision I made on 17 January 2008. Before I elaborate on Summons 855/08, I should set out some background facts.

2 The plaintiff, Ting Kang Chung John ("Mr Ting") is an architect by profession. He was appointed by the President of the Singapore Institute of Architects to conduct arbitration proceedings between the first defendant, Teo Hee Lai Building Construction Pte Ltd ("THL"), on the one side and the second and third defendants, who are Mr Siraj and Khoo Cheng Neo Norma ("Mdm Khoo"), respectively, on the other side. Mdm Khoo is the wife of Mr Siraj.

3 The arbitration was apparently conducted between December 2001 and December 2003. The present originating summons, *ie,* Originating Summons No 1807 of 2006, is an action commenced by Mr Ting for an order that he be given an extension of time to 15 April 2005 to issue the arbitral award and that all the defendants jointly and severally pay him $199,178.40 (this sum being his outstanding fee).

4 In Summons No 3348 of 2007, Mr Siraj applied, *inter alia*, for an order that Mr Ting produce certain documents referred to in Mr Siraj's Notice to Produce Documents for Inspection dated 12 July 2007 ("Mr Siraj's Notice"). On 15 August 2007, Assistant Registrar Lee Ti-Ting ("AR Lee") made an order ("AR Lee's order") pursuant to Mr Siraj's application. The first paragraph of AR Lee's order stated that inspection of the documents was to be at Mr Ting's counsel's office on 22 August 2007 from 10 am to 6 pm. The second paragraph stated that Mr Ting's counsel was to ensure that all documents in Mr Siraj's Notice would be available for inspection.

5 Mr Siraj and his wife attended at the office of M/s Ng & Koh (Mr Ting's solicitors) on 22 August 2007. According to Mr Siraj, not all the documents which were supposed to have been made available for inspection were made available.

6 Eventually, Mr Siraj filed Summons No 4906 of 2007 and an affidavit ("the 1 November 2007 affidavit") on 1 November 2007. The first two prayers of that application sought a court order to dismiss Mr Ting's action for failure to comply with AR Lee's order and an order of committal against Mr Ting and/or his counsel for the same non-compliance. That application also sought alternative reliefs for production and inspection of documents as well as the supply of documents which had allegedly been substituted by incorrect ones.

7 Summons No 4906 of 2007 was heard by Assistant Registrar Chung Yoon Joo ("AR Chung") on 12 December 2007. She declined to strike out Mr Ting's action or make any order of committal. Instead she made an order ("AR Chung's order") for inspection of certain documents on 14 December 2007 between 4pm and 5pm and for Mr Ting's counsel to be personally present throughout the entire duration of the inspection. AR Chung's order also gave directions on the filing of affidavits and the hearing of Mr Ting's action.

8 Mr Siraj was dissatisfied with AR Chung's refusal to order a striking out and to make an order of committal. He filed an appeal in RA 400 of 2007 ("RA 400/07") which was heard by me on 17 January 2008. After hearing arguments, I dismissed his appeal. He has since filed an appeal against my decision to the Court of Appeal.

9 In the meantime, Mr Siraj made two other applications under Summons 5635 of 2007 ("Summons 5635/07") and Summons 5581 of 2007 ("Summons 5581/07") which came up for hearing on 4 January 2008 before Assistant Registrar Teo Guan Siew ("AR Teo").

10 Summons 5581/07 was for the production of documents by Mr Ting. Apparently, by the time it was heard, it had become academic and AR Teo made no order on the application.

11 Prayer 1 of Summons 5635/07 was for a stay of execution of AR Chung's order of 12 December 2007 pending the outcome of the appeal which I heard and/or the outcome of any other appeal. Prayer 2 was for a stay of the main action until after the outcome of Summons 5581/07 or the appeal which I heard and/or any other appeals, whichever is the later. Prayer 3 was for the vacation of the hearing of the main action which had been fixed on 3 January 2008. Prayer 4 was for an extension of time to file further or final affidavits. Prayer 5 was the usual prayer for any other relief.

12 AR Teo dismissed prayer 1 and made no order as to Prayers 2 to 5 as the main action had in any event been adjourned by the Registry, presumably because of ongoing matters like the appeal which I heard.

13 Being dissatisfied with both of AR Teo's decisions, Mr Siraj filed an appeal in RA 16 of 2008 ("RA 16/08") for Summons 5635/07 and RA 17 of 2008 ("RA 17/08") for Summons No 5581/07. Both these appeals were heard by Justice Tay Yong Kwang on 4 February 2008 and he dismissed them.

14 Being dissatisfied with my decision and Justice Tay's two decisions, Mr Siraj resolved to appeal against the three decisions.

15 According to Mr Siraj, he attended at the Registry on 5 February 2008 to enquire about the procedure for filing an appeal to the Court of Appeal. He said he was under the impression he had to do so within one month of a judge's decision which was confirmed by staff at the Registry. He said that as a layman, he was unaware of the provisions of s 34(1)(c) of the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) ("SCJA") which states:

34.—(1) No appeal shall be brought to the Court of Appeal in any of the following cases:

(a) …

(b) …

(c) subject to any other provision in this section, where a Judge makes an interlocutory order in chambers unless the Judge has certified, on application within 7 days after the making of the order by any party for further argument in court, that he requires no further argument;

16 I will refer to the above provision as "s 34(1)(c)". In short, it requires a party who intends to appeal against an interlocutory order made by a judge in chambers to first apply to the judge, within seven days of his order, for further arguments and for the judge to certify that he requires no further argument, before the intended appellant can proceed to file an appeal to the Court of Appeal. As my decision on RA 400/07 was an interlocutory order, s 34(1)(c) was applicable.

17 As Mr Siraj was unaware of s 34(1)(c), he proceeded with his intended appeals by applying for and receiving the requisite Directions to the Accountant-General to receive his payment of $10,000 as security for costs of each appeal. He said he made payment of $20,000 on 5 February 2008 as security for costs of two appeals. I am not quite sure why there were two appeals when there should have been three, since Justice Tay had effectively made two decisions and I made one and I was given to understand that Mr Siraj was appealing against both of Justice Tay's decisions. However, that is not material for present purposes.

18 Apparently, the main action was fixed for hearing on 6 February 2008. Mr Siraj informed an assistant registrar of his intended appeals to the Court of Appeal whereupon the main action was adjourned to a date which was to be fixed after the appeals had been heard.

19 CA 15 of 2008 was first filed by Mr Siraj on 12 February 2008 and released to Mr Siraj on 14 February 2008. This was the appeal against my decision in RA 400/07. The second appeal in CA 21 of 2008 was filed on 20 February 2008 and apparently released to Mr Siraj on the same day. This was the appeal against Justice Tay's decision. According to Mr Siraj, he immediately served each appeal on the various parties.

20 It was thereafter that Mr Siraj learned about s 34(1)(c) and realised that he had not requested further arguments. Apparently, Mr Siraj learned about s 34(1)(c) because Mr Ting's solicitors wrote to him about this provision by letter dated 22 February 2008. Thereafter, Mr Siraj filed Summons 855/08 seeking various reliefs. The two main prayers were for an extension of time to request for further arguments before the judge who heard RA 400/07, RA 16/08 and RA 17/08.

The court's reasons

21 Summons 855/08 eventually came up for hearing before me on 23 May 2008. I was informed that insofar as the prayer for an extension of time in respect of Justice Tay's decisions was concerned, *ie*, prayer (ii), Justice Tay had heard the same on 10 April 2008 and certified that he did not wish to hear further arguments. Based on that, Mr Siraj apparently thought that he was free to carry on with his appeal against Justice Tay's earlier decisions in RA 16/08 and 17/08 and he cited Justice Tay's decision of 10 April 2008 as a precedent to persuade me to allow prayer (i) of Summons 855/08 which was in respect of my decision in RA 400/07.

22 However, as Ng Yuen ("Mr Ng"), counsel for Mr Ting, stressed, Justice Tay had merely certified

that he did not wish to hear further arguments. He did not grant the extension of time sought. The notes of argument also state:

> At the request of Second Defendant, I now certify no further arguments are required in respect of RA 16 and 17 of 2008. However, I emphasize that by doing so, I do not purport to regularize any matter or to give extension of time to do anything required by the Rules of Court.

23 For completeness, I would add that presumably Justice Tay's reference to the Rules of Court also included the SCJA. It was quite clear to me that he was not granting any extension of time at all. This was not disputed by Mr Siraj or by G Raman ("Dr Raman") who represents Mdm Khoo and who was present before Justice Tay on 10 April 2008.

24 It was clear to me that Justice Tay had consciously refrained from granting an extension of time to Mr Siraj. From Justice Tay's grounds of decision for RA 16/08 and RA 17/08 which I had read, it seemed that he was of the view that these appeals were without merit as they were academic. If his decision on extension of time was to be used as a precedent, it would have been against Mr Siraj and not in his favour. Nevertheless, I did not use Justice Tay's decision on extension of time against Mr Siraj in respect of Mr Siraj's application for a similar extension with regards to my decision in RA 400/07 since my decision was on a different point in any event.

25 Parties also informed me that they recently appeared before Justice Lai Siu Chiu on 22 May 2008 in another related matter for which, apparently, another extension of time to request further arguments was required. It was not disputed that Justice Lai granted the extension. However, Mr Ng submitted that perhaps Justice Lai was persuaded by Mr Siraj's presentation of what had transpired before Justice Tay. Mr Ng said that that presentation was inaccurate for the reason that he (Mr Ng) had elaborated before me. However, as Mr Ng had made his submission before Mr Siraj did, he was not given an opportunity to reply to that presentation.

26 As I did not know the reason or reasons why Justice Lai granted an extension of time, her decision did not assist me.

27 Coming back to the issue before me, it was for Mr Siraj to persuade me to grant the extension of time. It was not disputed that the same four factors have to be taken into account for an omission to seek further arguments as are applicable to a failure to file a Notice of Appeal on time (see *Denko-HLB Sdn Bhd v Fagerdala Singapore Pte Ltd* [2002] 3 SLR 357). The four factors are:

(a) the length of delay;

(b) the reasons for the delay;

(c) the merits of the appeal;

(d) the degree of prejudice to the other side.

28 I can deal with the length of delay and reasons for the delay together as the latter affected the former.

29 I accepted that Mr Siraj was not aware of s 34(1)(c). Had he been aware, he would have complied with it. The date by which he should have applied for further arguments from my decision of 17 January 2008 would be 24 January 2008. Order 3 rule 2(5) of the Rules of Court (Cap 322, 2006 Rev Ed) ("the Rules") does not apply as the period of time prescribed under s 34(1)(c) is not a period

fixed by the Rules or by any judgment, order or direction. Mr Siraj filed Summons 855/08 on 23 February 2008 which was 30 days later. However, that was because Mr Ting's solicitors wrote to him about s 34(1)(c) on 22 February 2008. Had Mr Siraj learned about that provision earlier, he would likewise have filed his application for extension of time earlier. The fact is that prior thereto, he had taken all other necessary steps to file his appeal. I was of the view that the length of delay had to take into account his ignorance about s 34(1)(c) although, on the other hand, ignorance *per se* is not a sufficient excuse.

30 Mr Siraj stressed that he is a layperson to explain his ignorance about s 34(1)(c). While it is true that he is a layperson, he was not as handicapped as he suggested. It must be remembered that Mdm Khoo was at all material times represented by Dr Raman who was also present before me on 17 January 2008 although RA 400/07 was not filed by her. Mdm Khoo was also present that day. Let me elaborate.

31 Mr Siraj represented himself. Dr Raman represented Mdm Khoo. However, from time to time, Mr Siraj would seek the court's indulgence for Mdm Khoo to sit with him for the reason that she would assist him with his documents. That indulgence, as far as I am aware, has usually been granted. So, while Mr Siraj and Mdm Khoo could have had one counsel representing both of them, the end result was that there was one counsel and both of them attending before the court. Any one of the three could at any time render assistance to the other at a hearing or thereafter.

32 This brings me to the next point. Mr Siraj castigated Mr Ng for not bringing s 34(1)(c) to his attention earlier. As one example, Mr Siraj pointed out that he had written to the Registrar of the Supreme Court on 28 January 2008 about the extraction of the order I made on 17 January 2008. In his letter, he mentioned his intention to appeal against my decision. This letter was copied to Mr Ng. Yet, Mr Ng did not raise s 34(1)(c) then.

33 However, the letter was also copied to Dr Raman who, apparently, also did not alert Mr Siraj to s 34(1)(c).

34 In any event, Mr Ng (and Dr Raman) was not obliged to raise s 34(1)(c) at the earliest opportunity, although I would encourage every counsel to raise such a point earlier rather than later if he is aware of the same. Otherwise, there may be costs consequences in the main appeal to the Court of Appeal.

35 In the circumstances, Mr Siraj's plight could not be blamed on Mr Ng. Insofar as Mr Siraj sought to elaborate on what he perceived as other unreasonable conduct of Mr Ting or Mr Ng, that attempt was irrelevant and served only to distract.

36 As mentioned above, Mr Siraj did not know about s 34(1)(c) and that led, firstly, to his omission to seek further arguments and, secondly, to the length of the delay in filing his application for an extension of time. However, Mr Siraj still had to address the issue about the merits of the appeal. On this, all he had to show was that his appeal had some merit or was not hopeless.

37 Mr Siraj had been given an opportunity to file an affidavit to address the merits of his appeal before Summons 855/08 was heard by me. Paragraphs 69 to 75 of his affidavit filed on 31 March 2008 was in respect of my decision on RA 400/07. Instead of dealing with the merits of his appeal against my decision, the said paragraphs 69 to 75 dealt with the ancillary orders which AR Chung had made regarding the time-frame for filing affidavits for the main action and a date for the hearing of the main action ("the Ancillaries").

38 As I was writing the grounds for my decision of 23 May 2008 on Summons 855/08, I received a written request dated 28 May 2008 for further arguments on Summons 855/08 from Mr Siraj ("the Request"). In the Request, he said that when he had filed his affidavit of 31 March 2008, he was not aware of my grounds in respect of my decision on RA 400/07 since my grounds were released after 31 March 2008. In view of that, Mr Siraj should then have asked for an extension of time to file his affidavit on the merits of his appeal till after my grounds of decision were released. In any event, they were available on or about 29 April 2008 and he had had enough time from then until 23 May 2008 to prepare his submissions thereon. I will deal later with his submission on the merits of his appeal as I wish to deal first with his reference to the Ancillaries as a reason for seeking an extension of time in Summons 855/08.

39 I stress that when Mr Siraj appeared before me on 17 January 2008, his submission was solely on the first two paragraphs of his earlier application, *ie*, the issue of striking out the main action and obtaining an order of committal against Mr Ting and/or his counsel for non-compliance with an order for discovery (see [6] above). He did not address me on the Ancillaries.

40 This is reinforced in Mr Siraj's outline written submission for the hearing on 17 January 2008 where no argument was presented on the Ancillaries. On the other hand, Mr Siraj initially disagreed that his outline submission was so confined. He pointed to paragraph 50 of the outline submission which referred to paragraph 2 thereof. In turn, paragraph 2 thereof simply set out the entire order made by AR Chung, including her order on the Ancillaries. I reiterate that no argument was presented by Mr Siraj to me in respect of the Ancillaries on 17 January 2008 in his outline submission. Neither did he do so in his oral submission then. He did not ask for further directions from me on the Ancillaries if his attempt to strike out was unsuccessful.

41 Indeed, Mr Siraj was constrained to acknowledge as much when he also submitted that the reason why he omitted to ask for further directions that day was because the court had led him to believe that he would be successful in his striking out application. I could not accept such a submission. He was not led by the court to believe anything of the sort. Indeed, as already mentioned, his outline submission, which was prepared before he attended before me on 17 January 2008, already did not include any request for further directions. In any event, if Mr Siraj really needs an order on the Ancillaries, it is open to him to file a fresh application before a registrar to seek such an order and explain the reasons for so doing in the light of developments.

42 It appeared to me that Mr Siraj was using the Ancillaries as an excuse to obtain an extension of time for the purpose of complying with s 34(1)(c).

43 When Mr Siraj finally addressed me on the merits of his appeal against my decision on RA 400/07, the only point he raised was that I had paid no attention to the pattern of previous misconduct of Mr Ting and his solicitors when I came to my decision.

44 As a general rule, I would certainly hesitate to say that there is no merit in an appeal from any decision of mine. As regards RA 400/07, I have given my reasons in separate grounds of decision and do not propose to repeat them in detail here. In summary, Mr Siraj was seeking draconian orders for conduct which I found to fall far short of wilful conduct. Any pattern of previous misconduct did not turn the conduct in question into wilful conduct. He should not have sought such orders in the first place. In my view, his appeal to the Court of Appeal was without any merit, *ie*, hopeless.

45 As for the question of any prejudice to Mr Ting if an extension of time was granted, Mr Ng submitted that there was prejudice as the appeals would delay the hearing of the main action and might enable Mr Siraj and Mdm Khoo to siphon away their sales proceeds (from their property) and

prosecute their claim in arbitration over substantially the same subject matter as that covered by Mr Ting's award.

46 I did not find such arguments by Mr Ng to be valid. The delay in the hearing of the main action is an ordinary consequence of an appeal in respect of an interlocutory order. Such a delay alone cannot constitute prejudice as it would in itself disentitle an applicant from an extension of time and all applications for an extension of time in respect of interlocutory orders would then necessarily be unsuccessful. As for the disposal of sales proceeds, Mr Ting has other remedies available to him, if that is truly his concern. However, if that is the concern of THL, that is another matter which does not concern Mr Ting. Likewise, whether the subject matter of Mr Ting's award is separately prosecuted elsewhere is of no concern to Mr Ting. I found no prejudice to Mr Ting.

47 While it would have been convenient for me simply to grant the extension which Mr Siraj urged on me, I was of the view that it was not right to do so as he failed to satisfy the most important factor, *ie*, the merits of the appeal. Accordingly, I dismissed prayer (i) of Summons 855/08 with costs.

48 I come back to yet another point that I have to address in light of the Request. One of the points raised in the Request was that the notes of argument I had recorded for the hearing of RA 400/07 were incomplete. They were incomplete because I had recorded that Mr Ng and Mr Siraj had said that they had no objection to my hearing RA 400/07 without recording what I had disclosed to them. I had disclosed that I knew Mr Ting as an acquaintance and that (as far as I knew), he was attending the same bible study group as I was. That is a group of a few hundred men. To that disclosure, Mr Siraj had laughed politely and said that he was not objecting. Mr Ng also was not objecting. In the circumstances, my acquaintance with Mr Ting was a private matter that did not need to be recorded since it had become a non-issue. Nevertheless, I recorded the fact of the non-objection in case events made it necessary to refer to it. I clarify that I am setting out details of the disclosure here since Mr Siraj has now chosen to make an issue of it in spite of his earlier position.

49 Mr Siraj did not say that he was unaware of what I had disclosed on 17 January 2008. Indeed, the Request states: "Obviously the Honourable Justice Woo must have briefed the parties on his knowledge and/or relationship with one or both parties". Yet, Mr Siraj saw it fit to argue in the Request at page 12 that:

> There are serious and damaging implications and consequences of an incomplete and inaccurate record of proceedings. If there was no comaradie or fellowship in the close relationship between the Judge and the party concerned then it ought to have been clearly and boldly recorded perhaps even highlighted. The fact of the glaring omission can now only raise serious doubts.
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> …
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> In this case, whilst there is the highest regard for the integrity and professionalism of the learned Judge, the omission in the record only adds to the grounds why he ought not to have heard the matter at this last stage and/or at all.

50 It seemed that even though Mr Siraj had not objected to my hearing RA 400/07, he was belatedly suggesting that I should not have heard Summons 855/08 and perhaps even RA 400/07. I reject such a suggestion.

51 I also do not see how there can be serious or damaging implications or consequences as the disclosure had become a non-issue.

52 In referring to the point about the incomplete record, page 13 of the Request states: "In Hearing this request for further arguments the Honourable Judge can remedy and cure this serious flaw". It was clear to me that, in raising the point, Mr Siraj was hoping to embarrass and pressure me into acceding to the Request. I have given instructions that I will not accede to the Request. It is certainly not to Mr Siraj's credit that he should adopt such a tactic to achieve his aim.

53 I should also mention that Mr Siraj has also suggested in the Request that Mr Ting has been favoured by the Registry of the Supreme Court for reasons which I need not repeat here.