

IN THE COURT OF APPEAL OF BRUNEI DARUSSALAM

CIVIL APPEAL NO. 13 OF 1998

MARLON R. MANALO . . . Appellant

vs

HAJI AWG. BESAR HJ. HAMID
AWG. HJ. IDRIS BIN HJ. HAMID . . . Respondents

Before : FUAD, P.; HUGGINS AND SILKE; JJA.

Date of Hearing : 24TH NOVEMBER, 1998.

Date of Handing down of Judgment : 26TH NOVEMBER, 1998.

J U D G M E N T

Silke, J.A.

On the 24th August 1998 a trial took place in the Intermediate Court before Judge Hayati of an action for damages claimed by the Plaintiff Marlon R. Manalo - "Marlon" as the result of a collision between a motor cycle ridden by Marlon and a car driven by Hj. Awang Besar bin Hj. Hamid - "Besar".

There was a second named defendant who does not concern us, nor indeed, by itself does the resulting award of \$205 special damages and \$16,000 general damages, a total of \$16,205.

This purported appeal is solely concerned with the matter of costs.

The Order of the trial judge was that "the 1st and 2nd defendants shall also pay to the Plaintiff costs on the Magistrate's Court scale, to be taxed if not agreed".

We say "purported appeal" for we raised at the outset of this hearing the issue of jurisdiction.

The civil jurisdiction of the Court of Appeal is stated in Section 18 of the Supreme Court Act as amended by the Emergency (Supreme Court Act) (Amendment) Order 1991 as consisting of -

- “(a) appeals from a judgment or order of the High Court in a civil cause of matter; and
- (b) such other jurisdiction as may be conferred upon it by this or any other written law”.

Under the provision of section 26 of the Emergency (Intermediate Courts)’ Order 1991 an appeal from an Intermediate Court in the exercise of its civil jurisdiction shall lie to the Court of Appeal as if it were an appeal from the High Court.

For the sake of completeness, section 21 of the same Order provides that -

“Where an action has been commenced in an Intermediate Court, the same costs and fees shall apply as if it had been commenced in the High Court”.

The issue of jurisdiction arises from the provisions of Section 20 of the Supreme Court Act as amended by the Emergency (Supreme Court Act) (Amendment) Order 1991.

This reads -

20.(1) Subject to subsection (2), an appeal shall lie as of right to the Court of Appeal from every judgment or order of the High Court in a civil cause or matter.

- (2) No such appeal shall lie -
 - (a) from any order allowing an extension of time for appealing against a judgment or order; or
 - (b) from any judgment or order expressed to be final by any law; or
 - (c) from any order made with consent of the parties thereto; or
 - (d) from any order relating only to costs; or
 - (e) without leave of the High Court or Court of Appeal, if the amount or value of the subject matter of the trial does not exceed 10 thousand dollars; or

(f) without leave of the High Court or Court of Appeal, from any interlocutory order or judgment.

(3) Any reference in this section to the High Court shall include a reference to any other Court, person or tribunal from which appeal lies to the Court of Appeal.”

The question is: can there be an appeal to this court from an order relating only to costs on a proper construction of section 20 - which, in respect of such an order, makes no reference to leave.

Miss Naz Parveen Rashid made a valiant effort in the face of a point not taken by the Respondent and brought to her attention only at the sitting of this Court to persuade us that an appeal lay in that a point of law and principle arose. She relied on a paragraph in the commentary on O.62 at 62/B/28 p.1135 of The Supreme Court Practice 1997 where *Re Rio Grande Co. (1877) 5 Ch. D. 282* is relied on for that proposition.

There the Court of Appeal was considering the provisions of Section 49 of the Judicature Act 1873. That reads:

“No order made by the High Court of Justice or any judge thereof, by consent of the parties, or as to costs only which by law are left to the discretion of the Court, shall be subject to any appeal, except by leave of the Court or a judge making such order.”

The Court of Appeal extended the application of that section by holding that, where law or principle arose, it itself could entertain an appeal despite the absence of leave granted “by the Court or judge making such order”.

However in *Adlington v Conyngham (1898) 2 Q.B. p.492* it was held by Lindley M.R. as he then was, supported by Chitty L.J. - a strong court - that the provisions of the Judicature Act contained clear and express terms and no exception was made of cases involving a question of law or principle. The judge there had refused leave and the Divisional Court was not prepared to go beyond that.

In Singapore we note that Section 34(i) of The Supreme Court of Judicature Act Cap. 15

provides that no appeal should be brought to the Court of Appeal -

“Where the judgment or order relates to costs only, which by law are left to the discretion of the Court, except with the leave of the Court of Appeal or a Judge of the Supreme Court.”.

This again refers to “leave” - a word conspicuous by its absence in our legislation.

This Court is a creature of statute. Appeals do not stem from any inherent jurisdiction but from the provisions of statute.

Had the legislation intended to permit costs only appeals by leave they would have been expected to say so, particularly in the light of the wording of paragraph (e) and (f) of section 20(2). While at first blush the use of the word “such” in the opening paragraph of that subsection could be thought to relate to the expression “an appeal shall lie as of right” contained in subsection (1) of the section, on a proper construction of the section as a whole the possible implication that leave to appeal can be granted is not one which is open.

By the juxtaposition of para (a), (b) and (c) appearing immediately before para (d) and provisions prohibiting appeal in matters which are manifestly unappealable - and paras (e) and (f) - the “leave” provisions - we are of the opinion that we are here being asked to entertain an appeal against the decision of an Intermediate Court Judge in a matter declared by statute to be not appealable.

Counsel having been given time to consider the point raised came back to us and very properly accepted that she could not mount an appeal.

We must refuse jurisdiction.

Having heard both sides on the matter of costs we ordered that this matter be struck out with no order as to the costs of this hearing.

WILLIAM SILKE

Judge, Court of Appeal

KUTLU TEKIN FUAD
President, Court of Appeal
Appeal

ALAN HUGGINS
Judge, Court of

Ms. Naz Parveen

for Appellant

Mr. Siva Sankaran

for Respondent