

SUPARMAN
AND
SEKUNTUM ZAHRAH SDN BHD

(Intermediate Court of Brunei Darussalam)
(Civil Suit No.69 of 2019)

APPEAL AGAINST REGISTRAR'S ORDER

Dk Hjh Norismayanti binti Pg Hj Ismail, Judge.
16th March 2024

Civil Law – Appeal – Reinstatement of the Plaintiff's action under Order 21 rule 2 (10) of the Rules of the Supreme Court – adjourn sine die does not equate to a stay of proceedings.

Ms Nuramalina binti Abd Latif (M/S Sandhu & Co.) for Plaintiff/Respondent.
Ms Wong Mew Sum (M/S Abrahams, Davidson & Co.) for the Defendant/Appellant.

Cases cited in Judgment:

Moguntia-Est Epices SA v Sea-Hawk Freight Pte Ltd [2003] SGHC 231
Akib v Daelim industrial Co. Ltd and 2 Ors (HCCS No.49 of 2019)
Attorney-General, Singapore v Tan Wee Beng (2002) SGHC 261
Suparni v Metrobina and Partners Sdn Bhd & 2 Ors (HCCS No.23 of 2018)

JUDGMENT

Dk Hajah Norismayanti, Judge:

1. This is the defendant's appeal against the decision of the learned Senior Registrar's decision on the 24th June 2023 in allowing the plaintiff's application for reinstatement of the action in Summons no.24 of 2023 under Order 21 rule 2(10) of the Rules of the Supreme Court (RSC), with cost in the cause, to be taxed of not agreed. The court proceeds to hear this appeal by way of a rehearing of the said Summons.

Brief history of the case

2. This is a personal injury suit initiated by the plaintiff who was a construction worker working for and under the instructions of the defendant as the employer. The plaintiff suffered injuries after experiencing a fall while cleaning a roof at a worksite on the 13th February 2017 on the instructions of the defendant's servants, agents, foreman, supervisor and/or officers. It is the plaintiff's case that the defendant's instructions led to his fall and damages.
3. The plaintiff's suit was filed on the 3rd July 2019. The defendant entered an appearance on the 2nd October 2019 and subsequently filed their Defence on the 18th October 2019. The matter was

eventually set down for trial by the plaintiff on the 27th January 2020. This was then followed by several pre-trial conferences fixed by the Court.

The Pre-Trial Conferences ('PTC')

4. The first PTC took place on the 21st April 2020 where it was informed by the defendant of their wish to have the plaintiff medically examined. Granting the defendant's request, the PTC was adjourned to 20th June 2020 and yet there was no medical examination arranged by the defendant. The situation remained unchanged until the 6th and final PTC which was held on the 4th February 2021. On this particular date, the defendant informed the court that the medical examination of the plaintiff could not proceed due to the situation of the Covid-19 pandemic. As a result, the registrar adjourned the matter sine die with the direction that the defendant was to update the court and the plaintiff on their progress. For the purposes of automatic discontinuance, the court agrees that the 4th February 2021 is the trigger date.
5. As time progressed, there is a clear lack of inactivity from both parties in the proceedings and eventually 12 months had passed with no activity on record. Until the 7th October 2022, the plaintiff finally wrote to court for a PTC date. Upon notification of the PTC date, the defendant alerted the plaintiff on the 21st October 2022 on whether the plaintiff had applied to extend the action in accordance to the RSC. The plaintiff did not respond and no such application had been filed and consequently on 14th February 2023 the registrar deemed the plaintiff's action discontinued.

Relevant rules on automatic discontinuance and reinstatement

6. The following are the relevant rules on discontinuance and reinstatement of an action before the court under Order 21 of the RSC: -

Rule 2(6): *"Subject to paragraph (7), if no party to an action or cause or matter has, for more than one year (or such extended period as the Court may allow under paragraph (8), taken any step or proceeding in the action, cause or matter that appears from records maintained by the Court, the action, cause or matter is deemed to have discontinued."*

Rule 2(10): *"Where an action, cause or matter has been discontinued under paragraph (5) or (6), the Court may, on application, reinstate the action, cause or matter and allow it to proceed on such terms as it thinks just."*

Senior Registrar's decision to deem the action discontinued under Order 21, rule 2(6) of the RSC

7. On the 22nd February 2023, the plaintiff filed an application via summons in chamber (no.24 of 2023) for the plaintiff's action to not be deemed discontinued or alternatively reinstatement of the plaintiff's action. The application was heard on the 19th April 2023. The plaintiff relied on the following grounds in support of their application:
 - (a) the delay was due to the defendant's inability to secure a medical examination of the Plaintiff;
 - (b) if the plaintiff's action is not reinstated, the plaintiff's action would be time barred;
 - (c) there is no prejudice to the defendant;
 - (d) the fact that the court adjourned the matter sine die, it has the same effect as a stay order;
 - (e) the Defendant had deliberately delayed the matter for 2 years.

8. After assessing the arguments before her, the Senior Registrar found that neither party took any action within the 12 months period since the last PTC. In accordance with the RSC, she deemed the action discontinued. The court finds no flaw in this finding. Although the matter was adjourned sine die, the court however did not at any point give a direction that the matter would be stayed and thus for all intent and purposes, time continued to run. Despite the fact that the defendant was supposed to make the necessary arrangements to have the plaintiff medically examined by their expert, this does not however excuse the plaintiff to allow the matter to go inactive for over 12 months. In the circumstances, the court affirms the registrar's decision that the action is deemed discontinued.
9. On the issue of reinstatement, the registrar allowed the reinstatement of the action on the basis of her finding that the plaintiff had satisfied the test established in the case of *Moguntia-Est Epices SA v Sea-Hawk Freight Pte Ltd* [2003] SGHC 231.

Appeal against the Senior Registrar's Order granting the Plaintiff's application for reinstatement of the cause of action.

10. In consideration of this appeal, the court refers to the established guideline from the case of *Moguntia-EST Epices S.A v Sea-Hawk Freight Pte Ltd* [2003] SGHC 231 ('*Moguntia case*') concerning discontinuance and reinstatement of actions. It is accepted that the *Moguntia case* sets out a 3-limb test to be applied in consideration for reinstatement of a cause of action. The court will proceed to consider the 3-limb test below with respect to the present case.

First limb: *Has the plaintiff satisfied the court that he is innocent of any significant failure to conduct the case with expedition prior to the trigger date having regard to the particulars of the case. If he has not, then reinstatement should be refused.*

11. For this first limb, the defendant conceded that the plaintiff had taken the step to set the matter down for trial prior to the 4th February 2021. The court accepts that there was no delay in the plaintiff's prosecution of the case and the case was conducted in a timely manner before the trigger date. Under the first limb, the plaintiff succeeds. In support of this finding, the court refers to the case of *Suparni v Metrobina and Partners Sdn Bhd & 2 Ors* (HCCS No.23 of 2018) where the action was reinstated and the judge held "...I am in agreement with the learned Senior Registrar's finding that there is nothing to suggest any delay on the part of the Third Party prior to the 3 December 2020 when the case proceeded with due diligence and at a usual pace, and the Third party therefore satisfies the first limb."

Second limb: *- Has he satisfied the court that in all circumstances his failure to apply to take any step in the action since the trigger date (and this would include his failure to apply for an extension of time) is excusable, i.e. should be forgiven? If he has not, then again reinstatement should be refused.*

12. The court emphasizes that the trigger date is the date of the last PTC i.e. 4th February 2021. It is acknowledged that no steps were taken within a period of 12 months since the trigger date. However, the plaintiff contends that there were no further steps for the plaintiff to take considering that the action had already been set down for trial and that the standard practice is that once an action has been set down, it is left to the court to fix trial dates. It is further submitted that the last PTC was adjourned at the request of the defendant and not the plaintiff.
13. In support of the above contention, the plaintiff refers to the case of *Attorney-General, Singapore v Tan Wee Beng* (2002) SGHC 261 where the judge held: "25. The term "step or proceeding.... that appears from the records maintained by the court" connotes an action vested with the formality of

the court adjudication process. The operative term is that the step or proceeding must be one which appears in the court record. Such a step or proceeding must therefore involve documents which are filed in court, which accordingly, excludes correspondences with the court and correspondences between parties." Based on the said case, the plaintiff submits that once the action was set down for trial, there was no further 'step' required from him. The plaintiff further refers to the case of *Akib v Daelim industrial Co. Ltd and 2 Ors* (HCCS No.49 of 2019) where the trial judge agreed with the finding that once a matter had been set down for trial, there was no further formal action or application required of the Plaintiff and that the next step was in the "hands of the court".

14. In consideration of the above contention, the court accepts that there was no further procedural step required from the plaintiff. However, it must be noted that standard procedural timelines exist and time continues to run and thus putting the plaintiff at risk of the action being deemed discontinued if no activity occurred within 12 months from the trigger date. On this point, the court notes that the plaintiff did not apply for an extension of time within the 12 months period from the trigger date.

Genuine mistake

15. The plaintiff's explained his non-adherence to the standard procedural timelines by a genuine mistake in assuming that time was stayed and concedes that he failed to file an application for extension of time. In addition, the plaintiff contends that the delay in the proceedings was mainly due to the defendant who failed to update the court and the plaintiff on their supposed efforts to secure an expert to medically examine the plaintiff. Based on this genuine mistake, the plaintiff submits that the action should not be discontinued.
16. In assessing whether this justification of genuine mistake is excusable, the court examines the overall facts and the circumstances surrounding the delay. After the guillotine date, another 8 months had passed before the plaintiff corresponded with the court requesting for a PTC. The defendant thereafter alerted the plaintiff on the 21st October 2022 that the matter was deemed discontinued since the last step in the proceedings was over 12 months prior. Despite the notice given by the defendant, the plaintiff only filed their summons for reinstatement on the 22nd February 2023, approximately 12 months after the guillotine date. This meant that there was a period of 24 months of inactivity in the action.
17. On the assertion of a genuine mistake, the court finds that the registrar's order to put on hold the PTC does not equate to the entire legal action being put on hold. The action is still alive and the action is still subject to procedural rules particularly Order 21 rule 2(6) of the RSC on automatic discontinuance. A separate order or decision is usually required for a stay of the whole legal action. Therefore, although the next step was in the hands of the court, the plaintiff was still subject to the standard procedural timelines. Hence, it is to the benefit of the plaintiff to actively monitor the timeline to ensure that the action is not discontinued.
18. Despite these circumstances, it's important to highlight that the court has acknowledged the plaintiff's readiness for trial since 27th January 2020. The main cause for the delay of the legal proceedings can be attributed to the defendant's request to conduct a medical examination of the plaintiff. Following this request, the registrar not only granted it but also provided the defendant with considerable time to carry out the examination. This was done by providing multiple adjournments of PTCs and subsequently placing the PTC process on a temporary hold. Despite these accommodations on time, the defendant has not yet communicated any developments or

findings from the medical examination to the court. This lack of communication has contributed to the ongoing delay in the proceedings, leaving the court and the plaintiff in a state of uncertainty regarding the progression of the case.

Is the plaintiff's justification of genuine mistake excusable?

19. The court refers to Judith Prakash J's view in the *Moguntia* case that applications for reinstatement of a cause of action deemed to have been discontinued should be "*an exception rather than the rule*". This implies that the court believes reinstatement should be reserved for truly exceptional situations. With this in mind, the court may consider the plaintiff's mistaken impression of a stay as an exceptional circumstance if the court finds that the deviation from the standard procedural timelines is justified.
20. At the outset, the court finds that the plaintiff was negligent for mistakenly believing that the registrar's direction meant that proceedings were stayed. The plaintiff failed to apply for an extension of time or promptly seek reinstatement, showing a lack of urgency in their request for relief. The court views the plaintiff's mistake was due to lack of diligence in managing the case. It must be highlighted that the registrar did not conclude the PTC but merely adjourned it, whilst waiting for further updates from the defendant on their progress. Considering the history of adjournments for the same reason before the final PTC, time was of the essence to ensure that the case progresses diligently and in a timely manner to the next stage of the proceedings, which in this case is for the action to be fixed for trial. The situation should have compelled the plaintiff to closely monitor the timeline and prevent the case from being indefinitely delayed. Here, the plaintiff only acted to revive the PTC 8 months after the guillotine date, highlighting the delay.
21. Despite the fact that the plaintiff did not apply for an extension of time, it is important to note that the responsibility for the delay in the legal proceedings cannot solely be blamed on the plaintiff. More than a year has elapsed since the trigger date, a specific point in time significant to the case's timeline, yet there has been a noticeable absence of progress or communication from the defendant's side. This period of inactivity raises questions about the defendant's commitment to advancing the proceedings.
22. Additionally, the court takes into consideration the defendant's lack of action alongside the plaintiff's genuine mistake concerning a legal stay. A "stay" in legal terms refers to a court order halting certain proceedings or actions temporarily. The plaintiff's misunderstanding regarding the status of such a stay, though it led to their inaction, is viewed by the court through a lens of empathy, recognizing the complexity and often confusing nature of legal processes.
23. Given these circumstances, the court concludes that the plaintiff's failure to move forward with any action since the trigger date, while not standard procedure, is understandable and justifiable under the unique circumstances of this case. As a result, this meets the criteria for the second limb of the test being discussed. This acknowledgment by the court emphasizes the importance of considering the context and nuances of each party's situation in legal deliberations, rather than strictly adhering to procedural timelines without regard for extenuating circumstances.

Third limb: *Has the plaintiff satisfied the court that the balance of justice indicates that the action should be reinstated? If not once again reinstatement should be refused.*

24. The plaintiff submits that he would be prejudiced if reinstatement is refused. The main contention is that the statute of limitations for the plaintiff's cause of actions expired on the 12th

February 2020. Consequently, without reinstatement, the plaintiff's cause of action is time-barred. The court finds that given the plaintiff's prompt and timely actions in prosecuting the case up until it was set down for trial, the balance of justice favours reinstating the case.

25. Furthermore, the court concludes that the defendant will not be unfairly prejudiced by the reinstatement except for their loss of the defence of limitation. The defendant however will still have the opportunity to argue their defence at trial. The inactivity of the defendant following the final PTC and the fact that the case was already set down for trial are significant factors in this decision. Therefore, the court finds that it is only fair to allow the reinstatement of the action and give the plaintiff the opportunity to have the case adjudicated.

Conclusion

26. Based on the above-mentioned findings, the court concludes that the plaintiff has satisfied all 3 limbs of the *Moguntia* guidelines and thereby the court upholds the registrar's decision to reinstate the action under Order 21 rule 2(10) of the RSC. The defendant's appeal of the registrar's decision is hereby dismissed with cost to the Plaintiff, to be taxed if not agreed.

DK HJH NORISMAYANTI PG HJ ISMAIL
Judge, Intermediate Court