Abdul Salam Asanaru Pillai (trading as South Kerala Cashew Exporters) v Nomanbhoy & Sons Pte Ltd
[2008] SGHC 48

Case Number : Suit 97/2006, SUM 4826/2007

Decision Date : 03 April 2008

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Tan Teng Muan and Loh Li Qin (Mallal & Namazie) for the plaintiff; Lawrence Teh Kee Wee, Derek Kang Yu Hsien, Jeannette Lim and Ng Hui Min (Rodyk & Davidson LLP) for the defendant; Sarbjit Singh and Suja Sasidharan (Lim & Lim) for the second defendant in counterclaim

Parties : Abdul Salam Asanaru Pillai (trading as South Kerala Cashew Exporters) — Nomanbhoy & Sons Pte Ltd

Civil Procedure

3 April 2008

Choo Han Teck J:

1 By this summons the defendant (Nomanbhoy & Sons Pte Ltd) prayed for security for costs against the plaintiff (Abdul Salam Asanaru Pillai trading as South Kerala Cashew Exporters) and the second defendant by counterclaim (Vallinayagam Dheenathayalavel). Both the plaintiff and the second defendant (by counterclaim) reside overseas. The trial is likely to be only marginally less difficult than the parties have been with each other. Taking into account the complexity of the case and the intransigency of the parties in accommodating each other, a fair estimate of the time for trial is probably 15 days, and maybe more.

2 Numerous interlocutory applications had been heard even before this action was docketed to be heard by me and since then, further applications and cross applications had been made, but I had kept them on a small scale with the view that the action proceed more expeditiously and with the intention of reducing the costs of trial.

3 The defendant was entitled to ask for security for costs to be provided against both the parties named since they are foreign companies. Mr Teh, counsel for the defendant, had asked for a much larger sum than the $30,000 I awarded. He submitted that a 15-day trial may cost $400,000 in terms of taxed costs.

4 Mr Tan, counsel for the plaintiff, submitted that the defendant had failed to obtain security for costs in its previous application, and since there had been no change in the circumstances, this application should also be refused. I am of the view, however, that since the previous application, the skirmishes between the parties had risen in number and intensity. I thought it was now appropriate to review the question of security for costs.

5 It is not easy to judge the merits of this action even if only to determine a good arguable case or a sound, plausible defence as the cases on both sides seem equally balanced and the tilt is likely to be made only after the evidence has been tested. This may not be the sole test but it would be useful and relevant for the court to know, for the purposes of a security for costs

application, which party appears to have the stronger case. In the instant case, this aspect was of little assistance.

6 I can only follow the progress on paper until the time the interlocutories were all heard by me. The parties had been constantly accusing each other of delay and unreasonableness. In my view, it was the plaintiff who had been the more unreasonable party. I am of the view that some security for costs ought to be provided even if only as a small measure in reducing further applications before trial. If not for the fact that neither party had a *prima facie* stronger claim on merits, and further, having regard to the fact that this matter ought to proceed to trial soon, I would have ordered a larger sum than $30,000. One of the pertinent reasons I think that the plaintiff should now provide some security is that judging by its conduct in the series of interlocutories, it is likely that the plaintiff will place all kinds of obstacles in the recovery of costs should the defendant succeed at trial. Mr Tan complained that the plaintiff is "bleeding" every day, but the history of the progress of this action to date did not seem to justify counsel's claim. Accordingly, I was of the view that the sum of $30,000 was an appropriate sum and I so ordered.

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