



HIGH COURT RULED NO SPECIAL CIRCUMSTANCES, APPLICATION FOR STAY OF PROCEEDINGS DISMISSED

High Court of Malaya at Kuala Lumpur
March 2, 2020
Kuala Lumpur Litigation Branch of IRBM

GOVERNMENT OF MALAYSIA v. MNMN

ISSUES

1. Whether special circumstances exist to warrant the grant of a stay of proceedings?
2. Whether Section 106 of the Income Tax Act 1967 is contrary to Article 121(1) of the Federal Constitution and is therefore invalid?
3. Whether it is unjust for the Plaintiff to file the current claim when there is an issue of limitation?

JUDGE

YA Dato' Ahmad Zaidi Bin Ibrahim

FACTS

1. The Plaintiff had raised additional assessments against the Defendant for the Years of Assessment 2011 (Additional), 2012 (Additional), 2013 (Additional), 2014 (Additional), 2015 (Additional), 2016 (Additional) and 2017 (Additional) for the amount of RM37,644,810.73 including increases under the Income Tax Act 1967 ("ITA").
2. As the Defendant had failed to pay the total outstanding sum of RM37,644,810.73, on 24.07.2019, the Plaintiff filed a Writ of Summons and Statement of Claim against the Defendant.
3. However, the Defendant proceeded to file the Notice of Application for Stay of Proceedings pending resolution of the Defendant's appeal before the Special Commissioners of Income Tax

REVENUE COUNSELS

Norhisham Ahmad
Al Hummidallah Idrus
Nor Asmah Adam
Muhammad Nabil Abdul Halim
Komathy A/P Karuppanan

DEFENDANT'S CONTENTION

The Defendant contended that special circumstances exist given that a successful appeal to the Dispute Resolution Department and/or Special Commissioners of Income Tax ("SCIT") would be rendered nugatory by a refusal to stay this civil suit as the Defendant could not be restored to his original position should judgment of this proceeding be entered against him. This is especially when:

- a) The total amount claimed by the Plaintiff will cause colossal financial damage to the Defendant; and

- b) The risk of the Defendant being declared bankrupt by virtue of bankruptcy proceedings and the effect on the Defendant's political career is not an unforeseeable future event but a certainty.

The Defendant has submitted that Section 106 of the ITA is unconstitutional as it is contrary to Article 121 of the Federal Constitution and invalid under Article 4(1) of the Federal Constitution. A literal application of Section 106(3) would effectively amount to the Plaintiff, or in particular the decision of Inland Revenue Board usurping the High Court of its judicial power to effectively determine disputes.

The Defendant submitted that the issue of the limitation period under Section 91(1) of the ITA, which should be dealt with by the SCIT, constitutes a special circumstance that warrants the grant of a stay of proceedings. This is on top of the fact that the Plaintiff did not plead fraud, wilful default, or negligence by the Defendant in its Statement of Claim, which would enable the Plaintiff to circumvent the limitation period under Section 106 of the ITA.

PLAINTIFF'S CONTENTION

The Plaintiff submitted that the grounds provided by the Defendant does not constitute special circumstances for a stay of civil proceedings to be granted.

It is submitted that the stay should only be granted when there is a clear evidence on special circumstances taking into consideration that any stay order would principally defeat the whole substratum of tax recovery legislation as enshrined in Section 103 and 106 of the ITA.

The Plaintiff is seeking a monetary judgment that would not in any way lead to physical damage to the subject matter or substratum of the Defendant's tax appeal. Hence, the result of the appeal will not be rendered nugatory in any way.

It is submitted that colossal financial damage does not tantamount to special circumstances as it is not something distinctive and out of the way.

There is no certainty that the consequences alleged by the Defendant will arise should a stay not be granted. The Defendant's contention that he would be declared bankrupt by virtue of bankruptcy proceedings and that his political career will be affected are irrelevant to the current proceeding. The Plaintiff submitted that the current proceeding is a civil proceeding initiated by the Plaintiff to recover the tax due and payable by the Defendant, which is not related to bankruptcy proceedings and there is no indication that the Plaintiff will initiate bankruptcy proceedings against the Defendant.

In addition, on the Defendant's contention that he could not be restored to his original position due to the bankruptcy proceedings that the Plaintiff might take against the Defendant and the irreparable damages which could be suffered by the Defendant, the Plaintiff submitted that it is a mere assumption without basis. There is no evidence to support the Defendant's statement that if the judgment were recorded against him, such damages would be incurred.

The Plaintiff submitted that Section 106 of the ITA does not operate to usurp the judicial powers of this Honourable Court. It is a settled law that the provision of section 106 of the ITA and its application is not an abuse of the process of the court and does not go against the provision of the Federal Constitution. In addition, our superior courts have previously dismissed constitutional challenges to the validity of Section 106(3) of the ITA as decided in the case of **Arumugam Pillai v Government of Malaysia [1975] 2 MLJ 29 (FC)**.

It is pertinent to note that the nature of the ITA is substantive law that have been legislated for the purpose of administering tax matters. Therefore any other provisions besides Federal Constitution especially subsection 106(3) of the ITA must be adhered to. Section 106(3) of the ITA is the power given to the Plaintiff in performing and exercising its statutory duties under the federal law.

The Plaintiff submitted that the door is not shut for the Defendant to bring its appeal to this court. However, there are procedural steps to be taken which has been provided under the ITA. It is also to be noted that these procedural steps, i.e., the appeal by way of Form Q and hearing before the SCIT, does not totally negate the fact that the court has the jurisdiction to make its decision on such dispute.

The Plaintiff further submits that the function of the court comes into operation after the case has been decided by the SCIT. The appeal from SCIT to the High Court is provided under paragraph 34 of Schedule 5 of the ITA.

The Plaintiff submitted that the issue of limitation is one relating to the merits of the claim. Thus, it is an irrelevant consideration in respect of an application for a stay of proceedings as held by the Federal Court in **Kosma Palm Oil Mill Sdn Bhd & Ors v. Koperasi Serbausaha Makmur Bhd [2003] 4 CLJ 1**. Such issue of limitation is a matter for the SCIT to deal with.

COURT'S DECISION

The Honourable Court agreed with the Plaintiff and decided that the Defendant had no strong grounds and thus failed to discharge the burden of proving the existence of special circumstances to the satisfaction of the Court. The application is dismissed with costs.