Sathish Kumar Ayyaswamy & Anor v Peeran Syed Mohamed Syed Mahaboob [2025] MLJU 33

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COURT OF APPEAL (PUTRAJAYA)

MARIANA YAHYA, JCA, HASHIM HAMZAH, JCA and FAIZAH JAMALUDIN, HCJ

CIVIL APPEAL NO J-02(IM)(NCvC)-954-06 OF 2023

3 January 2025

Mirdhulekha a/p Muralidharan (with Divesh a/l Ramani) (David Gurupatham & Koay) for the appellant. Rohan Arasoo a/l Jeyabalah (with Tey Siaw Ling and Damia Amani bt Shaiful Bahri) (Harold & Lam Partnership) for the respondent.

Faizah Jamaludin J:

GROUNDS OF JUDGMENT

Introduction

[1] This is an appeal by the Appellants against the decision of the learned High Court Judge on 30.08.2023 where he allowed the Respondent's application in Enclosure 9 to strike out the pleadings in the Appellants' statement of claim ("**SOC**") under Order 18 rule 19(1)(a) and Order 78 rule 3 of the Rules of Court 2012 ("**ROC 2012**") on the basis that the pleadings did not disclose a reasonable cause of action.

Salient Facts

[2] At the material time, the 1st Appellant was the Construction Manager and the 2nd Appellant was the Managing Director of Poratha Corporation Sdn. Bhd. ("**PCSB**"). The Respondent was a director of ATB Sdn. Bhd. ("**ATB**"). He was also the Trading and Marketing Manager of Vitol Trading Malaysia Ltd.

[3] ATB and HQC Engineering Sdn Bhd ("**HQC**") entered into an agreement for the construction of the "ATB PU Project" at Tanjung Bin, Johor ("**the Project**"). ATB was the employer and HQC was the main contractor of the Project. PCSB was HQC's subcontractor for the Project.

[4] ATB and PCSB entered into a Letter of Undertaking dated 13.07.2021 ("**LOU**"), pursuant to which ATB undertook to underwrite HQC's payments to PCSB.

[5] On 24.11 2021, a meeting was held between PCSB and ATB. The meeting was attended by the 1st Appellant and Mr. Brij Dogra for PCSB, and the Respondent and ATB's staff for ATB. The purpose of the meeting was to discuss the procedures required by HQC for the processing and payment of PCSB's claims.

[6] On 25.11.2021, at around 9.00 am, the Respondent came to PCSB's site cabin and requested for a brief meeting with the 1st Appellant to discuss an alleged discrepancy relating to an outstanding payment for the Project. The meeting on 25.11.2021 ("**the Unscheduled Meeting**") was held at HQC's meeting room, which was located approximately 100 meters from PCSB's site cabin.

[7] The 1st Appellant contends that during the Unscheduled Meeting, he told the Respondent that he did not have the mandate to discuss payments on behalf of PCSB and that the Respondent should discuss the matter directly with the 2nd Appellant, who is PCSB's Managing Director.

[8] The 1st Appellant alleges that the Respondent, upon being informed that he should discuss the matters relating to payment directly with the 2nd Appellant, verbally assaulted and defamed the 1st Appellant and disparaged the 2nd Appellant by using the following words: "*bastard, big shot, periya pudinggi, fuck, fucker, your boss is a bastard*" ("**the Impugned Words**").

[9] Additionally, the 1st Appellant claims that the Respondent acted aggressively and violently by slamming his fist hard with force on the table and pushed the chairs in the meeting room, while continuously uttering the Impugned Words. He also claims that the Respondent threatened PCSB's ability to conduct business in the United Arab Emirates with ATB.

[10] The 1st Appellant contends that following the Respondent's verbal assault, the 1st Appellant left the meeting room. However, the Respondent followed the 1st Appellant and continued to utter the Impugned Words towards the 1st Appellant in the presence of PCSB's workers, who were at a smoking shed located approximately 10 meters away from HQC's meeting room.

[11] It is the 1st Appellant's case that the PCSB workers at the smoking shed witnessed the incident and heard the Impugned Words uttered by the Respondent against him.

[12] On 24.02.2022, the Appellants filed an action for defamation against the Respondent at the Johor Bahru High Court. In their SOC, the Appellants contend that the Impugned Words were uttered, spoken and published by the Respondent and that the words were defamatory in nature.

[13] On 18.05.2022, the Respondent filed the application in Enclosure 9 to strike out the Appellants' SOC under Order 18 rule 19(1)(a) and Order 78 rule 3 of the ROC 2012 on the grounds, *inter alia*, that the Appellants failed to show any actionable claim based on the Impugned Words; there were no particulars of publication to third parties; and the third parties who allegedly heard the Impugned Words were not explicitly identified in the SOC.

High Court's Grounds for Allowing Enclosure 9

[14] At the conclusion of the hearing of the Respondent's application in Enclosure 9, the learned High Court Judge found that:

(i) the Impugned Words were not defamatory as they were mere verbal abuse, and

(ii) the Impugned Words were not published to third parties because the Appellants did not plead in the SOC the identity of the PCSB workers who were in the smoking shed when the Respondent uttered the Impugned Words towards the 1st Appellant.

[15] By reason of his findings detailed in sub-paragraphs [14](i) and (ii) above, the learned High Court Judge held that the Appellants' pleadings did not disclose a reasonable cause of action for defamation against the Respondent and struck out the pleadings in the SOC under Order 18 rule 19(1)(a) of the ROC 2012.

Cause of Action for Defamation

[16] The Appellants' action against the Respondent is for the tort of defamation for alleged slander by reason of the Impugned Words allegedly uttered by the Respondent against the Appellants on 25.11.2021 during and shortly after the Unscheduled Meeting, which Impugned Words were allegedly heard by the PCSB workers in the smoking shed.

[17] Under Order 18 rule 7(1) of the ROC 2012, the Appellants are required to plead a statement in summary form of the material facts on which they rely for their claim. Where the words referred to in the pleadings are themselves material, the Appellants are required under Order 18 rule 7(2) to plead the precise words.

[18] As the Appellants' action against the Respondent is for slander and the Appellants alleged the Impugned Words were used in the defamatory sense other than their ordinary meaning, they are required under Order 78 rule 3(1) of the ROC 2012 to give particulars of the facts and matters on which they rely in respect of such defamatory sense.

[19] Accordingly, in order to assess whether the pleadings in the SOC disclosed a reasonable cause of action for defamation, this Court must first, consider what the necessary elements for an action in defamation are. Secondly, this Court must ascertain whether the material facts required to establish all those elements were pleaded in the SOC.

(i) What are the necessary elements of a cause of action in defamation?

[20] The necessary elements of a cause of action in defamation are: (i) the Impugned Words are defamatory; (ii) the Impugned Words refer to the plaintiff; and (iii) the Impugned Words are published. In *Ayob Saud v. TS Sambanthamurthi* [1989] 1 CLJ 152; ; *[1989] 1 MLJ 315*), Mohamed Dzaiddin J (as he then was) held:

"In our law on libel, which is governed by the Defamation Act 1957, the burden of proof lies on the plaintiff to show (1) the words are defamatory; (2) the words refer to the plaintiff; and (3) the words were published."

[21] Order 78 rule 3 of the ROC 2012 applies to actions for libel or slander. It states:

> **(1) Where in an action for libel or slander the plaintiff alleges that the words or matters complained of were used in a defamatory sense other than their ordinary meaning, he must give particulars of the facts and matters on which he relies in respect of such sense.**
>
> (2) Where in an action for libel or slander the defendant alleges that, in so far as the words complained of consist of statements of fact, they are true in substance and in fact, and in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest, or pleads to the like effect, he must give particulars stating which of the words complained of he alleges are statements of fact and of the facts and matters he relies on in support of the allegation that the words are true.
>
> (3) Where in an action for libel or slander the plaintiff alleges that the defendant maliciously published the words or matters complained of, he need not in his statement of claim give particulars of the facts on which he relies in support of the allegation of malice, but if the defendant pleads that any of those words or matters are fair comment on a matter of public interest or were published upon a privileged occasion and the plaintiff intends to allege that the defendant was actuated by express malice, he must serve a reply giving particulars of the facts and matters from which the malice is to be inferred.
>
> (4) This rule shall apply in relation to a counterclaim for libel or slander as if the party making the counterclaim were the plaintiff and the party against whom it is made the defendant.
>
> [emphasis added]

[22] In an action for slander in respect of words calculated to disparage the plaintiff in any office, profession, calling, trade or business held or carried on by the plaintiff at the time of publication, *section 5* of the *Defamation Act 1957* provides that it shall not be necessary for the plaintiff to allege or prove special damage whether or not the words are spoken of the plaintiff in the way of his office, profession, calling, trade or business. *Section 5* of the *Defamation Act 1957* reads:

> **5. Slander affecting official, professional, or business reputation**
>
> In an action for slander in respect of words calculated to disparage the plaintiff in any office, profession, calling, trade or business held or carried on by him at the time of the publication, it shall not be necessary to allege or prove special damage whether or not the words are spoken of the plaintiff in the way of his office, profession, calling, trade or business.

(ii) Did the Appellants plead the requisite facts to establish the necessary elements for a cause of action in defamation?

[23] In the SOC, the Appellants pleaded, *inter alia*, the following:

(i) the Impugned Words uttered by the Respondent against the Appellants: see paragraphs 29 and 46 of the SOC;

(ii) the Impugned Words referred to the Appellants: see paragraphs 29 and 33 of the SOC;

(iii) the Impugned Words were defamatory in nature in their natural and ordinary meaning, and by innuendo: see paragraphs 47, 50, 51 and 52 of the SOC.

  (a) Particulars of the Impugned Words in its natural and ordinary meaning and by innuendo being defamatory in nature and constitutes actionable slander against the 1st Appellant are pleaded in paragraph 50 of the SOC; and

  (b) Particulars of the Impugned Words in its natural and ordinary meaning and by innuendo being defamatory in nature and constitutes actionable slander against the 2nd Appellant are pleaded in paragraph 51 of the SOC.

(iv) the Impugned Words amounted to lower the Appellants in the estimation of right-thinking members of society generally and exposed them to hatred, contempt or ridicule and further injure the Appellants' names and reputation: see paragraph 53 of the SOC;

(v) the Impugned Words were published to third parties, namely the group of PCSB workers who were in the smoking shed: see paragraphs 33, 48, 49 of the SOC; and

(vi) the Impugned Words were published with malicious intention: see paragraph 56 of the SOC.

[24] Additionally, the Appellants had pleaded in paragraph 58 of the SOC that the Impugned Words were calculated to disparage the 1st Appellant's professional standing. They had also pleaded in paragraph 61 of the SOC that the Impugned Words had affected the 2nd Appellant's standing as Managing Director of PCSB and had affected his professional standing and reputation.

[25] Further, the Appellants pleaded in paragraph 62 of the SOC that the Impugned Words had put their professional reputations to odium, contempt and scandal, and humiliation in the eyes of their clients, colleagues and subordinates. In paragraph 63 of the SOC, the Appellants pleaded that the Impugned Words were calculated to disparage the Appellants in their respective office, profession, calling, trade or business.

[26] Accordingly, based on as the facts as pleaded on the face of the SOC, we find that the Appellants had pleaded all the three elements necessary to establish a cause of action in defamation against the Respondent.

Our Analysis and Findings

[27] Under Order 18 rule 19(1)(a) of the ROC 2012, a Court may strike out any pleadings on the grounds that it discloses no reasonable cause of action.

[28] The law is settled that in an application under Order 18 rule 19(1)(a), Courts may only consider the SOC on the face of it: it cannot take into account the merits of the plaintiff's claim or any of the evidence. Pursuant to Order 18 rule 19(2) no evidence is admissible on an application under Order 18 rule 19(1)(a). Order 18 rule 19(2) reads:

> **19. Striking out pleadings and endorsements (**O. 18 r.19**)**
>
> (2) No evidence shall be admissible on an application under subparagraph (1)(a).

[29] The Court of Appeal in *Abdul Rahim Abdul Hamid & Ors v Perdana Merchant Bankers Bhd & Ors* [2000] 2 CLJ 457 held:

> **In considering an application under** O. 18 r. 19(1)(a)**, the court has to take into account the statement of claim on the face of it and no consideration whatsoever shall be paid to the evidence in the form of these affidavits**. So long as the statement of claim discloses a reasonable cause of action, however weak the claim is, the claim cannot be struck off summarily. **At that stage of the proceedings, it is not for us or for the learned Judge of the High Court to consider the merits of Carah's claim. On an application under** O. 18 r. 19(1)(a) **the court has only to consider whether the statement of claim discloses a reasonable cause of action.** The well-established principle is that the court will not summarily strike out pleadings, except only in plain and obvious cases where the claim or counterclaim is plainly and obviously not sustainable.
>
> [Emphasis added]

[30] In *Bandar Builder Sdn. Bhd. v. United Malayan Banking Corp. Bhd.* [1993] 4 CLJ 7; ; *[1993] 3 MLJ 36* (SC) at p. 44, Mohamed Dzaiddin SCJ said:

> **This court as well as the court below is not concerned at this stage with the respective merits of the claims.** But what we have to consider is whether the counterclaim discloses some cause of action and, likewise, whether the defence to counterclaim raises a reasonable defence. **It has been said that so long as the pleadings disclose some cause of action or raise some question fit to be decided by the judge, the mere fact that the case is weak and not likely to succeed at the trial is no ground for the pleadings to be struck out**.
>
> [Emphasis added]

[31] Gopal Sri Ram JCA (as he then was) delivering the judgment of the Federal Court in *Owen Sim Liang Khui v. Piasau Jaya Sdn. Bhd. & Anor* [1996] 4 CLJ 716; ; *[1996] 1 MLJ 113* said:

> When it is shown that there is a reasonable cause, however weak it is, the court should refuse the application.

[32] Hence, the question for the learned High Court Judge, in considering the Respondent's striking out application in Enclosure 9, was whether the Appellants' pleadings on the face of the SOC disclosed a reasonable cause of action for defamation. In doing so, he cannot consider the merits of the Appellants' claim or the evidence in the affidavits filed by both parties.

[33] As discussed above, on the face of the pleadings in the SOC, we find that the Appellants had pleaded the requisite facts to establish all the three elements necessary for a cause of action in defamation. They had pleaded that the Impugned Words: (i) were defamatory; (ii) referred to the Appellants; and (iii) were published. Whether or not the Appellants will succeed in proving the facts pleaded depends on the evidence adduced during the trial of the action: it is not for the Court's consideration in an application for striking out under Order 18 rule 19(1)(a).

[34] However, the learned High Court Judge, as is evident from his written grounds of judgment, instead of just considering whether the Appellants' pleadings in the SOC disclosed a reasonable cause of action in defamation, undertook a minute analysis of the merits of the Appellants' claim and concluded solely based on the pleadings that two of the three elements of the tort of defamation pleaded in the SOC were "unsustainable". Based on this conclusion, the learned Judge held that the Appellants have no reasonable cause of action in defamation against the Respondent and struck out the pleadings in the SOC.

[35] On the first element, namely that the Impugned Words were defamatory, the learned Judge said in paragraph [21] of his judgment:

> [21] In our present case, after carefully scrutinizing the Impugned Words in their natural and ordinary meaning and I find that the words ""*bastard, big shot, periya pudinggi, fuck, fucker, your boss is a bastard"* allegedly uttered by the Defendant are clearly not defamatory albeit undeniably abusive. There is nothing in the Impugned Words that could be calculated to defame the Plaintiffs nor expose the Plaintiffs to hatred, ridicule or contempt in the mind of a reasonable man. It is no doubt that the Impugned Words are amongst the nasty words more often than not uttered by a person in the midst of anger but not all nasty words are defamatory. As long as the nasty words do not defame or impute the moral character, credibility and integrity of the person whom the words are uttered to, they are not defamatory.
>
> …….
>
> [23] In light of the above, I find the Impugned Words are not defamatory and the first element in the defamation suit is unsustainable.

[36] With respect to the learned High Court Judge, based on the legal principles established in a long line of Federal Court, Supreme Court and Court of Appeal cases, the function of a Court in an application to strike out pleadings under Order 18 rule 19(1)(a) is to consider whether the pleadings disclosed a reasonable cause of action. It is not for a Court to consider in a striking out application whether the plaintiff has proven the facts pleaded in the said pleadings.

[37] Moreover, because a Court is prohibited from considering the merits of the claim or any of the evidence in an application under Order 18 rule 19(1)(a), it would be impossible for a Court to determine, when considering such an application, whether a plaintiff has proven his pleaded case.

[38] Whether or not the Appellants succeed in proving their pleaded case is a matter to be decided by the Court after considering the evidence adduced in Court during trial. As held by the Supreme Court in **Bandar Builder** (supra) and the Federal Court in **Owen Sim Liang Khui** (supra), the fact that a plaintiff's case is weak is no reason for Courts to strike out his pleadings.

[39] Accordingly, we find that the learned High Court Judge fell into error and was plainly wrong in considering the merits of the Appellants' pleading that the Impugned Words are defamatory in an application for striking out under Order 18 rule 19(1)(a) of the ROC 2012.

[40] As for the second element that the Impugned Words referred to the Appellants, the learned High Court Judge

found that the Impugned Words did refer to the Appellants and that this second element is *prima facie* fulfilled. He said in paragraphs [24] and [25] of his grounds of judgment:

> [24] I find there is no doubt that the Impugned Words referred to the Plaintiffs as the Defendant was very angry at that time with the Plaintiffs after being unsatisfied [sic] with the explanation given by the 1st Plaintiff.
>
> [25] Hence, this element is *prima facie* fulfilled.

[41] In concluding that the Impugned Words referred to the Appellants, the learned Judge failed to consider the Respondent's pleadings in his statement of defence, where he denied having uttered the Impugned Words and had put the Appellants to strict proof. In the face of the Respondent's express denial and without the Appellants proving their case at trial, it is not apparent to us how the learned Judge was able to conclude that the Respondent had uttered the Impugned Words and that the words referred to the Appellants.

[42] For the third element, i.e. publication of the Impugned Words, the law is settled that to constitute publication, the Impugned Words must have been communicated to at least one third party i.e. a person or group of persons other than the plaintiff: see *S. Pakianathan v Jenni Ibrahim* [1988] 2 MLJ 173; ; [1988] 1 CLJ 771 (HC), followed in *Dato' Seri Mohammed Nizar bin Jamaluddin v Sistem Televisyen Malaysia Bhd & Anor* [2014] 4 MLJ 242 (CA).

[43] Where the alleged publication is to a specific individual or organisation, the plaintiff must plead the name of the specific individual or organisation: see **S. Pakianathan v Jenni Ibrahim** (supra); *Abu Samah bin Omar v Zainal bin Montel* [2004] 5 MLJ 377; ; [2003] 1 LNS 501.

[44] However, where the alleged publication is to a specific group of persons, it is sufficient for the plaintiff to plead that the defamatory words were published to the said specific group of persons. It is not necessary for the plaintiff to plead the names of all the members of the group of persons who had read or heard the defamatory words: see *Chan Cheng Wah Bernard & Ors v Koh Sin Chong Freddie and another appeal* [2012] 1 SLR 506 (CA, Sing); *Lee Kok Choy v Leong Keng Woo* [2022] 4 SLR 1253 (HC, Sing).

[45] Doris Chia in her book *Defamation Principles and Procedure in Singapore and Malaysia,* LexisNexis, 2016 at paragraph 5.18 summarised the legal principle relating to publication to a specific group persons as follows:

> 5.17 Where publication is to a specific group of persons, for example, members of a club or associations, there is no need to name each member, but it will be necessary to plead and prove that persons in that group received or read the publication or heard the speech ……...

[46] In **Chan Cheng Wah Bernard & Ors v Koh Sin Chong Freddie and another appeal** (supra), the Singapore Court of Appeal held where the alleged publication is to a specific group of persons, there is no need to name each member of the group but it is necessary to plead and prove that the persons in the group read or heard the defamatory words. In **Lee Kok Choy v Leong Keng Woo** (supra), the Singapore High Court held:

> [64] There is no need for the plaintiff to plead how he came to know about the republication to the MRL Board. This is a matter of evidence. **There is also no need to specify precisely how many persons from the MRL Board the Alleged Defamatory Statements were republished to and their exact identities, since the category of persons is sufficiently identified.** It simply refers to the directors of MRL. ……..
>
> [Emphasis added]

[47] Both these Singapore cases, which is of persuasive authority on this Court and the High Court, reiterated the legal principle that as long as the specific group of persons are sufficiently identified in the pleadings, there is no need to plead their exact names and identities.

[48] In summary, the requirements in pleading publication to "a specific person" versus publication to "a specific group of persons" are as follows:

(i) where a plaintiff alleges publication to "a specific person", the plaintiff must name and identify the reader or listener of the defamatory words in his pleadings.

(ii) where a plaintiff alleges publication to "a specific group of persons", the plaintiff must plead publication of the defamatory words to the specific group of persons. He does not have to plead the names and identities of the persons in the group.

[49] In this case, the Appellants had pleaded that the Impugned Words were published to a specific group of persons, namely, the PCSB workers who were in the smoking shed when the Respondent allegedly uttered the Impugned Words.

[50] Accordingly, we find that the requirement to plead publication of the Impugned Words to a specific group of persons is met by the Appellants in their pleadings.

[51] Nonetheless, the learned High Court Judge found because the Appellants "did not elaborate the full identities" of the group of PCSB workers who were in the smoking shed, this third element of publication was "unsustainable". The learned Judge said in paragraphs [34] and [35] of his grounds of judgment:

> [34] It is my considered view that there cannot be defamation of the Plaintiffs in the absence of full detail about the involvement of a third party. A mere statement in the Plaintiffs' pleading that a group of employees overheard the Impugned Words without elaborating their full identities to substantiate the allegation is not sufficient to support the Plaintiffs' averment that the element of communication to a third party is sustainable.
>
> [35] In the upshot, the third element in this defamation suit is unsustainable.

[52] It is not clear to us what the learned Judge meant by the third element being "unsustainable". He had similarly found that the first element was "unsustainable": see paragraph [23] of the grounds of judgment.

[53] The test for striking out pleadings is not whether one of the elements in a cause of action as pleaded is "unsustainable". The correct test — as expounded by the Supreme Court in **Bandar Builder** (supra) — before a Court can strike out pleadings under Order 18 rule 19(1)(a), (b), or (c) is that a plaintiff's cause of action as pleaded is "obviously unsustainable".

[54] In considering an application to strike out pleadings under Order 18 rule 19(1)(a), a Judge must assess the pleadings as a whole and conclude that on the face of the pleadings there is no reasonable cause of action and the action is "obviously unsustainable" before he can summarily strike out the pleadings under order 18 rule 19(1)(a).

[55] Based on the applicable law, we find that it was plainly wrong for the learned High Court Judge to have considered the merits of the case during an application for striking out under Order 18 rule 19(1)(a) of the ROC 2012. Further, it was plainly wrong of the learned Judge to have struck out the pleadings in the SOC under Order 18 rule 19(1)(a) based on his assessment of the merits of the case and his findings that two of the three elements of the cause of action for defamation in the pleadings are "unsustainable".

Decision

[56] Therefore, for the reasons above, we find that the learned High Court Judge fell into error and was plainly wrong in holding that the

Appellants' pleadings in the SOC did not disclose a reasonable cause of action and for striking out the pleadings.

[57] Accordingly, at the conclusion of the hearing of this appeal, we allowed the Appellant's appeal against the High Court's decision and set aside the High Court Order dated 30.08.2023.

[58] Costs of RM10,000.00 here and below are to be paid by the Respondent to the Appellants, subject to allocatur.
