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Enforcement of Foreign Judgments in Singapore

*Ramesh Vangal v Indian
Overseas Bank and
another matter* [2023]
SGHC(A) 25

18 July 2023

LEGAL UPDATE

In this Update

In *Ramesh Vangal v Indian Overseas Bank* [2023] SGHC(A) 25, the Appellate Division of the High Court held that the discretion to adjourn an application to set aside the registration of a foreign judgment under the Reciprocal Enforcement of Foreign Judgments Act (“**Act**”) must be exercised having regard to both the interests of the judgment creditor in obtaining the well-earned fruits of litigation, as well as the interests of the judgment debtor that an appeal in the foreign court is not rendered nugatory. On the facts of the case, the Appellate Division allowed the judgment creditor to proceed with the enforcement of a foreign judgment registered under the Act that was itself subject of a stay application and an appeal before the Hong Kong Court of Appeal.

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INTRODUCTION

In *Ramesh Vangal v Indian Overseas Bank* [2023] SGHC(A) 25, the Appellate Division of the High Court ("**Appellate Division**") considered the principles that a court should take into account in deciding whether to set aside the registration of a foreign judgment, or adjourn the setting aside application under section 6 of the Reciprocal Enforcement of Foreign Judgments Act ("**REFJA**"). It held that the court must balance the interests of the judgment creditor in the fruits of its success in having obtained judgment against the interest of the judgment creditor that the foreign appeal is not rendered nugatory. In so doing, the Appellate Division upheld the decision of the General Division of the High Court not to set aside the registration of a Hong Kong judgment or to grant the judgment debtor a further adjournment of the setting aside application, notwithstanding that there was an appeal against the Hong Kong judgment and an application for stay of execution pending before the Hong Kong Court of Appeal ("**HKCA**").

BACKGROUND

Indian Overseas Bank ("**Bank**") granted credit facilities to a company which were guaranteed by two individuals, including Mr Vangal. In January 2018, the Hong Kong Court of First Instance ("**HKCFI**") found Mr Vangal and other defendants jointly and severally liable to the Bank for a sum of about CAD\$9.6m and interest on those sums ("**HK Judgment**"). The defendants filed an appeal against the HK Judgment to the HKCA in February 2018.

In August 2019, the Bank filed an application to register the HK Judgment in Singapore under the REFJA. The application was granted and the HK Judgment was duly registered. Thereafter, the Bank attempted to serve the Notice of Registration on Mr Vangal in May 2021.

On 18 May 2021, Mr Vangal filed an application in the HKCFI to stay the execution of the HK Judgment pending the determination of the appeal before the HKCA ("**First HK Stay Application**"). Mr Vangal also filed an application in Singapore to set aside the registration of the HK Judgment in Singapore, alternatively, that the setting aside application be adjourned and execution of the HK Judgment in Singapore be stayed ("**Setting Aside Application**").

The Setting Aside Application was heard by an Assistant Registrar in May 2022 who ordered that the Setting Aside Application be adjourned until after the determination of the appeal before the HKCA, and that there be a stay of execution of the HK Judgment in Singapore until such time as the appeal before the HKCA was decided.

On appeal by the Bank against the Assistant Registrar's decision, the Judge sitting in the General Division of the High Court ("**HC Judge**") varied the period of adjournment of the Setting Aside Application to such time as the First HK Stay Application was disposed by the HKCFI, instead of after the

appeal was determined by the HKCA. The HC Judge also granted Mr Vangal leave to file a fresh application to adjourn the Setting Aside Application, but indicated that the outcome of any fresh application would include the consideration of partial security for the sums due under the HK Judgment.

On 8 November 2022, the First HK Stay Application was dismissed by the HKCFI. Thereafter, on 5 December 2022, Mr Vangal filed a renewed application to the HKCA to stay the execution of the HK Judgment ("**Second HK Stay Application**"). Mr Vangal also filed a fresh application in Singapore for a further adjournment of the Setting Aside Application and the stay of execution of the HK Judgment in Singapore.

The HC Judge dismissed both Mr Vangal's application for a further adjournment of the Setting Aside Application, and the Setting Aside Application. Mr Vangal appealed to the Appellate Division.

DECISION OF THE APPELLATE DIVISION OF THE HIGH COURT

The Appellate Division held that in deciding whether to set aside the registration of a foreign judgment, or adjourn a setting aside application under section 6(1) of the REFJA, a court should be guided by the following principles:

KEYPOINT

The Appellate Division set out principles which would guide a Singapore court in exercising its discretion under s 6(1) of the Reciprocal Enforcement of Foreign Judgments Act.

- (a) The court must have regard to the interests of the judgment creditor in the fruits of its success, balanced against the interests of the judgment debtor that the foreign appeal is not rendered nugatory.
- (b) The court should examine whether there would be excessive delays occasioned to the judgment creditor in enforcement, if an adjournment were granted. The time taken for foreign proceedings to conclude is a relevant consideration for the court since there may be prejudice occasioned to the judgment creditor if it had to wait for an indefinite period to continue enforcement in Singapore, particularly where the judgment creditor is out of pocket in the meantime with a risk that the judgment debtor's assets might deteriorate.

- (c) The court should factor in any offer by the judgment debtor to provide security.
- (d) The court should consider how readily the judgment debtor will be able to recover the judgment sums paid over if the registered judgment is enforced and the foreign appeal then subsequently allowed. The court should also consider if there will be irremediable harm caused if the registration is not set aside or an adjournment not granted.
- (e) The court should be satisfied, in relation to the foreign appeal, that it is a *bona fide* one that is prosecuted with due diligence.
- (f) It is inappropriate for the court to assess the merits of the appeal pending in the foreign court, especially where foreign law or complex issues of law and fact are involved.

Applying the principles to the case, the Appellate Division dismissed both Mr Vangal's appeals. The Appellate Division held that there was no good reason for the HC Judge to grant another adjournment pending the Second HK Stay Application when no new reasons were provided beyond the mere existence of the renewed application.

The Appellate Division rejected an argument by Mr Vangal that by failing to grant the adjournment, the HC Judge was prejudging or interfering with the HKCA's decision in respect of the Second HK Stay Application and that the decision was inconsistent with international comity. The Appellate Division considered that Mr Vangal's argument ignored the fact that the HKCFI had already dismissed the First HK Stay Application, and that the HC Judge had rightly taken this into consideration when deciding not to grant a further adjournment.

The Appellate Division also considered that the HC Judge correctly exercised his discretion not to adjourn as (a) Mr Vangal made no offer of security despite the Judge mentioning this as a factor to be considered in any fresh application for a further adjournment, (b) Mr Vangal would have no difficulty in recovering any sum paid over to the Bank if it succeeded in the appeal before the HKCA as the Bank was well-established with a presence in Hong Kong; and (c) there would be significant delays occasioned to the Bank in enforcement as the appeal has been outstanding for almost 5 years and the second stay application in Hong Kong may not be heard for quite some time.

As for Mr Vangal's argument that he would suffer irremediable harm and might be made a bankrupt if no adjournment were granted, the Appellate Division considered that this was a relevant consideration, but the burden of proof was on Mr Vangal to demonstrate his assertion that he would suffer irreparable financial ruin should enforcement be permitted. However, Mr Vangal had not provided any evidence of his assets and his apparent inability to meet the HK Judgment. Therefore, the Appellate Division considered Mr Vangal's argument to be more apparent than real.

COMMENTARY

The Appellate Division's decision provides detailed guidance on the factors that will affect whether the Singapore courts will allow the enforcement of a foreign judgment registered under the REFJA to proceed. The decision is particularly timely considering that the REFJA, which until February this year only applied to parties seeking the registration of Hong Kong judgments in Singapore, now allows for the registration of judgments made by various courts across the United Kingdom, Australia, Malaysia, India and other former Commonwealth states.

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