

**DALAM MAHKAMAH RAYUAN MALAYSIA  
(BIDANGKUASA RAYUAN) KES CIVIL NO: W-02-1039-2007**

**ANTARA**

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- (1) MUKUNDAN A/L MANIAM**
- (2) SUGUMARAN A/L SUPPARAMANIAM**
- (3) KAMALESWARAN A/L S KANDIAH**
- (4) KASINATHAN A/L MUTHOO**
- (5) SUBRAMANIAM A/L PAIDATHALLY**
- (6) ARIKERISNEN A/L VEERAPPAN**
- (7) ARUMUGAM A/L MARUTHAMUTHU**
- (8) ABD HARDI BIN ATAN ... PEMOHON/PERAYU**

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**DAN**

- (1) RATIGA A/P MARKANDAN;**
- (2) E. POOMALA A/P ELLAPAN;**
- (3) LAI KIM CHUA**
- (4) MOHAMMAD NASIR BIN AHMAD**
- (5) DEVI A/P APPARORAN @ APPARAO**
- (6) MD ROPEK BIN ISMAIL**
- (7) APPALANAIDU A/L ULU SINNIAH**

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**(8) SIMJALAM A/L MUNIANDY**

**(9) MOHAMAD BIN KHAMIS**

**(10) NORISAH BINTI KARIM**

**(11) MANOKARA A/L VENGADESAN**

5 **(12) MANDUCEKAP HI-TEC SDN BHD. ... RESPONDEN-RESPONDEN**

**CIVIL APPEAL NO: W-02-1039-2007**

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**BETWEEN**

**MUKUNDAN A/L MANIAM & 7 ORS – APPELLANTS/APPLICANTS**

**[M/S SOOSAY DHILLON SHARMA]**

**AND**

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**RATIGA A/L MARKANDAN & 11 ORS – RESPONDENTS**

**[M/S RAGUMAREN & CO – 1<sup>ST</sup> TO 11<sup>TH</sup> RESPONDENTS]**

**[M/S RAJA SEELAN & ASSOCIATES FOR THE 12<sup>TH</sup>**

**RESPONDENT]**

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**CORAM: MOHD GHAZALI MOHD YUSOFF, J.C.A.**

**SULONG MATJERAIE, J.C.A.**

**AHMAD MAAROP, J.C.A.**

## GROUND OF JUDGMENT

[1] This is the unanimous judgment of the Court.

5 [2] Five (5) Notices of Motion were brought before this Court in this instant case. These Motions are at enclosures 5a, 11a, 13a, 15a and 16a.

10 [3] Enclosure 5a dated 30<sup>th</sup> November 2007 is an application filed by the Applicants for a stay on all proceedings in the High Court pending the disposal of the appeals.

15 [4] Enclosure 11a dated 6<sup>th</sup> December 2007 is an application filed by the 1<sup>st</sup> to 11<sup>th</sup> Respondents to strike out the Applicants' Notices of Motion for Stay and for the Consolidation of Appeals.

20 [5] Enclosure 13a dated 6<sup>th</sup> December 2007 is an application filed by the 1<sup>st</sup> to 11<sup>th</sup> Respondents to strike out nine (9) appeals filed by the Applicants.

[6] Enclosure 15a and Enclosure 16a are filed by the Respondents for an Order to strike out the Applicants' Notice of Motion filed on 30<sup>th</sup> November 2007 (Enclosure 5a) and to strike out the nine (9) Notices of Appeal filed on 12.11.2007. Enclosure 16a was filed by the 12<sup>th</sup> Respondent, a body corporate known as MANDUCEKAP HI-TEC SDN BHD.

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**BACKGROUND:**

[7] Nine appeals were filed by the Applicants on 26<sup>th</sup> October, 2007. Neither appeal records had been filed by the Applicant nor was any application for extension of time sought.

[8] By a Court Order handed down on 15<sup>th</sup> April 2008, all the Applicants have been struck out as Defendants in the Counterclaim and are no longer parties to the proceedings. Similarly no appeal had been filed by the Applicants against the said striking out Order.

**[9] Applicants No. 3 and No. 6 have withdrawn themselves as Interveners in the Counterclaim and consequently were absent at the hearing before us and they have decided not to participate in this application.**

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**[10] Learned counsel for the Respondents therefore argued that since no appeal had been filed, the applicants have no right or locus standi to apply for stay as per their application at enclosure 5a.**

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### **HEARING BEFORE THIS COURT**

**[11] On the day of the hearing, learned counsel for the 1<sup>st</sup> to 11<sup>th</sup> Respondents informed this Court that her instruction was to initiate a Preliminary Objection on the applications. Appropriate notices of their intention to initiate the Preliminary Objection had been given to the Applicants. Two points were canvassed and these are as follows:-**

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**(i) Although nine (9) appeals have been filed by the Applicants on or about 26<sup>th</sup> October, 2007, no appeal record had been filed in respect of those appeals. Further, it was argued that no application for extension of time had been sought by the Applicants to extend time of filing. There was also no evidence produced to this Court that dispensation from compliance with the appropriate Rules of the Court of Appeal 1994 had been granted by the appropriate authority. Consequently, the 1<sup>st</sup> to 11<sup>th</sup> Respondents have filed enclosure 13a and the 12<sup>th</sup> Respondent have filed enclosure 16a seeking to strike out the said nine (9) appeals;**

**(ii) All the Applicants are no longer parties to the proceedings as the Court below had struck them out by way of a Court Order handed down on 15<sup>th</sup> April, 2008. No appeal had been filed against this decision.**

**[12] In the meantime, Applicants No. 3 and No. 6 have also withdrawn themselves as Interveners in the**

Counterclaim. It was therefore argued that the Applicants have neither the right nor locus standi to seek for a stay as per their application at enclosure 5a.

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[13] Learned counsel for the 12<sup>th</sup> Respondent adopted the argument of learned counsel for the 1<sup>st</sup> to 11<sup>th</sup> Respondents and placed on record that he was pursuing the Preliminary Objection against the applicants as well.

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### **ARGUMENT OF THE APPLICANTS**

15 [14] Learned counsel for the Applicants told this Court that when they filed their application at enclosure 5a on 30<sup>th</sup> November 2007, they were still parties to the proceedings. Applicants No. 1 to No. 8 with the exception of Applicants No. 3 and 6 were struck out  
20 by the learned High Court Judge on 15<sup>th</sup> April 2008. This Court has also been informed that the 3<sup>rd</sup> and 6<sup>th</sup> Applicants have also withdrawn themselves as

**Interveners and are not parties to this proceeding before this Court.**

**[15] Learned Counsel for the Applicants confirmed that no appeal was made against the decision handed down on 15<sup>th</sup> April 2008. As such that decision remains intact and binding on them.**

**[16] Two reasons were offered by learned counsel as to why they remain as parties to the proceeding and these are:-**

**(i) The Notice of Motion at Enclosure 5a was made pursuant to s44 of the Court of Judicature Act for a stay pending disposal of the nine (9) appeals arising from the nine (9) Orders made on 22<sup>nd</sup> October, 2007.**

**(ii) The applicants can still be added as parties to the proceedings. Although no relevant provision was quoted to us by learned counsel as to adding any person as a party, we are of the view that such application may be made**

under O.15 r.6(2)(b) of the Rules of High Court 1980. This is because the Rules of the Court of Appeal 1994 have no enabling provision to accommodate such application. However Rule 4 thereof mandates that the Rules of High Court 1980 shall apply *mutatis mutandis*.

[17] We have examined s44 of the Court of Judicature Act 1964 which relates to Incidental Directions and Interim Orders but found no relevance to the argument. Similarly, on the argument that the Applicants can still be added as parties to the proceeding, we observe here that there is no such application before us. As such both arguments fail *ab initio*.

**ADMISSION MADE BY LEARNED COUNSEL FOR THE APPLICANTS**

[18] By his own admission, learned counsel for the Applicants conceded to this Court that:-

**(i) The Applicants are no longer parties to the suit at the High Court;**

5 **(ii) On the preliminary objection, it was also conceded that contrary to the requirement of Rule 18 (7) of the Rules Court of Appeal 1994, they failed to file the 9 Appeal Records within the specified eight (8) weeks;**

10 **(iii) Further, it was also admitted by learned counsel for the applicants that no application had been filed to extend time to file all the nine (9) appeals.**

15 **[19] Learned counsel however argued that although they have not applied for any extension of time it does not preclude them from making such application by way of a motion before this Court. This is of course true as the filing period for the record of appeal may still be extended to such**  
20 **further period as the Court may allow. This period cannot however be indefinite and the Applicant**

must decide within a reasonable period of time giving reason for such an application.

5 **REASON FOR MAKING THE APPLICATION AT ENCLOSURE**

**5a**

10 [20] Learned counsel told this Court the reason for his application at enclosure 5a can be found at prayer 3 thereof. Prayer 3 essentially was an application requesting for all the nine (9) appeals to be heard together and with only the need to file one Record of Appeal rather than nine (9) separate appeals.

15 [21] When asked for any rule or authority to support his contention, learned counsel argued that he was only praying to the Court to invoke its inherent power as it was just and economical to do so for it would be an unnecessary waste to file nine (9) separate appeal records.

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[22] It was further argued that the motion to strike out their application is based solely on their omission

to file appeal record as the appeals are competent and pending. Counsel submitted that an application to strike out should not be entertained purely on the basis of non filing of the appeal record. Learned counsel for the Applicants argued that the appeals are competent.

### **DECISION OF THE COURT**

[23] Without having the need to consider any submission on the appeal proper, this Court is of the view that since learned counsel for the applicants have conceded that they have failed to file any record of appeal and that since no application had been filed to extend time, this Court allowed the application for striking out the applications at enclosure 13a and 16a with costs. Even prayer 3 of the application at enclosure 5a failed to apply for any extension of time to file the record of appeal.

**[24] On the Preliminary Objection we upheld the second part and ruled that the applicants have no standing to make this application. They have been struck out and not having appealed against such decision,**

5 **they are no longer parties to this action.**

**[25] On the first part of the Preliminary Objection that since no appeal record had been filed whilst no application for extension of time had been sought and by virtue of our decision to have the applications at enclosures 13a and 16a to be struck out, this objection has been rendered academic.**

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**[26] As such, it is the unanimous decision of this Court that the application at enclosure 5a should be and is hereby struck out with no order as to costs. Similarly since learned counsel for the respondents have withdrawn their applications at enclosure 11a and 15a, those applications were accordingly struck out with no order as to costs as well.**

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**[27] All the Orders hereby made shall not apply to the 3<sup>rd</sup> and 6<sup>th</sup> applicants not only because they were**

**absent in the hearing before this Court but because they have filed the Notice of Discontinuance on 15<sup>th</sup> September, 2008 as well.**

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**Original signed by:**

**Datuk Sulong Matjeraie,**

**Judge of the Court of Appeal Malaysia.**

10 **26<sup>th</sup> May 2009**

**Counsel for the Applicants No.1,2,4,5,7 and 8**

**Mr. Khabir Dhillion**

15 **Messrs Soosay Dhillion Sharma**

**Counsel for the 1<sup>st</sup> to 11<sup>th</sup> Respondents**

**Ms. Renu Zechariah (Senior Counsel)**

**Messrs G. Ragumaren & Co.**

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**Counsel for the 12<sup>th</sup> Respondent**

**Mr. S. Kanaga Sundran**

**Messrs Raja Seelan & Associates**