

9/84

No. 49 of 1981

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L
FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

KOH KIM CHAI

Appellant
(Chargor/Respondent)

- and -

ASIA COMMERCIAL BANKING CORPORATION LIMITED

Respondent
(Chargee/Applicant)

RECORD OF PROCEEDINGS

KINGSFORD DORMAN
14 Old Square
Lincoln's Inn
London WC2A 3UB.

Solicitors for
the Appellant

COWARD CHANCE
Royex House
Aldermanbury Square
London EC2V 7LD.

Solicitors for
the Respondent

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L
FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

KOH KIM CHAI

Appellant
(Chargor/Respondent)

- and -

ASIA COMMERCIAL BANKING CORPORATION LIMITED

Respondent
(Chargee/Applicant)

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

<u>No.</u>	<u>Description of Document</u>	<u>Date</u>	<u>Page No.</u>
<u>IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU</u>			
1.	Originating Summons	7 June 1977	1-3
2.	Order of Syed Othman Bin Ali J.	28 December 1978	4-6
<u>IN THE FEDERAL COURT OF MALAYSIA AT JOHORE BAHRU</u>			
3.	Order of the Federal Court	24 June 1980	6-7
4.	Order granting conditional leave to appeal	4 August 1980	7-9
5.	Order granting final leave to appeal to H. M. the Yang Di-Pertuan Agong	7 March 1981	9-11

INDEX OF REFERENCE (continued)

DOCUMENTS TRANSMITTED TO THE JUDICIAL
COMMITTEE BUT NOT REPRODUCED

<u>No.</u>	<u>Description of Document</u>	<u>Date</u>
1.	Affidavit of Ong Beng Tiong	16 May 1977
2.	Affidavit of Koh Kim Chai	12 February 1978
3.	Affidavit of Lim Cheun Ren	19 April 1978
4.	Affidavit of Koh Kim Chai	31 July 1978
5.	Notice informing that "further arguments would be heard in Open Court on 29 October 1978"	3 October 1978
6.	Notes of Proceedings in Chambers and in Open Court	16 October 1977 to 28 December 1978
7.	Grounds of Judgment of Syed Othman Bin Ali J.	28 December 1978
8.	Notice of Appeal to Federal Court	31 December 1978
9.	Memorandum of Appeal	8 November 1979
10.	Grounds of Judgment of the Federal Court	24 June 1980
11.	Notice of Motion	18 July 1980
12.	Affidavit of Koh Kim Chai	14 July 1980
13.	Affidavit of Poh Kar Chiow	29 July 1980
14.	Affidavit of Sivaran Singh Gill	31 July 1980
15.	Affidavit of R. Padmanabhan	2 August 1980

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL
FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

KOH KIM CHAI Appellant
(Chargor/Respondent)

- and -

ASIA COMMERCIAL BANKING CORPORATION LIMITED
Respondent
(Chargee/Applicant)

10

RECORD OF PROCEEDINGS

No. 1

ORIGINATING SUMMONS

In the High
Court of Malaya
at Johore Bahru

IN THE HIGH COURT OF MALAYA AT JOHORE BAHRU

CHARGEES' APPLICATION

No. 1

Originating
Summons

ORIGINATING SUMMONS)
NO. 146 of 1977)

7 June 1977

In the Matter of a Chargee's Application
under Sections 256 and 257 of the
National Land Code, Act No. 56 of 1965

20

AND

In the Matter of a Charge dated the 22nd
day of May 1973 bearing Presentation
No. 5640/73, Charge Volume 179,
Folio 3 on all that piece of land com-
prised and delineated in Grant 23940,
Lot 2605, Mukim of Senai, Kulai,
Johore

BETWEEN

In the High
Court of Malaya
at Johore Bahru

ASIA COMMERCIAL BANKING
CORPORATION LIMITED of No. 110
Robinson Road, Singapore, 1.
Chargee/Applicant

No. 1

AND

Originating
Summons

KOH KIM CHAI of No. 2-E Jalan Ah
Fook, Johore Bahru Chargor/Respondent

7 June 1977

continued

ORIGINATING SUMMONS

LET KOH KIM CHAI of No. 2-E, Jalan Ah Fook,
Wong Shee Fun Building, Johore Bahru within eight (8) 10
days after service of this Summons on him, inclusive of
the date of such service, cause an appearance to be
entered for him to this Summons, which is issued upon
the application of the abovenamed Chargee/Applicant,
ASIA COMMERCIAL BANKING CORPORATION LIMITED
of No. 110 Robinson Road, Singapore, 1 for an Order :-

1. That all that piece of land comprised in Grant
23940, Lot 2605 in the Mukim of Senai, Kulai and
containing an area of 53 Acres 0 Rood 30 Poles
or thereabouts be sold by public auction under the 20
direction of The Senior Assistant Registrar;
2. That the sale be held on a date not less than one
month after the date upon which this Order is
made;
3. That the total amount due to the Chargee/Applicant
in respect of the principal and interest up to the
9th day of January 1975 is \$95,292-24 which sum
together with interest at the rate of 14.75% per
annum to the 31st day of March 1977 amounts to 30
\$128,964-09;
4. That the Chargee/Applicant is further entitled to
interest at the rate of 14.75% per annum with
monthly rests from the date of this Order to the
date of realisation;
5. That the Senior Assistant Registrar of the Court
shall further fix a reserve price for the purposes
of the said sale equal to the estimated market
value of the said land;
6. That there be liberty to all parties to apply;
7. That the costs, charges, expenses of and incidental 40

to this application and of the sale hereby directed be taxed by the Senior Assistant Registrar on the Higher Scale and be paid by the Chargor/Respondent to the Chargee/Applicant and the amount of such costs, charges and expenses when duly taxed may be added by the Chargee/Applicant to the amount due for principal and interest owing under the said Charge.

In the High Court of Malaya at Johore Bahru

No. 1

Originating Summons

7 June 1977

continued

Dated this 7th day of June, 1977.

10

Sgd. Illegible

SENIOR ASSISTANT REGISTRAR,
HIGH COURT, MALAYA,
JOHORE BAHRU.

Entered No. 523/77

This Summons is taken out by Messrs. Yeow & Chin of No. 16-B, Jalan Station, Tan Chan Cheng Building, Johore Bahru, Solicitors for the abovenamed Chargee/Applicant.

20

The Chargor/Respondent may appear hereto by entering an appearance either personally or by Solicitor at the Registry of the High Court at Johore Bahru.

NOTE: If the Chargor/Respondent does not enter appearance within the time and at the place above-mentioned, such order will be made and proceedings taken as the Judge may think just and expedient.

30

A person appearing personally may, if he desires, enter his appearance by post and the appropriate forms may be obtained by sending a Postal Order for \$5-00 with an addressed envelope to the Senior Assistant Registrar of the High Court at Muar.

To:

Koh Kim Chai,
2-E, Jalan Ah Fook,
Wong Shee Fun Building,
JOHORE BAHRU.

In the High
Court of Malaya
at Johore Bahru

No. 2

ORDER OF SYED OTHMAN BIN ALI J.

No. 2

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

Order of Syed
Othman Bin Ali J.
28 December 1978

CHARGEES' APPLICATION

ORIGINATING SUMMONS)
No. 146 of 1977)

In the Matter of a Chargee's
Application under Sections 256 and
257 of the National Land Code, Act
No. 56 of 1965.

10

AND

In the Matter of a Charge dated the
22nd day of May 1973 bearing
Presentation No. 5640/73, Charge
Volume 179, Folio 3 on all that piece
of land comprised and delineated in
Grant 23940, Lot 2605 Mukim of
Senai, Kulai, Johore.

BETWEEN

ASIA COMMERCIAL BANKING
CORPORATION LIMITED of No. 110
Robinson Road, Singapore, 1.
Chargee/Applicant

20

AND

KOH KIM CHAI of No. 2-E, Jalan Ah
Fook, Johore Bahru.
Chargor/Respondent

BEFORE THE HONOURABLE MR.
JUSTICE DATO' SERI SYED
OTHMAN BIN ALI

IN CHAMBERS
THIS 28TH DAY OF
DECEMBER, 1978

30

O R D E R

UPON the application on the part of ASIA
COMMERCIAL BANKING CORPORATION LIMITED, the
abovenamed Chargee/Applicant, made by way of
Originating Summons Entered No. 523 of 1977 dated the
7th day of June 1977 coming on for hearing on 23rd day
of April, 1978 AND UPON further argument in Open
Court on the 31st day of July 1978, 29th day of October

1978 and 28th day of December 1978 AND UPON
READING the said Originating Summons and the Affidavit
of Ong Beng Tiong affirmed on the 16th day of May 1977
and filed herein on the 7th day of June 1977 and the
exhibits referred to therein and the Affidavit of A. Ghani
bin Md. Tahir affirmed and filed on the 18th day of July
1977 and the exhibit referred to therein and the Affidavit
of Lim Cheun Ren affirmed on the 19th day of April 1978
and filed herein on the 23rd day of April 1978 and the
exhibit referred to therein and the Affidavit of Koh Kim
Chai affirmed and filed herein on the 31st day of July
1978 AND UPON HEARING Miss Cheah Chew Kwe of
Counsel for the abovenamed Chargee/Applicant and Mr.
Paramjothy of Counsel for the abovenamed Chargor/
Respondent THIS COURT DOTH ORDER :-

In the High
Court of Malaya
at Johore Bahru

No. 2

Order of Syed
Othman Bin Ali J.

28 December 1978

continued

10

20

30

40

1. That all that piece of land comprised in Grant 23940, Lot 2605 in the Mukim of Senai, Kulai and containing an area of 53 Acres 0 Rood 30 Poles or thereabouts be sold by public auction under the direction of the Senior Assistant Registrar;
2. That the sale be held on a date not less than one month after the date upon which this Order is made;
3. That the total amount due to the Chargee/Applicant in respect of the principal and interest at the rate of 14.75% per annum up to the 23rd day of April 1978 amounts to \$149,874-66;
4. That the Chargee/Applicant is further entitled to interest at the rate of 14.75% per annum with monthly rests from the 23rd day of April 1978 to the date of realisation;
5. That the Senior Assistant Registrar of the Court shall further fix a reserve price for the purposes of the said sale equal to the estimated market value of the said land;
6. That there be liberty to all parties to apply;
7. That the costs, charges, expenses of and incidental to this application and of the sale hereby directed be taxed by The Senior Assistant Registrar on the Higher Scale and be paid by the Chargor/Respondent to the Chargee/Applicant and the amount of such costs, charges and expenses when duly taxed be added by the Chargee/Applicant to the amount due

In the High
Court of Malaya
at Johore Bahru

No. 2

Order of Syed
Othman Bin Ali J.
28 December 1978
continued

for principal and interest owing under the said
Charge.

GIVEN under my hand and the Seal of the Court,
this 28th day of December, 1978.

Sd. Abdul Kadir bin Musa.

Senior Assistant Registrar,
High Court,
JOHORE BAHRU.

In the Federal
Court of Malaysia
at Johore Bahru

No. 3

Order of the
Federal Court
24 June 1980

No. 3

ORDER OF THE FEDERAL COURT

10

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
JOHORE BAHRU

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 3 OF 1979

Between

KOH KIM CHAI

Appellant

And

ASIA COMMERCIAL BANKING
CORPORATION LIMITED

Respondents

(In the Matter of Johore Bahru High Court Originating
Summons No. 146 of 1977)

20

Between

ASIA COMMERCIAL BANKING
CORPORATION LIMITED

Chargee/
Applicant

And

KOH KIM CHAI

Chargor/
Respondent)

CORAM: LEE HUN HOE, CHIEF JUSTICE, HIGH
COURT, BORNEO; WAN SULEIMAN,
JUDGE, FEDERAL COURT, MALAYSIA;
ABDUL HAMID, JUDGE, FEDERAL COURT,
MALAYSIA.

30

IN OPEN COURT.
THIS 24TH DAY OF JUNE 1980

O R D E R

THIS APPEAL coming on for hearing on the 3rd day of February 1980 in the presence of Encik V.C. George (Encik K.S. Narayanan with him) of Counsel for the Appellant and Encik Upali Masacorale (Encik Lim Cheun Ren with him) of Counsel for the Respondent AND UPON READING the Record of Appeal filed herein AND UPON HEARING Counsel as aforesaid for the parties IT WAS ORDERED that this Appeal do stand adjourned for Judgment AND the same coming on for Judgment this day at Kuala Lumpur in the presence of Encik V.C. George (Encik K.S. Narayanan with him) of Counsel for the Appellant and Encik Gan Eng Chee of Counsel for the Respondents IT IS ORDERED that this Appeal be and is hereby dismissed with costs to be taxed and be paid to the Respondents by the Appellant AND IT IS LASTLY ORDERED that the sum of \$500-00 (Ringgit Five Hundred only) paid into Court by the Appellant as security for costs of this Appeal be paid out to the Respondents towards taxed costs.

10

20

Given under my hand and the Seal of the Court, this 24th day of June 1980.

(Sd.) A.S. TAN

SENIOR ASSISTANT REGISTRAR,
FEDERAL COURT, MALAYSIA,
KUALA LUMPUR.

No. 4

ORDER GRANTING CONDITIONAL LEAVE TO APPEAL

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 3 OF 1979

BETWEEN

KOH KIM CHAI

Appellant

AND

ASIA COMMERCIAL BANKING
CORPORATION LIMITED

Respondent

30

In the Federal
Court of Malaysia
at Johore Bahru

No. 3

Order of the
Federal Court

24 June 1980

continued

No. 4

Order granting
conditional
leave to appeal

4 August 1980

In the Federal
Court of Malaysia
at Johore Bahru

(In the Matter of Johore Bahru High Court Chargee's
Application Originating Summons No. 146/1977

BETWEEN

No. 4
Order granting
conditional
leave to appeal
4 August 1980
continued

Asia Commercial Banking Corporation
Limited Chargee/Applicant

AND

Koh Kim Chai Chargor/Respondent

CORAM: LEE HUN HOE, CHIEF JUSTICE, HIGH
COURT, BORNEO; CHANG MIN TAT,
JUDGE, FEDERAL COURT, MALAYSIA;
SALLEH ABAS, JUDGE, FEDERAL COURT,
MALAYSIA.

10

IN OPEN COURT
THIS 4TH DAY OF AUGUST 1980

UPON MOTION made unto the Court this day by
Encik V.C. George of Counsel for the Appellant above-
named in the presence of Encik Lim Cheun Ren Counsel
for the Respondent abovenamed AND UPON READING
the Notice of Motion dated the 18th day of July 1980, the
Affidavit of Koh Kim Chai affirmed on the 14th day of
July 1980, the Affidavit of Poh Kar Chiow affirmed on the
29th day of July 1980, the Affidavit of Sivaran Singh Gill
affirmed on the 31st day of July 1980 and the Affidavit
of R. Padmanabhan on the 2nd day of August 1980 all
filed herein AND UPON HEARING Counsel for the
Appellant and Counsel for the Respondent as aforesaid
IT IS ORDERED that leave be and is hereby granted to
the Appellant to appeal to His Majesty the Yang Di-
Pertuan Agong against the whole of the decision of this
Honourable Court given on the 24th day of June 1980 in
Federal Court Civil Appeal No. 4 of 1979 which said
decision is binding in this Appeal and in Federal Court
Civil Appeal No. 5 of 1979, upon the following conditions:-

20

30

- (a) that the Appellant abovenamed do within three (3)
months from the date hereof enter into good and
sufficient security to the satisfaction of the Chief
Registrar of the Federal Court in the sum of
M\$5,000.00 (Ringgit Five Thousand) only for the
due prosecution of the Appeal and the payment of
all such costs as may become payable to the
Respondent abovenamed in the event of the above-
named Appellant not obtaining an Order granting
final leave to appeal or of the Appeal being

40

dismissed for non-prosecution or of His Majesty the Yang Di-Pertuan Agong ordering the abovenamed Respondent costs of the Appeal as the case may be; and

In the Federal Court of Malaysia at Johore Bahru

No. 4

(b) that the abovenamed Appellant do within three (3) months from the date hereof take the necessary steps for the purpose of procuring the preparation of the Appeal Record and despatch thereof to England.

Order granting conditional leave to appeal
4 August 1980

10 AND IT IS FURTHER ORDERED that the Appellant's prayer (b) contained in the Notice of Motion dated the 18th day of July 1980 requesting for the stay of execution of the Judgment of this Honourable Court given on the 24th day of June 1980 pending appeal on the said judgment to His Majesty the Yang Di-Pertuan Agong be and is hereby allowed AND IT IS LASTLY ORDERED that costs of the Appellant's application be costs in the cause.

continued

GIVEN under my hand and the Seal of the Court this 4th day of August 1980.

20

(Sd.) A.S. TAN

Senior Assistant Registrar
Federal Court, Malaysia,
Kuala Lumpur.

This Order is filed by Messrs. Ng Ek Teong & Partners of 2nd Floor, Bangunan Persatuan Hokkien Selangor, Jalan Raja Chulan, Kuala Lumpur, Solicitors for the Appellant abovenamed.

No. 5

No. 5

ORDER GRANTING FINAL LEAVE TO APPEAL

Order granting final leave to Appeal

30

IN THE FEDERAL COURT IN MALAYSIA HOLDEN AT JOHORE BAHRU

7 March 1981

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 3 OF 1979

Between

In the Federal
Court of Malaysia
at Johore Bahru

Koh Kim Chai

Appellant

And

Asia Commercial Banking
Corporation Limited

Respondent

No. 5

Order granting
final leave to
Appeal

(In the Matter of Johore Bahru High Court Originating
Summons No. 146 of 1977

7 March 1981

Between

continued

Asia Commercial Banking
Corporation Limited

Chargee/Applicant

And

Koh Kim Chai

Chargor/Respondent

10

CORAM: WAN SULEIMAN, ACTING CHIEF JUSTICE,
HIGH COURT, MALAYA; SALLEH ABAS,
JUDGE, FEDERAL COURT, MALAYSIA;
ABDUL HAMID, JUDGE, FEDERAL COURT,
MALAYSIA.

O R D E R

IN OPEN COURT
THIS 7TH DAY OF MARCH
1981

UPON MOTION made on to Court this day by Encik
C. Paramjothy of Counsel for the Appellant and Encik
Sivaran Singh Gill of Counsel for the Respondent above-
named AND UPON READING the Notice of Motion dated
the 30th January 1981 and the Affidavit of Encik K. S.
Narayanan affirmed on the 29th January 1981 AND UPON
HEARING Counsel for the Appellant aforesaid and Encik
S.S. Gill Counsel for the Respondent abovenamed IT IS
ORDERED that final leave be and is hereby granted to
the Appellant to appeal to His Majesty the Yang Di-
Pertuan Agong against the whole of the decision of this
Honourable Court given on the 24th June 1980 in Federal
Court Civil Appeal No. 4 of 1979 which said decision is
binding in this Appeal and in Federal Court Civil Appeal
No. 5 of 1979.

20

30

Given under my hand and seal of the Court this 7th
day of March 1981.

(Sd.) A.S. TAN

SENIOR ASSISTANT REGISTRAR,
FEDERAL COURT, MALAYSIA,
KUALA LUMPUR.

40

This Order is filed by M/s Ng Ek Teong & Partners,
Solicitors for the Appellant abovenamed whose address
for service is at 2nd Floor, Bangunan Persatuan
Hokkien Selangor, Jalan Raja Chulan, Kuala Lumpur.

In the Federal
Court of Malaysia
at Johore Bahru

No. 5

Order granting
final leave to
Appeal

7 March 1981

continued

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L
FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

KOH KIM CHAI

Appellant
(Chargor/Respondent)

- and -

ASIA COMMERCIAL BANKING CORPORATION LIMITED

Respondent
(Chargee/Applicant)

RECORD OF PROCEEDINGS

KINGSFORD DORMAN
14 Old Square
Lincoln's Inn
London WC2A 3UB.

Solicitors for
the Appellant

COWARD CHANCE
Royex House
Aldermanbury Square
London EC2V 7LD.

Solicitors for
the Respondent