

**IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR  
CIVIL DIVISION  
CIVIL SUIT NO. S7-22-766-2004**

**BETWEEN**

**MANIKAN A/L SOLKAN**

**.....PLAINTIFF**

**AND**

**TETRACON ENGINEERING SDN BHD**

**... DEFENDANT**

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**GROUND OF JUDGMENT**

This is the Plaintiff's Appeal to the Judge in Chambers against the decision of the SAR which allowed the Defendant's application to set aside the Summary Judgment obtained by the Plaintiff under 0 14 RHC. I allowed the appeal by the Plaintiff with costs and the Defendant appealed to the Court of Appeal against my decision.

## **Background Facts**

The Plaintiff had provided transportation services to the Defendant for delivery of goods to named destinations. The Defendant had made payments by installments for the services rendered by the Plaintiff, however the defendant still owes the Plaintiff some payments.

The Plaintiff had made demands many times and each time the Defendant promised to make the payments but never seems to honour its promise.

The Defendant only disputes as to the amount claimed by the Plaintiff.

On 23.6.2008 the minutes of the file shows that the case for application by the Plaintiff for Summary Judgment under 0 14 RHC against the Defendant was heard on merits before the SAR in the absence of the Defendant's counsel despite the cause papers and affidavits have been served on the counsel for Defendant, and the date of hearing had been informed. The SAR had granted order in terms.

## **The Courts Findings.**

I allowed the appeal by the Plaintiff with costs for the following reasons:

- a) The 0 14 application was heard on its merits and decision was given by the SAR after the Plaintiff's counsel had submitted before the SAR with authorities;
- b) The Defendant's counsel have been served with the relevant cause papers and affidavits and the date of hearing had been duly informed;
- c) The Defendant has not shown in their affidavits as to why was the counsel not present in court on the date set for hearing of the 0 14 application;
- d) The proper avenue for the Defendant is to file an appeal on the Judge in Chambers against the 0 14 order made by the SAR and not by way of an application of setting aside the order. As there was no appeal filed by the Defendant the 0 14 Summary Judgment entered against the Defendant stands to be a good Judgment.

Therefore based on the reasons stated above, the appeal by the Plaintiff is allowed with costs and the Summary Judgment Order under 0 14 RHC dated 23.6.2008 against the Defendant is restored.

t.t. Datin Zabariah Mohd Yusof  
Tarikh : 1.6.2009

Bagi pihak Plaintiff : Cik Lalitha  
Tetuan Arun & Co

Bagi pihak Defendan : Tetuan Gideon, Tan Razali Zaini.