

Summary of Constitutional Court Ruling No. 10/2549

Dated 16th May B.E. 2549 (2006)*

Re: Whether or not section 236 paragraph one of the Civil Procedure Code was contrary to or inconsistent with section 272 in conjunction with section 3, section 4, section 29, section 30 and section 233 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

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1. Summary of Background and Facts

The Supreme Court referred an application of Miss or Mrs. Saisamorn Chokpiromwongsa, a defendant in a civil case, requesting a Constitutional Court ruling on whether or not section 236 paragraph one of the Civil Procedure Code was contrary to or inconsistent with section 272 in conjunction with section 3, section 4, section 29, section 30 and section 233 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

The facts may be summarized as follows. Siam City Bank Public Company Limited, the plaintiff, filed a lawsuit against Miss or Mrs. Saisamorn Chokpiromwongsa, the defendant, on claims of overdraft contract default and mortgage foreclosure.

The defendant denied all of the plaintiff's claims and made an objection to the plaintiff's standing to file an action, as well as contended that the plaintiff's calculation of interests was void. Subsequently, the defendant filed a written application to South Bangkok Civil Court requesting that an opinion be referred to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) on whether or not section 55 and section 271 to section 290 of the Civil Procedure Code and section 194 and section 204 of the Civil and Commercial Code were contrary to or inconsistent with section 3 and section 30 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). The South Bangkok Civil Court ordered that the proceedings still did not raise issues which required the court to apply such provisions of law to the case. As regards the defendant's opinion that the lawsuit and the application for judgment in favour of the lawsuit claims, the trial proceedings and the enforcement of judgment carried out by the plaintiff were contrary to or inconsistent with the Constitution, such opinion constituted allegations of the defendant against the acts of the plaintiff. Claims that the conduct of court trial proceedings and enforcement of judgment were contrary to or inconsistent with the Constitution were not

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objections that any provision of law was contrary to or inconsistent with the Constitution. Hence, there was no case for the court to refer such matter to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). The defendant's application was dismissed and judgment was given requiring the defendant to repay a sum of money together with interests to the plaintiff.

The defendant appealed the order of the South Bangkok Civil Court which dismissed the motion for referral to the Constitutional Court, stating that the court of first instance's order to dismiss the application was inconsistent with the Constitution and not in accordance with the spirits of the Civil Procedure Code. It was requested that the court of first instance refer the matter to the Constitutional Court for ruling in accordance with the procedures provided by law. The South Bangkok Civil Court dismissed the motion to appeal to the Court of Appeals.

The defendant appealed the South Bangkok Civil Court's order which dismissed the motion to appeal to the Court of Appeals. The Court of Appeals issued an order stating that the court of first instance's order was a case of application dismissal due to a lack of any issue which required the court to refer the matter to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). The case was therefore not an order to reject a reply which could be held as an order to reject a motion under section 18 of the Civil Procedure Code. This was an interlocutory order prior to a judgment of the court of first instance, and the appeal of an interlocutory order was prohibited under section 226(1) of the Civil Procedure Code. As the defendant did not make an objection to the order during the trial as provided under section 226(2) of the Civil Procedure Code, the defendant was barred from appeal. Thus the court of first instance's order was duly issued. The motion was therefore dismissed.

The defendant appealed the Court of Appeal's order to the Supreme Court, stating that the defendant was entitled to submit an appeal to the Court of Appeals that was not an interlocutory order and was entitled to an appeal, and appealed to the Supreme Court that the Court of Appeal's order was inconsistent with section 1, section 2, section 3, section 4, section 6, section 30 and section 48 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). It was therefore requested that the Supreme Court order the reversal of the Court of Appeal's order so as to admit the appeal motion, and to order the referral of provisions of law which were contrary to or inconsistent with the Constitution to the Constitutional Court for ruling, as well as an order to return the case to the court of first instance for retrial. However, the court of first instance (South Bangkok Civil Court) dismissed the defendant's appeal on the rejection of appeal motion by the court of first instance, ruling that the defendant's appeal was prohibited under section 226 of the Civil Procedure Code and that the Court of Appeal's order which constituted a rejection of the appeal affirming the court of first instance's rejection was final under section 236 of the Civil Procedure Code. The defendant's appeal to the Supreme Court was therefore rejected.

The defendant appealed the court of first instance's order rejecting the appeal to the Supreme Court. It was objected that the courts of justice were comprised of three layers, namely the court of first instance, Court of Appeals and Supreme Court. Therefore, section 236 paragraph one of the Civil Procedure Code in relation to the part which stated that "an order of denial of the court of first instance or an order rejecting an appeal is final", was inconsistent with section 3, section 4, section 29, section 30, section 233 and section 272 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), and void under section 6 of the Constitution. The issue had been raised by the court in barring the defendant from an appeal to the Supreme Court. The defendant therefore submitted a motion to the Supreme Court to refer the defendant's motion to the Constitutional Court for ruling under section 264 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). In other words, it was contended that the court of justice's order constituted a discriminatory practice which was inconsistent with section 30 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). Although the restriction of rights could be interpreted under section 236 of the Civil Procedure Code as a law under section 29 of the Constitution, nonetheless it could not be inconsistent with section 30 of the Constitution. Rights, liberties and human dignity could not be subject to discrimination. The court of justice's order which affirmed the court of first instance's denial that was final and not appealable to the Supreme Court under section 236 of the Civil Procedure Code was inconsistent with section 3, section 4, section 29, section 30, section 233 and section 272 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

2. Issues Considered by the Constitutional Court

The issues considered by the Constitutional Court were whether or not section 236 paragraph one of the Civil Procedure Code was contrary to or inconsistent with section 3, section 4, section 29, section 30 and section 233 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

After consideration, the Constitutional Court held as follows. Section 3 and section 4 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) were provisions in Chapter I General Provisions. Section 3 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) was a provision on the sovereign powers of the Thai people which comprised of legislative, executive and judicial powers, exercised by the King through the National Assembly, the Council of Ministers and the Courts. Section 4 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) was a provision which recognized the protection of human dignity, rights and liberties of the people. Section 29 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) provided a guarantee for the security of rights and liberties recognized by the Constitution which could not be restricted except by virtue of specific provisions of law for the purposes stated in the Constitution, to the extent that was necessary and without affecting the essential substances of the rights and liberties. Such provisions laid down safeguard guarantees for the rights and liberties of the people by providing that the National Assembly's could enact laws to restrict the rights and liberties of the people only to the extent provided under the rules of the Constitution. The laws should

also be of general application and not intended to apply to a specific case or person. And lastly, section 30 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) provided for the equality of rights and liberties of the Thai people before the law as well as equal protection under the law.

Section 236 of the Civil Procedure Code was a provision which granted the right of a party to submit an appeal against an order of the court of first instance denying an appeal to the Court of Appeals if it is deemed that such order of the court of first instance was unlawful. Such provision of law had a general application. Therefore section 236 paragraph one of the Civil Procedure Code was neither contrary to nor inconsistent with section 3, section 4, section 29 and section 30 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

Section 233 and section 272 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) were provisions in Chapter VIII on the Constitutional Court. Section 233 was a provision in Part 1, which contained general provisions on the jurisdiction of the court in carrying out trials and adjudications of cases that had to be in accordance with the Constitution and laws as well as conducted in the name of the King. The word ‘law’ in section 233 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) also included the Civil Procedure Code. Section 272 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), on the other hand, was a provision in Part 3 on the courts of justice, providing for the organization and structure for trials and adjudications of the courts of justice in accordance with the levels of the court, i.e. the court of first instance, Court of Appeals and Supreme Court, unless otherwise provided by the Constitution or by law. Section 272 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) was not a provision which granted the right of a party to undertake proceedings in all three levels of the courts of justice. The law could provide for each court to have the power to try a specific case and/or to provide for the finality of proceedings in that court. Section 272 paragraph two and paragraph three of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) provided for the establishment of a Criminal Division for Holders of Political Positions in the courts of justice with the powers and duties provided under the organic law on criminal procedures for holders of political positions. Thus, the exercise of a party’s right to appeal to the Court of Appeals or the Supreme Court in any case had to be in accordance with the relevant provisions of law. Section 236 paragraph one of the Civil Procedure Code was therefore neither contrary to nor inconsistent with section 233 and section 272 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

The Constitutional Court therefore held that section 236 paragraph one of the Civil Procedure Code, with respect to the text providing that “... the Court of Appeals shall consider the application and affirm the dismissal of the court of first instance, or issue an order denying the appeal, such order shall be final...”, was neither contrary to nor inconsistent with section 272 in conjunction with section 3, section 4, section 29, section 30 and section 233 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

3. Ruling of the Constitutional Court

By virtue of the reasons stated above, the Constitutional Court held that section 236 paragraph one of the Civil Procedure Code, with respect to the text providing that "... the Court of Appeals shall consider the application and affirm the dismissal of the court of first instance, or issue an order denying the appeal, such order shall be final...", was neither contrary to nor inconsistent with section 272 in conjunction with section 3, section 4, section 29, section 30 and section 233 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).
