

The Civil Court of Southern Bangkok

Undecided Case No. Por. 718/2561

The Court of Appeal

21 March 2022

Civil case

Between

Mrs. Hoy Mai, the 1st plaintiff, and the other, totalling 2 persons

Plaintiffs

and

Mitr Phol Co. Ltd.

Defendant

Subject Tort

Appeal (which, to be correct, must have been made as a petition or motion) of the defendant

Dated 19 November 2021

**Matter** In this case, both plaintiffs filed a lawsuit and amended the plaint requesting the defendant to pay compensation to both plaintiffs and 23 families which are class members with an interest at the rate of 7.5 percent per annum from the date of filing onwards until payment has been completed. The Court of Appeal allows for a class action. The defendant asked for the dismissal of the case, and submitted a motion for a decision on legal issues. The Court of First Instance issued an order to wait for a decision upon hearing the facts as attested by both parties, and dismissed the motion. The defendant appealed. The Court of First Instance ordered that the order dismissing the motion for a decision on legal issues did not result in the disposal of the whole case or certain issues under Sections 227, 228 (3) and 222/45 of the Civil Procedure Code. Therefore the defendant's appeal was rejected. The defendant filed an appeal against the order rejecting the appeal. Both plaintiffs filed an appellate response. The Court of First Instance ordered the collection of statements to be submitted to the Court of Appeal for consideration.

Court officials' clarification

The motion to appeal against the order rejecting the defendant's appeal which was petitioned and authored by Mr. Somsak Ajjikul, the defendant's attorney, and the report of the proceedings of the Court of First Instance are filed at No. 135 and 144, respectively. May we respectfully present to your honour.

Order 54/2565

4 April 2022

It is considered that the order of the Court of First Instance dismissing the defendant's motion for a preliminary decision on legal issues and pending a decision until the examination of witnesses of the plaintiffs and the defendant is completed, is not in favour of the defendant who filed the motion. Therefore, it is not an order to decide on preliminary legal issues under Section 24 of the Civil Procedure Code, which in effect will dispose of the whole case under Section 227 or of any particular issues in the case under Section 228 (3). It is, instead, an order during trial before the Court of First Instance has a verdict. It is forbidden to appeal against the said order during trial under Section 226 (1). That the Court of First Instance rejected the defendant's appeal is legitimate. The motion is dismissed.

Signatures of judges