

Anwar exhausts avenues to revive suit

Nst 24 FEB 2

KUALA LUMPUR, Fri. — Datuk Seri Anwar Ibrahim today exhausted his avenues to revive his RM100 million defamation suit against Prime Minister Datuk Seri Dr Mahathir Mohamad which was struck out by the High Court on Aug 30, 1999.

The Federal Court dismissed his application for leave to challenge the Court of Appeal's decision dismissing his appeal against the High Court order.

Chief Justice Tan Sri Mohamed Dzaiddin Abdullah, Chief Judge of Malaya Tan Sri Wan Adnan Wan Ismail and Federal Court judge Datuk Abdul Malek Ahmad held that Anwar would not succeed in the appeal even if leave was allowed.

Dzaiddin said the paramount consideration was whether the applicant would have a *prima facie* case for success, should leave be granted.

"Having agreed with the reasons and the conclusion of the learned trial judge on the defence of justification and qualified privilege after applying the law to the factual matrix of the case, it is our provisional view that should leave to appeal be granted, the applicant would not have any prospect of success," he said.

The court had deferred decision on Monday after hearing submissions by Anwar's counsel Karpal Singh, and Datuk M. Adnan Shuaib who appeared for the Prime Minister.

Anwar was also represented by Ramkarpal Singh while N. Chandran appeared with Adnan.

Anwar's suit was struck out by the High Court on Aug 30, 1999, as a preliminary issue without going for a full trial.

The Court of Appeal upheld the High Court's decision on Dec 9, last year.

In his submissions Karpal had raised three issues — whether the Court of Appeal was right in holding that:

- The convictions of businessman Sukma Darmawan Sasmitaat Madja and Dr Munawar Anees and the admission of the facts of their cases constituted a defence of justification to the Prime Minister relating to the "offending" words against Anwar, meriting the suit to be struck out;

(Sukma, Anwar's adopted brother, and Munawar, Anwar's former speech writer, were convicted in 1998 for allowing Anwar to sodomise them.)

- The High Court's findings should not be disturbed; and,

- The Prime Minister was "sheltered" by the defence of qualified privilege, having regard to the facts and circumstances of the application to strike out the suit.

Dzaiddin said the issue was whether the court could dismiss a defamation suit on the grounds of justification and qualified privilege without a trial under Order 18 rule 19 of the Rules of the High Court.

Citing the case of Datuk Syed Kechik Syed Mohamed, Dzaiddin said leave would only be given if the issue raised concerned public interest that had not been dealt with by the Federal Court, and there was a likelihood of the applicant succeeding in his appeal.

He said although the second criteria was important, it was not necessary to show the probability and a reasonable likelihood of success in the appeal.

"All he needs to do is to show that on first impression, the appeal might succeed," he said, adding that in this case there was no submission made on this point.

Dzaiddin found that the trial judge had correctly addressed the issues of justification and qualified privilege stated in the Prime Minister's statement of defence.

He added the trial judge had applied the correct law and test to the facts and circumstances of the case.