Lim Kah Ho Maurice v Beenleigh Construction And Project Management Pte Ltd [2003] SGHC 283

Case Number : OS 1442/2003

Decision Date : 20 November 2003

Tribunal/Court : High Court

Coram : Tai Wei Shyong AR

Counsel Name(s) : Leslie Yeo Choon Hsien (AbrahamLow LLC) for the plaintiff; K Anparasan (Khattar Wong and Partners) for the defendant

Parties : Lim Kah Ho Maurice — Beenleigh Construction And Project Management Pte Ltd

This was an Originating Summons taken out by the plaintiff for proceedings in a Magistrate's Court (MC Suit No 31634 of 2003) to be stayed. The application was made under section 6(1) of the Arbitration Act (Cap10)("the Act"), which states:

> **Stay of legal proceedings**
>
> **6.** —(1) **Where any party to an arbitration agreement institutes any proceedings in any court against any other party** to the agreement in respect of any matter which is the subject of the agreement, **any party to the agreement may**, at any time after appearance and before delivering any pleading or taking any other step in the proceedings, **apply to that court** to stay the proceedings so far as the proceedings relate to that matter.
>
> [Emphasis added.]

It is convenient to set out here two definitions from section 2 of the Act:

> (A) "Court" means the High Court in Singapore; and
>
> (B) "court" , for the purposes of sections 6, 7, 8, 11 (1), 55, 56 and 57, means the High Court, District Court, Magistrate's Court or any other court in which the proceedings referred to in those sections are instituted or heard.

2 At the hearing of the summons, counsel for the defendant, Mr Anparasan raised a preliminary objection to the application – ie. that the High Court had no jurisdiction to hear the case. The basis of the objection was that the plaintiff was required under section 6(1) of the Act to apply to the court *where the proceedings had been instituted* (in this case the Magistrate's Court) for the stay. After hearing submissions from the parties on this issue, I upheld the objection and dismissed the application with costs, without hearing the merits of the case. I give my reasons for doing this below.

3 The current version of the Act was enacted on 17 October 2001, and commenced on 1 March 2002. When read for a second time in Parliament on 5 October 2001, the then Minister of State for Law (Assoc. Prof. Ho Peng Kee) said that the proposed Bill enacted an Act which would be "more in line with the International Arbitration Act (IAA) and international practices, as reflected in the UNCITRAL Model Law on International Commercial Arbitration." In relation to clause 6(1) in particular, he said:

> …the Bill allows a party to apply for stay of court proceedings in favour of arbitration in the court in which the proceedings were first commenced. Under the current position, if an action is

commenced in the Subordinate Courts and a stay of the proceedings is sought in favour of the arbitration, the person seeking the stay needs to apply to the High Court to stay the proceedings in the Subordinate Courts. The new arrangements under the Bill would therefore remove this inconvenience in having to submit the matter for determination by the High Court.

It is perhaps worth setting out at this stage the relevant provision in the predecessor version of the Act. This was Section 7(1), which stated:

Power to stay proceedings where there is an arbitration agreement.

7. —(1) If any party to an arbitration agreement, or any person claiming through or under him, commences any legal proceedings against any other party to the arbitration agreement, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to the legal proceedings may at any time after appearance, and before delivering any pleadings or taking any other steps in the proceedings, apply to **the court** to stay the proceedings.

[Emphasis added.]

In the predecessor Act, there was only one definition of the word "court", which was defined to mean the High Court.

4 Mr Yeo for the plaintiff relied on the words of the Minister of State and argued that since the amendments were made merely to "remove the inconvenience" of having to submit the matter for determination to the High Court, the High Court still had jurisdiction to hear the matter and therefore there was no defect in the application. Alternatively, he argued that even if there was a defect, it was merely a technical defect which under Order 2 of the Rules of Court (Cap 332, R 5, 1997 Rev Ed) should not nullify the proceedings. He urged me to hear the case, or at the worst, to transfer the matter back to the Subordinate Courts for determination there.

5 It was my view that the wording of section 6 of the Act is unambiguous, and consequently, that the Parliamentary material relied on by Mr Yeo could not come in his aid. While it is true that statutes are to be interpreted purposively where appropriate, as stated in section 9A of the Interpretation Act (Cap 1), this principle is limited, in my view, by the even more cherished axiom that statutes should be read in accordance with their plain meaning unless such a reading would lead to a manifest absurdity. To subordinate the "plain meaning" rule to the purposive approach would be to abandon the wider concern that the laws of the land should be accessible and transparent to all.

6 In my opinion, the juxtaposition of the additional definition of the term "court" to include the subordinate courts in section 2 of the Act with the amended reference to "…that court" in section 6 leaves no room for the High Court to hear the matter. Even if one were to leave to one side the jurisdictional point, to bring such an application in contravention of the preferred forum in the absence of extenuating circumstances would, I think, amount to an abuse of process.

7 Since Mr Yeo raised the question of transferring the matter to the court in which the proceedings had been instituted, I will deal with it briefly. First, I should say that I did not think that there was a sufficient basis to transfer the proceedings to a Magistrate's Court. Having commenced the action in an inappropriate forum, the remedy was not, I think, to transfer the matter down so that there would be two parallel proceedings when there was no necessity for this. As I indicated to Mr Yeo at the hearing, the correct procedure in my view was simply to take out an application for a stay in the existing proceedings.

8 In any event, I doubted that I had the power to transfer the proceedings to a Magistrate's Court as suggested by Mr Yeo. He had referred me to clause 10 of the First Schedule to the Supreme Court of Judicature Act (Cap 322), which states:

> **Transfer of proceedings**
>
> **10.** Power to transfer any proceedings to any other court or to or from any subordinate court, and in the case of transfer to or from a subordinate court to give any directions as to the further conduct thereof, except that this power shall be exercised in such manner as may be prescribed by Rules of Court.

This clause is brought into play by section 18(2) of the same Act, which gives the High Court the powers set out in that schedule.

9 However, in the case of *Ong Pang Wee and Ors v Chiltern Park Development Pte Ltd* [2003] 2 SLR 267, the majority of the Court of Appeal, referring to section 18(2) of the Act, held as follows:

> 14…When the legislation is read in its entirety it is plain that, as submitted by the developer, the scope of the High Court`s power to transfer proceedings from a lower court to itself cannot be determined by looking only at the [Supreme Court of Judicature Act]. In fact it would be wrong to do so as s 18(3) provides that the powers "shall be exercised" in accordance with written law. Parliament had therefore intended the High Court to have regard to other applicable written laws before exercising the power to transfer proceedings to itself and to act in a manner that was "in accordance with" or consistent with those provisions in so doing. In this case, the applicable written law is the [Subordinate Courts Act] and the High Court can only exercise its powers of transfer of proceedings as provided for in this Act. (*Per* Judith Prakash J)

There appears to be no statutory provision which allows the High Court to transfer matters to a Magistrate's Court. The *Chiltern Park* case cited above concerned an application to transfer a case in a Magistrate's Court to the High Court, but I should think the reasoning applies both ways.

10 Mr Yeo also brought my attention to Order 89 of the Rules of Court, which sets out the procedure for transfer of proceedings between the High Court and the Subordinate Courts. In *Chiltern Park* (cited above), the majority took the view that Rules 1 and 2 of that Order do not set out the circumstances in which an application may be initiated – that issue is governed by primary legislation:

> 33… So, even though O 89 r 2(1) refers generally to the transfer of "any proceedings from the subordinate courts to the High Court" it must be interpreted in accordance with the specified provisions in the SCA, ***ie*** ss 24, 38 and 41 which themselves state expressly that they deal with the transfer of cases from the District Court to the High Court. (*Per* Judith Prakash J)

I would gratefully adopt this reasoning.

11 Having exhausted all the arguments advanced by counsel for the plaintiff and finding them insufficient to overcome the preliminary objection, I dismissed the application.