Tay Eng Chuan v United Overseas Insurance Ltd
[2009] SGHC 193

Case Number : OS 137/2009

Decision Date : 27 August 2009

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Tay Eng Chuan (applicant in person); Corina Song (Allen & Gledhill LLP) for the respondent

Parties : Tay Eng Chuan — United Overseas Insurance Ltd

Arbitration – Award – Recourse against award

Civil Procedure – Extension of time – Principles governing extension of time

27 August 2009

Judith Prakash J:

Introduction

1 On 3 February 2009, the applicant, Mr Tay Eng Chuan, acting in person, filed the originating summons herein. As stated in the summons he wanted orders:

> (a) that the time limit of 28 days prescribed in Section 50(3) of the Arbitration Act (Cap 10) be declared to begin to run from the date when the Applicant Tay Eng Chuan is notified by the Arbitral Tribunal or the SIAC of the result of his request stated in his NOTICE dated 29 January 2009 served on the respondent, United Overseas Insurance Limited, and the Arbitral Tribunal and filed with the Registrar of SIAC requesting the Arbitral Tribunal to clarify and correct and to make additional award for the mistakes in the Arbitration Award pursuant to Rules 34 and 35 of the SIAC Domestic Arbitration Rules (2nd Edition, 1 September 2002) and to Section 43 of the Arbitration Act (Cap 10);
>
> (b) that the costs plus reasonable disbursements for this application to be fixed and ordered by this Honourable Court [to be in] the cause of an application or appeal under Sections 49 and 50 of the Arbitration Act to be made by the applicant in due course;
>
> (c) that this Honourable Court to make any other appropriate orders or directions it deems fit for the Applicant to secure the chance of an application or appeal under Sections 49 and 50 of the Arbitration Act to be made by the Applicant in due course.

2 Although the originating summons was entitled "Ex-parte Originating Summons", the applicant was instructed to, and did, serve the summons on United Overseas Insurance Limited ("the respondent"). Thereafter, the respondent filed affidavits in response to the application and the same proceeded on an *inter-partes* basis. I dismissed the application after both parties had made fairly lengthy arguments. The applicant has since appealed.

Background

3 The applicant was the insured under five insurance policies issued by the respondent, a well known insurance company. The applicant had also taken out a policy ("the first policy") with Overseas Union Insurance Limited ("OUI"). Subsequently, the respondent took over OUI and assumed liability under the first policy as well. All six policies contained arbitration clauses.

4 On 12 November 2002, the applicant sustained an injury to his left eye. As a result of the injury, the applicant lost the lens in his left eye and thereafter lost sight in the normal vision range but could still see light peripherally. About two weeks after this unfortunate accident, the applicant made claims under the six insurance policies.

5 The applicant's claims under all six insurance policies were rejected by the respondent on 6 April 2004 on the grounds, *inter alia*, that the applicant had not disclosed material facts to the respondent and had intentionally caused his eye injury. On 12 November 2004, the applicant, as a litigant in person, commenced arbitration proceedings against the respondent in respect of his claims under the six policies. The arbitration proceedings were conducted by a tribunal ("the tribunal") comprising a single arbitrator in accordance with the relevant arbitration agreements. The arbitration was conducted under the auspices of the Singapore International Arbitration Centre ("SIAC").

6 The tribunal issued its award on 18 December 2008. It allowed most of the applicant's claims but dismissed certain claims. In summary, the tribunal's findings were that:

(a) the claim under the first policy (a claim in the sum of $500,000) failed because the provisions of Condition 5 of the first policy required disclosure of other insurances effected against accident or incapacity during the course of the first policy as a condition precedent to the applicant's right to sue and recover under the first policy and the applicant had failed to comply with Condition 5. The tribunal further found that the respondent had not waived compliance by the applicant with the provisions of Condition 5;

(b) the applicant was entitled to recover the sum of $500,000 for the loss of one eye under the second policy;

(c) the applicant was entitled to recover $125,000 for the permanent loss of sight in one eye under the third policy;

(d) the applicant was entitled to recover $5,000 for Accident Medical Reimbursement under the third policy;

(e) the applicant's claim for $5,000 for UOB Credit Card Indemnity under the third policy failed because, in the opinion of the tribunal, the bodily injury suffered by the applicant did not result in "Accidental Death or Permanent Disablement" within the meaning of this wording in the policy and therefore no liability under this head of claim attached;

(f) the applicant was entitled to recover $110,000 for loss of one eye under the fourth policy;

(g) the applicant's claim for Free Family Income Benefit under the fourth policy failed because such benefit was payable only in the event of "Accidental Death or Accidental Permanent Total Disability" and in the opinion of the tribunal, the injury to the applicant did not fall within either of those categories;

(h) the applicant was entitled to recover $5,500 for Daily Hospital Cash Benefit under the fifth policy;

(i) the applicant was entitled to recover $4,000 for Medical Reimbursement under the fifth policy; and

(j) the applicant was entitled to recover $5,000 for Surgery Indemnity under the sixth policy.

In total, therefore, the tribunal awarded $754,500 to the applicant. It also ordered that the respondent was to pay interest on the award and that the costs of the arbitration be paid as to 25% thereof by the applicant and 75% thereof by the respondent and that if either party had paid more than that party's share, that party would be entitled to recover the excess from the other party.

7 Though the tribunal's award was dated 18 December 2008, the parties were only notified on 23 December 2008 by the SIAC that the award had been made and would be released upon full payment of the costs of arbitration. The applicant paid his share of the arbitration fees on 26 December 2005 but the respondent only paid its share on 13 January 2009. The applicant was notified on 15 January 2009 that the award was ready for collection.

8 On 16 January 2009, the applicant wrote to the respondent's solicitors demanding payment of a sum of $1,028,645.54 being the amounts awarded to him by the tribunal together with interest as computed by the applicant and the respondent's share of the costs that the applicant had paid. The next day, the applicant filed an application by way of an *ex-parte* originating summons (OS No 70 of 2009) for leave to enforce the final award under s 46 of the Arbitration Act (Cap 10, 2002 Rev Ed) ("the Act") and O 69 r 14 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed). On 19 January 2009, the applicant appeared before the Assistant Registrar in OS No 70 of 2009 and was granted leave to enforce the final award and also to enter judgment against the respondent. This order was subsequently set aside.

9 On 23 January 2009, the respondent sent the applicant two cheques. The first was for $749,500 and the second was for $5,000 making a total of $754,500. The respondent paid the applicant a further sum of $126,827.40 as interest on 29 January 2009.

10 On 29 January 2009, the applicant himself served a Notice for Interpretation, Correction and Additional Award ("the Notice") pursuant to s 43 of the Act. By the Notice, the applicant requested the tribunal to clarify and correct and make an additional award for what he considered were "mistakes" in the award. The corrections that the applicant asked the tribunal to make were as follows:

Para (1) of Notice	The "Respondent's financial position" in Para 165 should be corrected to "the Claimant's financial position".
Para (2) of Notice	The "Claimant's 4th ground of defence" in Para 183 should be corrected to the "*Respondent's* 4th ground of defence".
Para (3) of Notice	Paras 52 and 53 of the Final Award should be corrected to ***allow*** the Applicant's claim against the 1st policy.

Para (4) of Notice	Para 172 of the Final Award should be corrected to ***allow*** the Applicant's claim of S$5,000 for UOB Credit Card Indemnity under the 3rd Policy.
Para (5) of Notice	Para 174 of the Final Award should be corrected to ***allow*** the Applicant's claim of S$12,000 for Family Income Benefit under the 4th Policy.
Para (6) of Notice	An additional award for costs to compensate the Applicant for his time expended in the arbitration.

11 On 2 February 2009, the respondent's solicitors sent the applicant a cheque for $57,968.34 in full settlement of the costs of the arbitration awarded to the applicant.

12 The next development was the filing of this application on 3 February 2009. It was originally fixed for hearing on Monday, 23 February 2009.

13 In the meantime, on 10 February 2009, the applicant was informed of the outcome of his Notice which did not alter the previous award in any substantive aspect. The tribunal only allowed two out of the applicant's six requests for correction and amendment *ie* the first two of the same.

The *prima facie* basis of the application

14 As stated, the application was made pursuant to s 43 of the Act. Sub-sections 43(1) and (3) of the Act provide:

> **43**. —(1) A party may, within 30 days of the receipt of the award, unless another period of time has been agreed upon by the parties —
>
> (a) upon notice to the other parties, request the arbitral tribunal to *correct in the award any error in computation, any clerical or typographical error, or other error of similar nature*; and
>
> (b) upon notice to the other parties, request the arbitral tribunal to give an interpretation of a specific point or part of the award, if such request is also agreed to by the other parties.
>
> …
>
> (3) The arbitral tribunal *may correct any error of the type referred to in subsection (1)(a) or give an interpretation referred to in subsection (1)(b)*, on its own initiative, within 30 days of the date of the award.
>
> [emphasis added]

15 The effect of an award and of an application under s 43 of the Act is set out in s 44 thereof which provides, *inter alia*:

> **Effect of award**
>
> **44**. —(1) An award made by the arbitral tribunal pursuant to an arbitration agreement shall be final and binding on the parties and on any person claiming through or under them and may be relied upon by any of the parties by way of defence, set-off or otherwise in any proceedings in any court of competent jurisdiction.
>
> (2) Except as provided in section 43, upon an award being made, including an award made in accordance with section 33, the arbitral tribunal shall not vary, amend, correct, review, add to or revoke the award.
>
> (3) For the purposes of subsection (2), an award is made when it has been signed and delivered in accordance with section 38.
>
> (4) This section shall not affect the right of a person to challenge the award by any available arbitral process of appeal or review or in accordance with the provisions of this Act.

16 It appears plainly from ss 43 and 44 read together that an award once made is final and may not be varied, amended or corrected or added to thereafter except in accordance with s 43. When it comes to correcting an award, a party is only entitled under s 43(1)(a) to ask the arbitrator to correct an error in computation, a typographical or clerical error or an error of similar nature. The procedure provided under this sub-section is to allow for the correction of obvious errors in calculation or phraseology or reference. It does not function as a procedure which allows the arbitrator to correct mistakes in his findings whether those mistakes are mistakes of fact or mistakes of law. If a party to an arbitration considers that such a mistake has been made, then he may challenge the award by using any available arbitral process of appeal or review which is provided by the Act (see sub-s 44(4)).

17 In the present case, out of the six items listed for clarification and/or correction in the Notice, only two pertained to clerical slips such as the respondent being wrongly referred as the claimant in the arbitration. The other four "clarifications and/or corrections" asked for were directed at the substantive findings of the tribunal which the applicant had taken issue with and wanted corrected. The applicant put his request to the arbitrator as a request for correction. He did not ask for an interpretation of the award, a matter in respect of which he would have needed the consent of the respondent. Nor did he ask for the making of an additional award under s 43(4).

18 It appeared to me that the appropriate channel for the applicant to seek redress in respect of his grievances for those four matters was the appeal process and not via a "correction" of the award. As s 43(1)(a) of the Act clearly shows, only technical and non-substantive errors are open to correction. The respondent also highlighted that R 34 of the SIAC Domestic Arbitration Rules was consistent with this position as it too prescribed correction for only computational and clerical errors.

19 The SIAC Rules 2007 (3rd Ed, 1 July 2007) ("SIAC Rules 2007") have since replaced the SIAC Domestic Arbitration Rules and R 34 of the latter has been reincarnated as R 28.1 of the SIAC Rules 2007. Rule 28.1 provides that:

> Within 30 days of receipt of the award, a party may by written notice to the Registrar request the Tribunal to *correct in the award any error in computation, any clerical or typographical error or any error of a similar nature*. If the Tribunal considers the request to be justified, it shall make the correction(s) within 30 days of receipt of the request. Any correction, made in the original award or in a separate memorandum, shall constitute part of the award
>
> [emphasis added]

It thus cannot be gainsaid that correction of an arbitral award whether under s 43 or under the SIAC Rules 2007 is confined only to technical errors.

20 The applicant argued that the time limit of 28 days from the date of the award (a period that expired on 20 January 2009) did not apply to him because of the operation of s 50(3) of the Act. This states:

> (3) Any application or appeal shall be brought within 28 days of the date of the award or, if there has been any arbitral process of appeal or review, of the date when the applicant or appellant was notified of the result of that process.

The applicant argued that that what he had done was to apply for a review of the award and that therefore time would run from 10 February 2009 when he was informed of the outcome of the Notice. He contended that a "correction award [was] necessary" because "NO *(sic)* part in the Award" mentioned whether his claims were within the respective policies' scope of cover or whether the respondent's defence that his claims fell outside the scope of cover had failed. This omission to state explicitly whether his claims were within the ambit of cover led to ambiguity in the award which, the applicant asserted, had to be clarified before he could appeal against the award.

21 The applicant cited the authorities of *AHT v Tradigrain* [2002] 2 Lloyd's Rep 525 and *Blackdale Ltd v Mclean Homes South East Ltd* (TCC Nov 2, 2001, unreported) ("*Blackdale Ltd*") in support of his arguments, extracting a quote from the former judgment that:

> The common sense view is to treat the corrected award as bearing the date of the correction, so that the 28 days run from the date on which the correction was published. This was the approach of Judge Humphrey Lloyd, Q.C. in *Blackdale Ltd v Mclean Homes South East Ltd* (TCC Nov 2, 2001, unreported at Paras 8-14 and 19) and I respectfully agree with it.

22 Shorn of its context, the above quotation would support the applicant's position that time should run from the date the award was corrected instead of the original date. However, it appeared to me that Judge Humphrey Lloyd, Q.C. in *Blackdale* was making his observations in the context of a situation in which substantive changes were being made to an award. Indeed, as Judge Humphrey Lloyd, Q.C pointed out at [19] of his judgment, s 57 of the English Arbitration Act 1996 was "dealing not merely with slips and other such mistakes but with substantive clarifications and the removal of ambiguities, both of which are likely to be of potential importance if required…the change might affect the substance. The date of an award, if corrected, must be the date of the corrected award." In the paragraph preceding that observation, he had also stated that parties had to know exactly what their position was and have any uncertainties resolved before they could decide whether to appeal against an arbitral award or to resist such an appeal.

23 Given that the amended award only corrected clerical errors and it was not possible under s 43(1)(a) to correct more than clerical or similar errors, the force of Judge Humphrey Lloyd Q.C's reasoning in *Blackdale* did not apply in this instance. This was also because I did not accept that there was such ambiguity in the award that the applicant did not know exactly where he stood. Simply because the tribunal had not expressly articulated whether the claims fell within or outside the policies did not give rise to ambiguity which affected the applicant's position. If there had been such ambiguity as the applicant alleged, he was free to ask for an interpretation of the award under section 43(b) of the Act. To my mind, it was obvious from the tribunal's decision what its views were as to the coverage of the policies. The applicant is an educated and intelligent litigant and would have appreciated fully his position under the tribunal's decision. I noted too, that the applicant was no stranger to arbitration proceedings and was acquainted with the various procedures in such proceedings. I found that from an objective standpoint, there was no inherent ambiguity in the award that could have caused genuine confusion and further, there was no real confusion that was actually created in the applicant's mind. In my judgment, bearing in mind the different legislative provisions in Singapore, s 50(3) cannot be read as referring to an application for correction under s 43(1)(a) of the Act when it refers to an "arbitral process of appeal or review". It may be referring to a process of interpretation under s 43(1)(b) of the Act or to a request for an additional award under s 43(4) in respect of claims presented during the arbitration proceedings but omitted from the award. I express no concluded view on this.

24 In view of the relevant legislative provisions and for the reasons I have set out above, the applicant's application for a declaration that the time limit of 28 days prescribed in s 50(3) in the Act (*ie* the time within which an application for leave to appeal against an arbitration award has to be made) was misconceived and doomed to fail. I had no choice but to dismiss it. It was, however, clear that the applicant had filed this application as a way of obtaining an extension of time for leave to appeal. I therefore thought it appropriate to consider whether there was a basis for giving him such an extension quite independently of s 43 of the Act.

Extension of time

General Principles

25 Finality is of paramount importance in arbitration proceedings as the Court of Appeal observed at [32] of *Hong Huat Development Co (Pte) Ltd v Hiap Hong & Co Pte Ltd* [2000] 2 SLR 609 ("*Hong Huat*"). Endorsing the remarks of Hobhouse J in *The Faith; International Petroleum Refining & Supply Sdad v Elpis Finance* [1993] 2 Lloyd's Rep 408, the court cited from the latter:

> The court has an unfettered discretion to extend time in any case where it considers it just to do so but the discretion has to be exercised in accordance with the principles and policy applicable to arbitration matters as stated in many cases including *The Nema* … In England we have a relatively liberal system which allows appeals on questions of law within carefully controlled limits and we entertain a range of grounds for saying that tribunals have misconducted themselves including what we describe as technical misconduct or procedural mishap. *But all this was to be viewed against the fundamental principle that the parties have chosen their tribunal, that is to say, the arbitral tribunal, and have agreed to be bound by the decision of that tribunal. They have agreed that the award is to be final, subject always to any question of jurisdiction. Courts will only interfere with the decision of tribunals within very carefully controlled limits. One of those limits is the time within which the matter may be brought before the court. If it is not brought before the court within the 21 days then an award made with jurisdiction becomes effectively final for all purposes*. This applies both ways, it applies to both parties. So, following the publication of an award, each party has to make up its mind whether it wishes to take up the award within 21 days. In making that choice they no doubt have regard to both their own position and that of the opposite party. It must be always borne in mind that the purpose of an application to the court is that the party so applying may obtain at the end of the exercise a different award from that which has originally been made by the arbitrators. [emphasis added]

And the court continued to note at [33] of its judgment that:

> The principles governing the court's exercise of its discretion to extend time to file a notice of appeal are set out in *Pearson*. We do not see any logic why the same principles should not apply to an application to extend time for leave to file a notice of appeal, bearing in mind that Parliament's intention in enacting s 28 was to limit the right of appeal and promote greater finality in arbitration awards. It would be inconsistent with the object of that section if extensions of time are freely granted.

26 Evidently, the principle of finality is to be upheld and should not be compromised, at least not without compelling reasons. *Pearson v Chan Chien Wan Edwin* [1991] SLR 212 identifies the general principles governing the exercise of discretion in deciding whether an extension of time should be granted: (a) the length of the delay; (b) reasons for the delay; (c) the prospects of success if time for appealing was extended and (d) the degree of prejudice to the other party if the application was granted.

Length of delay

27 The applicant filed this application on 3 February 2009. This was 14 days after his time for filing an application for leave to appeal had expired. Whilst the application was not, in form, an application for an extension of time, in substance it could be looked in that light bearing in mind that the third prayer of the application asked the court to make appropriate orders so that the applicant could secure the chance of an application for leave to appeal under s 49 of the Act. On that basis, I was willing to treat the length of the delay for purposes of appeal as being 14 days.

28 In *Denko-HLB Sdn Bhd v Fagerdala Singapore Pte Ltd* [2002] 3 SLR 357 ("*Denko*"), the Court of Appeal found that a 14-days' delay was "quite substantial" bearing in mind that Denko had seven days to file an application. In the present case, the applicant had 28 days to file his application, but only did so 14 days after his right had expired. The applicant having had a longer period to make his application on the face of it, a delay of 14 days appeared more serious and therefore I considered that his grounds needed to be strong to persuade the court to show him indulgence.

Reasons for the delay

29 Many reasons were listed by the applicant for his delay. He remarked that the award was made only 19 months after the arbitration hearing in May 2007, and he needed time to review the award and to recall the evidence. Additionally, he had sought the counsel of many people in order to formulate the right questions of law which had been a time-consuming process especially when many "confusing" views were given to him. Further, he had been troubled by the "ambiguity" at paragraph 183 of the award which had referred to the respondent wrongly as the "Claimant" (*ie* the applicant) and wanted to clarify the award before lodging an appeal. Most importantly, the applicant averred, was that he had had a hearing before Tay Yong Kwang J on 20 and 21 January 2009 in relation to his claim against one ACE Insurance Ltd ("ACE"). Therefore from 15 to 19 January 2009, "most of [his] time was expended" in preparing his cross-examination of the court expert in that case and formulating his closing submissions to be presented on 21 January 2009. It was only on the following day (*ie* 22 January 2009), "after a good night sleep" [*sic*] that he was able to focus his efforts and energies on reviewing the award and formulating the questions of law for the appeal against the award.

30 As a result of the above factors, the applicant asserted that it was "impossible" for him to file his application in time, *ie* by 20 January 2009. Similarly, it was "impossible" for him to file the application when he only had five days from the day he collected the award on 15 January 2009, in which to do so.

31 The most important reason for the delay, according to the applicant, was that he had been preparing the case before Justice Tay and that it was thus "impossible" for him to comply with the deadline. I think this was an overstatement of the state of affairs existing at that point in time. Whilst the applicant did have his obligations in relation to the ACE case, he had found the time to take steps to enforce the award against the respondent. The facts are stated in [8] above. He not only made written demands on the respondent but filed a court application for enforcement.

32 It thus appeared to me that far from being wholly immersed and absorbed in preparing his case before Justice Tay so that he neglected the deadline for his application for leave to appeal, the applicant was actually quite capable of "multi-tasking" and dealing with the award as well.

33 I would add that it was most unclear to me what exactly the applicant meant when he asserted it was "impossible" for him to file his application just in time on 20 January 2009. Did he mean that he was so preoccupied with the matter before Justice Tay that it was "impossible" for him to be conscious of the looming deadline, *i.e*. he simply forgot all about it? Or did he mean that he was so busy with the matter before Justice Tay that it was "impossible" for him to simultaneously give his attention to this application for leave to appeal?

34 Given the tenor of the applicant's submissions, I was inclined to adopt the latter interpretation. Indeed, there had been no allusion to him being careless and inadvertent in not complying with the deadline. He had not pleaded that he was so mentally or physically exhausted from the preparation of his case that the deadline completely slipped his mind. Rather, his pleaded case seemed to be that he

was engaged in another matter, and had to give it his fullest attention because he had to "prepare it well." As such, I was of the view that the applicant might have deliberately turned a blind eye to the deadline, labouring under the false impression that he would be able to obtain an extension. Alternatively, the applicant may not have made himself aware of the deadline, and had simply chosen to place this matter on the backburner whilst he sorted out the seemingly more pressing and urgent matter before Justice Tay. If so, then the applicant was pursuing a reckless course. Between forgetting the deadline and neglecting it altogether, I find that the latter attracts greater opprobrium, though for the purpose of clarity, I would state that both situations are unmeritorious, unless some mitigating factor(s) can be furnished to show why an applicant may have forgotten the deadline.

35 The applicant made much of the fact that he had only five days between the date of collection of the award and the last day for filing an application for leave to appeal. Whilst the brevity of this period would engage the court's sympathy especially considering that the applicant was a litigant in person, in this case the applicant contributed to the brevity of the period. The applicant could have collected the award much earlier. If he had made payment of the full amount due for release of the award, it would have been furnished to him on 26 December 2008 or within a day or two thereafter. He received it late because the respondent was late in making payment of its share of the costs. There would have been no prejudice to the applicant in paying the respondent's share of costs as well since he would have known that the respondent was a solvent company which would be able to reimburse him without difficulty. There was no evidence of any financial difficulty on the part of the applicant that would have prevented him from taking this course. Therefore the applicant's own conduct had to an extent contributed to the truncation of the available period in which to file an application under s 49.

36 The other reasons furnished by the applicant were that he had to spend much time recalling the evidence and consolidating the various (conflicting) legal opinions. This reason was unconvincing in view of the correspondence shown to me by the respondent which indicated that throughout 2007 and 2008 the applicant was, as contended by the respondent, on top of his own case. The stronger reason was that he needed time to take advice and formulate questions of law. This reason might have explained why he was not able to file the application by 20 January 2009 but it did not explain why he had not formulated the questions of law by 3 February 2009 or even by the first substantive hearing date which was 26 February 2009. By then there would have been more than sufficient time to get the relevant advice.

37 The applicant did not give any reason why during the period between 22 January 2009 when he had completed the ACE case and 3 February 2009 when he filed this application, he did not consider filing an application for an extension of time. During that period, he appears to have concentrated on preparing the Notice and the present application. It seemed to me possible that the applicant had resorted to the Notice and the procedure under s 43 as a means of lengthening the time granted to file an application for leave to appeal rather than having genuinely considered that the award required correction before he could consider whether there were questions of law upon which an appeal could be launched. In relation to this point, I found helpful the following observations of Judge Humphrey Lloyd QC in the English case of *Gbanbola v Smith & Sheriff Ltd* [1988] 3 All ER 730 ("*Gbanbola*") (at 736-7):

> Mr Coster says that the purpose of the Act is to ensure both that the arbitrator and the courts are not troubled by repeated applications, but also that the court should have the totality of the tribunal's views as clarified and with ambiguities removed in all respect before considering any appeal or process …
>
> I see the force of that argument. It certainly must apply where the uncertainty or ambiguity has affected or may affect that part of the result which is in question (and also perhaps in some cases the reasoning leading to that result). However, one must carefully consider what would be the point of delaying an appeal on a matter which as here would be completely unaffected by any possible outcome of going back to the arbitrator to clarify an ambiguity or uncertainty …
>
> The time limits set out in the Act seem to me to point quite clearly to the court being seized of any appeal within a specific time limit. Recourse to s 57 necessarily postpones those time limits (see s 57(4) to (6)) [these sections are the equivalent in the English Arbitration Act 1996 of s 43 of the Act] and leaves any otherwise victorious party in uncertainty as to whether or not there would be a challenge to any part of the award which was otherwise entirely clear and certain as to its effect. Mr Coster's argument would therefore enable a recalcitrant party to apply to the arbitrator for the correction of any supposed error (of any of the kinds described in s 57(3)(a)) in order to give it more time to lodge any appeal or to make an application in respect of a part which could not possibly be connected to the supposed error.

38 This passage underscores the futility of the applicant's argument that the award was ambiguous and that he needed to seek clarification before applying for leave to appeal against it. As I explained above, these "ambiguities" were mere clerical ones; I did not even think they could give rise to any genuine confusion on the applicant's part because there was no material ambiguity to begin with. The applicant's conduct described in [37] smacked of opportunism and a desire to avoid the weight of having to establish extenuating circumstances which he would have incurred had he immediately filed an application for an extension of time.

39 I thus found that the delay was substantial, and that while there were circumstances that would have attracted the court's sympathy, the applicant by his own conduct had, to a large extent, dissipated that sympathy. I might, however, still have considered the applicant's position favourably had I been more persuaded of his chances of succeeding in an application for leave to appeal.

The prospect of success of the application if extension were allowed

40 In *Lee Hsien Loong v Singapore Democratic Party and Others and Another Suit* [2008] 1 SLR 757 ("*Lee Hsien Loong*") at [19], the court observed that this particular limb is:

19… set at a very low threshold in fairness to the applicant – namely, whether the appeal is "hopeless" (see the decision of this court in *Nomura Regionalisation Venture Fund Ltd v Ethical Investments Ltd* [2000] 4 SLR 46 ("*Nomura*") at [32]). Indeed, as this court put it in *Aberdeen Asset Management Asia Ltd v Fraser & Neave Ltd* [2001] 4 SLR 441 ("*Aberdeen Asset Management Asia Ltd*") (at [43]):

> As to the question of merits, it is not for the court at this stage to go into a full-scale examination of the issues involved. Neither is it necessary for the applicant to show that he will succeed in the appeal. The threshold is lower: the test is, is the appeal hopeless? (see [*Nomura* ([19] *supra*)]). Unless one can say that there are no prospects of the applicant succeeding on the appeal, this is a factor which ought to be considered to be neutral rather than against him.

20 This third factor nevertheless becomes of signal importance where the appeal is a truly hopeless one. In such a situation, notwithstanding even a very short delay, an extension of time will generally not be granted by the court simply because to do so would be an exercise in futility, resulting in a waste of time as well as resources for all concerned. As Yong Pung How CJ put it in this court's decision in *Pearson v Chen Chien Wen Edwin* [1991] SLR 212 ("*Pearson*") at 218, [17]:

> [T]he chances of the appeal succeeding should be considered, as it would be a waste of time for all concerned if time is extended when the appeal is utterly hopeless.

41 Taking the issue in the context of arbitration proceedings what I had to consider was not whether the appeal itself would be hopeless but whether the application for leave to appeal could be said to be "hopeless".

42 Section 49 of the Act provides that:

49. —(1) A party to arbitration proceedings may (upon notice to the other parties and to the arbitral tribunal) appeal to the Court *on a question of law* arising out of an award made in the proceedings.

…

(4) The right to appeal under this section shall be subject to the restrictions in section 50.

(5) *Leave to appeal shall be given only if the Court is satisfied that* —

(a) the determination of the question will *substantially affect the rights of one or more of the parties*;

(b) the question is one which the arbitral tribunal was asked to determine;

(c) *on the basis of the findings of fact i*n the award —

(i) the decision of the arbitral tribunal on the question is *obviously wrong*; or

(ii) the question is one of *general public importance and the decision of the arbitral tribunal is at least open to serious doub*t; and

(d) despite the agreement of the parties to resolve the matter by arbitration, it is just and proper in all the circumstances for the Court to determine the question.

[emphasis added]

43 The applicant's proposed appeal pertains to the insurance benefits under the first, third and fourth policies. In dismissing the applicant's $500,000 claim under the first policy, the tribunal found as a matter of *fact*, that there had been no unequivocal communication of a waiver by the respondent to the applicant that the first policy was still in force despite the applicant's failure to make a certain material disclosure to the respondent. It had been the applicant's contention that even though he did not disclose the fact that he had other insurance polices, by sending a medical expert to examine him, the respondent had by its conduct unequivocally waived its rights under the policy to render the policy *ab initio*. This argument did not impress the tribunal. It considered that, as an insurer, the respondent was "always entitled to investigate a claim as fully and thoroughly as the circumstances of the claim warrant".

44 As for the third policy, the tribunal made a finding that there was no liability on the respondent's part to pay the applicant $5,000 as the injury sustained by the applicant did not result in "Accidental Death or Permanent Disablement" as required under the policy. The fourth policy concerned a Family Income Benefit amounting to $12,000 which claim the tribunal denied because it found that the applicant had not suffered an "Accidental Death or Accidental Permanent Total Disability" as required under the fourth policy.

45 Dealing first with the situation in relation to the first policy, the findings of the tribunal were evidently concerned with fact, not law. The applicant did not formulate any question of law for the court to consider but considering the award and the law as best I could it appeared to me that, *prima facie*, there was no "question of law" for a court to determine pursuant to s 49 of the Act. A "question of law" was defined in *Ahong Construction (S) Pte Ltd v United Boulevard Pte Ltd* [2000] 1 SLR 749 wherein GP Selvam J said at [7] that:

> A question of law means a *point of law in controversy* which has to be resolved after opposing views and arguments have been considered. It is a matter of substance the determination of which will decide the rights between the parties. … If the point of law is settled and not something novel and it is contended that the arbitrator made an error in the application of the law there lies no appeal against that error for there is no question of law which calls for an opinion of the court. [emphasis added]

46 Approving the above passage in *Northern Elevator Manufacturing Sdn Bhd v United Engineers (Singapore) Pte Ltd (No 2)* [2004] 2 SLR 494 at [19], the Court of Appeal noted that:

> To our mind, a "question of law" must necessarily be a finding of law which the parties dispute, that requires the guidance of the court to resolve. When an arbitrator does not apply a principle of law correctly, that failure is a mere "error of law" (but more explicitly, an erroneous application of law) which does not entitle an aggrieved party to appeal.

47 In this case, even if the tribunal's finding that there was no waiver was a finding of mixed fact and law, there was no disputed finding of law that required the guidance of the court. At the most, there would have been an incorrect application of an established principle of law, the legal principles relating to waiver being well established and non-controversial. As such, I could not find in relation to the first policy "a question of law" within the definition in *Northern Elevator* upon which an appeal could be launched. To me, therefore, an application for leave to appeal in relation to the findings of the tribunal on the first policy appeared hopeless.

48 In respect of the third and fourth policies, however, it appeared to me that there would be questions of law involved as to the correct construction of the terms of the policies concerned ie as to whether these terms properly construed covered the injury sustained by the applicant so as to make the respondent liable to meet his claims hereunder. In fact, I would go so far as to say that it appeared to me that the tribunal had misconstrued the policies and, therefore, its decisions on these two claims were open to serious doubt. Notwithstanding that conclusion there was still a serious obstacle in the way of the applicant. As stated in ss 49(5)(a), the issue raised must, *inter alia*, "*substantially affect the rights of one or more of the parties*".

49 In *Permasteelisa Pacific Holdings Ltd v Hyundai Engineering and Construction Co Ltd* [2005] 2 SLR 270 at [13], I observed that:

> … the court cannot give leave to appeal unless it considers that the determination of the question of law concerned could substantially affect the rights of one or more to the arbitration agreement…Thus, the questions of law must have a substantial impact on the rights of at least one of the parties in order for leave to be given.

50 What does "substantially affect the rights" mean then? At [51] of *Hong Huat*, the Court of Appeal adopted the interpretation of the English Court of Appeal in *Pioneer Shipping Pte Ltd v BTP Tioxide Ltd* [1980] QB 547 (*The Nema*) at 564, where Lord Denning Mr found that the phrase "substantially affect the rights' meant that the *point of law* must be a "point of practical importance – not an academic point – nor a minor point" [emphasis added].

51 I was satisfied that the two questions of law which could be raised in respect of the third and fourth policies would not, even if they were determined in the applicant's favour substantially affect his rights. It would be recalled that the applicant was awarded a total of $130,000 in respect of his

claims under the third policy. In comparison with that award, the possibility of a further award of $5,000 if the question of law was resolved in his favour, would not substantially affect his rights. The same went for his claim to a further $12,000 in respect of his rights under the fourth policy since the arbitrator had already awarded him $110,000 under that policy. It appeared to me also, that considering that the arbitration had resulted in a total award of $754,500 in favour of the applicant, plus interest and costs, an appeal which could at the most gain him an additional $17,000 would not substantially affect either his rights or those of the respondent, the paying party, and that on this basis since only minor points were involved the appeal would not be allowed to proceed. It must be remembered that the limitation on the right to appeal against an arbitrator's finding has been imposed to protect party autonomy, respect their choice of dispute resolution and maintain arbitration proceedings as an efficient, cost effective and final method of settling claims. Allowing recourse to the courts in respect of insubstantial amounts would not further those aims.

Prejudice caused to the respondent

52 Should leave be granted, what prejudice will respondent suffer? This was the relevant question to be asked in considering the fourth factor ([24] of *Lee Hsien Loong*). The respondent argued that "it would be prejudicial to [its] interests if the applicant were granted an extension of time to file his appeal and [it] is denied the opportunity of doing so" but failed to elaborate further.

53 At [25] of *Lee Hsien Loong*, the Court of Appeal stated that such "prejudice alleged must be tangibly proven". Pertinently, it went on to cite the following observation in the case of *Aberdeen Asset Management Asia Ltd* [2001] 4 SLR 441:

> The 'prejudice' cannot possibly refer to the fact that the appeal would thereby be continued, if the extension is granted. Otherwise, it would mean that in every case where the court considers the question of an extension of time to file notice of appeal, there is prejudice. We endorse the views expressed in this regard by Woo Bih Li JC in S3 Building Services v Sky Technology (judgment of 8 May 2001 in Suit 1001/2000) [[2001] SGHC 87]. The 'prejudice' here must refer to some other factors, eg change of position on the part of the respondent pursuant to judgment.

54 In the present case, the respondent had not identified the prejudice it would suffer should an appeal be allowed, much less tangibly proved that such prejudice would indeed be suffered. This factor therefore did not assist the respondent.

Conclusion

55 Having weighed the factors and found that any application for leave to appeal against the award would be hopeless, I considered that even if the application could be viewed as an application for an extension of time in which to file an application for leave, it could not succeed. Accordingly, treating the application on this basis would not assist the applicant and there was no basis on which I could make any order save an order dismissing the application.