

Holland Leedon Pte Ltd (in liquidation) v Metalform Asia Pte Ltd
[2011] SGHC 32

Case Number : Originating Summons No 1679 of 2007 (Summons No 4527 of 2010)
Decision Date : 14 February 2011
Tribunal/Court : High Court
Coram : Philip Pillai J
Counsel Name(s) : Lee Eng Beng SC, Low Poh Ling and Farrah Salam (Rajah & Tann LLP) for the plaintiff; Chelva Rajah SC, Chew Kei-Jin and Moiz Haider Sithawalla (Tan Rajah & Cheah) for the defendant.
Parties : Holland Leedon Pte Ltd (in liquidation) — Metalform Asia Pte Ltd

Arbitration

14 February 2011

Judgment reserved.

Philip Pillai J:

1 This is an application by the Defendant, Metalform Asia Pte Ltd, for leave to be granted to appeal to the Court of Appeal against my decision made on 17 September 2010 in Originating Summons No 1679 of 2007 ([2010] SGHC 280). I had granted leave under s 49(5) of the Arbitration Act (Cap 10, 2002 Rev Ed) ("AA") to appeal against certain questions of law arising from an award issued by the sole Arbitrator in SIA Arbitration No 069/DA17/05.

2 Section 49(7) of the AA provides that an appeal against a court decision to grant or refuse leave to appeal requires the leave of the court. The Court of Appeal construed "the court" in s 49 (7) to mean the High Court which granted or refused the leave to appeal application under s 49(5) of the AA and no further leave may be sought from the Court of Appeal (See *Ng Chin Siau and others v How Kin Chuan* [2007] 4 SLR(R) 809, subject possibly to the exceptional circumstances of *CGU International Insurance plc v AstraZeneca Insurance Co Ltd* [2006] EWCA Civ 1340).

3 The underlying policy of the AA is to promote finality of the arbitration process and awards. The AA recognises party autonomy as parties have decided to resolve their disputes by arbitration and not court actions. Section 49 of the AA provides an exceptional recourse to the courts on questions of law only where the rigorous statutorily prescribed conditions have been met.

4 I would adopt the approach set out in *Motor Image Enterprises Pte Ltd v SCDA Architects Pte Ltd* [2010] SGHC 278, per Judith Prakash J at [28]:

The leave stage functions as a time and cost-saving filter against cases which are not even open to serious doubt. (See *Antaios Compania SA v Salen Rederierna AB (The Antaios)* [1985] AC 191 ("*The Antaios*") at 206G–207C, where Lord Diplock holds up the practice of the House of Lords in dealing with petitions for leave to appeal from judgment of the Court of Appeal in civil actions as an example to be followed: "generally a brief oral hearing *inter partes* is permitted of which the average duration is ten to fifteen minutes; the parties are not allowed to use the hearing as an opportunity to argue the appeal that is the subject of the petition."). Whilst arguments for leave in the courts here generally take somewhat longer than 15 minutes, the court should hear only enough at the leave stage to adopt a provisional view on the merits which allows it to decide

whether a full-dress hearing is warranted. To ask the court to hear enough at the leave stage to make final and conclusive determinations would undermine the utility of the leave stage as a filter.

In short, I would be guided by the approach that leave to appeal should only be granted in exceptional circumstances where there is a wider purpose in having the Court of Appeal elucidate the statutory criteria of s 49 (5) of the AA.

5 The applicant did not raise exceptional circumstances relating to the elucidation of the criteria that would merit a substantive appeal. The applicant repeated the arguments that had been fully argued and rejected in the earlier appeal proceedings under s 49 of the AA. The applicant next submitted that in the absence of any threshold or principles, the Court should be guided by where the justice lies and obtaining certainty from the Court of Appeal. No supporting authority was cited in support of this submission but in any event I was not persuaded that either of these grounds were made out in this case. To further introduce yet another layer of time and expense in an appeal against the leave granted to appeal on the questions of law, would be at variance with the parties' agreement to resolve their disputes expeditiously by arbitration within the prescribed framework of the AA.

6 Leave to appeal denied.

7 Costs of this application to be agreed or taxed.

Copyright © Government of Singapore.