Sim Chay Koon and others *v* NTUC Income Insurance Co-operative Limited [2015] SGCA 46

Case Number	: Civil Appeal No 18 of 2015
Decision Date	: 20 August 2015
Tribunal/Court	: Court of Appeal
Coram	: Sundaresh Menon CJ; Andrew Phang Boon Leong JA; Steven Chong J
Counsel Name(s)	: Choo Zheng Xi, Peter Cuthbert Low, Raj Mannar and Low Ying Li Christine (Peter Low LLC) for the appellants; Hri Kumar Nair, SC, Shivani Retnam and Tan Sze Mei Angeline (Drew & Napier LLC) for the respondent.
Parties	: SIM CHAY KOON — LIM KIA MENG — LIM PAW SENG PHILLIP — TAY KENG HONG — NTUC INCOME INSURANCE CO-OPERATIVE LIMITED

20 August 2015

Sundaresh Menon CJ (delivering the judgment of the court *ex tempore*):

1 The central question that is raised in the present appeal is the proper relationship between the courts and arbitration.

2 The appellants before us brought an action for themselves and on behalf of 34 others against the respondent for an alleged breach of employment terms and wrongful termination. They are parties to contracts that include an arbitration agreement, which reads:

> If there is a disagreement, one party must notify the other party in a dated notice describing the nature of the disagreement. If no settlement can be reached within [2 months] through consultation, either part can make a written request to the other party that the disagreement be submitted to arbitration before an arbitrator in Singapore according to the Arbitration Rules of the Singapore International Arbitration Centre in force at that point of time. These Arbitration Rules are deemed to be part of this Agreement.

3 Counsel for the appellants, Mr Choo Zheng Xi, was candid enough to accept that the disputes that have been raised would in principle come within the ambit of the arbitration agreement. The question then is under what circumstances should this court ignore the existence of that agreement?

4 We put it to Mr Choo at the outset of his argument that a primary feature of arbitration is the doctrine of kompetenz-kompetenz. This is a doctrine that finds expression in s 21(1) of the Arbitration Act (Cap 10, 2002 Rev Ed) which, it is common ground, is the statute that governs this dispute. Section 21(1) provides as follows:

> The arbitral tribunal may rule on its own jurisdiction, including a plea that it has no jurisdiction and any objections to the existence or validity of the arbitration agreement, at any stage of the arbitral proceedings.

5 In our judgment, the existence and applicability of the doctrine means that as a general rule, where a party seeks to avoid its obligation to arbitrate its dispute, the court should undertake a restrained review of the facts and circumstances before it in order to determine whether it appears on a *prima facie* basis that there is an arbitration clause and that the dispute is caught by that

clause. That standard is amply met in the present case. Hence, on the face of it, we should hold the parties to their duty to arbitrate and allow them to raise any relevant objections such as those in relation to jurisdiction, the validity of the arbitration agreement, or subject matter arbitrability before the tribunal.

6 While the tribunal generally has the first right to determine and pronounce on these matters, it does not have the last word. If the appellants should consider that the tribunal was wrong in the view it may eventually take on any of these matters, they can then seek relief from the court, among other ways, by seeking recourse under s 48 of the Arbitration Act. Of course, an unmeritorious application will find its penalty in costs. That is a view that the appellants' legal advisors will have to form and the parties will have to take that into account in due course.

7 Mr Choo then submitted that the court should as a matter of discretion decline to uphold the arbitration agreement. It is true that under s 6 of the Arbitration Act, the court has the discretion not to refer a matter to arbitration. But, we are satisfied that this discretion should be exercised sparingly and in a principled way.

8 Mr Choo put a number of points before us but in our judgment, they can essentially be boiled down to three main points:

(a) First, the question of the cost of arbitration, which he said would be higher, including by reason of the availability of class action relief in court proceedings;

(b) Second, the nature of the statutes, namely, the Central Provident Fund Act (Cap 36, 2013 Rev Ed), the Employment Act (Cap 91, 2009 Rev Ed) and the Industrial Relations Act (Cap 136, 2004 Rev Ed), that are implicated in this matter, which Mr Choo said were statutes applicable to employment and with a particular emphasis on protecting workers; and

(c) Third, the subjective belief of his clients that they would get a better hearing in the court.

9 In our judgment and with respect to Mr Choo, these are not sufficient grounds for the exercise of our discretion not to stay the present proceedings in favour of arbitration. We first point out that there is a further important factor which must be considered when we exercise our discretion in this context and that is the existence of an agreement to arbitrate. The very existence of that agreement between the parties, pursuant to which they have undertaken to resolve their disputes in a particular way, means that something weighty must be shown in order to demonstrate that there is sufficient reason not to hold the parties to that agreement.

10 Against that background, we turn to the grounds put forward:

(a) In our judgment, it is firstly not a legitimate ground to say that arbitration will be more costly. Even if true, the parties may be taken to have already factored that when they nonetheless chose to arbitrate their disputes. But moreover, we actually have no way knowing if it will or will not be more expensive to arbitrate this matter. As we observed during Mr Choo's arguments, we expect and would encourage the respondent to adopt measures to control costs in the interests of all the parties.

(b) As to the nature of the statutes, again there is nothing in the nature of these statutes that make it unsuitable for an arbitrator to deal with the issues they give rise to. Further, as we observed, there are retired judges and senior lawyers who may be available and willing to be appointed as arbitrator(s) to hear this matter.

(c) Lastly, the subjective preference of a party will generally not be a relevant basis for the exercise of the court's discretion.

11 For these reasons we dismiss the appeal. We fixed costs at $30,000 plus reasonable disbursements.