

Hong Huat Development Co (Pte) Ltd v Hiap Hong & Company Pte Ltd
[2000] SGHC 160

Case Number : OM 12/1999, CA 85/1999
Decision Date : 04 August 2000
Tribunal/Court : High Court
Coram : Woo Bih Li JC
Counsel Name(s) : Lawrence Teh (Rodyk & Davidson) for the applicants/appellants; John Chung (Khattar Wong & Partners) and Sharon Tay (Donaldson & Burkinshaw) for the respondents
Parties : Hong Huat Development Co (Pte) Ltd — Hiap Hong & Company Pte Ltd

JUDGMENT:

Grounds of Decision on Further Arguments and on Costs

- 1 On 6 July 2000, I delivered my Judgment but reserved the question of costs at the request of the Appellants.
- 2 The Appellants then sought further arguments on item(e) (as defined in my Judgment) and, as regards costs, they said they would ask for variation of the Arbitrator's award on costs as well.
- 3 I heard further arguments on item(e) and maintained that the arbitrator's award on item(e) was to remain.
- 4 This was because even if his award on item(e) was made because of a misapprehension of a legal principle, which principle was determined by me, it did not necessarily follow that his conclusion was wrong.
- 5 It was not seriously disputed that the amount comprised in item(e) was paid back by the Respondents to the Appellants who had complained that it was an over-certified sum in a certificate. However, there was no evidence that the certificate was amended to take into account this payment, or that the arbitrator had factored this payment in his decision of the total amount under the final accounts and the balance due to the Respondents.
- 6 Furthermore, the Appellants themselves did not want item(e) to be remitted back to the arbitrator presumably because of the extraordinarily long delay he had taken to publish his award.
- 7 In the circumstances, I did not think that I should interfere with his award on item(e).
- 8 As for costs, Mr Chung argued that the court had no power to vary this part of the award and that the court could only remit this part of the award back to the arbitrator.
- 9 He cited a passage from *The Law and Practice of Commercial Arbitration in England* 2nd Ed by Mustill and Boyd at p 398:

‘First, the Court of Appeal has power to substitute its own order as to costs for that of the trial judge. This the High Court cannot do in relation to the order of an arbitrator. It can only remit the award for reconsideration¹⁵, unless the parties empower it by consent to direct how the costs of the award should be borne¹⁶.’
- 10 The case cited in footnote 15 is *Anglo-Saxon Petroleum v Adamastos Shipping Co Ltd* (1957) 1 Lloyd's Rep 73.
- 11 However Mr Chung did not cite this case to me. Instead he cited *Tramountana Armadora S.A. v Atlantic Shipping Co S.A.* (1978) 1 Lloyd's Law Reports 391 at 396 and 398 and *Demolition & Construction Company Ltd v Kent River Board* (1963) 2

Lloyd's Law Reports 7 at p 8.

12 Mr Teh cited *The Law and Practice Relating to Appeals from Arbitration Award* by D. Rhidian Thomas 1994 p 214 and the case of *Cargill Inc v Margo Ltd* (1983) 2 Lloyd's Rep 570 and two other cases as illustrations where the court varied awards on costs after decisions on non-cost issues were made.

13 I was of the view that the cases cited by Mr Chung did not establish the proposition he had advocated. Also, two of the cases cited by Mr Teh did show the court varying awards on costs after decisions on non-cost issues were made.

14 Furthermore, if the court can vary a substantive part of an award, it must, as a consequence, be able to vary the cost aspect of the award.

15 I was satisfied that items (a) to (d), on which the Appellants had succeeded, were responsible for part of the costs of arbitration and that the award on such costs should be varied.

16 Once I determined that as a matter of principle, the parties agreed that the Respondents should get 75% of the costs of the arbitration meaning the reference to arbitration and the arbitrator's fees. I so ordered. In addition, the Appellants were to pay the fees of the quantity surveyor (appointed at the request of the arbitrator to assist him) entirely as the quantity surveyor's work was not affected by items (a) to (d).

17 After considering Calderbank letters, I awarded the entire costs of Originating Motion 12 of 1999 before me to the Appellants on a standard basis notwithstanding that the Appellants had not succeeded on item(e) because that item hardly involved any getting up in the context of the issue I was to determine. Such costs would be for the Motion up to 6 July 2000.

18 As for the hearing on 26 July 2000 regarding further arguments on item(e) and arguments on costs, I decided that each party should bear its own costs as the Appellants had lost on the further arguments in respect of item(e) but won on the costs issue regarding a variation of the arbitrator's award on costs.

19 The costs of the hearing before Justice Lai Kew Chai in the same Motion (for leave to appeal to the High Court) was to follow, as previously ordered by the learned judge.

Woo Bih Li

Judicial Commissioner

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