Lum Chang Building Contractors Pte Ltd v Anderson Land Pte Ltd
[2000] SGCA 18

Case Number : CA 137/1999

Decision Date : 05 April 2000

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Tan Lee Meng J; L P Thean JA

Counsel Name(s) : Woo Bih Li SC (instructed), John Chung and Sharon Tay (Donaldson & Burkinshaw) for the appellants; Alvin Yeo SC, Paul Sandosham and Kirindeep Singh (Wong Partnership) for the respondents

Parties : Lum Chang Building Contractors Pte Ltd — Anderson Land Pte Ltd

Arbitration – Agreement – Arbitration ordered by court – Nature of arbitration award pursuant to such arbitration – Whether necessary for court to adopt such an award – s 22 Arbitration Act (Cap 10, 1985 Rev Ed)

Arbitration – Award – Setting aside – Time within which to apply to set aside award – Extension of time – Whether mistake of law or otherwise of solicitor constitutes sufficient grounds for extension of time – ss 23(2), 28 Arbitration Act (Cap 10, 1985 Rev Ed) – O 69 r 4 Rules of Court

Words and Phrases – "Equivalent to judgment of a judge" – s 23(2)Arbitration Act (Cap 10, 1985 Rev Ed)

Words and Phrases – "Or otherwise" – O 69 r 4 Rules of Court

(delivering the grounds of judgment of the court): The central issue in this appeal concerned the question of the appropriate procedure to adopt to challenge an arbitral award where the reference to arbitration was directed by the High Court pursuant to s.22 of the Arbitration Act (`the Act`) and not pursuant to a written arbitration agreement.

Facts

The facts of this case were straightforward. The respondents, Anderson Land Pte Ltd (`Anderson Land`) were the developers of a condominium project situated at 18 Anderson Road. The appellants, Lum Chang Building Contractors Pte Ltd (`Lum Chang`), were the main contractors for the project. One of the nominated sub-contractors of Lum Chang for the project was Tan Chiang Brother`s Marble (S) Pte Ltd (`Tan Chiang`).

Sometime in 1995, disputes arose between Lum Chang and Anderson Land concerning the late delivery of certain marble tiles for the project. Pursuant to an arbitration clause in the contract the parties agreed to refer the disputes to arbitration.

At about the same time, Tan Chiang commenced Suit 1414/95 in the High Court against Anderson Land for payment of marble tiles supplied to the project. Anderson Land applied to join Lum Chang as third parties to the action on the ground that there were overlapping issues. The application was granted.

On 4 August 1997, the action came up for hearing before Choo Han Teck JC. Counsel for Lum Chang and Anderson Land indicated to the learned judge that the dispute was one which was more suitable for arbitration. As Tan Chiang was, at that point, unwilling to have the matter resolved by arbitration, counsel for Lum Chang orally applied for the entire matter to be referred to arbitration pursuant to s 22 of the Arbitration Act (Cap 10) and for the court proceedings to be stayed. The learned judge

stood the matter down for Tan Chiang to reconsider their position.

Eventually, all three parties consented to the matter being referred to arbitration. As a result, Choo Han Teck JC ordered that the action be stayed and the entire matter be referred to arbitration. He also ordered that the remuneration of the arbitrator be fixed by consent with the arbitrator, with liberty to apply.

Mr Giam Chin Toon SC was duly appointed the arbitrator and proceedings were accordingly commenced. On 9 February 1999, pursuant to a request of the parties, the arbitrator delivered an interim award touching only on the issue of extension of time.

Lum Chang was dissatisfied with the interim award and on 2 March 1999, applied under s 28 of the Arbitration Act by way of OM 7/99 for leave to appeal against Mr Giam`s award. On 3 June 1999, however, Lum Chang filed SIC 3610/99 wherein they asked for a contradictory relief, namely, a declaration that leave to appeal was not required. The apparent reason for this change of position was that they had come to realise that s 28 of the Act did not apply as the arbitration in this case was ordered by the court under s 22 of the Arbitration Act and not pursuant to an arbitration agreement. Lum Chang also asked, if they were out of time, for an extension of time to apply to set aside the award.

While counsel for Anderson Land recognised that this reference to arbitration was not pursuant to an arbitration agreement and was made under s 22 pursuant to an oral application, he argued that by virtue of the special facts here, where the reference was with the consent of all the parties, it could nevertheless be treated as an arbitration within s 28. He contended that the order of court could constitute a written agreement of the parties to arbitrate since it was an order drawn up by Lum Chang`s solicitors with the consent of the other parties.

The decision below

The learned judge below held that s 28 did not apply to this interim award and the only avenue for an aggrieved party to challenge the award would be by an application under s 23(2) to have it set aside. He rejected the argument that the order of court could constitute the arbitration agreement such that the reference could be treated as pursuant to an arbitration agreement. By virtue of the definition in the Act, an arbitration agreement has to be in writing.

He also held that Lum Chang was out of time in making the application to set aside the award under s 23(2). He ruled that an aggrieved party must apply to set aside an award within a reasonable time and adopting the time frame set out in s 28 as a guide, the application should be made within 21 days from the date of the award. As the time to set aside the award had expired, by virtue of s 23(2) of the Act it stood as a judgment of the court. The only available avenue was to appeal to the Court of Appeal, and as the one-month period to file the notice of appeal under O 57 r 4(a) had expired, Lum Chang would have to apply directly to the Court of Appeal for an extension of time to file their notice of appeal.

The issues

Lum Chang were dissatisfied with the ruling of the learned judge and appealed to this court. As canvassed by the parties before us, the issues which they sought this court`s consideration were the following:

A Was the reference to arbitration one pursuant to an arbitration agreement?

B If it was not a reference to arbitration under an arbitration agreement, what was the time frame within which a dissatisfied party must apply to set aside the award?

C In the event that there was a time limit and Lum Chang had exceeded it, did the High Court have the jurisdiction to extend time and, if it did, should an extension of time be granted in the circumstances of this case?

Nature of the reference

On the first issue, Lum Chang raised a preliminary objection that as the learned judge had ruled that s 28 did not apply to the interim award and as there was no cross-appeal, Anderson Land were estopped from raising the issue again. On Anderson Land`s part, they argued that they were seeking to have the decision affirmed on a different ground and for this purpose they relied upon O 57 r 9A(5) of the Rules of Court, which reads as follows:

> *A respondent who, not having appealed from the decision of the Court below, desires to contend on the appeal that the decision of that Court should be varied in the event of an appeal being allowed in whole or in part, or* ***that the decision of that Court should be affirmed on grounds other than those relied on by that Court****, must state so in his Case, specifying the grounds of that contention. [Emphasis mine.]*

In the light of this rule, it was quite clear that Anderson Land were entitled to raise the point. Lum Chang`s objection was therefore without merit.

It is necessary for us at this juncture to set out the provisions of ss 21, 22, 23 and 28 of the Act:

21	(1)	Subject to the Rules of Court, the court or a judge thereof may refer any question arising in any cause or matter, other than a criminal proceeding by the Public Prosecutor, for inquiry or report to any special referee
	(2)	The report of a special referee may be adopted wholly or partially by the court or a judge thereof, and if so adopted may be enforced as a judgment or order to the same effect.
22		In any cause or matter, other than a criminal proceeding by the Public Prosecutor, -
(a)		if all the parties interested who are not under disability consent;

(b)		if the cause or matter requires any prolonged examination of documents or any scientific or local investigation which cannot, in the opinion of the court or a judge thereof, conveniently be conducted by the court through its ordinary officers; or
(c)		if the question in dispute consists wholly or in part of matters of account,

the court or a judge thereof may at any time order the whole cause or matter or any question or issue of fact arising therein to be tried before a special referee or arbitrator respectively agreed on by the parties or before an officer of the court.

23	(1)	In all cases of reference to a special referee or arbitrator under an order of the court or a judge thereof in any cause or matter, the special referee or arbitrator shall be deemed to be an officer of the court and shall have such authority and shall conduct the reference in such manner as is prescribed by Rules of Court, and subject thereto as the court or a judge thereof directs.	
	(2)	The report or award of any special referee or arbitrator on any such reference shall, unless set aside by the court or a judge thereof, be equivalent to the judgment of a judge.	
	(3)	The remuneration to be paid to any special referee or arbitrator to whom any matter is referred under order of the court or a judge thereof shall be determined by the court or a judge thereof.	
...			

28	(1)	Without prejudice to the right of appeal conferred by subsection (2), the court shall not have jurisdiction to set aside or remit an award on an arbitration agreement on the ground of errors of fact or law on the face of the award.	
	(2)	Subject to subsection (3), an appeal shall lie to the court on any question of law arising out of an award made on an arbitration agreement, and on the determination of such an appeal the court may by order -	
		(a)	confirm, vary or set aside the award; or
		(b)	remit the award to the arbitrator or umpire for reconsideration together with the court`s opinion on the question of law which was the subject of the appeal,
and where the award is remitted under paragraph (b) the arbitrator or umpire shall, unless the order otherwise directs, make his award within 3 months of the date of the order.			
	(3)	An appeal under this section may be brought by any of the parties to the reference -	
		(a)	with the consent of all the other parties to the reference; or
		(b)	subject to section 30, with the leave of the court.

Section 2 of the Act defines `arbitration agreement` to mean `a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not.`

The basis upon which Anderson Land sought to argue before us that the reference to arbitration was pursuant to an arbitration agreement was very much the same as that canvassed in the court below, namely, that all parties eventually agreed to the reference and the order of court dated 4 August 1997 constituted the written agreement.

With respect to the learned senior counsel, we did not think this argument was tenable. It was not in dispute that all three parties eventually consented to the reference to arbitration. But we were unable to see how the order of court of 4 August 1997 could constitute the written agreement. While it was true that all parties consented to the court directing a reference, that could not render the order any less an order. Indeed s 22(a) specifically provided for a case such as the present, where the reference was ***with the parties*** ` consent. The learned judge recorded in the court minute-book that the reference in this case was made under s 22. In truth the order merely evidenced the parties` oral agreement to refer to arbitration. Counsel for Anderson Land seemed to imply that all references under s 22 must be by compulsion of the court. This could not be true as it ran plainly against s 22(a).

We would further add that the fact that Lum Chang had erroneously by OM 7/99 applied for leave to appeal under s 28 cannot alter the true character of the reference. It was clear to us that under s 22 the court was empowered to refer either the entire cause for arbitration or just an issue or question. In this instance the court had referred the entire cause to arbitration. Under s 23(2) such an arbitral award, unless set aside, was equivalent to a judgment of a judge.

In our opinion, there could not be any doubt that this reference to arbitration was not pursuant to an arbitration agreement but directed by the court under s 22.

Was adoption of the award by the court necessary?

We now turn to consider the second issue. Lum Chang`s position was that the recourse which a dissatisfied party in a s 22 reference had was derived solely from s 23(2) of the Act. In this regard, they also made the point that there was a need for the court to adopt the award and, until adoption, an aggrieved party could apply to set it aside at any time.

We will first examine the question whether there is a need for the court to adopt the award before it can become effective. Counsel for Lum Chang took us through the history of the enactment of the relevant provisions, starting with the English Common Law Procedure Act 1854, where it was provided that the award `shall be enforceable by the same process as the finding of a jury`.

Next was the Supreme Court of Judicature Act 1873 (`1873 Act`), where it was provided in s 56 that the court could refer any question in the cause or matter for inquiry and report to any official or special referee and the report might be adopted in whole or in part and upon such adoption could be enforced as a judgment by the Court. It should be noted that the 1873 Act expressly referred to `adoption`. In s 57 of that Act, the court was also empowered, either with the consent of the parties or in certain specified circumstances, to order `any question or issue of fact or any question of account arising therein` to be tried either before an official referee or before a special referee to be agreed on between the parties.

The next enactment was the Arbitration Act 1889 (`1889 Act`), which was the first statute to consolidate the law on arbitration. The Singapore Arbitration Ordinance 1890 was enacted based on the 1889 Act. This Act was divided into three parts, as is the case in our present Arbitration Act. The provisions in that part relating to `references under order of court` are very similar to those provisions in our present Act. The only material difference is that whereas under our Act, an award shall `be equivalent to the judgment of a judge`, in the 1889 Act it was to `be equivalent to the verdict of a jury`.

Those provisions in the 1889 Act relating to `references under order of court` were repealed and replaced by ss 88 to 92 of the Supreme Court of Judicature Consolidation Act 1925 (`1925 Act`). In 1932, the Administration of Justice Act provided for appeals to the Court of Appeal from a decision of an official referee on a point of law and except as aforesaid no decision of an official referee shall be called in question. It did not mention about the decisions/awards of arbitrators.

In 1950, the English Arbitration Act (`1950 Act`) was enacted to consolidate the Arbitration Acts of 1889 to 1934. In the 1950 Act there was no provision for reference to arbitration pursuant to an order of court. While the 1953 Singapore Arbitration Ordinance was enacted based on the 1950 Act, it did not adopt the English approach entirely as it retained those provisions on `references under order of court`. This was obviously a deliberate decision.

In 1956, by the Administration of Justice Act, England repealed those provisions in the 1925 Act relating to references to arbitration by order of court. Thus, by 1956 there was no provision in England for references to arbitration by order of court.

In 1979 the English Arbitration Act of 1950 was amended to restrict the right to appeal from an arbitral award. Under that amendment, appeal to the High Court is only permissible on questions of law and even then, leave of court or the consent of all persons would be required. In 1980, Singapore adopted the 1979 English amendment and introduced what is found in our present s 28.

We did not think there is anything in the historical development which is really that helpful in determining whether an award of the arbitrator under such a reference requires adoption by the court before it becomes effective. What is clear is that the origin of ss 21-25 of our present Act is to be found in the 1889 Act. Whether adoption is required is a question of construction. In our view, the scheme of things under ss 21 and 22 of the Act is quite clear. In the case of a reference under s 21, the report of the special referee would require adoption by the court. As for a reference under s 22, no requirement for adoption by the court is specified. Section 23(2) provides that the award `shall, unless set aside, be equivalent to the judgment of a judge`. Though s 23(2) also refers to the report of a special referee, it must mean only the report of a referee under s 22, otherwise there would be a contradiction in terms between s 21(2) and s 23(2). It is pertinent to note that in **Darlington Wagon Co v Harding** [1891] 1 QB 245 Lord Esher MR said that s 15(1) of the Arbitration Act 1889 (the equivalent of s 23(1) in our present Act) was intended to prescribe the mode of carrying out references under the previous section (namely s 22 of our Act) and not references under s 13 (our s 21).

Counsel for the appellants cited three cases to contend that the award rendered under a s 22 reference must be adopted by the court before it can be effective. We did not think those cases are germane to the construction of ss 22-23 of our Act. First is **Dyke v Cannell** [1883] 11 QBD 180. There, the court referred, pursuant to s 57 of the 1873 Act, all questions of fact in the action to an official referee for trial. The findings of the referee were filed and the plaintiff gave notice of motion for judgment on the findings, whereupon the defendant gave notice of motion to set aside the findings. In his judgment, Cave J said (at p 183):

> *On the other hand the report of a referee has no effect so long as it remains a report. To produce any result it has to be adopted by the court. If the party seeking to impeach the report does not do so before judgment has been given upon it, he is too late, because after judgment the report has no further value, and it is the judgment, and not the report that is relied on by the successful party, but so long as the report of the referee is unconfirmed by a judgment of the court I think it may be impeached.*

There is an important distinguishing factor in ***Dyke v Cannell*** . The court there did not refer the entire cause or matter to the official referee. Only questions of fact were referred. By implication the findings would have to be reverted to the court which would give judgment in the light of those findings. Thus, the views of Cave J must be viewed in their context. As he rightly pointed out, the referee made a report and it remained a report. Indeed we did not think the court could refer the entire cause to the official referee under s 57 (referred to in [para] 21 above).

The second case is **Bedborough v The Army & Navy Hotel Co** [1884] 53 LJ Ch 658 which followed ***Dyke v Cannell*** . The main issue canvassed in Bedborough concerned the effect of some new rules of court introduced after ***Dyke v Cannell*** .

The third case is **Proudfoot v Hart** [1890] 25 QBD 42 where the substantive issue was the question of the extent of a tenant`s obligation to maintain the premises in `good tenantable repair`. There, by an order of 11 November 1889 the court directed that all questions in the action be tried before an official referee who `shall have all the powers of certifying and amending of a judge of the High Court, and shall direct judgment to be entered and otherwise deal with the whole action pursuant to Order XXXVI r 50.` The referee made his report on 16 December 1889 and directed judgment to be entered for the plaintiff. Three days later judgment was entered. On the day following, the defendant filed a notice of motion to set aside the findings and award of the referee. The plaintiff, relying upon ***Dyke v Cannell*** , took the preliminary objection that the defendant should have filed the motion before judgment had been entered. This objection was overruled on the ground that O XL r 6 gave the defendant the power to move in the Queen`s Bench Division after the judgment had been entered. We would observe that the reference to arbitration in ***Proudfoot*** must have been made pursuant to s 14 of the 1889 Act, which came into force on 26 August 1889. There the point of contention was not whether the report/award of the referee required adoption. What is important to note is that the referee submitted a report and directed that a judgment be entered and judgment was so entered in compliance with the direction of the referee.

Therefore, it was our opinion that an award rendered pursuant to a s 22 reference does not require adoption by the court before it can become effective. But this is not to say that the court could not, in directing a reference, order that the arbitrator submits his award to the court for adoption. If such a direction is given, then the act of adoption is essential before the award can become effective.

Period within which to file application

The next question is the time limit for filing an application to set aside the award. The learned judge below held that, in the absence of any express statutory provision and adopting the time limit prescribed in relation to an appeal under s 28 as a guide, a reasonable time to file such an application would be 21 days from the publication of the award.

Order 69 r 4 provides that an application to the court `to set aside an award under s 17(2) or

otherwise` must be made within 21 days after the award. It seemed to us that the scope of O 69 r 4 is wide enough to cover even an application to set aside an award given under a s 22 reference. It would appear that the attention of the learned judge below was not drawn to this provision. Be that as it may, he had by a different route arrived at the same conclusion as to the time limit.

Extension of time

We turn next to the issue whether the court should grant an extension of time to enable Lum Chang to file an application to set aside the award out of time.

Section 23(2) clearly recognises the right of a party to apply to court to have it set aside. There is no ambiguity in that. If Lum Chang had intended to set aside the award they should have done so within 21 days and not some several months later. Error of law or otherwise on the part of solicitors is not in itself a sufficient ground to grant an extension of time to file a notice of appeal: see **Asia Commercial Finance (M) Bhd v Pasadena Properties Development Sdn Bhd** [1991] 1 MLJ 111 at 116; **Abdul Majeed v Yeo Chng Tay** [1964] MLJ 75 ; **Gatti v Shoosmith** [1939] 3 All ER 916; **Re Coles and Ravenshear** [1907] 1 KB 1 per Farwell LJ at p 8; **Cheah Teong Tat v Ho Gee Seng & Ors** [1974] 1 MLJ 31 ; **Tan Chai Heng v Yeo Seng Choon** SLR 381 [1981] 1 MLJ 271 . Similarly, it should also not be a sufficient ground to extend time to file an application to set aside an award. For this reason we refused to grant an extension of time to enable Lum Chang to file an application out of time to set aside the award. The appeal was accordingly dismissed.

Avenue for challenge

In Lum Chang`s case, which was repeated in counsel`s oral submission, they also sought guidance from the court as to the correct procedure to challenge an award rendered in a s 22 reference.

As provided in s 23(2), the effect of such an award is that the award `shall, unless set aside, be equivalent to the judgment of a judge.` What is the meaning of this expression? If it means no more than that the award may be enforced like a judgment, we would have thought the legislature would have used the same but more explicit form of words which are found in s 20:

> *An award on an arbitration agreement may, by leave of the court or a judge thereof, be enforced in the same manner as a judgment or order to the same effect, and where leave is so given, judgment may be entered in terms of the award.*

The fact that the legislature deemed it fit to treat such an award as `equivalent to the judgment of a judge` must mean more than that the award may be enforced like a judgment, though enforcement is an essential attribute of a judgment. The dictionary meaning of `equivalent` is `equal to` or `having the same effect or value.` In our view, the expression `equivalent to the judgment of a judge` in the context means that the award, unless set aside, stands as a judgment of a High Court judge. Two further questions, therefore, arise. First, may a party appeal against such an award. Second, to which forum should an appeal lie.

At this juncture, it may be useful to refer to the case **Glasbrook v Owen** [1890] 7 TLR 62. There the question touched on Statute 53 and 54 Vict c 40 which provided that appeals `in cases tried by a jury` should go to the Court of Appeal. In that action, the plaintiff claimed a sum of money as money

received by the defendant for the plaintiff. The action was referred to the official referee, who found that Â£101 was due from the defendant to the plaintiff, but not as money received for him. However, on being asked to amend his claim, the plaintiff refused. Thus, the official referee reported that no money was due from the defendant to the plaintiff as money received. The plaintiff appealed against the report to the Divisional Court. The defendant opposed the appeal and contended that under the rules there was no appeal in such a case, and that if there was, it laid not to the Divisional Court but to the Court of Appeal, citing Statute 53 and 54 Vict c 44. In this connection the defendant also referred to the 1889 Arbitration Act which provided that the award or report of a referee would be equivalent to the verdict of a jury. In a rather brief report, Hawkins J said that the fact that an award was `equivalent to the verdict of a jury` did not mean there had been a trial by a jury. It meant that the report/award should be enforced as the verdict of a jury. Thus, it was correct that the appeal against the report of the official referee should go to the Divisional Court and not the Court of Appeal. The issue in ***Glasbrook*** was whether a report of an official referee, though equivalent to the verdict of a jury, came within the meaning of `cases tried by a jury`. An award of an official referee, though equivalent to the verdict of a jury, did not mean it was given after having been tried by a jury. There was, in fact, no trial by a jury. ***Glasbrook*** was thus concerned with the construction of a particular provision in Statute 53 & 54 Vict c 44.

In ***Glasbrook*** it was ruled that the Divisional Court (consisting of two judges) was the proper forum to hear the appeal. This was because O LIX r 3 of the then English rules of court provided that:

> *Where a compulsory reference to arbitration has been ordered, any party to such reference may appeal from the award or certificate of the arbitrator or referee upon any question of law; and on the application of any party the Court may set aside the award on any ground on which the Court might set aside the verdict of a jury. Such appeal shall be to a Divisional Court who shall have power to set aside the award or certificate, or to remit all or any part of the matter in dispute to the arbitrator or referee, or to make any order with respect to the award or certificate or all or any of the matters in dispute that may be just.*

We would also add that at the time, there was another provision in the English rules of court which provided for appeal should a referee decide that judgment on the award be entered. This was O XL r 6, which read:

> *Where at a trial by a referee he has directed that any judgment be entered, any party may move to set aside such judgment, and to enter any other judgment, on the ground that upon the finding as entered the judgment so directed is wrong: Provided that in the Queen`s Bench Division such motion shall be made to a divisional court.*

It seemed to us that what this rule provided for was really an appeal, as the divisional court had the power not only to set aside the judgment but also to enter any other judgment if it felt the judgment so directed to be entered was wrong.

Clearly, whether there is a right of appeal against such an award must be construed from the Act itself. The rules of court can only govern the procedure. During the period when England still retained provisions similar to our ss 22-23, their rules recognised and provided an avenue for appeal while our rules were silent on it. They are still silent now. Surely, omission in our rules should not be allowed to deprive a party of the right to appeal. It seems to us inconceivable that, apart from the more limited avenue of an application to set aside, there should be no recourse for appeal against a s 22 award. If

the legislature had intended that setting aside should be the only recourse available, we would have expected it to state so explicitly and not indirectly as it had done in s 23(2), `unless set aside`. Perhaps the matter can be looked at from another angle. Had the court decided the cause itself and not exercised its powers under s 22 to have the cause referred to arbitration, the parties would have had the right to appeal. Why should such an act of the Court deprive the parties of that right? Even in a situation where an award is made pursuant to an arbitration agreement, and s 28 applies, the parties have a restricted right of appeal.

We turn next to the question as to the forum to which the appeal should be lodged. Conceptually, we find it difficult to imagine that an appeal from such an award should be to the High Court, as the award is `equivalent to the judgment of a judge`. It would amount to appealing against a decision of a judge to another judge. In the circumstances, it seems to us more logical for the appeal to proceed directly to the Court of Appeal. When a court, pursuant to s 22, decides to refer an entire cause to arbitration, the court has, in effect, relinquished its functions to the arbitrator, whom the court must have thought is better placed to decide the cause. The arbitrator has really become an extension of the court in making the award. It would be quite unnecessary for the matter to come back to the court again unless the court has so ordered or unless a party applies to set aside the award.

It is significant to note that the legislature contemplated that the Court of Appeal, even at that stage, could still refer what is before the Court of Appeal for the assistance of an arbitrator. This is provided for in s 25 which reads:

> *The Court of Appeal shall have all the powers conferred by this Act on the court or a judge thereof under the provisions relating to references under order of the court.*

Accordingly, it is our opinion that an appeal against an award pursuant to a s 22 reference, which has not been set aside, is to the Court of Appeal. An award, unless set aside, stands as the judgment of a judge. Sections 22-23 of the Act should be construed purposively. The time frame for filing such an appeal would be the normal period of one month.

Outcome:

Appeal dismissed.

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