IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1993] SGHC 129

OM 42/1992

Between

Ahong Construction (S) Pte Ltd

… *Applicant*

And

United Boulevard Pte Ltd

… *Respondent*

GROUNDS OF DECISION

Arbitration — Award — Recourse against award; Arbitration — Award — Recourse against award

Version No 1: 20 Nov 2026 (01:16 hrs)

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Ahong Construction (S) Pte Ltd v United Boulevard Pte Ltd

[1993] SGHC 129

OM 42/1992
G P Selvam J
16 June 1993

1 : This judgment is in respect of an arbitration relating to a dispute arising under a building contract between the respondents (`the developers`) and the applicants (`the contractors`) and dated 15 February 1982. The arbitrator made an award on 7 May 1992 (`the award`).

2 It is not in dispute that the effect of the award was that a sum of S$1,920,420.67 which the developers had deducted from six interim payment certificates issued by the architects had to be refunded by the owners to the contractors. The arbitrator further awarded the sum of $1,260,695 as extra preliminaries recoverable by the contractors. Other sums were also allowed in favour of the contractors. As against these sums, the owners were allowed a sum of $445,882. After set[dash]off the nett amount which the contractors say was due to them under the award is $3,189,459.61.

3 The contractors had claimed interest. The arbitrator dealt with the interest claim in these words:

> *Claim for interest - I have also decided that the claims by both the claimants and the respondents for sums due from one party*

> *to the other consequent upon my decisions in this arbitration are to be rejected and disallowed.*

4 Being dissatisfied with the arbitrator`s rejection of the claim for interest, the contractors by OM 42/92 sought the following:

> (a) leave to appeal against the rejection of interest on the ground that a question of law arose out of the award;
>
> (b) alternatively, order for the award to be remitted to the arbitrator pursuant to s 16(1) of the Arbitration Act (`the Act`) with a direction that interest should be awarded on the sums due to the contractors under the award at a rate or rates and for a period or periods that the arbitrator may fix.

5 It was contended for the contractors that the rejection and the disallowance of their claim for interest was a failure by the arbitrator to exercise his discretion judicially and accordingly he had erred in law. It amounted to injustice to the contractors because the arbitrator disregarded the correct principle and practice in regard to the awarding of interest.

6 ***Appeal on a question of law***

7 Under the present law the court has no jurisdiction to set aside or remit an award on the ground of errors of fact or law on the face of the award.

8 An appeal to the High Court from an arbitration award is possible provided a question of law arises out of the award. 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 matter of substance the determination of which will decide the rights between the parties. The point of Iaw must substantially affect the rights of one or more of the parties to the arbitration. If the point of law is settled and not something novel and it is contended that the

Version No 1: 20 Nov 2026 (01:16 hrs)

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. An application for leave to appeal on the ground that the appeal invokes a question of law must therefore clearly present the question of law on which the court`s opinion is sought and should also show that it concerns a term of the contract or an event which is not a one[dash]off term or event: see **The Nema; Pioneer Shipping v BTP Tioxide** [1982] AC 724.

9 An error in law or failure to act judicially by itself does not confer a right of appeal. The contractors accordingly failed to show that a question of law arose out of the rejection of the claim for interest. I therefore refused to give leave to appeal.

10 In this case no proposition of law on which there was disagreement was presented to the court. Indeed no such point of law could arise out of the award as neither counsel made submissions on the claim for interest. In any event the law relating to interest in a commercial matter is stated in ***Russell on Arbitration*** (20th Ed) at p 324:

> *A distinction must be drawn between the power of an arbitrator to award interest up to the date when he makes his award, and his power to award interest on his award.*
>
> *As concerns his power to award interest up to the date of his award it was always considered that he had power to do so, by virtue of his implied authority to follow the ordinary rules of law, and he not only has the power but he should normally exercise it in the absence of a cogent objection.*

11 Further the following passages in **Panchaud Freres SA v R Pagnan & Fratelli** [1974] 1 Lloyd`s Rep 394 give a clear statement of the law. Kerr J said at pp 409-410:

> *On behalf of Pagnan Mr Goff submitted that whilst the award of interest is a matter in the discretion of the tribunal, it is a*

Version No 1: 20 Nov 2026 (01:16 hrs)

discretion which must be exercised judicially and that in all the circumstances the reason put forward in the special case for refusing to award any interest was not a judicial exercise of this discretion. I agree. Mr Goff cited two cases containing passages which reflect the practice of the courts in relation to interest, at any rate in commercial cases. In ***Kemp (AB) Ltd v Tolland*** *[1956] 2 Lloyd`s Rep 681, at p 691, the winning party asked for interest at the end of the judgment although there had been no claim for interest in the writ. This was resisted on the ground that the case had taken some years to come on without the losing party being to blame for the delay. Mr Justice Devlin (as he then was) said on this point:*

`I do not think that I should award interest on the basis of anybody`s fault. I should award it on the simple commercial basis that if the money had been paid at the appropriate commercial time, the other side would have had the use of it.`

Similarly in ***The Myron*** *[1970] 1 QB 527, at p 536; [1969] 1 Lloyd`s Rep 411, at p 417, Mr Justice Donaldson said:*

`All matters of costs in the arbitration and interest upon any moneys due are for the arbitrators or umpire. However, it may assist if I express my views upon the principles which are applicable. It is of paramount importance to the speedy settlement of disputes that a respondent who is found to be under a liability to a claimant should gain no advantage and that the claimant should suffer no corresponding detriment as the result of delay in reaching a decision. Accordingly, awards should in general include an order that the respondent pay interest on the sum due from the date when the money should have been paid ...`

In my view it is clear that the appeal tribunal has, on the face of the award, erred in the judicial exercise of its discretion in relation to interest. First, it has evidently overlooked, or at any rate failed to apply, the well[dash]recognised rule of practice illustrated by the foregoing passages, viz that prima face the losing party should be ordered to pay interest at a reasonable rate running from the date when the amount or amounts due should reasonably have been paid. Further, if and in so far as delay on the part of the winning party might in an exceptional case require a modification of this exercise of the discretion, then the tribunal must for this purpose at least have before it some material indicating that the winning party has been to blame for the delay or has gained something by the delay, so that it would be right to deprive it, either wholly or more usually partly, of the interest which the losing party should prima facie be ordered to pay. But the arbitration tribunal had no such material before it in the present case. An unexplained delay cannot be any basis for a refusal to award interest. The onus must rest on the losing

Version No 1: 20 Nov 2026 (01:16 hrs)

> *party to show some sufficient reason why the usual practice should not apply in a particular case. An unexplained delay may be the joint responsibility of both parties or one for which the losing party must take the main blame. It follows that the tribunal`s discretion relating to interest was exercised unjudicially in the present case even if its discretion could properly be affected by the question of delay. As to this I would however repeat, in line with what was said by Mr Justice Devlin and Mr Justice Donaldson, that at any rate in commercial cases the prima facie rule of practice should generally be followed and that mere delay should generally not be regarded as a ground for modifying this rule. I therefore remit the special case to the appeal tribunal with a direction to reconsider the question of interest on the sums awarded to Pagnan in the light of this judgment and of any further submissions which the parties may wish to make on this point.*

12 Lord Denning MR said at p 411:

> *The buyers asked the judge for the award to be remitted so that interest should be awarded. See p 409. The judge did so. I think he was quite right. In a commercial transaction, if the plaintiff has been out of his money for a period, the usual order is that the defendant should pay interest for the time for which the sum has been outstanding. No exception should be made except for good reason. The delay in this case was not such as to deprive the buyers of interest. An affidavit has been put in explaining the delay. The buyers should be awarded interest.*
>
> *In parting with the case, I would like to express my appreciation for the way in which Mr Justice Kerr dealt with it. I find myself entirely in agreement with all he said.*

13 This, of course, does not mean that no question of law would arise if counsel had made submissions on it.

14 ***Jurisdiction to remit***

15 I shall now turn to the alternative application to remit the award for reconsideration.

16 Section 16(1) of the Arbitration Act (Cap 10) confers on the court jurisdiction to remit any matter referred to the arbitrator for reconsideration. The

Version No 1: 20 Nov 2026 (01:16 hrs)

court will exercise this power where there has been misconduct on the part of the arbitrator or where there has been a procedural mishap leading to injustice: See **Interbulk Ltd v Aiden Shipping Co Ltd** [1984] 2 Lloyd`s Rep 66 and **Sokratis Rokopoulos v Esperia Spa** [1978] 1 Lloyd`s Rep 456.

17 It was common ground that the arbitrator rejected the claim for interest without hearing counsel on the matter. The failure to afford an opportunity to submit and rejecting the claim without hearing the parties was a clear technical misconduct and a procedural mishap leading to injustice. Accordingly I remitted the claim concerning interest to the arbitrator to reconsider the claim after affording opportunity to both sides to make submissions on interest.

18 **Outcome:**

19 Order accordingly.

G P Selvam J

C S Wu and John Chung (Donaldson & Burkinshaw) for the applicants
Wong Meng Meng and Lan Khoon (Wong Meng Meng & Partners) for the respondents

Version No 1: 20 Nov 2026 (01:16 hrs)