

BRITISH VIRGIN ISLANDS COURT OF APPEAL

Sonera Holdings B.V. -v- Cukurova Holdings A.S. BVIHCMAP 2015/0005

INTERLOCUTORY APPEAL - ARBITRATION - ANTI-ARBITRATION INJUNCTION - FOREIGN ARBITRAL PROCEEDINGS - ARBITRATION ACT, 2013 - INTERPRETATION OF S. 3(2)(B) OF ARBITRATION ACT, 2013 - WHETHER COURT HAS JURISDICTION UNDER ARBITRATION ACT, 2013 TO GRANT ANTI-ARBITRATION INJUNCTION SO AS TO RESTRAIN PARTY FROM PURSUING FOREIGN ARBITRAL PROCEEDINGS

This was an Appeal against the refusal to grant an anti-arbitration injunction against the Respondent, Cukurova Holdings A.S. ("CH"). The Applicant, Sonera Holdings B.V. ("Sonera"), brought the Application in the context of new arbitration claims brought by CH, which Sonera contended amounted to a collateral attack on a previously registered arbitration award. In refusing the injunction, the Learned Judge in the Court below found that Section 3(2)(b) of the *Arbitration Act, 2013* (the "Act"), which stated that "the Court shall not interfere in the arbitration of a dispute, save as expressly provided in this Act" meant that the Court could no longer interfere in ongoing arbitral proceedings by the grant of an injunction.

In allowing the Appeal, the Court of Appeal held that the Learned Judge erred in holding that Section 3(2)(b) of the Act ousted the Court's jurisdiction to grant injunctive relief. The Court found that absent clear words to the contrary in the Act, it retained its general power and jurisdiction pursuant to Section 24 of the *Supreme Court Act* to grant such relief and that that power was wholly independent of the provisions of the Act. The Court further held Section 3(2) of the Act merely reflected a policy of non-interference in arbitration by the Court. The Court further held that a distinction should be drawn between this policy of non-interference and restraining a party from embarking on a court or arbitration process designed to be vexatious, oppressive or an abuse of the court's process.

The Court stated that the power of the Court expressed in Section 24 of the *Supreme Court Act* to grant injunctions in circumstances as the Court deems just and convenient, was expressed in the broadest terms and must remain flexible to suit the interest of justice of a case. On those facts the Court of Appeal held that the Act complained of by Sonera would amount to a nullification of the Court's jurisdiction as recognised by the New York Convention, and thus it was appropriate that CH be restrained.

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