

**IN THE HIGH COURT OF SINDH AT KARACHI**

Present:

Mr. Justice Jawad Akbar Sarwana

**IInd Appeal No. 317 of 2024**

Appellant: Dr. Munir Ahmed Sharer,  
Through Mr. Abdul Ghaffar Kalwar,  
Advocate

v.

Respondent: Muhammad Asad, in person  
Nemo

Date of hearing: 23.01.2025

Date of Judgment: 21.02.2025

**J U D G M E N T**

**JAWAD AKBAR SARWANA, J:** The Appellant, Dr. Munir Ahmed Sharer, (“the Award-Debtor”), has filed this IInd Appeal in the High Court on primarily three (3) grounds, namely:

- A. Condemned Unheard: He argued that he (Dr. Sharer, the Award-Debtor), was not heard by the trial Court, which made an Arbitral Award dated 03.09.2022,<sup>1</sup> a Rule of the Court in Suit No.476/2020 by an Order dated 03.08.2023.<sup>2</sup> The Suit No.476/2020,<sup>3</sup> was filed by the Respondent, Muhammad Asad, the Award-Creditor against the Award-Debtor for Specific Performance of Partnership Agreement dated 26.07.2017 and Permanent Injunction but was stayed by the trial court when Dr. Sharer filed an application under Section 34 of the Arbitration Act, 1940 which was allowed by the Court on 27.04.2021, and the dispute was referred to arbitration culminating in the Arbitral Award;

---

<sup>1</sup> Page 45 of the IInd Appeal file

<sup>2</sup> Page 37 of the IInd Appeal file

<sup>3</sup> Page 137 of the IInd Appeal file.

B. Original Partnership Agreement not produced in evidence: Secondly, Dr. Sharer contended that the original of the Partnership Agreement was never produced in evidence during the trial before the learned Sole Arbitrator. Hence, the agreement could not form the basis of the Arbitral Award which was ultimately passed against him (Dr. Sharer); and,

C. Court Fee in Suit No.476/2020 was Not paid: The Respondent, Muhammad Asad, the Award-Creditor, and the Plaintiff of Suit No.476/2020, did not deposit the court fee when he filed the suit on 19.08.2020. At the time, he filed an Application u/s 149 CPC requesting the trial court to grant him one (1) month's time to arrange and deposit the Court fee,<sup>4</sup> which application was allowed on the date of filing of the said Suit, but the Award-Creditor never deposited the Court fee. Hence, the Appellant Counsel argued that the entire arbitral proceedings were coram non-judice and liable to be set aside.

A. Condemned Unheard

2. Counsel for the Appellant, Dr. Sharer pleaded that he (Dr. Munir Ahmed Sharer, the Award Debtor), was unwell when the trial Court issued notice(s) concerning the filing of the Arbitral Award. Thus, he could not file objections to the Award because of his illness. He claimed he could not even inform the trial Court of the reason for not filing his objection, since filing of the Award was not in his knowledge. In response, the Respondent, Award-Creditor present in person, referred to pages 41 to 45 of the file of the IInd appeal file wherein a notice of the Court was issued to be served by way of pasting, which is attached with the Bailiff's Report and corroborates Respondent/Award-Creditor submission that service

was validly effected upon Dr. Sharer. Additionally, he also took this Court to the Court notices published in the Daily Express Newspaper, which is available on page 47 of the IInd appeal file. Dr Sharer could have engaged a pleader, sought condonation of delay, filed time-barred objections, etc. But he chose to do nothing.

3. Given the above, we cannot accept Dr. Sharer's position that he did not know of the filing of the Arbitral Award. The record of the trial Court filed with the IInd Appeal shows that service of the filing of the Award was duly effected, yet he chose not to file objections to the Award. Instead, he decided to remain silent and must now face the consequences.

B. Original Partnership Agreement not produced in evidence

4. Dr. Sharer claims that the original Partnership Agreement was not produced in evidence during the trial before the Sole Arbitrator. Yet Dr. Sharer, the Award-Debtor, relied on the arbitration clause of the very Partnership Agreement to stay the Respondent, Mohammad Asad's Suit No.476/2020. This was not all. Before the institution of Suit No.476/2020, Dr. Sharer himself, on 20.07.2020, had filed an application under Section 20 of the Arbitration Act, 1940, numbered Suit No.391/2020, relying on a clause in the same Partnership Agreement to refer the dispute to arbitration. This application/suit was also allowed vide Order dated 27.04.2021.

5. Given the above, Dr. Sharer cannot blow hot and cold, i.e. approbate and reprobate. Once he accepted the dispute resolution clause embedded in the arbitration clause, he could no longer pick and choose its provisions. He had accepted the execution of the Partnership Agreement. Its existence was common ground between the contesting parties. Muhammad Asad was seeking specific performance of the Partnership Agreement in Suit

No.476/2020. As a shield in Suit No.476/2020 and as a sword in Suit No.391/2020, Dr. Sharer relied on the arbitration agreement within the Partnership Agreement to refer the dispute to the Sole Arbitrator. Neither party could challenge its existence now, as only the interpretation of the terms and conditions of the admitted document was subject to the arbiter/decision of the Sole Arbitrator. Indeed, when this Court queried both Counsel whether this Agreement was relied upon by both parties in Suit No. 391/2020 and 476/2020, both Counsel responded in the “affirmative”. The non-production of the Original Partnership Agreement, as primary evidence, was immaterial and could not shake the evidence and, most certainly, not demolish the Arbitral Award in the facts and circumstances of the case.

C. Court Fee in Suit No.476/2020 was Not paid

6. Mohammad Asad, the Award-Creditor, conceded that the court fee in Suit No.476/2020 had not been paid on checking the record. He defended his position on the ground that in fact he had paid the court fee to his lawyer and that he was under the impression that the same had been or ought to have been paid by him to the Court.

7. Counsel for the Appellant, Dr. Sharer, the Award-Debtor, contended that Respondent Muhammad Asad, the Award-Creditor, had filed an application under Section 149 CPC requesting time to file the court fee in Suit No.476/2020, and the Court granted such request. Yet the court fee was never deposited. Counsel argued that as Muhammad Asad never paid the court fee in his Suit No.476/2020, the plaint was liable to be rejected under Order 7 Rule 11(c) CPC, and the matter could not have been referred to arbitration. When the Court queried the Counsel whether there was any document available before the Arbitrator wherein he had taken the objection concerning non-payment of court fee or any application filed either before or after the Civil Judge in Suit No.476/2020 referred the matter to arbitration, objecting to non-

payment of court fee and the trial court continuing with the hearing of the matter, including referring the dispute to arbitration, he responded in the “negative”. Counsel confirmed that Dr Sharer filed no such application for rejection of the plaint, nor did the civil Court follow up on the matter concerning non-payment of the Court fee. The issue of non-payment of Court fee was agitated neither in the Memo of Appeal nor during arguments of the first appeal filed by Dr Sharer. The argument is raised for the first time in this IInd appeal.

8. It is admitted that Muhammad Asad, the Award-Creditor, has not paid the Court fee in Suit No.476/2020, and the suit has also been decreed. On 19.08.2020 (in the middle of the Coronavirus (COVID-19) pandemic), the Civil Court accepted Muhammad Asad’s Application under Section 149 CPC, and gave him one (1) month to submit the Court fee, which, in the facts and circumstances of the case, was the maximum amount of Court fee of Rs.15,000. However, for reasons best known to him, neither he submitted the Court Fee nor has he done so, so far, nor during the hearing before this bench has he undertaken to comply with the Order dated 19.08.2020. Regrettably, the Civil Court did not take notice of this lacuna on the part of the Award-Creditor. The oversight continued from the date of institution of the suit until the matter was belatedly raised by Dr Sharer, the Award Debtor, as a defence, at the appellate stage before this bench in the IInd appeal. In all fairness, the Civil Court ought to have taken up the matter at the end of expiry of the period of one (1) month and after giving an opportunity of hearing to Mohammad Asad to satisfy itself as to the reasons for non-compliance, i.e. say positive mala fide, collusion or bad faith to avoid the payment of Court fee due from him or any other reason, etc. passed an appropriate order for non-compliance. The trial Court carried out no such exercise, and a Judgment and Decree have accrued in favor of the Plaintiff/Decree Holder. The situation could have been avoided, yet the matter has not crossed the point of no return. At this stage, given the fact and

circumstances of the case, and the matter reached this far, I am not inclined to reduce the entire proceedings to a cipher, at this belated stage, when the defect in the present case, is curable against the Decree Holder. Mohammad Asad, the Decree Holder and Award Creditor, must pay the Court fee of Rs.15,000/-.

9. Given the above, I do not find any reason to interfere in the impugned Judgment and Decree dated 13.07.2024 passed by the IVth Additional District Judge, Karachi, Malir EXCEPT that the Court of IVth Senior Civil Judge, Malir, Karachi, in Civil Execution No.17/2023 in Civil Suit No.476/2020, is hereby directed/ordered to recover from Muhammad Asad s/o Muhammad Irshad, the Plaintiff/Decree-Holder in the said suit, the so far unpaid, Court Fee in the sum of Rs.15,000/-, which is immediately and promptly payable by him, after giving him a last and final chance, i.e. a final one (1) month's notice, prior to the Executing Court taking any further steps to comply with the Judgment and Decree dated 03.08.2023 in terms of the Arbitral Award dated 03.09.2022. For removal of doubt, execution proceedings against Dr. Munir Ahmed Sharer s/o Muhammad Yaqoob, the Defendant/Judgment Debtor, shall immediately be suspended and shall remain suspended until Muhammad Asad has deposited the Court fee of Rs.15,000/- and the Executing Court will recommence the executing proceeding subject to such deposit of Court fee only. Suppose the decree has been satisfied in favour of Muhammad Asad (Plaintiff / Decree Holder), and there is nothing left for the Executing Court to do in enforcing the Decree on behalf of the Plaintiff/Decree Holder. In that case, the Executing Court, after giving Muhammad Asad a last and final chance, i.e. a final one (1) month's notice, shall commence such action against Muhammad Asad as provided under the law for recovery of the Court Fee of Rs.15,000/- liable to be deposited as Court Fee by the Plaintiff/Decree Holder in Civil Suit No.476/2020.

10. There is also another aspect. The Arbitration Award may have been filed in Suit No.496/2020 with the deficit court fee; however, the Appellant, Dr Sharer had also moved an application for referring the matter to arbitration (Suit No.391/2020). The commencement of arbitration was the outcome of multiple actions initiated by Dr Sharer which led to the trial court passing Order dated 27.04.2021 in Suit Nos. 391/2020 and 496/2020. Even if Suit No.496/2020 was deficient in court fee, the dispute stood referred to arbitration pursuant to the Order of the trial Court dated 27.04.2021 in Suit No.391/2020, also referring the matter to arbitration. It just happened that as the lis that was still pending when the Arbitral Award was announced happened to be Suit No.496/2020 which had had the proceedings stayed for the matter to be referred to arbitration. Suit No.391/2020 which was a Section 20 application for referral to arbitration came to an end when the application/suit stood granted vide Order dated 27.04.2021. Therefore, the Arbitral Award was not filed in Dr Sharer's Suit No.391/2020, but in Mohammad Asad's Suit No.496/2020 wherein the court fee was/is deficient. Therefore, for this reason too, the Arbitral Award stands for enforcement and the impugned Order passed by the Appellate Court dated 13.07.2024 mandates no interference.

11. Office is directed to forward a certified copy of this Judgment to the Court of IVth Senior Civil Judge, Malir, Karachi, in Civil Execution No.17/2023 in Civil Suit No.476/2020.

12. The appeal is disposed of in the above terms.

JUDGE