IN THE HIGH COURT OF SINDH AT KARACHI

High Court Appeal No.434 of 2003

(*Trading Corporation of Pakistan (Pvt) Ltd v. Agri Impex Trading Company Ltd*)

Before:

Muhammad Faisal Kamal Alam J &
Sana Akram Minhas J

Appellant:	Trading Corporation of Pakistan (Pvt) Ltd Through, Mr. Anas Habib, Advocate
Respondents:	Agri Impex Trading Company Ltd Through, Mr. Ghulam Murtaza, Advocate
Date(s) of Hearing:	**12-8-2025, 4-9-2025 & 22-9-2025**
Date of Decision:	**23-12-2025**

J U D G M E N T

1. **Sana Akram Minhas, J**: This High Court Appeal **("HCA")** assails the judgment dated 20.10.2003 **("Impugned Judgment")** of a learned Single Judge in Suit No.215/1999 (*M/s Agrimpex Trading Company Limited v. Trading Corporation of Pakistan (Pvt) Limited*), whereby the Appellant's **("TCP")** Objections were dismissed and the arbitral Award dated 24.12.1998 **("Impugned Award")** in favour of the Respondent was upheld and made a Rule of Court/Decree. By virtue of the Impugned Award, the Respondent was granted an aggregate sum of USD 1,175,047.76 – comprising USD 1,035,072.12 (as the differential between the market and contracted prices for the unshipped balance rice[1]) and USD 139,975.64 (as liquidated damages[2]).

Factual Context

2. The *Rice Export Corporation of Pakistan* – which, with effect from 19.1.2001, was merged/amalgamated into TCP – had entered into a Contract dated 11.8.1994 **("Contract")** with the Respondent for the supply of 150,000 metric

[1] The Arbitrators awarded damages for price differential under Amended Prayer Clause (i)

[2] The Arbitrators awarded liquidated damages under Prayer Clause (ii) (a) & (b)

tons of Pakistan long grain rice[3], at the rate of USD 182.50 per metric ton freight on board (FOB), with shipment to be completed by 23.1.1995. The Respondent furnished a security deposit equivalent to 2% of the contract value.

3. It is an admitted fact that TCP supplied only 114,572.95 metric tons and failed to deliver the remaining 35,427.05 metric tons. After an exchange of correspondence, the Respondent invoked the arbitration clause and filed a Statement of Claim dated 6.5.1996. The TCP appointed (late) Mr. Abu Shamim Ariff, Vice-Chairman, Export Promotion Bureau, who at the time of Impugned Award was Federal Secretary, Ministry of Industries & Production, Government of Pakistan, while the Respondent appointed (late) Mr. Abdul Monem Khan, Advocate, as their respective Arbitrators. On 19.5.1996, the two Arbitrators jointly appointed Mr. Justice (Retd.) Imam Ali Kazi, as Umpire. During the pendency of the proceedings before the Arbitrators, the Umpire passed away. Thereafter, by this Court's order dated 25.9.1997, a new Umpire ([late] Mr. Justice (Retd.) Abdul Rahim Kazi) was appointed. However, reference to the Umpire did not arise, as the Arbitrators rendered a unanimous Impugned Award in favour of the Respondent.

4. The Arbitrators unanimously allowed the Respondent's claim in the following terms:

> (i) *Rice Export Corporation of Pakistan (Pvt) Limited, the Respondent (RECP) to provide unshipped balance i.e. 35,427.05 m. tons of rice to M/s. Agrimpex Trading Company Limited, Budapest, Hungary, through its agents M/s. Hashoo International (Pvt) Limited, the Claimants, a contracted specification or the comparable rice of other specifications subject to normal premium and discount acceptable to the Claimant/Buyer.*
>
> *OR*
>
> *Rice Export Corporation of Pakistan (Pvt) Limited to pay an amount of US$ 10,35,072.12 to M/s Agrimpex Trading, Company Limited, Budapest; Hungary, through its agents M/s Hashoo International (Pvt) Limited, the Claimants, within 90 days from the issue of this Award. After expiry of that period the Respondent will be liable to pay to the Claimant the ruling interest rate on the amount of the Award, in addition to the Award for the time period the subject payment is delayed by the Respondent (RECP).*
>
> (ii) *Rice Export Corporation of Pakistan (Pvt) Limited to pay an amount of US 139,975.64 (US Dollars one hundred thirty-nine thousand nine hundred seventy-five and cents sixty-four only) to M/s Agrimpex Trading Company Limited, Budapest, Hungary, through its agents M/s Hashoo International (Pvt) Limited, the Claimants, as damages for delay in shipment of 6407.7000 M/Tons of rice shipped on m.v. IVAN KOROTEEV for 11 days and delay in shipment of 12,000 M/Tons shipped on m.v. MANLEY EXETER for 90 days within 90 days of the*

[3] Precisely, the rice was Irri-6 Sindh White Rice (15/20% broken), sourced from the 1992-93 and/or 1993-94 crops

issue of this Award. After expiry of that period the Respondent will be liable to pay to the Claimants the interest at the prevailing rate on this amount for the time period the subject payment is made.

Contentions Of Parties

5. The nub of TCP's argument was three-fold: (i) there was no contractual provision for liquidated damages, rendering any such award unsustainable; (ii) there was no evidence of a replacement contract or actual loss arising from the shortfall in delivery, precluding an award of damages; and (iii) although the prayer clause was amended after the close of evidence, no opportunity was admittedly given to lead additional evidence in support of the amended claim for damages, a fact explicitly acknowledged within the Impugned Award.

6. Conversely, learned Counsel for the Respondent submitted that the production of evidence to establish damages was not required, since TCP in its Written Statement, in its Affidavit-in-Evidence and during cross-examination had conceded that there was a shortfall in rice delivery, which by necessary implication was sufficient to establish that the Respondent suffered a loss.

Original Prayer Clause In Unamended Statement Of Claim

7. The Statement of Claim dated 6.5.1996 contained the following Prayer Clause:

P R A Y E R

WHEREFORE it is prayed that the learned Arbitrators may be pleased to award directing the Respondent (RECP):

i. *to supply to the Claimant balance quantity of 35,427.05 M/Tons Pakistan Long Grain Irri-6 Sindh White Rice 15-20% broken under Agreement No..RECP/EXP/5(32)/94 dated 11.8.1994 forthwith;*

ii. *to pay to the Claimant liquidated damages to the tune of US$ 2,135,640,42 as under:-*

   a. *6407.7000 tons shipped on m.v. IVAN KOROTEEV for which RECP completed shipment on 3.2.1995 (delayed period 11 days) at the rate of 2% liquidated damages for each 30 days calculated to:* *US$ 8,575.64*

   b. *12,000 tons shipped on m.v. MANLEY EXETER for which RECP completed shipment on 23.4.1995 (delayed period 90 days) at the rate of 2% liquidated damages for each 30 days calculated to:* *US$ 131,400.00*

   c. *35,427.05 tons still remain unshipped. Liquidated damages calculated till 30th April, 1996 (delayed period 463 days) at the rate of 2% Liquidated*

> *damages for each 30 days calculated to:* *US$ 1,995,664.78*
>
> ***US$ 2,135,640.42***
>
> iii. *to pay to the Claimant further damages at the rate of 2% for each 30 days delay until the balance quantity of Rice is shipped/loaded;*
>
> iv. *to pay to the Claimant further damages, if any, sustained by them on account of non-fulfilment of their short commitments with their clients/customers;*
>
> v. *any further relief or reliefs which the learned Arbitrators may deem fit and proper in the circumstances of the case*.

8. As shown above, the Respondent initially through the original (unamended) Prayer Clause (i) of the Statement of Claim sought only specific performance (of shipment of the balance short-supplied rice), and did not include any claim for damages.

Belated Prayer Clause Amendment Allowed At Final Arguments – No Additional Evidence Recorded To Expedite Proceedings

9. The record reveals – which fact is reaffirmed in paragraphs 16 and 18 of the Impugned Award – that after the conclusion of evidence of both parties and during the course of final arguments before the Arbitrators, the Respondent filed an application seeking amendment of the Prayer Clause of the Statement of Claim and recording of additional evidence, specifically requesting the substitution of the original Prayer Clause (i) with the following new clause (i):

> (i) *to supply to the Claimant balance quantity of 35,427.05 M/Tons Pakistan Long Grain Irri-6 Sindh White Rice 15/20% broken under Agreement No. RECP/EXP/5(32)/94 dated 11-8-1994 forthwith or to pay to the Claimant U.S.$ 1,682,784.87 as and by way of compensation for business loss being difference in the contract price (US$ 182.50) per metric ton and market price (U.S.$ 230.00) per metric ton at the time of breach of contract in respect of balance quantity of 35,427.05 metric tons of rice*.

10. As is discernible, the Respondent in addition to the original prayer for specific performance, had now also claimed damages/compensation on account of the alleged price differential.

11. The Arbitrators (as narrated in paragraph 18 of the Impugned Award) allowed the amendment application but disallowed recording of additional evidence through order dated 3.11.1998, reasoning that:

> 18. *The application under Order VI Rule 17 read with Section 151 C.P.C. was disposed of by the Arbitrators in the following manner by means of Order dated 3-11-1998*:-
>
> "From the perusal of the record and citations submitted by the Claimant the amendment of the

> Statement of Claim is justified and to be allowed but the Arbitrators feel that it will take long time to conclude the case which will involve amendment of Statement of Claim, amendment of the written statement and then evidence of the Claimant and also the evidence of the Respondent.
>
> In view of this difficulty the Arbitrators are of the view that under sub-clause (v) of prayer clause of the Statement of Claim, the Arbitrators may grant any relief or reliefs which they may deem fit and proper under the circumstances of the case.
>
> In view of this position and to avoid delay the application under Order VI Rule 17 read with Order XVI Rule 1 and Section 151 C.P.C. stands disposed of."

12. Thus, astoundingly, the Arbitrators held that the amendment to the Prayer Clause was justified, but declined to allow a corresponding amendment to the Statement of Claim or to the Written Statement, as this would have necessitated further evidence from both parties and delayed the conclusion of the case. Relying on sub-clause (v) of the Prayer Clause – which they construed as authorizing them to grant any relief deemed appropriate – they accordingly disposed of the amendment application, effectively precluding TCP from cross-examining the Respondent on its newly-advanced claim for damages in the substituted Prayer Clause (i).

13. Noticeably, the Respondent's own amendment application included a prayer "*to adduce additional evidence*", yet this was disregarded by the Arbitrators while allowing the amendment application.

Points For Determination

14. The key issues that emerge for determination are:

i) Whether the Respondent bore, and was required to discharge, the initial burden of proving actual loss arising from the shortfall in the rice supply (i.e., the unshipped balance of 35,427.05 metric tons).

ii) Whether the Respondent could be awarded (a) liquidated damages in the absence of any contractual provision, and (b) damages/ compensation for shortfall in rice delivery, solely on TCP's admission of short supply, despite having neither pleaded nor proven that it procured the unshipped balance rice from any alternate source or suffered any consequent loss.

Opinion Of The Court

15. We have heard the arguments of the respective sides and have also considered the record.

Respondent's Damages Claim Predicated Entirely On Numerical Shortfall Rather Than Actual Loss

16. The Respondent's entire claim for damages rests solely on the undisputed and admitted fact that there was a shortfall in rice delivery by TCP. This purported admission constitutes the exclusive foundation of the Respondent's case on loss.

17. A review of the Respondent's pleadings, as set out in its Statement of Claim (which was never formally amended despite the Arbitrators having allowed a substantive amendment in Prayer Clause (i)), reveals that no documentary evidence was annexed to substantiate the allegation that the short supply of rice caused any loss, financial or otherwise, to the Respondent. Moreover, the Respondent has not pleaded anywhere that the shortfall compelled it to procure rice from an alternative source at a price higher than that agreed with TCP. In these circumstances, we specifically inquired from the Respondent's Counsel if the Respondent had, at any stage – whether in its Statement of Claim, Affidavit-in-Evidence, or in any other document on record – pleaded or filed documentary evidence showing that, following TCP's failure to supply the contracted quantity of rice, the Respondent had procured the unshipped balance from an alternative source, including any supporting replacement contracts or payment receipts, and, if not, why such a plea or evidence had not been included. Counsel for the Respondent replied that no such pleading or documents had been filed, submitting that there was no need to do so, since it was an undisputed position that 35,427.05 metric tons of rice had been short-supplied by TCP, and TCP's witness in cross-examination had conceded that TCP's predecessor (viz. RECP) had failed to fulfil the contract during the contracted period. Counsel contended that this necessarily led to the irrefutable conclusion that the Respondent had suffered a loss.

18. We respectfully disagree with the learned Counsel for Respondent. The reasons for our conclusion are set out below.

Breach of Contract Alone Does Not Establish Loss: Burden of Proof on Claimant Despite Admission

19. A breach of contract, or a mere admission by a party or a witness of such breach – either in pleadings or elicited in cross-examination – does not automatically establish that the affected party has suffered a loss. A party

claiming damages (in this case, the Respondent), was required to plead and substantiate its claim with concrete evidence, such as contemporaneous records, replacement purchase contracts, or payment receipts. Without such evidence, no inference of actual loss can be drawn merely from the fact of a contractual breach or an admission by the opposing party. In other words, the occurrence of a breach, even if undisputed, does not relieve the claimant of discharging its foundational burden[4] to plead and prove the actual loss.

20. During cross-examination, the Respondent's witness was specifically asked:

> Q) You have not provided any documentary evidence regarding forward contracts with other parties or damages paid to them for non-supply of rice?
>
> A) We have not filed any such evidence as it is our business secret.

This odd pretext for non-filing appears to be a convenient refuge for the Respondent's inability to produce any evidence of the loss allegedly suffered. The witness has effectively elevated confidentiality over credibility, thereby rendering verification of the purported loss impossible. Unfortunately for the Respondent, the law requires proof, not mystique. Irrespective of the veracity or merits of the explanation offered by the witness, it nevertheless reinforces that the Respondent produced no evidence whatsoever to substantiate its claim of actual loss. Indeed, the admission merely underscores the speculative and unsubstantiated nature of the claim, which cannot form the basis of a legally sustainable award of damages. Quite apart from this admission, a perusal of the record (particularly the pleadings and the Respondent's Affidavit-in-Evidence) reveals that no pleading or claim of actual loss, no quantification of damages, and no assertion of any payment to third parties on account of the alleged non-supply of rice was ever made or supported by evidence.

21. The Supreme Court in ***Allah Din***[5] endorsed the principle that compensation will not be awarded in the absence of tangible evidence demonstrating actual loss. A mere claim or bare assertions, without independent evidence, is insufficient to establish such damages. The Supreme Court also affirmed that even though the courts do not sit in appeal over the arbitrator's decision, they can nevertheless intervene in arbitrator's findings where they are unsupported by evidence. It further ruled that the court has the power to examine the reasonings in an arbitral award, as Section 26-A[6] of the *Arbitration Act 1940*,

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[4] 1991 CLC 32 (*Trading Corporation of Pakistan v. International Trading & Sales Inc.*)

[5] 2006 SCMR 614 (*Allah Din & Company v. Trading Corporation of Pakistan*)

[6] Section 26-A. **Award to set out reasons**.

(1) The arbitrators or umpire shall state in the award the reasons for the award in sufficient detail to enable the Court to consider any question of law arising out of the award.

requiring the arbitrator to provide reasons, enables the court to assess the soundness of the award. As also declared by the Supreme Court in ***Gerry's International***[7], the said provision entitles the court, inter alia, to identify any errors of law, misapplication of contractual provisions, or conclusions reached without proper reasoning, as well as to ascertain whether the reasons are inconsistent with, or contradictory to, the material on record. Thus, this provision ensures that the award is not merely an expression of the arbitrator's opinion but is supported by a rational and legally sustainable basis.

22. In the present case, the alleged short supply of rice, even though admitted, does not ipso facto establish that the Respondent suffered a compensable loss. As ruled by a Division Bench of this Court in ***Industrial Development Bank***[8], damages for short delivery arise not from the shortfall itself or from breach of terms of a contract, but from the claimant's ability to show that it incurred an actual, quantifiable financial detriment as a direct consequence – something the Respondent has wholly failed to do. A numerical shortfall recorded in the documents does not, by itself, translate into actual loss. It is entirely possible, for instance, that the Respondent – being the foreign principal of the Pakistani agent (and it being the latter who instituted the legal proceedings, which TCP alleges were unauthorised) – may have chosen to forgo the short-supplied quantity and not procure any replacement rice at all. In such a scenario, no financial outlay would have been incurred, and therefore no compensable loss could have arisen. The law does not award damages for hypothetical or assumed losses; it requires proof of real, demonstrable injury. In the absence of such proof, the Respondent's claim for damages cannot succeed.

23. There is another reason why the admission of any witness regarding the short supply of quantity, a breach of contract, or even the alleged suffering of a loss by a claimant cannot, by itself, be treated as proof of damages in the absence of supporting documentary evidence (although in the instant case, TCP's witness in paragraph 5 of his Affidavit-in-Evidence expressly denied that the Respondent suffered any loss as a consequence of the short-supplied rice). Admissions in such cases may be unreliable: the award may be collusive[9], or

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(2) Where the award does not state the reasons in sufficient detail, the Court shall remit the award to the arbitrators or umpire and fix the time within which the arbitrator or umpire shall submit the award together with the reasons in sufficient detail:

Provided that any time so fixed may be extended by subsequent order of the Court.

(3) An award remitted under sub-section (2) shall become void on the failure of the arbitrators or umpire to submit it in accordance with the direction of the Court.

[7] 2018 SCMR 662 (*Gerry's International v. Aeroflot Russian International Airlines*); 2002 SCMR 1903 (paragraph 19) (*Tribal Friends Co. v. Province of Balochistan*)

[8] 2010 CLD 591 (*Industrial Development Bank of Pakistan v. Baloch Engineering*)

[9] PLD 1990 SC 800 (paragraph 10) (*Pakistan v. OMR Expert Consultants*)

admissions may be procured or misstated. For this reason, the law requires that claims of pecuniary loss be established through objective and contemporaneous documentation and evidence rather than resting entirely on the fallible recollection or subjective assertions of a witness.

24. The award of substantial damages of USD 1,035,072.12 under Amended Prayer Clause (i) is vitiated by a further patent illegality. This claim was introduced by amendment after the conclusion of evidence and at the stage of final arguments; however, no issue was framed in respect thereof and no additional evidence was permitted to be led in support of the claim, despite the Respondent's express request in its amendment application to adduce additional evidence. The Arbitrators consciously denied the opportunity to lead evidence to prove this newly introduced claim on the ground of avoiding delay, as specifically admitted in paragraph 18 of the Impugned Award (highlighted in paragraph 11 above). Any award of damages made in disregard of these fundamental requirements is legally unsustainable[10].

25. In these circumstances, the Respondent's reliance on a solitary admission of short supply, unsupported by any evidence of loss – oral or documentary – or any pleaded factual basis, is legally insufficient to discharge its evidentiary burden to establish its entitlement to damages beyond mere assertion. Consequently, the Respondent's claim for damages on price differential basis and the award of USD 1,035,072.12 by the Arbitrators (in the Impugned Award in paragraph 23 under Issue No.6, as set out in Amended Prayer Clause (i)), therefore, cannot be sustained.

No Contractual Clause For Liquidated Damages – Arbitrators Improperly Award Liquidated Damages Under Two Heads While Decline One Head

26. Liquidated damages can be claimed or enforced only if expressly stipulated in the contract, as provided under Section 74[11] of the *Contract Act, 1872*.

27. Significantly, the Respondent's Prayer Clause in the Statement of Claim primarily seeks substantial amounts as liquidated damages, despite the fact that the Contract contains no provision authorising the award of liquidated damages to the buyer (Respondent) in any circumstance, nor does it specify any sum payable to an aggrieved party. This absence was expressly admitted by the Respondent's own witness during cross-examination, stating:

> Q) Is there any clause in the contract that, like RECP, M/s Agrimpex may also charge the 2% claim on delayed shipments?

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[10] 2022 SCMR 1572 (paragraph 6) (*Muhammad Riaz v. Muhammad Hanif*)

[11] See Footnote 18 below (for text of Section 74 of *Contract Act, 1872*)

A) The contract provides only for RECP to claim penalty but at the same time it does not restrict the other party to claim the penalty in case of delay in shipment by RECP.

Such an admission although was superfluous, as the existence or non-existence of a contractual clause is a matter of law ascertainable through a simple perusal of the Contract itself. Reference may be made to ***Muhammad Shahnawaz***[12] and ***Burma Oil Mills***[13] wherein a Single Judge of this Court observed that once the terms of a contract are ascertained or undisputed, the proper interpretation thereof – including whether it contains any clause for a particular relief – is a question of law to be determined by the court.

28. While the phrase "*liquidated damages*" occurs once in the Contract – specifically in clause 4(b)[14] – it merely provides that the buyer (Respondent) shall not be required to pay liquidated damages but shall be liable to pay storage charges in the event of an extension of the export period. Accordingly, the Contract provides no basis whatsoever for claiming or awarding liquidated damages in favour of the Respondent, and any such claim is entirely unsupported by its terms.

29. Even otherwise, the mere presence of a clause stipulating liquidated damages does not, by itself, entitle a party to recover the named sum, as held in ***Saudi-Pak Industrial***[15]. A claimant seeking liquidated damages is still required to demonstrate that it has suffered an actual loss under the contractual terms, as the law does not permit recovery of damages merely on the basis of a contractual clause without establishing the underlying financial detriment.

30. In ***Aslam Saeed & Co.***[16] (a case that also pertained to supply of rice by TCP), the principles enunciated by the Supreme Court are that an arbitrator cannot award damages beyond what is expressly provided in the contract, and cannot import new terms absent from the agreement. Under the principle of *expressio unius est exclusio alterius*, remedies not expressly mentioned cannot be

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[12] 2011 PLC (C.S) 1579 (paragraph 23) (*Muhammad Shahnawaz v. Karachi Electric Supply Company*)

[13] 2011 CLC 1538 (paragraph 7) (*Burma Oil Mills Limited v. Trustees of the Port of Karachi*)

[14] 4. EXTENSION IN PERIOD OF CONTRACT:

a) … … … … … … …

b) Sellers may at their sole discretion, accept advance payment of the cost of rice in full within the due. date of shipment through foreign exchange remittance or red-clause letter of credit. In that case, buyers, shall, not be required to pay liquidated damages, but shall be required to storage charges at the rate of Rs.1/- (ONE) PMT per day from the last date of shipment provided in Clause–3 herein-above. Storage charges will be recovered as per clause 4(c) herein-below.

c) … … … … … … …

[15] 2003 CLD (SC) 596 (*Saudi-Pak Industrial And Agricultural Investment Company v. Allied Bank of Pakistan*)

[16] PLD 1985 SC 69 (*Aslam Saeed & Co. v. Trading Corporation of Pakistan*)

implied unless necessarily intended. Section 73[17] of the *Contract Act, 1872* applies to cases of breach of contract where no amount of compensation is stipulated in the agreement itself. In such cases, compensation must be assessed strictly based on the actual loss suffered by a contracting party in the ordinary course of events, or on losses which the parties knew, at the time of entering into the contract, were likely to result from such a breach. On the other hand, where the parties have pre-estimated the damages, Section 74[18] of the said 1872 Act, which treats liquidated damages and penalties alike, allows compensation up to, but not exceeding, the sum expressly named in the contract as payable in the event of a breach, or under any other stipulation by way of penalty[19]. Awards exceeding the contract's scope are unauthorized, and courts may review arbitral awards only for legal errors apparent on the face of the award, without reinterpreting contractual terms, in line with the principle established in ***West Pakistan Industrial Development Corporation***[20] that contractual terms cannot be implied merely because it may seem reasonable.

31. Similarly, in ***Waseem Construction Co***.[21] it was recognized that an error is apparent on the face of an arbitral award where the relevant provisions of the contract documents have not been properly appreciated or considered.

32. Likewise, the Supreme Court in ***Gerry's International*** (supra) has reaffirmed that the arbitrator cannot act arbitrarily, irrationally, capriciously or independently of the contract. An arbitrator derives authority from the contract, and any deliberate departure from, or conscious disregard of, its terms not only constitute misconduct or an excess of authority but may also amount to mala fide action, thereby vitiating the award.

33. In ***Al-Farooq Builders***[22], a Division Bench of this Court declared that courts may intervene where sufficient and reliable material on record demonstrates

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[17] Section 73. ***Compensation for loss or damage caused by breach of contract*****:** When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. … … … … ….

[18] Section 74. ***Compensation for breach of contract where penalty stipulated for*****:** When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for. … … … … ….

[19] 1995 SCMR 1431 (*Sandoz Limited v. Federation of Pakistan*); 2010 MLD 192 (*Muhammad Junaid v. Karachi Development Authority*)

[20] PLD 1973 SC 222 (*West Pakistan Industrial Development Corporation v. Aziz Qureshi*)

[21] 1991 CLC 66 (*Province of Sindh v. Waseem Construction Co.*)

[22] 2001 MLD 99 (*Federation of Pakistan v. Al-Farooq Builders*)

that the award is violative of statute or inconsistent with well-settled legal principles and norms.

34. The Impugned Judgment (in paragraph 13) brushes aside the reliance placed by TCP's Counsel on ***Aslam Saeed & Co.*** (supra) by distinguishing it on the ground that the cited case involved a clause providing for liquidated damages, whereas no equivalent provision could be identified in the present Contract. However, the inability of TCP's Counsel to point to such a clause arose for the simple reason that no provision for awarding liquidated damages exists in the Contract at all – fact that actually strengthens TCP's objection rather than undermines it. The Single Judge's bypassing of the ***Aslam Saeed & Co.*** precedent was, therefore, erroneous, and the failure to properly apply the said decision constituted yet another error of law.

35. The Impugned Judgment (in paragraph 12) disregarded TCP's objection – that the Contract contained no provision for liquidated damages – on the ground that it was not raised before the Arbitrators. In doing so, the Single Judge erred in holding that TCP was precluded from raising this legal objection

36. In the present matter, the straightforward question of whether the Contract contains a clause for damages (specifically liquidated damages) is a pure question of law, not of fact, and can be raised at any stage, including in proceedings challenging an arbitral award. Although a specific issue[23] (viz. Issue No.7 regarding the Respondent's entitlement to liquidated damages had been framed), it is immaterial whether the issue was specifically taken before the Arbitrators, as it involves no disputed facts but merely the legal construction of the contract. The absence of a contractual provision for liquidated damages goes directly to the validity and legality of the Impugned Award, and a party cannot be deprived of raising such a fundamental legal objection.

37. Since the Contract contained no clause for liquidated damages, the Arbitrators erred by effectively inserting or importing such a clause, thereby manifestly misconstruing the contractual terms contrary to their express stipulations. This empowers a court to examine the reasoning and invalidate the award where the error in construction is apparent on the face of the award.

38. For the Arbitrators to have awarded liquidated damages (and that too at the rate of 2%, a figure not mentioned anywhere in the Contract), and for the Single Judge to have upheld such an award through the Impugned Judgment, there ought to have been clear evidence demonstrating both the quantum of loss and a contractual formula in the Contract for its quantification. In the

[23] All consent issues have been reproduced in paragraph 14 of the Impugned Award

absence of both a contractual clause and supporting evidence, the award of liquidated damages of USD 139,975.64 (granted in the Impugned Award in paragraph 21 under Issue Nos.4, 7 and 8, pursuant to Prayer Clause (ii) (a) and (b)) is legally unsustainable and liable to be set aside.

Grave Misreading Of Record By Single Judge: Impugned Judgment Erroneously Assumes Additional Evidence Recorded Post-Amendment

39. The Impugned Judgment (in paragraph 4) records as follows:

> 4. An application, under Order VI, rule 17 read with section 151, CPC, seeking amendment, was disposed of by the learned Arbitrators vide order dated 3-11-1998, **allowing the proceedings to continue subject to the prayer and after recording of evidence** and considering the documents on record, the Arbitrators unanimously allowed the claim of the Plaintiff in the following terms … … … … … ….
>
> **[Emphasis added]**

40. The Single Judge's observation in the Impugned Judgment is a clear misreading of the record as it directly contradicts the Arbitrators' own order dated 3.11.1998 (quoted in paragraph 18 of the Impugned Award and reproduced in paragraph 11 above of this Judgment), in which the Arbitrators explicitly stated they had, inter alia, dispensed with the recording of additional evidence in order to expedite the proceedings. This fundamental error further undermines the reasoning of the Impugned Judgment.

Conduct Of TCP Demonstrates That It Has Undermined Its Own Case

41. At the end, we feel compelled to comment on the conduct of TCP.

42. The award of liquidated damages (amounting to USD 139,975.64) in the absence of any contractual provision is both staggering and shocking. This is all the more so considering that TCP's own Arbitrator (Mr. Abu Shamim M. Ariff), in a prior matter had rendered an award dated 30.8.1997 (*M/s Seychelles Marketing Board, Seychelles v. RECP*) (a copy of which was filed by the Respondent itself[24]), and had declined to grant liquidated damages[25] on the ground that the contract contained no such provision. Yet the same principles were disregarded in the Impugned Award, which relied on that very *M/s Seychelles* award in paragraphs 17 and 23 of the Impugned Award (to additionally grant price differential compensation of USD 1,035,072.12). The *M/s Seychelles* award case demonstrates that the said TCP's Arbitrator was

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[24] The *M/s Seychelles* award dated 30.8.1997 was annexed to Respondent's application under Order XII Rule 2 CPC dated 29.10.1998 (and specifically referred to in paragraph 8 of the supporting affidavit). The Arbitrators allowed this application vide order dated 3.11.1998, reproduced in paragraph 18 of the Impugned Award and cited in paragraph 11 above of our Order

[25] In paragraph 12 of *M/s Seychelles* award

well versed in the law, yet he unhesitatingly opened TCP's coffers to award hundreds of thousands of dollars (precisely USD 139,975.64) to the Respondent under a head of claim (viz. liquidated damages) that finds no support in the Contract.

43. Equally startling is that the Award – unanimously endorsed by TCP's Arbitrator – records (reproduced in paragraph 11 above) that the requirement to adduce additional evidence was dispensed with, purportedly to expedite the proceedings, even as a new claim for damages (representing the differential between the market and contracted prices for the unshipped balance rice, under which the Arbitrators awarded a massive USD 1,035,072.12) was introduced for the first time by way of an amendment to the Prayer Clause (i) at the closing stage i.e. after the recording of evidence and during final arguments.

44. There is more. Without prejudice to the unlawfulness of the award of damages to the Respondent, the unanimous Award (rendered jointly by TCP's own Arbitrator and the Respondent's Arbitrator in favour of the Respondent) had also expressly afforded the TCP an alternate opportunity to make good the shortfall by supplying the contracted quantity of rice, or rice of comparable specifications. TCP, however, made no attempt at that time to exercise caution and to avail itself of this opportunity to avert the imposition of damages, albeit under protest and subject, of course, to its right to challenge the same.

45. Taken together, these actions reveal a pattern of conduct by TCP that has been detrimental to its own case, demonstrating that TCP has effectively undermined its own position.

46. In spite of these challenges, the young Counsel for the TCP – though constrained by TCP's conduct and forthright about the deficiencies in its case – has conducted himself commendably in contesting the Respondent's claim for damages and opposing the Impugned Judgment. Counsel for the Respondent similarly made submissions that were of assistance to this Court.

Conclusion

47. In the light of the foregoing, the award of an aggregate sum of USD 1,175,047.76, comprising:

    i) liquidated damages (of USD 139,975.64) in the absence of any contractual provision, and thus having no warrant under the terms of the subject Contract – granted in the Impugned Award in paragraph 21

under Issue Nos.4, 7 and 8, pursuant to Prayer Clause (ii) (a) and (b); and

ii) compensation (of USD 1,035,072.12) for the price difference between the market rate and the contract price for the unshipped balance rice – granted in the Impugned Award in paragraph 23 under Issue No.6, pursuant to Amended Prayer Clause (i)),

when it is not even the Respondent's case, nor has it been pleaded by it anywhere, that the Respondent procured the shortfall rice or suffered any actual loss as a result, is wholly unsustainable. An award of damages cannot be predicated merely on a contractual breach, or on unproven or speculative claims, or assumed losses. However, in the absence of such plea and/or evidence, there is no basis for us to remit the matter back to the Arbitrators for re-determination of damages. The Impugned Award is, therefore, entirely unsustainable and legally untenable, as the Arbitrators have, inter alia, acted in violation of settled principles of law governing damages, thereby constituting misconduct.

48. Consequently, we ***allow*** this High Court Appeal and set aside the Impugned Award dated 24.12.1998 as well as the Impugned Judgment and Rule of Court/Decree dated 20.10.2003 passed by the Single Judge in Suit No.215/1999 (*M/s Agrimpex Trading Company Limited v. Trading Corporation of Pakistan (Pvt) Limited*). Each party shall bear its own costs.

49. The records and proceedings (R&P) pertaining to said Suit No.215/1999 as well as the arbitration proceedings (which were unsealed during the proceedings dated 18.9.2025) shall be remitted to the concerned branch for safe custody.

JUDGE

JUDGE

The Office is directed to communicate a copy of this Decision to the Chairman, Trading Corporation of Pakistan (Pvt) Ltd (TCP), through email as well as through the usual modes.