

# THE HIGH COURT OF SINDH AT KARACHI

## High Court Appeal No.183 of 2021

Appellant: Province of Sindh through the Secretary, Livestock and Fisheries Department, through Mr. Zeeshan Adhi, Additional Advocate General Sindh along with Mr. M. B. Ashar, Advocate.

Respondent: M/s Zaheeruddin Consultants (Pvt.) Limited through Mr. Ghulam Hussain, Advocate

Date of hearing: 17.09.2025

Date of Announcement: 05.12.2025

## JUDGMENT

**MUHAMMAD HASAN (AKBER), J.-** The instant Appeal has been filed under Section 3 of the Law Reforms Ordinance 1972, against the Judgment dated 24.06.2021 and Decree dated 02.07.2021 passed in Suit No.468 of 2019, whereby the Arbitral Award dated 12.02.2019 was made Rule of the Court.

2. The Award was passed by the sole Arbitrator in Suit No.468 of 2019 '*M/s. Zaheeruddin Consultants (Pvt.) Ltd. Versus Livestock and Fisheries Department, Government of Sindh*' whereas the sole Arbitrator was appointed in the earlier Suit No.2545 of 2014 '*M/s. Zaheeruddin Consultants (Pvt.) Ltd. Versus Livestock and Fisheries Department, Government of Sindh*' by a consent order dated 18.03.2015.

3. The subject matter of the dispute is the provision of consultancy services by Respondent/Claimant to the Appellant (*Livestock and Fisheries Department, Government of Sindh*), for the establishment of Bhambore Dairy Village, District Thatta-Project.

4. Perusal of the Award reflects that the learned Arbitrator framed 07 Issues from the pleadings and concluded the Award in the following terms:

"1. Total Design Fee	.....	Rs.28,334,293/-
2. Total Supervision Fee	.....	Rs.28,565,594/-
3. Total Direct Cost	.....	Rejected
4. Total Interest	.....	Rs.5,194,192/
5. Costs	.....	Rs.2,000,000/-
Total	.....	Rs.64,094,079/-
Amount admittedly already received		

by the Claimant ..... Rs.38,401,000/-

The Claimant is therefore, entitled to Rs.25,693,079/- against his various claims.

An amount of the Rs.2 million is granted as costs of these proceedings to the Claimant which makes the awarded amount to be **Rs.25,693,079/-**."

5. Learned AAG argued that the impugned Judgement is liable to be set aside, that there are patent irregularities in the Arbitral Award, floating on the surface of the award; that the evidence of the Appellant was not fully appreciated by the learned Arbitrator; there were observations made beyond the merits of the case by the learned Arbitrator; learned Judge did not consider that markup/interest is to be awarded from the date of the decree and not from the date of the Award; the learned Arbitrator did not have the power to award costs; and that the Honourable Court when making an Arbitral Award Rule of Court is required to minutely examine and scrutinize the Arbitral Award even if no objections are filed; and lastly that the Award be set-aside and instant appeal be allowed.

6. Conversely, learned counsel for Respondent supported the judgment impugned and argued that the instant appeal is barred by law; that objections to the award were barred under article 158 of the limitation act 1908; that no error is floating on the surface of the Award nor any misconduct was committed by their Arbitrator who was appointed by consent of the parties; and that the instant appeal be dismissed.

7. Heard learned counsel for the parties and perused the record with their able assistance, which reflects that the sole Arbitrator was appointed in the earlier Suit No.2545 of 2014 by consent of the parties vide Order dated 18.03.2015. The subject matter of the dispute is the provision of consultancy services by the Respondent to the Appellant (Livestock and Fisheries Department, Government of Sindh), for the establishment of Bhambore Dairy Village, District Thatta-Project. The Award dated 12.02.2019 was rendered by the Sole Arbitrator in the Arbitration proceedings.

8. The first preliminary objection by the respondent is that the appeal is barred by limitation and no application for condonation of delay has been filed. Record transpires that the impugned order making the Award as rule of the court, was passed on 24.06.2021, whereas the decree was prepared on 02.07.2021. The application for certified copies of the same was applied by the Applicant on 08.07.2021; the fee was estimated on 25.08.2021; and on the same day, the cost was paid, and the certified copy was received by the applicant side. The instant appeal was filed on 04.09.2021,

i.e. within stipulated period of receipt of the certified copies, and therefore the instant Appeal is well within the time. The objection is overruled.

9. The next objection raised by Respondent's learned counsel is that objections to the award were not filed within time by the appellant before the learned single judge, and therefore, the same were barred under Article 158 of the Limitation Act 1908. In this regard, perusal of the Judgment impugned reflects that at paragraphs 2 to 5 thereof, the issue has been attended by the learned Single Judge, which need not be reproduced here for the sake of brevity. In this regard, the Respondent's contention before the learned Single Judge was that even if objections are not filed to the Award, the same cannot be made as a Rule of the Court in a mechanical manner, and the Court has to apply its independent mind to the overall review of the Award. The issue was settled by the Honourable Supreme Court of Pakistan in '**A. Qutubuddin Khan v. Chec Millwala Dredging Co. (Pvt.) Limited**' (2014 CLD 824) wherein it was held that non-filing of objections to the award would not absolve the Court of its judicial duty to apply its mind and examine the validity of the Award, before making it Rule of the Court.

"10. In view of the above, the obvious question that floats to the surface is that in the eventuality that an Award was filed in the Court and objections thereto are either not filed or if filed found to be barred by limitation, whether the Court is to mechanically make such an Award, the Rule of the Court. The powers vested in the Court to make an Award the Rule of the Court are obviously judicial and not ministerial and it is now settled law that the absence of objections to such an Award does not absolve the Court of its responsibility to examine the same. In the instant case, the learned Single Judge, after concluding that the objections filed by the respondent were time barred, without conducting a judicial exercise of examining the Award qua its validity, made the same the Rule of the Court. Hence, its order in this behalf dated 5-8-2000 was not sustainable in law and was rightly set aside by way of the impugned judgment and the case remanded."

10. In the present case, perusal of the Judgment impugned also reflects that, notwithstanding the non-filing of Objections to the Award, the learned Single Judge did not make the award Rule of the Court mechanically but duly applied his judicial mind while passing the impugned Judgment. As regards the scope of hearing before the learned Single Judge to consider making the award Rule of the Court, it has been consistently held that while hearing objections and examining the award, the Court could not sit as a Court of Appeal on the Award rendered by the Arbitrator and substitute its own view for the one taken by the Arbitrator; and that an Award could not be set aside unless the error was apparent on the face of the Award; or from the Award it could be inferred that Arbitrator had misconducted himself. Reliance in this

regard is placed upon '**A. Qutubuddin Khan V. Chec Millwala Dredging Co. (Pvt.) Limited.**' (2014 CLD 824), '**Chairman, Wapda and another v. Messrs Syed Bhais (Pvt.) Ltd. and another**' (2011 CLC 841); '**National Highway Authority through Director (Legal) V. Lilley International (Private) Limited and another**' (2016 CLC 1757).

11. As regards the scope of an Appeal and an Order making the Award Rule of the Court, it was held in '**Federation of Pakistan v. Joint Venture Kocks K.G./RIST**' (PLD 2011 SC 506), that:

"While considering the objections under sections 30 and 33 of the Arbitration Act, 1940 the court is not supposed to sit as a court of appeal and fish for the latent errors in the arbitration proceedings or the award. The arbitration is a forum of the parties' own choice and is competent to resolve the issues of law and the fact between them, which opinion/decision should not be lightly interfered by the court while deciding the objection thereto, until a clear and definite case within the purview of the section noted above is made out, inasmuch as the error of law or fact in relation to the proceedings or the award is floating on the surface, which cannot be ignored and if left outstanding shall cause grave injustice or violate any express provision of law or the law laid down by the superior courts, or that the arbitrator has misconducted thereof. Obviously if there is a blatant and grave error of fact such as misreading and non-reading or clear violation of law, the interference may be justified by the courts. But for the appraisal and appreciation of the evidence the courts should not indulge into roving probe to dig out an error and interfere in the award on the reasoning that a different conclusion of fact could possibly be drawn."

12. In another case of '**M/s Joint Venture KG/RIST v. Federation of Pakistan**' (PLD 1996 SC 108), it was held:

"We may mention here that the Court while examining the validity of an award does not act as a Court of appeal. Therefore, a Court hearing the objection to the award cannot undertake reappraisal of evidence recorded by the arbitrator in order to discover the error or infirmity in the award. The error or infirmity in the award which rendered the award invalid must appear on the face of the award and should be discoverable by reading the award itself. Where reasons recorded by the arbitrator are challenged as perverse, the perversity in the reasoning has to be established with reference to the material considered by the arbitrator in the award."

13. In '**Ashfaq Ali Qureshi v. Municipal Corporation, Multan**' (1984 SCMR 597) it was held that:

"It is a well-established rule of law that where a dispute is referred to an arbitrator of the choice of the parties and he makes an award, it becomes the duty of the Court to give every reasonable intendment in favour of the award and lean towards upholding it rather than vitiating it." Further held that:

"The arbitrator is the judge of all matters arising in the dispute whether of fact or of law and the Court is not to act as a Court of appeal sitting in

judgment over the award. Nor is it proper for the Court to proceed to scrutinize the award in order only to discover an error for the purpose of setting it aside. The error must be apparent on the face of the award and not latent such as can be discovered only after a scrutiny of the material beyond the award."

14. The same principles were followed in '**Messrs Awan Industries Ltd. v. The Executive Engineer, Lined Channel Division and another**' (1992 SCMR 65), '**Kashmir Corporation Ltd. v. Pakistan International Airlines**' (PLD 1995 Kar. 301) and '**National Highway Authority v. Messrs China Petroleum Engineering Corporation**' (PLD 2017 Islamabad 1).

15. In '**Trading Corporation of Pakistan (Pvt.) Ltd. through Chairman v. Amanullah Khan and another**' (2017 CLC 588), a Division Bench of this Court held that:

"13. ....Therefore, in our view, a sanctity is attached to the Award which could not be brushed aside until and unless it is shown that the Award has been improperly procured, invalid or the Umpire has mis-conducted himself in terms of Section 30 of the Act. The Court, in our view, could not sit as a Court of appeal in respect of the factual findings recorded by an Arbitrator until and unless the same are proved to be perverse and based on misreading or non-reading of the evidences, leading to miscarriage of justice. It is also a settled principle of law that while making an Award the rule of the Court, the Court has to examine the validity of the Award in a limited scope without deeply examining the same and if from the surface any error or infirmity is apparent only then the Award is to be interfered with. The decisions relied upon by the learned counsel are found to be distinguishable from the facts obtaining in the instant appeal."

16. In the present case, perusal of the Judgment impugned also reflects that the learned Single Judge did not make the award Rule of the Court mechanically. Despite non-filing of objections to the Award, the learned Single Judge looked into the Award, applied its judicial mind, and passed the impugned Judgment after considering relevant factors, whereas the learned Single Judge also duly considered the scope of hearing Objections to the Award, in consonance with the principles settled in the above Judgments. Therefore, the second objection by the Respondent also fails.

17. During his arguments, the learned AAG has drawn attention at item No.5 of clause (vi) of paragraph 39(vi) at page 95 of the Award passed by the Sole Arbitrator, Rs.5,194,192/- was awarded as Total Interest to the Respondent. This was based upon the reasoning recorded at paragraph 39(iv) (page 94) of the Award in the following words:

"(iv) the claimant has claimed an amount of Rs.10,388,385.45/- by way of "Total Interest" and a breakup of this amount was given at page 57 of

Statement of Claim of Volume I/V which was, not tested in the cross-examination of CW-1. The Claimant's Invoice No.4 was neither denied nor paid by the Respondent. Consequences have to flow from this default of the Respondent. Keeping these aspects in view, the tribunal is of the view that payment of 50% of the claimed amount by way of total interest i.e. Rs.5,194,192/- against this item will be appropriate."

18. Per learned AAG, this amounts to Pre-Award, which violates the spirit of section 29 of the Arbitration Act, 1940. On this issue, the reasoning recorded by the learned single Judge on this issue, while hearing the Objections to the Award, is as follows:

"Adverting to the Award of interest, the arguments of learned counsel for the Respondent, in this regard, cannot be accepted, because a specific finding is given in the Award, inter alia, in sub-para-iv of paragraph-39 and it is not hit either by Section 29 of the Arbitration Act, 1940, relating to the grant of interest, or any judicial pronouncement. In this regard, the decision in Ghulam Abbas case (supra) is relevant. Reasoning mentioned in the Award is in accordance with Section 26-A of the Arbitration Act, 1940."

19. For the sake of convenience, both the above-referred provisions viz. Sections 29 and 26-A of the Act 1940 are reproduced below:

**"29. Interest on Awards.--** Where and in so far as an award is for the payment of money the Court may in the decree order interest, from the date of the decree at such rate as the Court deems reasonable, to be paid on the principal sum as adjusted by the award and confirmed by the decree."

**"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.

(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."

20. In the case of '**Dawood Cotton Mills Ltd. v. K. F. Development Corporation Ltd.**' (2006 SCMR 1555), a Three-Member Bench of the Honourable Supreme Court disallowed the award of mark-up, from the date before the Judgment and Decree, on the premise that it violates section 29 of the Act, and held that:

"12. From a bare perusal of section 29 of the Act it is crystal clear that it confers power/authority on the Court making the award rule of the Court in allowing or granting interest on the principal sum adjudged by the award and

confirmed by the decree on such rate as deemed reasonable from the date of decree. This section does not confer power on the Court to grant interest prior to the date of award. It is the grant of interest from the date of decree which falls within the exclusive domain of the Court proceedings with the matter for making award rule of the Court in terms of section 14 of the Act. In the circumstances order, dated 3-3-1999 was illegal to the extent of granting interest before the period of award as it had usurped the jurisdiction/power, which vested in the Arbitrator. The judgment in the case of Ghulam Abbas (supra) is of no help to the case of the respondent as this Court categorically held that grant of interest prior to the date of award was within the domain of the Arbitrator and grant thereof from the date of decree was within the authority and power of the Court and the two forums could not act otherwise and if anyone of them acted contrary to the provisions of section 29 of the Act, the order would be an illegal order.

13. As the order, dated 3-3-1999 suffered from a patent illegality, the same could be assailed at any time as it being an order in illegal exercise of jurisdiction was an order coram non iudice.

14. For the foregoing facts, reasons and discussion this appeal is found to have force. Accordingly it is allowed. Impugned judgment dated 12-3-2002 of learned Division Bench of the High Court in H.C.A. No.230 of 2001 and the order of the learned Single Judge, dated 3-9-2001 in Execution Application No.150 of 2000 are set aside and the order dated 3-3-1999 of the learned Single Judge making the award rule of the Court is modified to the extent that the respondent would be entitled to the mark-up the rate mentioned in the decree from the date of decree till the payment of the decree. Parties are left to bear their own costs."

21. Again, in the case of '**Ghulam Abbas v. Trustees of Port of Karachi**' (PLD 1987 Supreme Court 393), a larger Bench of the Honourable Supreme Court held:

"21.....On a careful perusal of the judgment relied upon, we feel that the learned Judges did not lay down a general proposition in such wide terms to be applicable to every case of arbitration which is referred to an Arbitrator, so that the Arbitrator's power to award interest would be as extensive as that of a Court of law under section 34 CPC. The Indian Supreme Court first declared the law on the subject in the case of Thawardas Pherumal v. Union of India A I R 1955 SC 468. In that case an argument was inter alia advanced to support the award of interest by the Arbitrator on the basis of the analogy of section 34 of the CPC, but the learned Judges of the Supreme Court of India repelled. this contention on the reasoning that section 34 does not apply "because an Arbitrator is not a "Court" within the meaning of the Code nor does the Code apply to Arbitrators". In the cited case also reliance was placed on the dictum laid down in the last mentioned case, but the learned Judges declined to apply the IM laid down in Thawardas' case on the ground that the judgment in that case did not deal with the question whether the Arbitrator can award interest during the pendency of arbitration proceedings if the claim regarding interest is referred to arbitration. Therefore, the exposition of law earlier made was not overruled but the principles were held not to apply to the facts of the case in the subsequent judgment relied upon by the counsel before us. The opinion of the learned Judges is, therefore, to be understood in the context of the peculiar facts of the case. These facts are that while in Thawardas's case the validity of

the award passed by an Arbitration without intervention of the Court was in question the award in the Firm Madanlal Roshanlal's case under discussion, related to arbitration in a pending suit, on a reference by the Court. The Arbitrator directed the payment of interest on the principal sum awarded from the date of the award until payment. The award was then filed in Court and the application to set aside the same, having been dismissed, the Court passed a decree on the award. The objection before the Supreme Court as reproduced in the judgment was that "the Arbitrator had no power to award interest during the pendency of the suit" (emphasise provided). In the light of these facts, therefore, the Court held that it was an implied term of reference in the suit that the Arbitrator would decide the dispute according to law and would give such relief with regard to pendente lite interest as the Court could give if it decided the dispute. The observations in our opinion, must be viewed in the light of the fact that the matters in dispute, including the pendente lite interest in the suit were referred during the pendency of the proceedings to an Arbitrator and in all fairness the entire dispute including the relief which could be granted if the suit was tried by the Court, was impliedly agreed by the parties to be adjudicated by the Arbitrator instead of the Court. In these circumstances we cannot apply the reasoning adopted by the learned Judges in the facts of the present case qua pendente lite interest. But if the learned judges of the Indian Supreme Court meant to hold that an Arbitrator will generally have the power to grant pendente lite interest for the period covering the pendency of arbitration proceedings even in a case involving damages, we regret our inability to subscribe to such a general proposition of law. In *A.Z. Company (supra)* the law is settled so far as this Court is concerned and we find no reason to depart from that statement of the law that interest in such a case cannot be allowed for period prior to date of award and we hold accordingly.

22. In the case of '**A. Qutubuddin Khan V. Chec Millwala Dredging Co. (Pvt.) Limited**' (2014 SCMR 1268), it was held that:

"31. An Arbitrator cannot award interest prior to date of decree, in the absence of any express or implied agreement between the parties, mercantile usage and statutory provisions or on equitable grounds in a proper case. Thus, award of interest prior to date of decree is a patent illegality appears on the face of award.

32. The fact that the Arbitrator has the power to deal with and decide disputes which cropped up at a point of time, would certainly not clothe the Arbitrator with any power, which neither any law confers upon him nor there is any usage of trade having the force of law nor is there any agreement between the parties conferring that power. Although, technical rules of procedure contained in the Code of Civil Procedure are not extended to Arbitration proceedings, even if, I look elsewhere for the power of Arbitrator to award interest pendente lite or prior to that. Section 34 of C.P.C., which gives discretion to Court to award interest from the date of suit or period prior to it, does not apply to arbitration proceedings. Likewise, the Interest Act also did not confer power on the Arbitrator to award interest.

33. The grant of interest from the date prior to award or from the date of award until payment of the amount due and payable, the Arbitrator can under no circumstances award interest for the period beyond the passing of the decree by the Court in terms of award, as under section 29 of the Act, only the Court



and not the Arbitrator have discretion to order interest, from the date of the decree at such a rate as the Court deemed reasonable. In this view of the matter, grant of interest prior to date of award, in absence of an express or implied, statutory provisions, agreement between the parties, in the facts of the case, is an error of law apparent on the face of award.”

23. No express provision or clause could be referred by the learned counsel for the Respondent to show the agreement or consent of the Appellant for the grant of pre-Award interest in favour of the Respondent. Nor could the learned counsel for the Respondent justify the applicability to section 26-A of the Act. Hence, by applying the ratio settled by the Honourable Supreme Court to the facts of the present case, we are inclined to agree with the learned AAG that the grant of pre-Award Interest to the Respondent by the sole Arbitrator, solely based upon lack of contest by the Appellant, was not valid, for it directly violated section 29 of the Act and the principles settled in the above rereferred Judgment. As already discussed above, even if it was not contested, the correct law was bound to have been considered and applied. Such an error, floating on the surface of the Award, demands interference in this Appeal. Hence, only to the extent of “Total Interest” as awarded at paragraph 39(vi), page 95 of the Award is set aside; and the same is modified to the extent that the Respondent is allowed interest @ 6% from the date of the decree passed by the learned Single Judge.

24. Other contentions of the appellant were that the work carried out by the Contractor was wrongly verified by the Respondent, which resulted in payment of Rs.621.13 million, though the work done was of a much lesser amount. Paragraphs 16 and 17 of the Award reflect that the Appellant’s witness admitted that payment of Rs.621 million was erroneously made to the Claimant, but the same was to be paid to various Contractors. Exhibit D-1/5 was produced wherein the names of those Contractors were mentioned, and such Exhibit was not challenged by the Appellant. On the point of alleged over-payment, the Arbitrator concluded that the witness admitted that the bills were verified as per the stipulated procedure and that this figure of Rs.621 Million also included payments made to the Board of Revenue for the purchase of land and payment of taxes. Regarding the next argument against the quality of work, the depositions reflect that in response to such queries during his deposition, the appellant’s witness was unable to point out any such specific document. Apart from the above, nothing substantial was pointed out by the appellant side.

25. Upshot of the above discussion is that the Award and the impugned Order are partly modified, only to the extent of "Total Interest" which is disallowed and the interest as allowed at paragraphs 18 to 23 *supra*. As for the rest of the Award and the impugned Order, no misconduct or illegality by the sole Arbitrator could be pointed out, within the premise of Sections 30 and 33 of the Arbitration Act 1940, which could call for modification, remission or setting aside of the Award or the Order impugned. This appeal is, therefore, partly allowed in the above terms, along with pending application(s), with no order as to costs. The Office is directed to draw a Decree in the above terms.

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