IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Arshad Hussain Khan
Mr. Justice Amjad Ali Sahito

High Court Appeal No.429 of 2016

Appellant	:	Zulfiqar Shakoor S/o Abdul Shakoor through M/s. Badar Alam & Muhammad Kashif Badar, Advocates
Respondent	:	Sindh Workers Welfare Board through M/s. Irtafa-ur-Rehman and Bilal Akhund, Advocates
Date of Hearing	:	20.08.2026
Date of Judgment:		28.08.2026

J U D G M E N T

Amjad Ali Sahito, J-. This appeal is directed against the Judgment dated 30.11.2016 and Decree dated 09.12.2016, passed by the learned Single Judge in Suit No.987 of 2013, whereby the Award rendered by the learned Sole Arbitrator was made rule of the Court only to the extent of refund of the retention money/security deposit pertaining to the four contracts, amounting to Rs.36,37,460/-, whereas the amounts awarded towards overhead expenditure and loss of profit in respect of the unexecuted portion of the works were set aside. It was further observed that, as the defendant/present respondent had neither paid the aforesaid amount nor deposited the same before the Court, the plaintiff/present appellant would also be entitled to interest at the rate of 10% per annum, as awarded by the learned Sole Arbitrator, on the said amount from the date of the Award until realization.

2. Briefly stated, the facts giving rise to the instant appeal are that the dispute emanates from four construction contracts awarded by the respondent to the appellant pursuant to an invitation for bids from pre-qualified contractors. Contract No.1, dated 16.03.2004, pertained to the construction of a Model

School at Lakhra, Sindh, for a contract price of Rs.41,745,660/-; Contract No.2, also dated 16.03.2004, concerned the construction of a Model School at Ghotki for Rs.41,446,245/-; Contract No.3, dated 07.12.2004, related to the construction of one hundred houses at Ghotki for Rs.39,047,550/-; and Contract No.4, also dated 07.12.2004, pertained to infrastructure works for the said one hundred houses at Ghotki for Rs.13,237,155/-. Letters of acceptance/work orders were subsequently issued, and the General Conditions of Contract **(hereinafter referred to as the "GCC")** were incorporated into all four agreements. Consultants were appointed for supervision, measurement and certification of the works. The appellant commenced execution of the contracts and submitted running bills; however, disputes subsequently arose between the parties concerning payments, progress of the works, extension/rescheduling of the contractual periods, and their respective rights and obligations in relation to termination of the contracts.

3. The case set up by the appellant before the learned Arbitrator was that the respondent had failed to perform its contractual obligations, particularly with regard to the timely certification and payment of running bills, and that the execution of the works had also been adversely affected by the prevailing law and order situation as well as by the conduct and omissions attributable to the respondent. In respect of Contract No.1, twelve running bills were submitted, including the 12th Running Bill dated 03.10.2008, which, according to the appellant, was verified after considerable delay and for an amount substantially less than that claimed. The appellant maintained that the contractual mechanism envisaged prompt certification and payment of the running bills and that the respondent's defaults in making timely payments entitled him to invoke the termination provisions contained in Clause 69.1 of the GCC. Conversely, the respondent maintained that the appellant had failed to complete the works within the stipulated contractual period. Upon examination of the rival contentions and the material available on record, the learned Arbitrator accepted the appellant's entitlement to terminate the contracts.

4. The dispute thereafter proceeded in terms of Clause 67.1 of the GCC. Initially, the appellant referred the disputes to the Consultants for determination and, upon failure of the contractual mechanism to resolve the disputes within the prescribed period, invoked the arbitration clause. As the respondent failed to nominate an arbitrator, the appellant approached this Court under Section 20 of the Arbitration Act, 1940 **(hereinafter referred to as "the Act")**. Consequently, by order dated 19.07.2011, the learned Sole Arbitrator was appointed to adjudicate and resolve the disputes arising out of all four contracts. Before the learned Arbitrator, the appellant submitted his Statement of Claim along with documentary evidence, whereas the respondent filed its reply and counter-claim. The appellant contested the maintainability of the counter-claim, inter alia, on the ground that the same had not been processed through the contractual dispute-resolution mechanism prescribed under Clause 67.1 and had not initially been referred to the Consultant, as required under the GCC.

5. The learned Arbitrator framed the following issues for determination: **(i)** whether the termination of the contracts under Sub-Clause 69.1 was valid; **(ii)** whether the unilateral termination was in violation of the GCC; **(iii)** whether the appellant was entitled to all or any of the claims raised in the Statement of Claim; **(iv)** whether the counter-claim preferred by the respondent was maintainable and, if so, to what extent and with what effect; and **(v)** what should the Award be. Both parties were afforded full and adequate opportunity to adduce evidence in support of their respective cases. The appellant produced his affidavit-in-evidence along with an extensive documentary record comprising numerous volumes, while the respondent also adduced evidence through its authorized representative, who was subjected to cross-examination. Thereafter, both parties advanced their respective submissions before the learned Sole Arbitrator. The record, therefore, clearly demonstrates that the arbitral proceedings were neither conducted ex parte nor concluded without affording either party a reasonable and effective opportunity of hearing.

6. Upon consideration of the pleadings, evidence and material placed before him, the learned Arbitrator held that the appellant possessed a contractual right to terminate all four contracts and that such termination was not in violation of the GCC. The learned Arbitrator, however, awarded an aggregate amount of Rs.29,910,192/- in respect of the claims arising under all four contracts, which included an amount of Rs.5,000,000/- towards overhead expenditure. The Award directed the respondent to make payment within two months and further provided that, in the event of default, the respondent would be liable to pay interest at the rate of 10% per annum from the date of the Award until realization. The respondent thereafter challenged the Award before the learned Single Judge. The learned Single Judge, while upholding the appellant's entitlement to refund of the retention money/security deposit, set aside the amounts awarded towards overhead expenditure and loss of profit, holding that such claims had been determined on the basis of presumption rather than cogent and sufficient evidence. Accordingly, the Award was made rule of the Court only to the extent of the retention money/security deposit, together with interest thereon. Aggrieved by the said Judgment and Decree, the plaintiff/appellant has preferred the instant appeal.

7. Learned counsel for the appellant has primarily contended that the learned Single Judge exceeded the limited scope of jurisdiction available under Sections 30 and 33 of the Act. According to learned counsel, the Arbitrator was the final arbiter of questions of fact; the Award was a reasoned and speaking Award; and the learned Arbitrator had duly considered the evidence, circumstances and material brought on record by the parties. It was further submitted that neither any misconduct on the part of the Arbitrator nor any misconduct in the conduct of the arbitral proceedings had been alleged or established. Learned counsel argued that the learned Single Judge could not substitute his own assessment of the evidence for that of the learned Arbitrator merely on the ground that, in his opinion, the evidence was insufficient to sustain the claims.

8. It was further submitted that the learned Arbitrator had not mechanically accepted the appellant's claims. Rather, the Arbitrator had rejected the claim relating to preliminary items in its entirety, substantially reduced the claim towards overhead expenditure from more than Rs.53 million to Rs.5 million, and similarly reduced the claimed profit from 20% to 10%. According to learned counsel, these findings demonstrate that the learned Arbitrator had independently assessed the evidence and exercised judicial discretion instead of accepting the appellant's claims without scrutiny. With regard to loss of profit, learned counsel also placed reliance upon the testimony of an officer of the respondent, who, according to the grounds of appeal, admitted during cross-examination that contractors executing Government contracts ordinarily earned profits ranging between 10% and 15%. It was, therefore, contended that the award of 10% towards loss of profit could not be characterized as an imaginary or arbitrary figure, but represented a conservative assessment of the loss suffered by the appellant on account of premature termination of the contracts.

9. Learned counsel, therefore, submitted that the findings recorded by the learned Arbitrator were founded upon the material available on record and that, in the absence of any legally recognized ground for setting aside the Award, the same ought not to have been interfered with by the learned Single Judge. It was further contended that, by reassessing the sufficiency and adequacy of the evidence, the learned Single Judge had effectively entered into the merits of the Award and substituted his own appreciation of the evidence for that of the Arbitrator, which was beyond the permissible scope of judicial interference under the Act. Learned counsel lastly prayed that the amounts awarded by the learned Arbitrator towards overhead expenditure and loss of profit be restored. In support of his submissions, learned counsel has relied upon the case law reported as: (1) Injum Aqeel vs. Latif Muhammad Chaudhry and others (2023 SCMR 1361) (2) Pakistan Steel Mills Corporation, Karachi vs. Messrs Mustafa Sons (Pvt.) Ltd., Karachi (PLD 2003 Supreme Court 301), (3) Karachi Transport Corporation vs. Karachi Tameerat Limited in Civil Appeal No.36-K of 1991 and Karachi Tameerat Limited vs. Karachi Transport Corporation in Civil Appeal No.144-K of 1991 [PLD 1992 Supreme Court 479] and (4) Messrs Hindustan Tea Co. vs. Messrs K. Sashikant & Co. 1989 MLD 212).

10. Conversely, learned counsel for the respondent has supported the impugned judgment and contended that the learned Arbitrator himself expressly recorded that there was *"hardly any credible evidence"* concerning overhead expenditure and that no evidence had been brought on record to substantiate the claim of 20% profit. According to learned counsel, once the Arbitrator himself found the absence of credible evidence, he could not thereafter award Rs.5 million simply because overhead expenses *"must have been incurred"*, nor he, without any evidentiary basis or supporting reasoning, determined the loss of profit at 10% after rejecting the appellant's claim for 20%. Learned counsel submitted that the determination of both amounts was based upon presumption rather than any evidence establishing the actual loss suffered by the appellant. The respondent therefore submits that the learned Single Judge correctly applied the principle that an award unsupported by evidence and suffering from an error apparent on its face is open to judicial interference. Learned counsel further argued that the Court is competent to reverse an arbitral finding where the same is not supported by evidence. He submitted that where an objection is specifically raised that an Award is based upon no evidence, the Court may examine the record for determining whether the Award has any evidentiary foundation or a reasonable nexus between the evidence and the findings recorded in the Award. The Court, however, cannot reappraise the evidence or substitute its own view merely because another conclusion may be possible on the material available on record. In support of his contentions, he has relied upon the case laws as reported (1) Allah Din & Company vs. Trading Corporation of Pakistan and others (2006 SCMR 614), (2) Azizullah Sheikh and another vs. Standard Chartered Bank Ltd. (2009 SCMR 276), (3) Dr. Amir Ali Malik vs. Messrs Transpak Corporation Ltd. (2002 CLC 129), (4) M/s. Joint Venture KG/RIST through D.P. Giesler vs. Federation of Pakistan through Secretary Food, Agriculture & Coop and another (PLD 1996 SC 108), (5) Ghee Corporation of Pakistan (Pvt.) Ltd. vs. Broken Hill Proprietary Company Ltd. through their Local Agents (PLD 1999 Karachi 112), (6) J.F.C. Gollaher vs. Samad Khan (1993 MLD 726) and (7) Messrs Ibad & Co. vs. Government of Sind and outs-Defendants (PLD 1981 Karachi 236).

11. We have heard learned counsel for the parties and have carefully examined the material available on record.

12. The controversy essentially pertains to the permissible scope of judicial interference with an arbitral award under Sections 30 and 33 of the Arbitration Act, 1940, particularly where the Arbitrator has awarded amounts towards overhead expenditure and loss of profit notwithstanding having observed that the evidence adduced in support of such claims was inadequate. The principal question requiring determination is whether, in the circumstances of the present case, the learned Single Judge exceeded the limited supervisory jurisdiction vested in the Court by reassessing the evidence underlying the Award, or whether the absence of a discernible evidentiary basis for the amounts awarded constituted an error apparent on the face of the Award, thereby justifying judicial intervention.

13. At the outset, it is well settled that an arbitral award cannot be equated with a decree rendered after a regular civil trial and subjected to appellate scrutiny as though the Court were exercising general appellate jurisdiction over findings of fact. Arbitration is a consensual mode of dispute resolution voluntarily adopted by the parties, and the supervisory jurisdiction of the Court is, by its very nature, circumscribed. Section 30 of the Act prescribes the grounds upon which an arbitral award may be set aside, including misconduct, invalidity and improper procurement. However, the limited scope of judicial intervention does not render every finding of an Arbitrator immune from scrutiny, particularly where the Award itself discloses a legal infirmity or an error apparent on its face.

14. So far as the finding relating to termination of the contracts is concerned, we find no justification to interfere therewith. The learned Arbitrator duly considered the contractual correspondence and the conduct of the parties and concluded that the respondent had, over a considerable period, accepted the appellant’s requests for extension and rescheduling of the contractual periods. The learned Single Judge independently examined this aspect of the Award and found the conclusion of the Arbitrator to be unexceptionable. We likewise find no reason to disturb the concurrent findings recorded in this regard. Accordingly, the finding that the appellant was entitled to terminate the contracts in terms of Clause 69.1 of the GCC is maintained. This finding assumes significance, as the respondent cannot, on the one hand, accept the finding that the contractor lawfully terminated the contracts and, on the other, deny the contractual consequences, if otherwise established, flowing from such lawful termination.

15. The appellant’s entitlement to refund of the retention money/security deposit is, therefore, clearly sustainable. The amounts in question had admittedly been deducted from the running bills, and the learned Arbitrator directed their refund after holding that the termination of the contracts was lawful. Unlike the claims for consequential damages, this component of the Award was directly relatable to identifiable deductions made from the contractor’s certified payments. The learned Single Judge, therefore, rightly upheld this part of the Award. We consequently find no justification to interfere with the finding concerning refund of the retention money/security deposit in respect of any of the four contracts.

16. The real controversy, however, arises in relation to the award of Rs.5 million under each contract towards overhead expenditure and loss. It is undoubtedly correct that overhead expenditure may, in an appropriate construction dispute, constitute a recognized head of consequential loss. A contractor who has mobilized labour, machinery, supervisory staff, establishment and other resources for execution of a project may, in appropriate circumstances, sustain overhead losses where the employer prematurely terminates the contract or otherwise prevents its completion. Nevertheless, the existence of a legal entitlement to claim such loss does not dispense with the requirement of establishing the loss through cogent and reasonably sufficient evidence. The amount awarded must bear a rational and demonstrable nexus with the material produced before the Arbitrator. A contractual right to compensation cannot be transformed into an unrestricted authority to award an amount merely on the assumption that some loss must necessarily have been suffered.

17. In the present case, the difficulty does not arise merely because the learned Arbitrator reached a conclusion different from that which this Court might have reached upon appreciation of the evidence. Rather, the infirmity is apparent from the reasoning expressly recorded by the learned Arbitrator himself. In relation to Contract No.1, the Arbitrator categorically observed that there was "hardly any credible evidence" concerning the overhead expenditure. Having so observed, the Arbitrator proceeded on the premise that overhead expenditure must nevertheless have been incurred and, without identifying any particular document, calculation, rate, period, expenditure statement, account or other evidentiary material, determined Rs.5 million to be a "reasonable figure".

18. This was not a case where the Arbitrator examined competing evidence and, upon appreciation thereof, preferred one figure over another. On the contrary, the Award itself demonstrates that the amount was not derived from the evidence but from the general assumption that expenditure must have been incurred. Section 26-A of the Act requires the Arbitrator to state reasons in sufficient detail. The object of such requirement is to ensure that the decision discloses a rational, intelligible and legally sustainable basis, enabling the Court, where permissible, to examine the questions of law arising from the Award and the validity of the reasoning supporting the conclusions reached therein. An order, judgment or determination rendered by a Court, tribunal or quasi-judicial authority must be clear, logical, reasoned and unambiguous, reflecting due application of mind in a just and judicious manner. A speaking order is indispensable to the proper administration of justice, for justice must not only be done but must also manifestly appear to have been done.

19. The requirement embodied in Section 26-A necessarily implies that, while exercising its limited jurisdiction in relation to an arbitral award, the Court may examine whether the reasons recorded by the Arbitrator are supported by the material placed before him and are consistent with the applicable law. Reliance in this regard may be placed upon **Umar Din through L.Rs. v. Mst. Shakeela Bibi and others (2009 SCMR 29)**. At the same time, it is equally well settled that the Court should not undertake a roving or probing inquiry with a view to discovering errors which do not appear on the face of the Award. However, where an error or infirmity is apparent from the Award itself and materially affects the validity of the conclusion reached, judicial intervention is permissible. The governing test, therefore, is not whether the Court would have arrived at a different conclusion, but whether the conclusion recorded by the Arbitrator possesses a lawful and discernible evidentiary foundation. Viewed in this context, the learned Single Judge was justified in treating the aforesaid defect as an error apparent on the face of the Award.

20. The appellant's reliance upon the principle that an Arbitrator is the final judge of facts does not cure the aforesaid defect. Finality attaches to a finding properly arrived at within the scope of the arbitral jurisdiction; it does not render an expressly unsupported estimate immune from judicial scrutiny. A clear distinction must be maintained between an erroneous appreciation of evidence and a finding rendered in the absence of any evidentiary support. Had the learned Arbitrator examined the documentary material and, upon considering the same, concluded that notwithstanding certain discrepancies the appellant had established overhead losses in the sum of Rs.5 million, the Court would ordinarily have been slow to interfere with such factual determination. In the present case, however, the reasoning proceeds in the converse manner: the evidence is expressly characterized as hardly credible, yet the amount is awarded on the assumption that the expenditure "must have been incurred". Such reasoning furnishes sufficient basis for judicial intervention without requiring the Court to undertake a fresh appraisal or retrial of the factual controversy.

21. The claim relating to loss of profit stands on a somewhat different footing in principle; nevertheless, in the context of the present Award, it suffers from the same fundamental infirmity. The appellant had claimed loss of profit at the rate of 20% of the unexecuted work. The learned Arbitrator rejected the claim at the rate of 20% as exaggerated and expressly recorded that no evidence had been produced in support thereof. Despite such finding, the Arbitrator proceeded to award loss of profit at the rate of 10%, describing the same as a "reasonable assessment" of the loss allegedly suffered as a consequence of the premature termination. The Award, however, does not identify any contractual profit margin, audited financial statement, comparative data relating to similar projects, tender analysis, expert opinion, cost structure, or any other specific evidentiary material forming the basis for selecting the figure of 10%. The percentage, therefore, appears to have been adopted as an estimate rather than derived from facts established on the record.

22. The appellant has sought to overcome this deficiency by relying upon the alleged admission of an officer of the respondent that contractors executing Government contracts generally earn profits ranging between 10% and 15%. Even assuming that such admission was correctly recorded in the arbitral proceedings, the same, by itself, does not establish that the appellant would necessarily have earned a profit of 10% on the particular unexecuted portion of each of the four contracts. A general statement concerning the profitability of Government contractors cannot be equated with proof of the anticipated net profit arising from a specific contract. Loss of profit constitutes a claim for compensation arising out of a particular contractual transaction and must, therefore, bear a reasonable relationship to the circumstances, contractual terms and economic considerations governing that transaction. A general statement regarding prevailing profit margins may constitute one item of evidence, but cannot, without supporting material, conclusively establish the precise amount of loss allegedly suffered by the appellant.

23. There is yet another material consideration. The learned Arbitrator appears to have adopted the reasoning recorded in respect of Contract No.1 and applied the same basis to Contracts Nos.2, 3 and 4. The four contracts constituted separate contractual instruments, relating to distinct works and, in certain respects, involving different consultants and differing scopes of work. Once the evidentiary foundation for the claims towards overhead expenditure and loss of profit under Contract No.1 was found deficient, the same figures could not automatically be applied to the remaining contracts without an independent examination of the evidence pertaining to each individual contract. The Award does not disclose any such separate evidentiary assessment. This circumstance further reinforces the conclusion that the impugned amounts were determined on the basis of a generalized assumption rather than evidence specifically establishing the loss attributable to each contract.

24. We are mindful of the submission that the appellant produced fourteen bound volumes of documents before the learned Arbitrator and that such extensive documentary material ought not to be disregarded. We do not disregard the record. However, the mere production of voluminous documents cannot, by itself, constitute proof of a particular head or quantum of damages. What is required is a discernible nexus between the evidence produced and the amount ultimately awarded. Section 26-A of the Act requires reasons to be stated in sufficient detail precisely to enable the Court, within the limited parameters of its jurisdiction, to ascertain whether the conclusion rests upon a legally sustainable foundation. Where the Arbitrator himself records that credible evidence has not been produced and nevertheless awards a substantial amount without identifying the material upon which the quantum has been determined, the resulting infirmity is apparent from the Award itself.

25. We also find no force in the contention that the learned Single Judge acted as an appellate court merely because he examined the reasoning adopted by the learned Arbitrator. The impugned Judgment expressly recognized that a Court exercising jurisdiction under Sections 30 and 33 of the Act does not sit as a Court of appeal over the Award and ordinarily cannot undertake a reappraisal of evidence. The learned Single Judge thereafter identified the recognized exception where an error or infirmity affecting the validity of the Award is apparent on its face and applied that principle to the two disputed heads of compensation. Such approach is consistent with the statutory scheme of the Act and the requirement contained in Section 26-A of the Act thereof, and preserves the essential distinction between limited judicial supervision of an arbitral award and appellate re-adjudication of the merits.

26. With regard to the respondent's counter-claim, we note that an issue concerning its maintainability and effect was specifically framed by the learned Arbitrator. The material placed before us, however, does not demonstrate that the respondent was ultimately granted any independent monetary relief on account of the counter-claim. In view of the finding that the appellant had validly terminated the contracts, and considering the consequential rejection of the disputed monetary claims, the absence of a separate adjudication resulting in monetary relief on the counter-claim does not, in the circumstances of the present case, furnish any ground for restoration of the impugned portions of the Award. The appellant's challenge is principally directed against the setting aside of the amounts awarded towards overhead expenditure and loss of profit, and those claims fail independently for the evidentiary reasons discussed hereinabove.

27. For the foregoing reasons, we are of the considered view that the learned Single Judge correctly maintained the finding regarding the appellant's contractual right to terminate the four contracts and rightly made the Award rule of the Court to the extent of the retention money/security deposit. The learned Single Judge was equally justified in setting aside the amounts awarded towards overhead expenditure and loss of profit, as the reasoning recorded by the learned Arbitrator himself demonstrates that the said amounts were not founded upon proved evidence but upon an assumption and generalized estimation. The intervention by the learned Single Judge, therefore, cannot be characterized as an appellate reassessment of the merits of the dispute; rather, it constituted a limited examination of the validity and evidentiary foundation of the reasoning disclosed on the face of the Award. The principle of finality attached to arbitral findings cannot be invoked to sustain a monetary award which lacks the evidentiary foundation required by law.

28. Consequently, for the reasons recorded hereinabove, the instant High Court Appeal, being devoid of merit, is **dismissed** to the extent that it assails the setting aside of the amounts awarded towards overhead expenditure and loss of profit. The Judgment dated 30.11.2016 and Decree dated 09.12.2016 passed by the learned Single Judge in Suit No.987 of 2013 are accordingly **maintained**. The Award shall stand made rule of the Court only to the extent sustained by the learned Single Judge, including the refund of retention money/security deposit together with interest thereon in accordance with the Award and the impugned Decree.

JUDGE

JUDGE

KAMRAN/PS