

Order Sheet

IN THE HIGH COURT OF SINDH, KARACHI

IInd Appeal No. 56 of 2015

[The Trustees of the KPT vs. R.H. Electric Service]

Appellant	Through Mr. Faheem Iqbal, Advocate.
Respondent	Nemo
Date of Hearing & Order	12.01.2026

ARSHAD HUSSAIN KHAN, J. Through the present second appeal, the appellant has assailed the concurrent findings of the two courts below and seeks to set aside the judgment and decree dated 30.05.2015, passed by learned Vth Additional District Judge, Karachi, in Civil Appeal No. 211 of 2011, whereby the lower appellate court, while dismissing the appeal, upheld the judgment and decree dated 17.08.2011 and 10.10.2011, respectively, passed by the learned IInd Senior Civil Judge (West), Karachi, in Suit No. 253 of 2003 (old Suit No. 420 of 1999), through which the arbitral award dated 19.03.1999 was made rule of the Court.

2. Briefly stated, the facts of the case are that the respondent/plaintiff initially filed Suit No. 531 of 1993 before this court for recovery of an amount against the appellant/defendant, namely, The Trustees of the Port of Karachi, arising out of a contract dated 10.10.1989 for the installation of an additional DE-PABX system at the KPT Head Office. During the pendency of the proceedings, the parties entered into a compromise and the dispute was referred to arbitration. The respondent filed its claim before the arbitrator, whereas the appellant raised objections along with a counter-claim alleging non-completion and deficiencies in the work. Upon consideration of the material on record, the arbitrator passed an award dated 19.03.1999, holding that the respondent had duly completed the work and that the final bill amounting to Rs.6,87,421/- had been certified by the consultant, while rejecting the objections raised by the appellant. The arbitral award was initially made rule of the court in Suit No. 253 of 2003 (old Suit No.

420 of 1999) before the learned IInd Senior Civil Judge (West), Karachi; however, the same was set aside in Civil Appeal No. 32 of 2004 and the matter was remanded. Upon remand, despite being afforded sufficient opportunities, the appellant failed to file a written statement and was consequently debarred from doing so. The learned trial court, proceeding ex-parte, again made the arbitral award rule of the court and decreed the suit, vide judgment and decree dated 17.08.2011.

3. Learned counsel for the appellant submits that the impugned Judgment and Decree give rise to substantial questions of law, as the learned courts below failed to exercise jurisdiction vested in them while making the Award rule of the Court without examining its legality, validity, or enforceability. It is contended that despite serious objections and a counter-claim raised by the appellant, the learned trial court acted mechanically, while the learned appellate court affirmed the decree without addressing material legal defects apparent on the face of the Award, thereby acting contrary to settled principles of law. It is further argued that the Award stood vitiated by legal misconduct, as the Arbitrator ignored binding observations of the Wafaqi Mohtasib contained in the Order dated 18-05-1993, which had attained finality. Learned counsel further submits that the appellant was illegally debarred from filing written statement on the basis of a diary entry not passed by the Presiding Officer, rendering the ex-parte proceedings void and unlawful. It is urged that the courts below have failed to properly appreciate the material available on the record and the arguments advanced by the appellant, and that denial of a fair opportunity to contest the matter on merits has resulted in grave miscarriage of justice, rendering the impugned Judgment and Decree contrary to law, equity, and principles of natural justice, which are therefore liable to be set aside, warranting interference by this Court under Section 100 CPC.

4. The respondent has been served through all modes including publication but none has appeared on its behalf.

5. Heard learned counsel for the appellant and perused the material available on the record.

6. It is evident from the record that the dispute between the parties originated from a contractual agreement dated 10.10.1989 relating to installation of an additional DE-PABX system at the appellant's premises. Upon occurrence of differences, the matter was, by mutual consent, referred to arbitration pursuant to a compromise recorded before this Court. The Arbitrator, after considering the pleadings, documentary evidence, and objections including the counter-claim raised by the appellant, returned a categorical finding that the respondent had completed the work and that the final bill was duly verified, certified, and approved by the consultant appointed by the appellant itself, culminating in the Award dated 19.03.1999.

7. The record further reflects that although the award was initially made rule of the Court and later set aside on appeal with a direction to decide the matter on merits, the appellant, despite availing prolonged opportunities extending over a considerable period, failed to file its written statement after remand. Consequently, the learned trial court, vide order dated 29.07.2011, debarred the appellant from filing written statement and proceeded ex-parte. The respondent led its evidence, which remained unrebutted and unchallenged. The trial court, upon appraisal of such evidence and the arbitral record, made the award rule of the court through judgment and decree dated 17.08.2011 and 10.10.2011 respectively. The appellant challenged the said judgment and decree before the lower appellate court by filing Civil Appeal No. 211 of 2011.

8. The learned lower appellate court, while dismissing Civil Appeal No.211 of 2011, examined the entire factual and procedural background, including the grievance regarding debarring of the appellant from filing written statement, and recorded a clear finding that the appellant had failed to avail lawful opportunities granted after remand, and that no illegality or procedural irregularity had been committed by the trial court. The lower appellate court also took note of the admitted position that the final bill had been approved by the appellant's own consultant and that the award was

based upon such admitted and documentary material, thereby affirming the decree on merits.

9. It is evident that the appellant's grievances predominantly relate to questions of fact, including the alleged non-completion of work, objections to the final bill, and the grievance regarding debarment from filing the written statement. The record reflects that the appellant failed to produce any documentary evidence in support of its stance, either before the arbitrator or before the courts below. It further appears that, despite repeated opportunities, the appellant did not file objections to the arbitral award, and in the absence of any such objections, the court below had no option but to accept the award and make it rule of the court.

10. Notwithstanding the above, it is well settled that while examining an arbitral award, the court is not authorized to re-assess or re-appraise the evidence. The court must avoid an over-intrusive approach and cannot act as a court of appeal over the findings of the arbitrator. Its jurisdiction is limited to examining whether the award suffers from any patent illegality or jurisdictional defect apparent on the face of the record. The Supreme Court of Pakistan in the case of *National Highway Authority through Chairman, Islamabad v. Messrs Sambu Construction Co. Ltd., Islamabad and others* [2023 SCMR 1103], while dilating upon the scope and parameters of judicial review of an arbitral Award, inter alia, held as under:

“15.We are also mindful of the fact that there is a limited scope of judicial review of the 'Award' announced by an Arbitrator. An arbitration Award is a final determination of the dispute between the parties. The grounds for challenging an Award are very limited. There are three broad areas on which an arbitration Award is likely to be challenged i.e. firstly, jurisdictional grounds (non-existence of a valid and binding arbitration agreement); secondly, procedural grounds (failure to observe principles of natural justice) and thirdly, substantive grounds (arbitrator made a mistake of law). The review of an arbitration Award cannot constitute a re-assessment or reappraisal of the evidence by the court. An over-intrusive approach by courts in examination of the arbitral Awards must be avoided. The court is not supposed to sit as a court of appeal and must confine itself to the patent illegalities in the Award, if any. The jurisdiction of the Court under the Act is supervisory in nature. Where two findings are possible the Court cannot interfere with the Award by adopting its own interpretation. Interference is only possible if there exists any breach of duty or any irregularity of action which is not consistent with general

principles of equity and good conscience. The arbitrator alone is the judge of the quality as well as the quantity of the evidence. He is the final arbiter of dispute between the parties. He acts in a quasi-judicial manner and his decision is entitled to utmost respect and weight. By applying the afore-noted principles of law on the subject and considering the petitioner's objections within the limited scope of court's jurisdiction in testing the validity of Award this court is not supposed to sit as a court of appeal and make a roving inquiry and look for latent errors of law and facts in the Award. The arbitration is a forum of the parties' own choice its decision should not be lightly interfered by the court, until a clear and definite case within the purview of the section 30 of the Act is made out. We do not find any jurisdictional, procedural or substantive error patently floating on the record that could justify interference by this Court.”

11. The dispute between the parties in the instant matter stood conclusively adjudicated through an arbitral award dated 19.03.1999, rendered pursuant to a lawful reference made with the consent of the parties and thereafter made rule of the Court. In light of the dicta laid down by the Supreme Court in NHA (supra), once an arbitrator, acting within the scope of the reference, records findings on the basis of the material available on record, the courts are not to assume the role of a court of appeal over such an award. Judicial interference is confined only to cases where misconduct of the arbitrator, want of jurisdiction, or a patent error apparent on the face of the award is established, such error being self-evident and not requiring any re-appraisal of evidence. In the present case, despite having been afforded sufficient opportunities, the appellant failed to file objections to the award before the learned trial court, as a consequence whereof the award was rightly made rule of the court.

12. Although, in a second appeal, this court is not required to consider objections to an arbitral award, particularly where no such objections were admittedly raised before the learned trial court, yet, in the interest of justice, the objection relating to the alleged misconduct of the arbitrator has been examined. The appellant asserts that the arbitrator committed misconduct by ignoring the observations of the Wafaqi Mohtasib, Mr. Justice Usman Ali Shah (Retd.), contained in his order dated 18.05.1993, passed in Complaint No. K/1870/92, which, for not having been challenged before the President of Pakistan, was claimed to have attained finality.

The objection is wholly misconceived. The dispute arises out of contractual rights and liabilities, which do not fall within the jurisdiction of the Honourable Ombudsman, whose competence is confined to matters of maladministration by an “Agency” as defined under the President’s Order No. 1 of 1983. The order relied upon neither determined nor concluded the contractual rights of the parties, nor could it operate to non-suit the claimant. Moreover, the record shows that, upon an application by the consultants, namely M/s Shims Enterprises, the Honourable Ombudsman, vide order dated 06.03.1994, expunged the entire paragraph 7 of the findings in the earlier order dated 18.05.1993. Consequently, the arbitrator was under no legal obligation to treat the said order as binding or conclusive, and having examined the claim independently on its own merits, no misconduct can be attributed to him on this account. The objection thus raised is devoid of substance and does not warrant any interference with the impugned award.

13. In view of the above, it is manifest that the findings recorded by both courts below are concurrent findings of fact, based on appreciation of evidence and conduct of the parties, and do not suffer from misreading or non-reading of material evidence, jurisdictional defect, or procedural illegality of the nature contemplated under Section 100 CPC. The objections raised by the appellant essentially seek re-appraisal of facts and evidence, which is impermissible in second appellate jurisdiction. No substantial question of law has been shown to arise so as to warrant interference by this Court.

14. Furthermore, this is a Second Appeal, which has been filed under Section 100 C.P.C. Under Section 100 of the Code of Civil Procedure 1908, a second appeal to the High Court lies only on any of the following grounds: (a) the decision being contrary to law or usage having the force of law; (b) the decision having failed to determine some material issue of law or usage having the force of law; and (c) a substantial error or defect in the procedure provided by CPC or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case

upon merits. However, in the instant matter, none of the aforesaid grounds is involved.

15. Accordingly, in view of the above discussion, present appeal is dismissed being devoid of any merit. The respondent would be at liberty to withdraw its decretal amount of Rs.6,87,421/- (alongwith profit accrued thereon, if any) deposited with the Nazir of District Judge, Karachi [West] as per the order of this Court dated 09.05.2018; which has been confirmed by the learned District Judge, vide its report dated 22.09.2018, available on the record.

JUDGE