

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

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

High Court Appeal No.223 of 2017

Appellant : Muzaffar H. Sufi S/o Syed Shujauddin
through Mr. Asif Ali Khawaja, Advocate

Respondents : M/s. Tourism Promotion Services
(Pakistan) Limited and other
through M/s. Hasan Mandviwalla &
Hassan Ali, Advocates appearing for
Respondent No.1

Date of Hearing : 15.09.2026

Date of Judgment: 15.09.2026

J U D G M E N T

Amjad Ali Sahito, J.- Through the instant High Court Appeal, Mr. Muzaffar H. Sufi, Claimant (hereinafter referred to as “**the Appellant**”), has called in question the judgment dated 22.02.2017 and decree dated 02.03.2017 passed by the learned Single Judge of this Court in Suit No.958 of 2009, whereby the objections filed by the Appellant under Sections 30 and 33 of the Arbitration Act, 1940, against the Award dated 06.07.2009 rendered by the learned Sole Arbitrator, were partly allowed. The learned Single Judge modified the Award and made the same Rule of the Court to the extent of Rs.7,000,000/- as principal amount, together with interest in terms of Section 29 of the Arbitration Act, 1940, from the date of the Award until final realization at the rate prescribed by the State Bank of Pakistan for cost of funds during the relevant period for lending money, whereas the remaining monetary claims allowed by the learned Sole Arbitrator were set aside. Being aggrieved by the said judgment and decree, the Appellant has preferred the present Appeal.

2. Briefly stated, the dispute emanated from a tender invited by Tourism Promotion Services (Pakistan) Ltd. (hereinafter referred to as “**Respondent No.1**”) in June 2000 for the supply, installation, testing, commissioning and maintenance of five OTIS lifts at Serena Hotel, Islamabad. The Appellant submitted his bid, which was accepted by Respondent No.1 on 17.11.2000 for a total consideration of Rs.12 million, followed by a Letter of Intent dated 29.11.2000 requiring supply of the lifts by 31.05.2001. Respondent No.1 paid a sum of Rs.7 million to the Appellant and also opened an irrevocable Letter of Credit for Rs.4.4 million. However, the lifts were neither supplied nor installed. According to the Appellant, the failure to complete the work was attributable to Respondent No.1 on account of delay in approval of drawings and repeated changes sought by it. Respondent No.1, on the other hand, maintained that the Appellant had failed to perform his obligations despite having received the aforesaid payment and despite the opening of the Letter of Credit. The dispute was thereafter referred to arbitration in terms of the arbitration clause contained in the tender documents.

3. In the first round of arbitration proceedings, an ex-parte Award dated 14.04.2004 was rendered against the Appellant. The said Award was challenged by the Appellant before this Court through J.M. No.16 of 2004. During the pendency of the said proceedings, the parties, by consent, agreed to have the earlier Award set aside, whereupon this Court, vide order dated 27.02.2007, appointed a Sole Arbitrator, with the consent of the parties, for fresh determination of the disputes between them.

4. In the fresh arbitration proceedings, the parties led evidence with regard to the alleged non-performance of the arrangement, the Appellant’s claim for damages, and his assertion that the amounts received by him had been utilized towards the manufacture of the lifts. The learned Sole Arbitrator, through Award dated 06.07.2009, held that the Appellant had failed to supply, install and commission the lifts despite having received Rs.7 million and despite the opening of the Letter of Credit. The claims of the Appellant for damages and the alleged

additional remittances made to the manufacturers were rejected, whereas refund of the sum of Rs.7 million, along with certain heads of the counterclaim raised by Respondent No.1, was allowed.

5. The Appellant thereafter challenged the fresh Award under Sections 30 and 33 of the Arbitration Act, 1940. The learned Single Judge partly allowed the objections, setting aside several heads of the counterclaim, while maintaining the liability in respect of the principal amount of Rs.7 million and substituting the markup awarded by the learned Arbitrator with interest in terms of Section 29 of the Arbitration Act, 1940. Aggrieved by the said judgment and decree, the Appellant has preferred the present Appeal.

6. Learned counsel for the Appellant contended that the learned Single Judge had failed to properly appreciate the material available on record as well as the findings recorded by the learned Sole Arbitrator. According to learned counsel, the parties had entered into negotiations concerning the supply and installation of the lifts; however, no formal contract was ultimately executed between them. It was argued that the Letter of Intent and the correspondence exchanged between the parties did not constitute a concluded contract in the manner alleged by Respondent No.1. Learned counsel further contended that the failure to complete the transaction was attributable to Respondent No.1, which had repeatedly sought changes and discounts and had failed to provide or approve the layout drawings necessary for manufacture of the custom-made lifts. He submitted that the Appellant had obtained and furnished the requisite drawings from the manufacturers and had remained ready and willing to proceed with the transaction, but Respondent No.1 failed to complete the necessary formalities. It was further argued that the terms and conditions of the Letter of Credit were not acceptable to the foreign manufacturers, which also contributed to the delay in completion of the transaction.

7. Learned counsel for the Appellant further contended that Respondent No.1 could not lawfully terminate the arrangement

without first issuing a show-cause notice to the Appellant and thereafter entrusting the work to another contractor at a substantially higher price. He submitted that, as a consequence thereof, the Appellant had suffered considerable financial loss, and that the assurance allegedly extended by Respondent No.1 that other work would be awarded to the Appellant by way of compensation had also not been properly considered. Learned counsel further maintained that the amounts received by the Appellant had been utilized towards the manufacture of the lifts and that the learned Arbitrator had erred in declining to accept the Appellant's claim regarding remittance of funds to the manufacturers. He also assailed the award of markup/interest and submitted that the learned Single Judge had erred in maintaining the principal liability while merely modifying the rate and manner of payment of interest.

8. Conversely, learned counsel appearing for Respondent No.1 supported the impugned judgment and decree passed by the learned Single Judge. He submitted that the learned Sole Arbitrator, after recording the evidence of both sides and examining the documents produced before him, had rightly concluded that the Appellant had failed to supply and install the lifts despite having received Rs.7 million and despite the opening of the Letter of Credit for Rs.4.4 million. Learned counsel further contended that the Appellant's assertion regarding payment or remittance of the amounts to the foreign manufacturers was not substantiated by any reliable documentary evidence. Likewise, the mere production of layout drawings did not establish that the Appellant had performed his obligations under the arrangement. It was, therefore, argued that the Appellant's claim for damages had rightly been rejected by the learned Sole Arbitrator.

9. Learned counsel further submitted that the learned Single Judge had already examined the objections raised against the Award and had substantially curtailed the relief granted in favour of Respondent No.1 by setting aside several heads of its counterclaim. According to learned counsel, the principal amount of Rs.7 million had admittedly been received by the Appellant and, particularly in view of the Appellant's own

concession before the learned Single Judge that the objections relating to Issues Nos.1 and 3 were not pressed, no lawful basis remained for interference with the liability to refund the said amount. It was lastly contended that the learned Single Judge had exercised jurisdiction under Sections 30 and 33 of the Arbitration Act, 1940, in accordance with law, had set aside the unsupported portions of the Award, and had appropriately dealt with the question of interest under Section 29 of the said Act. Learned counsel accordingly prayed for dismissal of the present Appeal and maintenance of the impugned judgment and decree.

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

11. The controversy essentially revolves around the scope of judicial interference with an arbitral Award under Sections 30 and 33 of the Arbitration Act, 1940, and whether the learned Single Judge committed any error in modifying the Award while maintaining the direction for repayment of Rs.7 million. It is well settled that an arbitral Award is not to be treated at par with an ordinary judgment of a civil Court so as to warrant a complete reappraisal of the evidence and factual controversy in appellate proceedings. The Court does not ordinarily substitute its own appreciation of the evidence for that of the learned Arbitrator. Interference is warranted only where a recognized statutory ground is made out, including an error of law or a finding which is unsupported by, or contrary to, the material available on record.

12. In the present case, the learned Single Judge adhered to the aforesaid limited scope of interference. The learned Court did not undertake a wholesale reappraisal of the arbitration proceedings; rather, it examined whether the various components of the Award were supported by the material available on record. Where the learned Arbitrator had allowed separate monetary claims without adequately disclosing the evidentiary basis for their quantification, the learned Single Judge interfered and set aside such claims. Thus, the impugned judgment was not founded upon an unrestricted reconsideration

of the Award, but upon an examination of those portions thereof which could legally and factually be sustained.

13. The principal issue regarding the Appellant's failure to supply, install and commission the five lifts is required to be considered in the aforesaid backdrop. The learned Arbitrator recorded a finding that the Appellant had failed to perform his principal obligation despite having received Rs.7 million and despite the opening of an irrevocable Letter of Credit for Rs.4.4 million. The Appellant sought to explain such failure by relying upon the alleged delay on the part of Respondent No.1 in approving the layout drawings, as well as the changes and discounts allegedly sought by Respondent No.1. The learned Arbitrator considered the correspondence and other material relied upon by the Appellant, but found that mere forwarding of the drawings did not, by itself, establish complete performance of the Appellant's obligations, nor did it establish that Respondent No.1 alone was responsible for failure of the transaction.

14. There is also a material procedural aspect which cannot be overlooked. Before the learned Single Judge, learned counsel appearing for the Appellant expressly stated that the objections relating to Issues Nos.1 and 3 were not pressed. Issue No.1 directly related to the failure of the Appellant to supply, install and commission the lifts despite receipt of Rs.7 million and opening of the Letter of Credit. Having consciously chosen not to press the objection to such finding before the learned Single Judge, the Appellant cannot, in the present Appeal, seek to reopen the same factual controversy in the absence of any legally sustainable ground warranting interference.

15. The receipt of Rs.7 million by the Appellant was not disputed. His case, however, was that the said amount had been utilized or transferred towards the manufacture of the lifts. The learned Arbitrator considered this assertion and found that no satisfactory documentary evidence had been produced to establish the alleged remittance to the foreign manufacturers. The Appellant relied upon a *hawala* transaction; however, the same was not substantiated by any documentary evidence. The

learned Arbitrator also took into consideration the Appellant's statement regarding his responsibility to return the amount if the same became payable. These findings were recorded upon an appreciation of the evidence brought before the learned Arbitrator.

16. The learned Single Judge, however, made an important distinction in this regard. The mere failure of the Appellant to establish that the amount had been remitted to the manufacturers could not, in itself, lead to the conclusion that the Appellant had retained the said amount for his personal benefit. The learned Single Judge, therefore, modified the adverse observation of the learned Arbitrator to that extent. Such modification, however, did not disturb the independent finding that the Appellant had failed to complete the agreed work. In other words, the liability of the Appellant to return the amount was not founded upon any finding of dishonest retention; rather, the amount was recoverable as it had been paid towards a transaction which remained incomplete, while the finding regarding non-performance remained unchallenged.

17. The contention that Respondent No.1 was solely responsible for failure of the transaction also does not persuade us to interfere. The Appellant relied upon correspondence relating to layout plans, changes, discounts and the Letter of Credit. Such correspondence may indicate that negotiations and certain disagreements had taken place between the parties; however, in the absence of further supporting material, it does not establish that Respondent No.1 alone was responsible for failure of the transaction. The learned Arbitrator considered this aspect of the matter but did not find the explanation furnished by the Appellant sufficient. Such appreciation of evidence cannot be interfered with merely because a different interpretation of the correspondence is sought to be advanced before us in appeal.

18. The contention regarding termination of the arrangement without issuance of a show-cause notice also does not furnish a valid ground for setting aside the Award. The question before the Court is whether the alleged absence of notice resulted in a

defect falling within any of the statutory grounds recognized for interference under the Arbitration Act. The Appellant was subsequently afforded full opportunity in the arbitration proceedings to establish his case. He entered the witness box, produced documentary evidence and made his submissions before the learned Arbitrator. The learned Arbitrator duly considered the evidence and did not accept the Appellant's contention that the Respondents alone were responsible for the alleged non-performance. Nothing has been brought on record to demonstrate that such conclusion was legally impermissible or otherwise fell within any recognized ground of interference.

19. The Appellant's claim for damages also required proof of actual loss and a causal nexus between such loss and the conduct attributable to the Respondents. The Appellant asserted that he had suffered substantial financial loss and had transferred considerable amounts from his own resources to the manufacturers. The learned Arbitrator, however, found that the alleged transfers and the consequential losses had not been established through sufficient evidence. Likewise, the alleged assurance that the Appellant would be compensated by being awarded some other work was not supported by any documentary evidence. In these circumstances, the rejection of the claim for damages does not disclose any legally sustainable ground warranting appellate interference.

20. We now turn to the counterclaim of Respondent No.1. The learned Arbitrator had allowed, in addition to the principal amount of Rs.7 million, claims under various heads, including markup, liquidated damages, legal fee, additional payments made to other suppliers and loss of revenue, while rejecting certain other claims. The learned Single Judge examined these claims separately and found that the Award did not sufficiently disclose the evidentiary basis upon which the respective amounts had been allowed. Consequently, those claims were set aside. This aspect of the impugned judgment is significant, as it demonstrates that the learned Single Judge did not mechanically affirm the counterclaim of Respondent No.1 in its entirety.

21. Consequently, the substantial counterclaim originally advanced by Respondent No.1 was considerably curtailed. What ultimately survived was the principal amount of Rs.7 million, which had admittedly been received by the Appellant and related to a transaction which, according to the finding recorded on Issue No.1, had not been completed. The learned Single Judge, therefore, maintained only that portion of the Award which had a clear basis in the material available on record, while declining to sustain the additional monetary claims which lacked adequate evidentiary support. We find no error in the approach adopted by the learned Single Judge.

22. The learned Single Judge has also correctly dealt with the question of interest. The learned Arbitrator had awarded markup at the rate of 15% per annum from the date of the Award until realization of the amount. The learned Single Judge examined the provisions of Section 29 of the Arbitration Act, 1940, as well as the authorities relied upon before him, and concluded that the question of interest was required to be dealt with in accordance with the statutory provision. Accordingly, the markup at the rate of 15% per annum was not maintained and interest was directed to be paid in terms of Section 29 of the Arbitration Act, 1940, at the rate prescribed by the State Bank of Pakistan for cost of funds during the relevant period for lending money. No error in such legal approach has been demonstrated before us.

23. We also find no substance in the contention that Respondent No.1 had claimed a lesser amount in the earlier arbitration proceedings. The earlier ex-parte Award had been set aside with the consent of the parties, whereafter a fresh reference was made to the Sole Arbitrator agreed upon by the parties. The claims and counterclaim in the fresh proceedings were, therefore, required to be considered on the basis of the pleadings and evidence brought on record in those proceedings. Significantly, even in the fresh proceedings, the learned Single Judge did not sustain all the claims advanced by Respondent No.1 and set aside several of them for want of sufficient evidentiary support.

24. The plea of limitation, insofar as the same was raised before the learned Arbitrator, also does not advance the case of the Appellant. The Award records that such plea was raised only at the stage of arguments and had not been taken in the pleadings, at the stage of proposed issues, or when the issues were settled. The learned Arbitrator considered the plea and rejected the same. No sufficient legal ground has been demonstrated before us which would warrant interference with such conclusion or render the surviving liability of Rs.7 million unsustainable.

25. The Appellant has also invoked the principles of natural justice and equity. We find no denial of a fair and reasonable opportunity in the proceedings. The Appellant participated in the arbitration proceedings before the learned Sole Arbitrator, appeared as a witness and produced documentary evidence in support of his case. He thereafter challenged the Award before the learned Single Judge, where his objections were duly heard and several portions of the Award were set aside in his favour. The material available on record, therefore, does not support the contention that the Appellant was denied an adequate opportunity to present and establish his case.

26. It is equally well settled that the present Appeal cannot be converted into a second round of factual adjudication. The learned Arbitrator considered the evidence relating to the transaction, payments made, layout drawings and alleged remittances. The learned Single Judge thereafter examined the Award within the limited jurisdiction available under Sections 30 and 33 of the Arbitration Act, 1940, and interfered with those portions which were found to be inadequately supported by the record. Unless the Appellant is able to demonstrate a material error of law, perversity, or a finding wholly unsupported by the evidence on record, interference at this stage would amount to a reappraisal of the evidence, which is not permissible merely because the Appellant seeks a different conclusion.

27. On the material available before us, the surviving direction for repayment of Rs.7 million has a clear factual basis. The said

amount was admittedly received by the Appellant; the lifts were neither supplied nor installed; the finding recorded on Issue No.1 was against the Appellant; and the objection to the said issue was expressly not pressed before the learned Single Judge. At the same time, the learned Single Judge did not sustain the additional monetary claims merely on the basis of assertions and set aside those claims which were not adequately supported by evidence. The balance ultimately struck by the impugned judgment, therefore, cannot be characterized as arbitrary or legally unsustainable.

28. For the foregoing reasons, we are satisfied that the learned Single Judge exercised the jurisdiction vested in him under Sections 30 and 33 of the Arbitration Act, 1940, in accordance with law. The Appellant has failed to demonstrate any material misreading or non-reading of evidence, jurisdictional defect, error of law or perversity in the surviving portion of the Award. The grounds urged in the present Appeal, in substance, seek reconsideration of factual matters which had already been examined by the learned Arbitrator and, to the extent permissible in law, by the learned Single Judge.

29. Consequently, we find no lawful basis warranting interference with the impugned judgment and decree. Accordingly, the instant High Court Appeal is **dismissed**. The judgment dated 22.02.2017 and decree dated 02.03.2017 passed by the learned Single Judge of this Court are hereby **maintained**. The Award dated 06.07.2009 shall remain Rule of the Court only to the extent and in the manner modified by the learned Single Judge, including the principal amount of Rs.7,000,000/- and interest payable in terms of Section 29 of the Arbitration Act, 1940. There shall be no order as to costs.

JUDGE

JUDGE