

**IN THE HIGH COURT OF SINDH AT KARACHI****Suit No.670 of 2012.****M/s. Abdul Latif Builders----- Plaintiff****Versus****Defence Housing Authority----- Defendant****Date of hearing: 03.11.2016****Date of Order: 03.11.2016****Plaintiff: Through Mr. Mazher-ul-Islam, Advocate  
for the plaintiff.****Defendant: Through Mr. Raja Sikandar Khan Yasir,  
Advocate.****ORDER**

**Muhammad Junaid Ghaffar, J.** This is a Suit in respect of an Award passed by the learned Sole Arbitrator and through this judgment the objections raised on behalf of the defendant / objector under Sections 30 & 33 of the Arbitration Act, 1940, against the validity of the Award dated 31.05.2012 passed by the learned Sole Arbitrator are being decided.

2. Briefly, the facts as stated are that due to differences between the parties, the matter was referred for Arbitration pursuant to Agreement dated 25.09.2007 and grievance of the plaintiff appears to be that, it was awarded a contract for construction of residential Bungalows/married officer's accommodation on Plot No.53/11, 6<sup>th</sup> Commercial Street, Phase-V, DHA, Karachi against a total consideration of Rs.14,868,018/-. It is the case of the plaintiff that the work commenced w.e.f. 02.10.2007 and

was completed on 30.08.2008 and on 26.02.2009 a final bill amounting to Rs.65,99,610/- was submitted but the defendant illegally and unlawfully deducted an amount of Rs.21,84,541/-. Whereas, plaintiff being under the financial compulsion agreed to accept the said deduction and requested the defendant to pay the balance amount of Rs.44,15,069/-. However, same was not paid, whereafter plaintiff claimed a total amount of Rs.84,40,724/- in respect of final bill, bank mark-up and other expenditures incurred by him. It further appears that thereafter the defendant gave an option through its Letter dated 05.12.2009 by raising objection in respect of some works and asked for deduction as compensation in respect of such defective works of Rs.400,000/-. Such option was accepted by the plaintiff vide its letters dated 12.12.2009 & 14.12.2009, conditionally if the amount was paid by 31.12.2009. However, it is the case of the plaintiff that since no payment was made within stipulated time, therefore, he is now entitled for entire balance payment including additional amount claimed by him and thereafter the matter was referred to the Arbitrator, who has given the Award.

3. The defendants have filed their objections under Section 33 & 34 of the Arbitration Act. Learned Counsel for the defendants submits that the only controversy, which is now being agitated by them against the Award is to the extent of granting the amount of Rs.400,000/-, which the plaintiff had agreed for deduction due to defective works being carried out. He has referred to the objections in this regard, in which it has been stated that the plaintiff is entitled only for an amount of Rs.39,77,731/-, which the defendant is ready to pay.

4. On the other hand learned Counsel for the plaintiff submits that since the claim is admitted and insofar as the amount of Rs.400,000/- is concerned the concession was only given by the plaintiff for timely payment of the final bill; and since no payment was made within such time, the defendant cannot deduct the said amount as they have failed to honor the commitment.

5. I have heard both the learned Counsel and perused the record as well as Award of the learned Sole Arbitrator. Though there were number of issues, which were framed by the learned Sole Arbitrator, however, on perusal of the objections filed in this matter, it appears that the defendants are only agitating the amount of Rs.400,000/-, which according to the defendants was to be deducted against defective construction, therefore, only Issue No.7 to 13 are relevant for deciding objections raised on behalf of the defendants, which reads as under:-

“7. Whether the claimant agreed for the deduction of Rs.400,000/- (Four Lacs) for the rectification of defective work out of his final bill of Rs.43,77,731/- vide his letter dated 14.12.2009 as per option given to him by the respondent vide letter dated 05.12.2009?

8. Whether the final bill comes to Rs.4,415,070.18 after deduction of Rs.400,000/- vide final amendment C/A No.DHA/CA/D&C dated 01.11.2007 bearing signature of officers concerned of the respondent?

9. Whether the final bill of the claimant was of Rs.6,599,815/- dated 26.02.2009 or Rs.4,377,731/-?

10. Whether the claimant agreed conditionally for deduction of Rs.400,000/- (four Lacs), if yes, from which bill?

11. Whether the claimant is entitled to receive Rs.39,77,731/- and not Rs.84,40,724/- as claimed by him.

12. Whether the claimant is entitled to the damages and salaries of his employees or mark-up as claimed?

13. What should be the order?”

6. The findings of the learned Sole Arbitrator on Issue Nos. 7 to 11 is to the extent that the plaintiff is entitled for an amount of Rs.44,15,069/-

as the plaintiffs payment was withheld without any justification and in the evidence it has come on record that Syed Ghulam Nabi Shah, the Civil Engineer of defendant admitted that the bill of the plaintiff has not yet been paid till the day he had given evidence. The learned Sole Arbitrator has discarded the objection for deduction of Rs.400,000/-, as such concession was given by the plaintiff only when the outstanding amount was paid within due date. Since no payment was made to the plaintiff within time, learned Sole Arbitrator observed that the defendant has no such right to deduct Rs.400,000/-, as only conditional consent was given by the plaintiff. On perusal of the reasoning given by the learned Sole Arbitrator, I am of the view that the learned Sole Arbitrator has come to a just and fair conclusion to which I am in total agreement.

7. It is a settled proposition by now that this Court while hearing objections under Section 30 and 33 of the Arbitration Act, 1940, has a very limited jurisdiction, and normally no interference is to be made in an Award which has come before the Court after mutual agreement between the parties to decide their dispute(s) through Arbitration. It is also a settled proposition of law that a Court while hearing objections against an Award does not sit as a Court of appeal and cannot undertake reappraisal of evidence recorded by the Arbitrator and even if a different conclusion can be drawn from such evidence, does not necessarily binds this Court to reach such different conclusion. Reliance in this regard may be placed on the cases reported as **PLD 2006 Lahore 534** (*Premier Insurance Company and others v. Attock Textile Mills Limited*), **PLD 2011 SC 506** (*Federation of Pakistan through Secretary, Ministry of Food, Islamabad and others vs. Messrs Joint Venture Kocks K.G/Rist*) & **1999 YLR 1213** (*Haji Abdul Hameed & Co. Vs. Insurance Company of North America*)

8. In view of hereinabove facts and discussion, I am of the view that the award passed by the learned Sole Arbitrator is based on proper appraisal of evidence and there is no error of which this Court can take notice of. Consequently, the objections filed on behalf of the defendant are hereby dismissed and the Award dated 31.05.2012 passed by the learned Sole Arbitrator is made rule of the Court, with a decree to follow accordingly.

Dated: 03.11.2016

JUDGE

Ayaz