

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
SUIT NO. 2555 / 2016

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DATE	ORDER WITH SIGNATURE OF JUDGE
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- 1) For hearing of CMA No. 17745/2017.
- 2) For hearing of CMA No. 17746/2017.
- 3) For hearing of objections to Award.

**08.12.2017.**

Mr. Shafi Muhammadi Advocate for Plaintiff.  
Mr. Muhammad Asif Khudai Advocate for Defendant No. 1.  
Mr. Abdul Qayyum Abbasi Advocate for Defendant No. 2 & 4.

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1 & 2. This is a Suit for making the Award dated 29.11.2016 passed by the Sole Arbitrator as a rule of the Court. Whereas, Applications at Serial No.1 & 2 have been filed on behalf of the Plaintiff/Claimant and objections have been filed by Defendants/Respondents. Insofar as Applications at Serial No.1 & 2 are concerned, since an award has been passed and this Suit is only to the extent of considering the Award and to make it as a rule of the Court or otherwise, both these applications are misconceived and are therefore dismissed.

3. It appears that the dispute between the parties was first referred to the Karachi Centre for Dispute Resolution (KCDR) for mediation and there was a Settlement Agreement dated 27.12.2012 and such Agreement provided that in case of future dispute the matter will be referred to the Sole Arbitrator and in view of such position, the parties came before the Sole Arbitrator, filed their claims and Award has been passed, which has been placed before the Court for making it as a rule of the Court.

Learned Counsel for the Respondents No.2 & 4 submits that the Award of the learned Arbitrator is based purportedly on a consent by his clients, however, the same is disputed as there is no consent on record, whereas, Issues were settled and parties have led their evidence before the learned Arbitrator and therefore there could not have been any question of a consent in the manner as recorded in the Arbitration Award. Per learned Counsel learned Arbitrator ought to have announced his Award on merits based on the pleadings and evidence and not on the basis of alleged consent of Respondents No.2 & 4. He further submits that during the proceedings though there were some discussions as to consent of the parties but neither any agreement was signed nor any consent was given, therefore, the Award may be set-aside and be remitted to the learned Arbitrator for pronouncing the Award on merits. Similarly Counsel for Respondent No.1 supports the stance of Respondents No.2 & 4 and has adopted the arguments of the learned Counsel of Respondents No.2 & 4.

On the other hand, learned Counsel for the Plaintiff/Claimant submits that it is a consent Award and this Court cannot deeply appreciate the contention of the Respondents, hence the same may made as rule of the Court.

I have heard all the learned Counsel and perused the record. The facts are not in dispute to the extent of approaching the Sole Arbitrator as per their own settlement agreement and filing their pleadings and recording of evidence. It appears that there were several issues settled by the learned Sole Arbitrator and the parties field their affidavit-in-evidence and were cross-examined by the other site. The relevant portion of the observation regarding consent is as follows:-

“On the date of final arguments on 24.11.2016, the parties and their advocates except the advocate for the Respondent No.2, Mr. Asif Khudai (who was absent) requested to pass a consent award in the following terms”

Perusal of the aforesaid observation reflects that on the said date according to the Award, the parties and their advocates except the Advocate for Respondent No.2, who was absent, requested to pass a consent Award in the terms so stated in the Award. First of all it cannot be a consent Award for all parties. Admittedly, the Respondent No.2 was not present as reflected from the Award itself. The award presently cannot be made rule of the Court as against all the parties and therefore even otherwise it could not be enforceable rendering it incapable of execution. Moreover, insofar as other respondents are concerned, no such consent in writing is available, whereas, the same is being disputed by the said Respondents as according to them no consent was given by them. It further appears that the parties were agitating their claim and have led their evidence before the Arbitrator, and therefore, in absence of any thing in writing it seems to be a remote possibility that any consent could have been given.

In view of hereinabove facts and circumstances of the case, I am of the view that it would be in the interest of justice and of the parties before the Court that the Award is set-aside and remitted to the learned Sole Arbitrator for passing/pronouncing the Award on merits. Accordingly, the Award dated 29.11.2016 is set-aside and is remitted to the Sole Arbitrator for passing the Award on merits in accordance with the Law within a period of 120 days from today.

The Suit stands disposed of in the above terms.

JUDGE