

ORDER SHEET  
**IN THE HIGH COURT OF SINDH AT KARACHI**  
**SUIT No. 222 / 2013**

DATE

ORDER WITH SIGNATURE OF JUDGE

- 1) For hearing of CMA No. 2202/2013.
- 2) For hearing of CMA No. 5129/2013.
- 3) For non-prosecution.

**02.03.2020.**

Mr. Muhammad Mushtaq Qadri Advocate for Plaintiff.  
Ms. Saman Rafat Imtiaz Advocate for Defendant.

1) This application has since become infructuous as apparently no ad-interim orders are in field; hence, the same is dismissed as infructuous.

2) This is an application filed under Section 34 of the Arbitration Act 1940 by Defendant No. 1 for staying the proceeding of instant Suit in view of the Arbitration clause in the Agreement. Learned Counsel for Defendant No. 1 submits that the Agreement in question was in respect of lifting of scrap from the Site of Defendant No.1 which was to be completed by 20.09.2012; however, the Plaintiff failed to act accordingly and the Agreement stands cancelled, whereas, Clause 22 provides that any dispute or disagreement which cannot be settled amicably by the parties, shall be submitted to Arbitration of two Arbitrators, one each to be appointed by the Plaintiff and Defendant No.1. According to her, admittedly, there is a dispute and instant Suit is also in respect of the same relief; hence, the proceedings be stayed as the matter has to be referred to Arbitration.

On the other hand, learned Counsel for the Plaintiff has opposed this application on the ground that the Plaintiff has also claimed

damages, whereas, through Legal Notice the Defendant No.1 was apprised regarding the Arbitration clause; but instead they have cancelled the Agreement and published a fresh advertisement for appointment of another contractor; therefore, the application does not merit any consideration. According to him, the Suit can continue even if there was an arbitration clause in the Agreement. In support he has relied upon ***Arabian Sea Enterprises Limited V. Abid Amin Bhatti (PLD 2013 Sindh 290)***, ***Messrs Franklin Credit and Investment Company Ltd. V. Export Processing Zones Authority and another (2016 MLD 952)***, ***Trading Corporation of Pakistan (Pvt.) Ltd. Karachi V. Messrs Abdullah Sugar Mills Limited (Depalpur) and others (PLD 2013 Sindh 254)*** and ***Sind Satellite Public Company Limited through attorney V. Messrs KASB Technology Services Limited (2016 YLR 2322 Sindh)***.

I have heard both the learned Counsel and perused the record. It is not in dispute that there is an Arbitration clause in the Agreement and in fact the Plaintiff itself in Para 6 of the Legal Notice dated 10.01.2013 has relied upon the said Arbitration clause and it would be advantageous to refer to Para 6 & 7 of the legal notice which reads as under: -

- “6. That it is also to be noted here that under the said Agreement there is a clause of Arbitration that in case any dispute or disagreement arose which cannot be amicably settled between the parties hereto shall be submitted to the Arbitration of two arbitrators, one to be appointed by my client and the other by EPCL.
7. That you without invoking the Arbitration proceedings under the said Agreement, published a notice in the daily Jang dated 6.1.2013 by inviting bids for sale of material on “As is where is basis” which is in violation of the Agreement executed between you and my client.

Perusal of the aforesaid contention of the Plaintiff reflects that insofar as the Arbitration clause is concerned, it has not been disputed

rather it has been stressed that without invoking the Arbitration proceedings under the said Agreement, a notice has been published for inviting bids for sale of the material in question which is in violation of the Agreement. Once the Plaintiff does not deny or dispute the Arbitration clause and even refers to it in its legal notice, then at the same time, the Plaintiff cannot come to the Court seeking relief as prayed for; and instead ought to have approached this Court under Section 20 of the Arbitration Act, 1940 on the basis of the Arbitration clause in the Agreement and asking the Defendants to come forward and proceed with the Arbitration as per the Agreement. Even if the Agreement stands repudiated, it does not bar invoking Section 34 of the Arbitration Act, and in support reliance may be placed on the cases reported as ***Sezai Turkes Feyzi Akkaya Construction Company, Lahore through Project Director V. Messrs Crescent Services, Lahore and another*** (1997 SCMR 1928), ***BNP (Pvt.) Limited V. Collier International Pakistan (Pvt.) Limited*** (2016 CLC 1772). The Plaintiff's entire case is premised on a claim of damages which the Plaintiff can always pursue in the Arbitration proceedings as it is the case of the Plaintiff that the Agreement in question has been unilaterally and unlawfully terminated, causing losses. It is not that on the one hand the Plaintiff wants to go for Arbitration as is reflected from the legal notice as above; and at the same time, claim that the Defendant cannot award the contract to any other person. This Suit is pending since 2013 without any noteworthy effort on the part of the Plaintiff to obtain any ad-interim orders, and in fact the prime purpose of the Plaintiff of seeking a restraining order is no more alive and such prayer to that extent has also become infructuous.

In view of hereinabove facts and circumstances of this case, listed application is allowed. The proceedings of this Suit are stayed pursuant to Clause 22 of the Agreement in question and parties may act accordingly to appoint Arbitrators and proceed further pursuant to the Agreement.

3) Weeks' time allowed for compliance.

**J U D G E**

ARSHAD/