

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

C. P No. D – 1769 of 2019

Before:-

Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Zulfiqar Ali Sangi

For direction

For hearing of CMA No.6693/2021 (C/A)

Date of hearing & Decision: 02-03-2022

Mr. Sohail Ahmed Khoso, Advocate for the Petitioner
Mr. Zulfiqar Ali Naich, Assistant Advocate General

ORDER

Muhammad Junaid Ghaffar, J;- Through this Petition, the Petitioner has sought the following reliefs;-

- (a) That this Honourable Court may be pleased to direct the respondent No.4 to release the amount of Rs.5,473,207/- as the same bill is forwarded to the respondent No.4 by the respondent No.6 and is pending in his office since long.
- (b) That this Honourable Court may be pleased to direct the Respondent No.4 to decide the application of the Petitioner and letter dated 20-11-2019 of the respondent No.6 according to law, as the same is pending and yet not decided by the respondent No.4.
- (c) To grant any other equitable relief, which this Honourable Court, deems fit and proper under the circumstances of the case, in favour of the Petitioner.
- (d) To award the costs of proceedings.

2. In nutshell, the Petitioner's case appears to be enforcement of a contract in writ jurisdiction. Time and again the above issue has been a bone of contention between the parties and recently the controversy has been settled in at least two cases by this Court. First of the two cases is a judgment passed by a Division Bench at Circuit Court, Larkana, reported as *Nawabzada Sardar Ahmed Khan v. Frontier Works Organization (P.W.O) through its Director General F.W.O and 3 others* **(2018 CLC 1744)**; wherein by following the judgment of another Division Bench dated 26.01.2017 passed in the case of *Fida Hussain & Others v. Secretary*

Local Government, Sindh & Others (C.P.No.D-546 of 2014) at the same Court, the petitions were dismissed as being not maintainable, whereas the case of Fida Hussain and others (Supra) was also approved by the Hon'ble Supreme Court of Pakistan in Civil Petitions No.95-K to 98-K of 2017, through order dated 11.07.2017.

Subsequently, another learned Division Bench of this Court at Sukkur had taken a contrary view vide its judgment dated 17.04.2018, passed in C.P.No. D-109 of 2011 and other connected matters, perhaps for the reason that the judgment in the case of Nawabzada Sardar Ahmed Khan (Supra) was not cited; though it was reported and was also earlier in time. Nonetheless, the learned Division Bench, at Sukkur, by placing reliance on various Judgments of the Courts including that of Hon'ble Supreme Court, had allowed the petitions by holding that that contractual obligations can be enforced in constitutional jurisdiction; however, the said judgment of the learned Division Bench of this Court was then impugned before the Hon'ble Supreme Court in Civil Petitions No.654-K, 655-K 679-K, 684-K to 695-K of 2018, (Province of Sindh v Abdul Sattar Arbani & Others) and the Hon'ble Supreme Court vide judgment dated 27.08.2018 has been pleased to set aside the Judgment of the learned Division Bench of this Court dated 17.04.2018. It has been held by the Hon'ble Supreme Court in the said case that contractual obligations cannot be enforced through constitutional jurisdiction as it involves determination of factual dispute and for that the aggrieved person has to seek recourse to civil proceedings.

3. In view of hereinabove facts and circumstances of this case and the dicta laid down as noted above, this Petition seeking enforcement of a contract is not competent under our Constitutional jurisdiction and is accordingly dismissed; whereas the Petitioner is at liberty to seek appropriate civil remedy, as may be available in accordance with law.

Judge

Judge