

THE HIGH COURT OF SINDH, KARACHI

Suit No. 891 of 2021

[Mst. Fehmida Begum versus Mati-ur-Rahman and others]

Plaintiff : Mst. Fehmida Begum widow of Muhammad Abdul Rahman through her Attorney Mr. Hafiz-ur-Rahman through Mr. M. Naim-ur-Rahman, Advocate.

Defendants 1-2 : Nemo.

Applicant/Intervener : Mst. Fehmida Begum widow of Waheeduddin through her Attorney Mst. Maheen Iqbal through Mr. Umar Farooq Khan, Advocate.

Date of hearing : 31-08-2022.

Date of decision : 09-09-2022.

ORDER

Adnan Iqbal Chaudhry J. - Though the suit has been registered by the office under Rule 282(3) of the Sindh Chief Court Rules [S.C.C.R.] (O.S.) read with section 14 of the Arbitration Act, 1940, it is not accompanied by the requisite petition under Rule 282(1) of the S.C.C.R. (O.S.). That is apparently so because the award has been filed by one of the parties to the award and not by the arbitrators as required under section 14 of the Arbitration Act and Rule 282(1) of the S.C.C.R. (O.S.). Therefore, issue notice to the arbitrators for filing the award in the manner prescribed. Till such time, the prayer for making the award rule of the court cannot be considered.

2. The listed applications are by an Intervenor, who is coincidentally the namesake of the plaintiff, and who prays that she may be joined in these proceedings as a defendant under Order I Rule 10 CPC. The Intervenor was not party to the arbitration agreement dated 03-12-2020 and hence not party to the arbitration award dated 05-12-2020 which is between the plaintiff and defendants only, whereby shares have been determined in immovable properties said

to be held by the plaintiff for distribution amongst the defendants, her children. It seems to be the Intervenor's case that the award unlawfully includes those properties that she inherited from her late husband, who was the brother of the plaintiff's late husband, as both brothers had inherited such properties from their father.

3. Mr. Naeem-ur-Rahman, learned counsel for the plaintiff submitted that since the Intervenor was not party to the arbitration agreement, she has no *locus standi* to intervene in these proceedings; and that her remedy, if any, is by way of a suit to challenge the arbitration award. On the other hand, Mr. Umar Farooq, learned counsel for the Intervenor submitted that the instant proceedings were nonetheless a 'suit' to which Order I Rule 10 CPC was applicable, and that section 41 of the Arbitration Act also makes the CPC applicable to proceedings brought under said Act.

4. Heard the learned counsel. These proceedings have been brought for filing an arbitration award under section 14 of the Arbitration Act, 1940, and then for making it rule of the Court under section 17 of the Act. It is not a regular suit under section 9 CPC, rather it has only been registered as suit by virtue of Rule 282(3) of the S.C.C.R. (O.S.).¹ The question that arises is that even treating the Intervenor's applications as objections to the award, can those objections be considered in these proceedings at the behest of a person who was not party to the arbitration agreement ?

5. Section 33 of the Arbitration Act, 1940 stipulates:

"33. Arbitration agreement or award to be contested by application
- Any party to an arbitration agreement or any person claiming under him desiring to challenge the existence or validity of an arbitration agreement or an award or to have the effect of either determined shall apply to the Court and the Court shall decide the question on affidavits:

Provided that where the Court deems it just and expedient, it may set down the application for hearing on other evidence also and it may pass such orders for the discovery and particulars as it may do in a suit."

¹ *Mohammad Re-rolling Mills v. Shamsuddin* (PLD 1978 Kar 356).

6. Thus, as per section 33 of the Arbitration Act, only a person who was “party to the arbitration agreement or any person claiming under him” can challenge the validity of an arbitration award. The Intervenor is not such party. It had been observed by a learned Division Bench of this Court in *Mohammad Re-rolling Mills v. Shamsuddin* (PLD 1978 Kar 356) that a stranger to an arbitration award cannot file objections to the award in proceedings brought to make the award rule of the Court. This of course is not to say that where no objections are filed a decree follows automatically.² The question that then arises is whether the Intervenor can file a suit to challenge the arbitration agreement and/or award in the face of section 32 of the Arbitration Act which bars a suit in the following terms:

“32. Bar to suit contesting arbitration agreement or award – Notwithstanding any law for the time being in force, no suit shall lie on any ground whatsoever for a decision upon the existence, effect or validity of an arbitration agreement or award, nor shall any arbitration agreement or award be set aside, amended, modified or in any way affected otherwise than as provided in this Act.”

7. The answer is provided by the case of *Muhammad Rashid v. Abdul Rahsid* (2004 SCMR 76). There, the facts were that the petitioners filed a suit for cancellation of an arbitration award on the plea that even though they were not parties to the award, yet the same had proceeded to deal with their property. The plaint of the suit was rejected by the courts below on the bar to a suit contained in section 32 of the Arbitration Act and given the special remedy provided in section 33 thereof. The Supreme Court observed that sections 32 and 33 of the Arbitration Act have to be construed together, and held that section 32 was not applicable to the petitioners who were not parties to the arbitration agreement, and thus they could maintain a suit to challenge the award which had dealt with their property to their detriment.

8. The ratio of *Muhammad Rashid's* case is that the bar to a suit in section 32 of the Arbitration Act is there because section 33 thereof

² *Pakistan v. O.M.R. Expert Consultants* (PLD 1990 SC 800).

provides a special remedy to challenge the arbitration award; but where section 33 is not applicable, such as to a person who was not party to the arbitration agreement, then the bar in section 32 is also not attracted.

9. Since section 33 of the Arbitration Act is not available to the Intervenor who was not a party to the arbitration agreement, section 32 thereof is also not attracted to her. Consequently, should she decide to file a suit to challenge the award, section 32 of the Arbitration Act, 1940 would not come in her way. With that observation, CMA Nos. 19120/2021, 19800/2021, 19801/2021, 7939/2022 and 7940/2022 by the Intervenor are not maintainable and are dismissed.

JUDGE

Karachi
Dated: 09-09-2022