IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Civil Rev .Application No.S-130 of 2015

Applicants	:	Bibi Imdad Khatoon and others, Through Mr. KalandarBuxPhulpoto Advocate
Respondents	:	Nemo
The State	:	Through Mr. Ghulam Abbas Kubar Assistant Advocate General
Date of hearing	:	19.02.2024
Date of Decision	:	19.04.2024

JUDGMENT

ARBAB ALI HAKRO, J.- Through this Civil Revision Application pursuant to Section 115 of the Civil Procedure Code, 1908 ("CPC"), the Applicants seek to challenge the judgment dated August 21, 2015, rendered by the Additional District Judge-IV, Khairpur ("the Appellate Court"), in Civil Appeal No. 76 of 2010. The impugned judgment affirmed the award/decision of the Arbitrator dated October 10, 2014, by converting it into a Rule of Court and subsequently issuing a formal decree on August 25, 2015.

2. In brief, the applicants/plaintiffs filed a suit for Declaration, Partition, Possession, Mesne Profits and Permanent Injunction against the respondents/defendants, claiming their inheritance in the suit land situated in Deh Goondariro Taluka Kotdiji District Khairpur, with the following prayers: -

a) *That this Court may be pleased to declare that the plaintiffs are entitled to inherit the shares from the property of Syed Alam Shah as shown in the schedule, which was subsequently inherited by Syed Andal Shah as per Shariat as shown in Para No.20-b to 20-b(xii) of the present plaint, hence the mutation made exclusively in the name of the defendant No.1 is illegal, void, without any lawful authority.*

b) That this Court may be pleased to declare that the relinquishment deed dated 17.9.1964, alleged to have been executed by the plaintiff No.1, 3, 5 and 9, is the forged and fabricated document and fails to confer any right upon the defendant No.1.

c) That this Court may be pleased to declare that the alienations made by the defendant No.1 in respect of the land in sit in excess of his share to any person and ultimately to the defendant No.5 to 28 are illegal, void and not binding upon the plaintiffs.

d) That the Court may be pleased to put the plaintiff in joint possession of property in suit land with defendant No.1 and 5 to 28 in case the property/share of the plaintiffs cannot be partitioned.

e) That this Court may be pleased to award the mesne profits to the plaintiffs for their share for the period of 03-years, prior to filing of this suit till the plaintiffs are put in joint possession or their shares are partitioned.

f) That a permanent injunction may kindly be issued restraining the defendant No.1 and 5 to 28 or any one claiming through them from interfering with the rights, title and possession of the plaintiffs over the land in suit after determination of their share by this Court.

g) Cost.

h) Relief.

3. Upon receiving the summons, respondents/defendants, filed their written statements, denying the applicant's claim.

4. The trial court framed issues, recorded the parties' pro and contra evidence, and decreed the suit vide Judgment dated 08.3.2010 and Decree dated 16.3.2010. The private defendants/respondents challenged this Judgment and Decree by filing Civil Appeal No.76/2010 before the appellate Court. In the appeal, both parties jointly moved an application on 03.9.2014 to refer the matter to an Arbitrator. This was allowed, and the matter was referred to Mr. Ghulam Qasim Jiskani for arbitration proceedings and a final decision. Subsequently, on 17.9.2014, both parties moved an application for a change of Arbitrator. This was allowed, and Mr. Noor Khan Chandio was appointed Arbitrator. The matter was then referred to him for a decision.

5. After hearing both parties, the Arbitrator decided the matter and gave his findings that after perusing the documents produced by the parties before him, which related to the land being approximately

74 years old, he noted that the legal heirs were alive during that period. However, no one challenged these documents in any court of law during their lifetime. The documents are genuine and cannot be deemed to be cancelled. The same *Khata* may be restored and the case may be disposed of. Upon receipt of the award by the appellate Court, the applicants/plaintiffs filed their objections and opposed the award. After hearing the parties, the appellate Court made the award as a Rule of Court and treated it as a decree.

6. At the outset, learned counsel for the applicant argued that the learned Appellate Court has seriously erred by passing impugned Judgment and decree without considering material illegalities and irregularities; that the Respondent No.1 has illegally mutated land in his favour on the basis of alleged registered relinquishment deed dated 17.09.1964, which is illegal, unlawful and also a forged and fabricated document; that the trial Court decreed the suit in favour of the applicants; however, matter was referred to Arbitrator, who without recording evidence or considering findings of lower Court and concluded that old documents are genuine one as no one had challenged the same before any competent Court of law, therefore, that documents cannot be cancelled; that the decision of Arbitrator was in violation of section 26(A) of the Act 1940 submitted before the appellate Court wherein the applicants filed their objections, but the appellate Court illegally dismissed their objections and upheld the decision of the Arbitrator as the Rule of Court. In the end, learned Counsel for the Applicants prayed that instant revision application may be allowed by setting aside impugned Judgment and decree passed by the Appellate Court. In support of his contention, learned counsel has relied on the case laws reported as 2023 SCMR 344, PLD 1990 Supreme Court 1, 2016 SCMR 763, 2020 SCMR 601, 2008 SCMR 521, 2009 SCMR 29 and 2023 SCMR 1901.

7. No one has appeared on behalf of the respondents despite repeated notices and intimations to their Counsel. Service has also been affected by publication in the daily Kawish dated 15.02.2018; hence, service upon the Respondents was held good vide order dated 05.03.2018.

8. Learned AAG, while refuting the contentions made by learned Counsel for the Applicants, supports the judgment and decree passed by learned Appellate Court and submits that no illegality, gross irregularity, or infirmity has been pointed out by learned Counsel for the Applicants; hence, this revision application, being devoid of merit, is liable to be dismissed. He relied upon the case law reported in 2022 SCMR 1810.

9. The arguments have been heard at length, and the available record has been carefully evaluated with the able assistance of the learned counsel for the parties, including case law relied upon by them. To evaluate whether justice has been dispensed, it is imperative to analyze the findings of both the Courts below.

10. Upon thoroughly examining the case records, it is evident that the applicants/plaintiffs have laid claim to their share of the land, which they assert was inherited from the deceased Syed Alam Shah and subsequently by Syed Andal Shah. They have contested the mutation made solely in the name of defendant No.1, deeming it illegal, void, and without lawful authority. Furthermore, they have alleged that the Relinquishment Deed dated 17.9.1964, purportedly executed by applicants/plaintiffs No.1, 3, 5, and 9, is a forged and fabricated document. The trial Court decreed the suit in favour of the applicants after a comprehensive discussion of all the evidence presented by the parties. However, the matter was referred to an Arbitrator for decision during the appeal. The Arbitrator, without recording evidence or considering the findings of the trial Court, summarily opined that the documents, being 74 years old, were

genuine. He reasoned that the legal heirs were alive during this period, but none challenged these documents in any court of law during their lifetime. Therefore, he concluded that these documents cannot be deemed cancelled, the same *Khata* may be restored, and the case may be disposed of accordingly. This decision of the Arbitrator was submitted before the appellate Court. The applicants filed their objections to this decision, but the appellate Court dismissed their objections and upheld the decision of the Arbitrator as the Rule of Court. This was done without reviewing the Judgment and Decree of the trial Court or setting it aside. It would be pertinent to reproduce the relevant findings of the appellate Court here under: -

> *"10. I have heard both the learned counsel for the parties and perused the award/decision made by Arbitrator after hearing both the parties. The award/decision submitted by the Arbitrator in this Court for making it as rule of Court and treated as Decree. The respondent No.1 to 9 alleged that the Arbitrator has mis-conducted himself and refused to allow the reasonable opportunity of hearing to the respondent No.1 to 9, but IQRARNAMA obtained by the Arbitrator from both parties shows that both parties attended the arbitration proceedings and given undertaking before the Arbitrator that any decision given by him, shall be final and binding upon both parties. The respondents filed objections by making allegation against the Arbitrator in the Court on 11.10.2014, but Arbitrator decided the matter on 10.10.2014 and sent his decision to the Court. I also see no force in the objections that Arbitrator mis-conducted himself during the arbitration proceedings, but Arbitrator has given proper decision. Another objection of the respondents is that for setting aside the decision/award and deciding the appeal on merits. Since both the parties with their own will and wishes, requested to the appellate Court for referring the matter to the Arbitrator and both parties bound themselves to accept the decision of Arbitrator as final if he respondent No.1 to 9, intended to get decision in appeal from the appellate Court on merits then what was the need to choose the forum of Arbitration, but they also chosen the forum of Arbitrator binding upon them deemed to be final.*
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> *11.-------*
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> *12. In the light of above-discussed circumstances, I am of the considered view that the award/decision given by the Arbitrator is proper and there is no element of misconduct during the Arbitration proceedings conducted by the Arbitrator, and decision of Arbitrator is binding upon both parties and deemed to be final. Hence, the same award/decision is made as a rule of Court and treated as*

Decree with no order as to costs. The appeal is disposed-of in above terms. Let Decree be prepared, accordingly."

11. To fully appreciate the legal implications of the case at hand, it is crucial to understand that before making the award a rule of the Court, the learned appellate Court should have applied its mind and could have set aside the award, even if no objections or objections were filed. This is in accordance with Section 17 of the Arbitration Act 1940 ("the Act of 1940"). Section 17 of the Act of 1940 gives the Court the authority to modify or correct an award in certain circumstances. This includes instances where the award contains clerical mistakes or errors arising from an accidental slip or omission or where the award needs to be adjusted in accordance with the terms of the agreement upon which the award is based. Furthermore, Section 30 of the Act of 1940 stipulates the grounds for setting aside an award. These include situations where an arbitrator has misconducted themselves or the proceedings, where the award has been made after the issue of an order by the Court superseding the Arbitration, or where an award has been improperly procured or is otherwise invalid. Lastly, Section 33 of the Act of 1940 allows a party to apply to the Court to decide any question regarding the existence or validity of an arbitration agreement, the existence or validity of an award, or the effect of an award. In the case of A. Qutubuddin Khan v. CHEC Mill Wala Dredging Co. Pvt. Ltd. (2014 SCMR 1268), it was unanimously held by the Supreme Court of Pakistan that:*"In view of the above, the obvious question that floats to the surface is that in the eventuality that an Award was filed in the Court and objections thereto are either not filed or if filed found to be barred by limitation, whether the Court is to mechanically make such an Award, the Rule of the Court. The powers vested in the Court to make an Award the Rule of the Court are obviously judicial and not ministerial and it is now settled law that the absence of objections to such an Award does not absolve the Court of its responsibility to examine the same. In the instant case, the learned Single Judge, after concluding that the objections filed by the respondent were time barred, without conducting a judicial exercise of examining the Award qua its validity, made the same*

the Rule of the Court. Hence, its order in this behalf dated 5-8-2000 was not sustainable in law and was rightly set aside by way of the impugned judgment and the case remanded".

[The underlining is supplied].

12. Considering the relevant legal provisions, it is evident that the appellate court possessed the requisite authority to set-aside the award, irrespective of whether objections were raised. It would have been judicious for the appellate court to conduct a comprehensive review of the award and the context of its issuance prior to endorsing it as a rule of the court. Such a measure would ensure the award's compliance with legal standards and the tenets of justice and equity. Although the applicants believed they had raised objections to the award, these were summarily dismissed. Section 17 of the Arbitration Act of 1940 imposes an obligation on the Court to independently scrutinize the award to determine if it is marred by any overt legal defects that would warrant either its annulment or its referral back to the arbitrator, even in the absence of formal objections from any party. In parallel, it is the arbitrator's unequivocal duty to articulate the rationale for the award with sufficient clarity, thereby enabling the court to address any legal questions that may emerge from the award, as stipulated under Section 26 of the Act of 1940. The arbitrator is obligated to provide sufficient detail in the reasoning for the award to enable the court to consider any question of law arising out of the award. Failure to do so may necessitate the setting aside of the award. Upon a thorough review of the arbitrator's award and the appellate court's judgment, it is clear that the award was confirmed as a rule of the Court, pursuant to Sections 17 and 26-A of the Arbitration Act of 1940. This scrutiny unequivocally reveals that the award falls short of the detailed reasoning required by Section 26-A of the Act. In addressing the objections submitted by the appellants, the appellate court summarily dismissed them without a substantive judicial evaluation. The court neglected its obligation under Section 17

of the Act to judiciously scrutinize the award, a departure from the expected standard of judicial scrutiny. For further guidance on this matter, reference can be made to the case of Umar Din through L.Rs. vs. Mst. Shakeela Bibi and others (2009 SCMR 29). A relevant extract from the same is reproduced hereunder: -

> *"The above noted text of the award clearly depicts that the Arbitrators had failed to give out the reasons for reaching to the conclusion of their decision. On the basis of which document, or evidence they had arrived at that conclusion was not given out in the award so as to enable the Court making the award a rule of Court, to examine the correctness of the reasons and conclusions. No sufficient detail has been found by us in the above noted award as envisaged by section 26-A of the Arbitration Act, 1940, to perceive the decision noted in the award. Section 26-A of the Arbitration Act, 1940 which was inserted by Arbitration (Amendment) Ordinance XV of 1981, was not interjected into the Act without any aim or purpose behind it by the Legislature. The Civil Court which had to make the award the rule of Court was granted an opportunity and power to examine the reasons of adjudication of the subject-matter in dispute by the Arbitrators. As to how and on what basis, the Arbitrators had decided and made the award, was to be scrutinized critically by the learned Court, to check-up as to whether the award was based on whimsical grounds, without any foundation or reason or it was supported by and rendered on some basis, evidence and document. In other words, arbitrary, non-speaking, sketchy, careless and sleazy award, deciding the fate of the parties to the dispute was not to be blessed with approval to give them authority of Court, by making it a rule of Court. The award which does not contain reasons in sufficient detail has to be rejected and is not to be approved by the Civil Court so as to make it rule of Court. An arbitration award is enforceable and is to be granted approval of the Court to be transferred into the shape and form of rule of Court, when it complies with the essential characteristics and requirements as are contained in section 26-A of the Arbitration Act of 1940. In the instant case no reason has been given by the Arbitrators for deciding the dispute. Therefore, we fully endorse the view pronounced in 2001 SCMR 750, 2006 SCMR 614 and 2006 SCMR 1657 (supra) as referred to by the learned counsel for the appellants. The judgments in 1994 MLD 2348 (supra) and PLD 1958 SC 221 (supra) referred to by the learned counsel*

for the respondents are not applicable to the facts and circumstances of the present case, as the present award is devoid of any reason for making a decision."

13. In the case of Ghulam Ali and 2 others vs. Mst.GhulamSarwarNaqvi(PLD 1990 S.C 1), the Supreme Court of Pakistan held that the so-called "relinquishment" by a female of her inheritance, as occurred in this case, is undoubtedly opposed to "public policy" as understood in the Islamic sense with reference to Islamic jurisprudence. The Court noted that Islam envisages many modes of wealth circulation under certain strict conditions. Almost all commentators on the Islamic System agree, with varying degrees, that the strict enforcement of inheritance laws is an important accepted method in Islam for achieving wealth circulation. Therefore, it is an additional object of public policy. Consequently, the disputed relinquishment of the right of inheritance, even if proved against the applicants, must be found against public policy. Accordingly, the respondent's action in agreeing to the relinquishment (though denied by her) was against public policy; the very act of agreement and contract constituting the relinquishment was void. Furthermore, in the case of Muhammad Ahmad Chatta vs. Iftikhar Ahmad Cheema and others(2016 SCMR 763), the Supreme Court of Pakistan held that the custom of surrendering inherited share by female legal heirs in agricultural land to male legal heirs was not only against the injunctions of Islam but also violative of the Constitution and the law. The Court opined that such a custom should not be taken into consideration by the Courts. In light of these judgments, it can be concluded that the award passed by the Arbitrator is against public policy as well as against the injunctions of Islam. The appellate Court also failed to consider this while making the Award a Rule of the Court. This highlights the importance of considering public policy and religious injunctions in legal decisions, particularly those related to inheritance rights.

14. In light of the preceding analysis and the legal principles articulated, I am firmly of the opinion that the appellate court has transgressed legal boundaries by confirming the arbitrator's award as a rule of the court. The exercise of revisional jurisdiction is undertaken with utmost diligence and restraint; nevertheless, when a judgment and decree are marred by the legal defects specified in Section 115 of the Code of Civil Procedure, it becomes the imperative duty of this court to invoke its revisional powers to rectify such deficiencies.

15. Based on the reasons outlined above, this Revision Application is hereby granted. Consequently, the award rendered by the Arbitrator is deemed illegal and invalid. As a direct consequence, the Judgment and Decree issued by the appellate court are hereby set-aside; thus, the appeal preferred by the respondents is to be considered as pending before the appellate court. The appellate court is directed to proceed with the appeal in a manner consistent with the law and to render a decision on its merits, with all due expedition, preferably within a one-month timeframe from the date of receipt of this Judgment.

JUDGE

Faisal Mumtaz/PS