

Judgment Sheet  
**IN THE HIGH COURT OF SINDH AT KARACHI**

**High Court Appeal No.124 of 2016**

Present:  
Mr. Justice Muhammad Iqbal Kalhoro  
Mr. Justice Muhammad Osman Ali Hadi

[ Syed Muzaffar Hussain Shah versus Karachi Electric Supply Company Limited ]

Date of hearing	:	<u>12.09.2025</u>
Date of decision	:	<u>12.09.2025</u>
Appellant	:	Through Mr. Zahid Ali Maitlo, Advocate
Respondent	:	Through Mr. Asadullah Soomro, Advocate

**J U D G M E N T**

**Muhammad Iqbal Kalhoro, J:** Appellant-Syed Muzaffar Hussain Shah, a contractor doing business with K-Electric, respondent, filed an application under Section 20 of Arbitration Act, 1940 before the learned Single Judge of this Court, praying mainly that his various claims disputed by respondent-K Electric be sent to Arbitrator for arbitration. The application was allowed and the dispute was sent to the Arbitrator appointed by K-electric, who was in fact Chief Executive Officer of K-Electric for arbitration. The Arbitrator dismissed the claim holding that it was time barred and passed such award. The learned Single Judge made the same as rule of Court and dismissed objections filed by the Appellant *vide* impugned judgment; hence, this appeal.

2. The case of the Appellant is that the claim was not time barred, but in any case, no evidence was led on this issue to determine the same. Even if the Arbitrator was of the view that claim of the Appellant was time barred, he should have at-least afforded an opportunity to the Appellant to satisfy him over the point. More so, the contract had never been terminated, it was still in existence; therefore, there was no question of time barred claim.

3. We have heard learned Counsel for the Parties at some length and have seen that *prima facie*, the argument of Appellant's Counsel that the Appellant was not afforded a proper opportunity of hearing to present his case and to explain as to whether the claim was time barred or not is spot on. The claim was made against K-Electric, and then a Senior Officer

working in K-Electric was chosen as Arbitrator, who made such a decision without even recording any evidence; therefore, a fair opportunity in terms of Article 10-A of the Constitution was not extended to the Appellant to lead evidence to present his case. The question of limitation has always been considered as a mixed question of facts and law. Without determining the same on the basis of evidence, the findings that the claim is time barred will always be looked into with suspicion by the Courts. Another question whether the contract was in subsistence or not has not been dealt with at all. The consequence viz-a-viz limitation will be altogether different, if the contract is found to be still running when the claim was made. This important question having not been attended to has resulted apparently into miscarriage of justice.

3. We, therefore, *set-aside* the impugned judgment and decree as well as award, and remand the matter and by consent appoint Mr. Obaid-ur-Rehman Advocate, as Arbitrator to hear the parties and pass the award. The fee of the Arbitrator shall be borne by both the parties equally to be decided by him. Both parties are directed to submit the record before him. In case of his excuse to arbitrate between the parties, the parties can always file an application in this Appeal for appointment of another Arbitrator.

In the above terms, this High Court Appeal stands **allowed** along with pending application[s], if any.

**JUDGE**

**JUDGE**

**Qurban**