

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Arshad Hussain Khan
Mr. Justice Amjad Ali Sahito

High Court Appeal No.380 of 2008

Appellant : Sui Southern Gas Company Limited
through Barrister Ghazi Khan Khalil,
Advocate

Respondent : Tracon Services (Pvt.) Limited
Nemo.

The State
through Barrister Sandeep Malani, AAG

Date of Hearing : 25.03.2026

Date of Judgment: 06.04.2026

J U D G M E N T

Amjad Ali Sahito, J. This High Court Appeal, preferred under Section 15 of the Code of Civil Procedure (Amendment) Ordinance, 1980, read with Section 39 of the Arbitration Act, 1940, is directed against the order dated 16.09.2008 and the decree drawn thereunder in Suit No.153 of 2000, whereby the learned Single Judge of this Court, while dismissing the objections raised by the appellant, was pleased to make the Award the rule of the Court.

2. Succinctly stated, the relevant facts are that Sui Southern Gas Company Limited (hereinafter referred to as the “Appellant”) awarded a contract to Tracon Service (Pvt.) Limited (hereinafter referred to as the “Respondent”), a registered private limited company engaged in freight forwarding and transportation services within Pakistan, for the transportation of 10,700 imported pipes from Karachi Port to various designated destinations. The said contract was awarded through a competitive bidding process, wherein the Respondent emerged as the lowest evaluated bidder and its bid was duly accepted. The

Respondent, being equipped with the requisite fleet and duly recognized by reputable organizations, undertook, pursuant to the instructions of the Appellant, extensive preparatory arrangements, including but not limited to route planning, mobilization of transportation vehicles, and engagement of necessary manpower, and commenced execution of the contract accordingly. By January 1996, the Respondent had transported a substantial portion of the consignment, 6,398 pipes to the notified Dumps. The respondent failed to deliver further pipes for transportation whereas in fact the agreement was entered into for transportation of 10,700 pipes. Notwithstanding repeated assurances extended by the Respondent, the remaining shortfall was not made good, which ultimately led to disputes between the parties.

3. Learned counsel for the Appellant argues that the learned Single Judge failed to appreciate that the learned Arbitrator proceeded ex-parte against the Appellant without ensuring proper and effective service, thereby violating the settled principles of natural justice and depriving the Appellant of a fair opportunity of hearing; that the impugned order, by making the Award rule of the Court, has erroneously upheld such illegality. He has further argued that the learned Single Judge did not properly consider that the learned Arbitrator mis-conducted the proceedings by allowing claims which were excessive and duplicative in nature, as compensation was granted under multiple heads for the same alleged deficiency, which is not sustainable in law. He has also submitted that the learned Single Judge failed to address that the award of interest on claims for damages is contrary to the provisions of law and constitutes an error apparent on the face of the Award, thus rendering the same liable to be set aside or suitably modified in appellate jurisdiction.

4. Learned Assistant Advocate General, Sindh supported the impugned judgment, as the learned Single Judge rightly upheld the Award after correctly appreciating that a valid arbitration agreement existed and the Appellant, having failed to appear

despite due notice, cannot assail ex-parte proceedings. He further contended that the scope of interference in appellate jurisdiction is limited, and in the absence of any misconduct or error apparent on the face of the Award, the appeal is devoid of merit and liable to be dismissed.

5. We have heard the learned counsel for the parties and have minutely perused the material available on record with their able assistance.

6. From perusal of the record, it appears that the Respondent is a duly incorporated private limited company engaged in the business of international freight forwarding and transportation, possessing the requisite fleet and experience, and being on the approved panels of various reputable organizations. The Appellant initiated the import of 10,700 steel pipes and invited bids from pre-qualified transporters, including the Respondent, for transportation from Karachi Port to designated dumping sites.

7. The record further reflects that the Respondent submitted their bid along with the prescribed security, and upon opening and evaluation, was found to be the lowest and most suitable. Consequently, after negotiations, the contract was awarded to the Respondent. It further appears that, upon instructions of the Appellant, the Respondent undertook extensive preparatory work, including development of access roads and deployment of machinery and manpower, incurring substantial expenditure.

8. Evidence on record shows that the Respondent commenced transportation operations and by January 1996, they had successfully transported a significant portion of the pipes. However, the Appellant failed to supply the entire agreed quantity of 10,700 pipes, resulting in a considerable shortfall. Thereafter, the Respondent suffered substantial financial loss due to such deficiency. The correspondence placed on record indicates that the Appellant acknowledged the short supply and the resultant loss, and extended assurances to mitigate the deficit.

9. Furthermore, a perusal of the record of proceedings before the learned Arbitrator reveals that the Appellant, despite having been duly served with notice, failed to enter appearance; consequently, the learned Arbitrator proceeded ex parte and rendered the Award in favour of the Respondent.

10. Insofar as the objections preferred by the Appellant are concerned, the principal contention raised is that no agreement existed between the parties for reference of the dispute to arbitration. However, the record reflects otherwise. The Respondent had submitted an offer which was duly accepted by the Appellant vide letter dated 06.12.1995. The said letter specified the quantity of pipes as 10,700, expressly indicating that the same were estimated quantities liable to variation in accordance with the requirements. It was further stipulated therein that the award of work was subject to the terms and conditions embodied in the Tender Enquiry, which, inter alia, contained Clause 28 providing for arbitration.

11. In these circumstances, it is manifest that the Respondent's offer was accepted subject to the terms of the Tender Enquiry, inclusive of the arbitration clause. The denial of the existence of an arbitration agreement by the Appellant is, therefore, devoid of merit and appears to be mala fide. It is a settled proposition of law that a formal written agreement executed on stamp paper is not a sine qua non for reference of disputes to arbitration; rather, the intention of the parties to submit to arbitration can be gathered from their correspondence and conduct. In the present case, in view of the explicit arbitration clause forming part of the contractual framework, the Appellant cannot be permitted to contend that no arbitration agreement existed.

12. Moreover, in its letter dated 08.09.1996 (Annexure A/27 of J.M. No.16/1996), the Appellant itself acknowledged the applicability of the Tender Enquiry for the purposes of implementation of the contract period. The Appellant, therefore, cannot be allowed to approbate and reprobate at the same time.

Consequently, the reference of the dispute to arbitration was lawful and justified.

13. The Appellant has next contended that the learned Arbitrator misconducted the proceedings. A perusal of the Award reflects that the Respondent had claimed a sum of Rs.5,542,016/- on account of losses allegedly arising from short supply of pipes for transportation; Rs.3,250,000/- towards extra man-months purportedly utilized by the Appellant from 01.02.1996 to 15.08.1996, calculated at Rs.500,000/- per month; Rs.270,000/- for maintaining an office for the purpose of pursuing recovery of its claims from 01.09.1996 to 31.05.1997; and interest at the rate of 13% per annum for the pre-award period.

14. The Respondent's assertion that it was awarded the contract for transportation of 10,700 pipes finds support from the letter dated 06.12.1995. Although the said letter stipulates that the quantities were estimated, it is an admitted position that the Appellant did not communicate any reduction in the said quantity to the Respondent. The earliest correspondence regarding short supply appears in the Respondent's letter dated 30.01.1996, to which the Appellant responded vide letter dated 12.02.1996 (Annexure A/18), assuring accommodation of the Respondent. The record further indicates that the Respondent provided transportation facilities in February and June 1996, but failed to do so in August 1996.

15. It further transpires that the Respondent has claimed amounts under two distinct heads in respect of the same alleged deficiency, namely: (i) loss arising from deficit in the quantity transported; and (ii) compensation at the rate of Rs.500,000/- per month on account of extra man-months from 01.02.1996 to 15.08.1996. Had the Appellant permitted the Respondent to transport the entire quantity of 10,700 pipes, the Respondent would have been entitled only to the agreed transportation charges and not to any additional claims. Moreover, after June 1996, the Respondent itself admitted its inability to transport

further pipes, as is evident from its letter dated 06.08.1996 (Annexure A/22). In such circumstances, the Respondent cannot legitimately claim losses in respect of transportation which was admittedly not performed.

16. Notwithstanding the above, the learned Single Judge has rightly held that the Respondent is entitled to reasonable compensation on account of breach of contract on the part of the Appellant, who neither provided the agreed quantity nor intimated the Respondent to discontinue its arrangements, thereby causing the Respondent to incur losses while maintaining readiness and capacity to perform its obligations. However, the learned Arbitrator fell into error in awarding interest on claims pertaining to damages, which is not permissible under Section 29 of the Arbitration Act, 1940. Such an error is apparent on the face of the Award and warrants appropriate modification to that extent.

17. In view of the foregoing discussion, it prima facie appears that the Respondent had substantially performed its contractual obligations, whereas the Appellant failed to adhere to the agreed terms, thereby giving rise to the present dispute.

18. For the reasons recorded hereinabove, we find no legal infirmity in the impugned order passed by the learned Single Judge, whereby the Award has been made the rule of the Court. No case for interference is made out. Consequently, this appeal, being devoid of merit, is dismissed along with the listed application.

JUDGE

JUDGE