

Order Sheet
IN THE HIGH COURT OF SINDH, KARACHI

2nd Appeals No. 57, 58 & 59 of 2009

[M/s. Ghee Corporation of Pakistan (Pvt.) Ltd Vs. M/s. Pasternack Baum]

Appellants	Through Choudhry Muhammad Iqbal, Advocate.
Respondents	Nemo
Date of Hearing	20.01.2026
Date of Order	29.01.2026

ARSHAD HUSSAIN KHAN, J. Since the parties, learned counsel, facts, and questions of law are identical in all these appeals, as such, the same are being disposed of by this common judgment in the interest of consistency and to avoid duplication.

Through the present second appeals, the appellants have assailed the concurrent findings of the two courts below and seek to set aside the judgments dated 07.08.2009, separately passed by learned VIIth Additional District Judge, Karachi, [South] in Civil Appeals No. 207, 208 & 209 of 2006, whereby the first appellate court, while dismissing the appeals, upheld the judgment and decrees 19.09.2006 & 26.09.2006, passed by the learned VIth Senior Civil Judge (South), Karachi, in Suits No.474, 475 and 60 of 2003 [old Suits No.655, 656 and 657 of 1997], through which the arbitral awards were made rule of the court.

2. Briefly stated, the facts of the case are that the appellant, M/s. Ghee Corporation of Pakistan (Pvt.) Ltd., entered into agreements dated 27.06.1991, 06.01.1994, and 26.01.1994 (subject-matter of Second Appeals Nos. 57, 58, and 59 of 2009 respectively) with respondent-M/s. Pasternack Baum Holding Sdn. for the purchase of RBD palm oil of different quantities to be supplied on different dates. The consignments reached the port within time; however, due to non-availability of a berth, the consignments were discharged from the vessels beyond the laytime¹, resulting in the imposition of demurrage. Consequently, a dispute arose between the parties

¹ Laytime is the agreed amount of time (days or hours) stipulated in a voyage charter-party during which a shipowner makes their vessel available to the charterer for loading or discharging cargo without additional costs. It begins after the Notice of Readiness (NOR) is accepted and, if exceeded, results in penalties known as demurrage.

regarding payment of the said demurrage. In terms of the agreements, arbitration proceedings were initiated by the respondents, culminating in arbitral awards passed by the umpire. The appellants assailed the said awards by filing objections under Section 30 of the Arbitration Act, 1940, *inter alia*, on the grounds of misconduct, absence of findings on material issues, limitation, and patent illegality apparent on the face of the awards. Initially, ex parte judgments were passed without consideration of the objections; however, the same were subsequently recalled by this Court, and the matters were remanded for decision on merits. Thereafter, the learned trial court as well as the learned appellate court upheld the arbitral awards without properly appreciating the evidence on record, the objections raised, and the mandatory requirements of law, thereby giving rise to the present second appeals under Section 100, C.P.C., seeking setting aside of the impugned judgments, decrees, and arbitral awards.

3. Learned counsel for the appellants contended that the impugned judgments and decrees suffer from a fundamental jurisdictional defect, as the Umpire assumed authority without any difference or conflicting awards between the arbitrators. Only the appellants' arbitrator had rendered an award, while the respondent's arbitrator failed to act; thus, no "difference" arose under the Arbitration Act, 1940, rendering the Umpire's award *coram non judice*. It was further argued that the respondent's arbitrator's failure amounted to misconduct, for which recourse should have been sought from the court, and that the Umpire exceeded his mandate by issuing a final award, committing legal misconduct under Sections 16 and 30 of the Act. The awards allegedly contain errors apparent on the face of the record, including absence of findings on material contractual clauses, laytime and demurrage calculations, and the respondent's alleged payments to the vessel owner.

Learned counsel also contended that the evidence relied upon, particularly the testimony of the respondent's alleged agent, was inadmissible due to lack of authority and that issues regarding cargo discharge allocation and laytime were not examined. Both the trial and appellate courts were said to have mechanically affirmed the

awards, relying on earlier ex-parte judgments, which had been recalled. Finally, it was argued that the appellate judgments fail to comply with Order XLI Rule 31, C.P.C., and suffer from material illegality and jurisdictional errors, raising substantial questions of law warranting interference in second appeal.

4. The respondents have been served through all modes including publication but none has appeared on its behalf.

5. Heard learned counsel for the appellant and perused the material available on the record.

6. It is observed that the dispute between the parties arose out of a commercial contract, and arbitration proceedings were initiated pursuant to its terms. Of the two arbitrators, the appellants' nominee rendered an award dismissing the respondent's claim, while the respondent's nominee failed to deliver any award. Subsequently, the matter was referred to an Umpire, who passed a final award holding the appellants liable to pay proportionate demurrage while disallowing claims for liquidated damages and legal expenses.

7. Upon consideration of the objections filed by the appellants under Section 30 of the Arbitration Act, 1940, the learned trial court examined the arbitral award in the light of the pleadings, evidence, and the contractual provisions governing demurrage. The trial court held that the learned Umpire had duly appreciated the evidence produced by the parties and had assigned cogent reasons for imposing demurrage on a proportionate basis in accordance with the appellants' share in the consignment. It was observed that no provision of law required the Umpire to frame or decide issues in the manner of a civil court and that the award sufficiently dealt with the controversies raised by the parties. The trial court further found that the claims for liquidated damages and legal expenses were rightly disallowed for want of supporting evidence. Rejecting the plea of misconduct and jurisdictional defect, the learned trial court concluded that no error of law or fact was apparent on the face of the award and accordingly dismissed the objections and made the arbitral award rule of the court with entitlement of markup from the date of decree.

8. The learned lower appellate court, while hearing the civil appeals against the judgments and decrees, passed by the trial court, re-examined the record and the objections raised by the appellants. The appellate court noted that the appellants had substantially reiterated the same grounds, which had already been considered and repelled by the trial court. It was held that the learned trial court had properly appreciated the arbitral award and the material available on record, and that the Umpire had acted within the scope of his authority by determining demurrage on a pro-rata basis corresponding to the appellants' consignment. The appellate court further observed that no material illegality, perversity, or jurisdictional defect was pointed out which could justify interference with the trial court's findings. Concluding that the judgment and decree of the trial court were based on sound reasoning and did not warrant appellate interference, the learned lower appellate court dismissed the appeals and affirmed the judgments and decrees whereby the arbitral awards were made rule of the court.

9. Insofar as the plea of the appellants that the Umpire lacked jurisdiction on the premise that only the appellants' arbitrator rendered an award, while the respondents' arbitrator failed to act, the same is misconceived. Under the scheme of the Arbitration Act, 1940, the jurisdiction of the Umpire is not dependent upon both arbitrators rendering separate awards, but arises the moment a difference emerges between the arbitrators, including a situation where one arbitrator fails or neglects to act. Such failure itself constitutes a "difference" within the meaning of the Act, thereby validly invoking the jurisdiction of the Umpire. Consequently, the award rendered by the Umpire cannot be termed as *coram non judice*.

10. Moreover, in examining the other objections raised by the appellants', it is well settled that the court's review of an arbitral award is limited to detecting patent illegality, misconduct, or jurisdictional defect apparent on the face of the award. The court is not authorized to re-assess or re-appraise evidence, nor can it assume the role of an appellate forum over the findings of the arbitrator. An over-intrusive approach must be avoided. The Supreme Court of

Pakistan, in *National Highway Authority through Chairman, Islamabad v. Messrs Sambu Construction Co. Ltd.* [2023 SCMR 1103], has clarified that the grounds for challenging an arbitral award are very limited, namely: (i) jurisdictional grounds, such as non-existence of a valid and binding arbitration agreement; (ii) procedural grounds, including failure to observe principles of natural justice; and (iii) substantive grounds, where an arbitrator has made a mistake of law. The arbitrator alone is the final judge of the quality and quantity of evidence, and of the proper construction of the contract, acting in a quasi-judicial capacity. Judicial interference is confined to cases where misconduct, lack of jurisdiction, or a patent error is self-evident and does not require re-appraisal of evidence.

11. On perusal of the arbitral award, it is apparent that the learned Umpire, after examining the evidence, contractual terms, and settled principles of carriage of goods by sea, rightly held that the obligation of the consignee to secure berth after notice of readiness is absolute and that pleas of port congestion or absence of negligence are legally irrelevant once delay beyond laytime is established. The Umpire correctly treated the vessel as an arrived ship upon reaching outer anchorage and computed laytime in accordance with the contractual clause permitting discharge laytime to be calculated on the basis of total cargo on board, thereby extending due contractual benefit to the respondent.

After allowing such laytime, the Umpire determined the remaining period of detention and awarded proportionate demurrage corresponding to the appellants' share of the cargo, while expressly disallowing claims for liquidated damages and legal expenses for want of evidence and on settled legal principles. The award also addressed the liability of any successor-in-interest and conclusively adjudicated the disputes between the parties. The Umpire acted strictly within the scope of his authority, and no patent illegality, misconduct, or jurisdictional defect is apparent on the face of the award. The objections raised merely seek re-appraisal of evidence, which is impermissible in law; hence, the appellants' prayer to set aside the award is rejected.

12. It is manifest that the findings recorded by both courts below are concurrent findings of fact, based on proper appreciation of evidence and the conduct of the parties, and do not suffer from misreading or non-reading of material evidence, jurisdictional defect, or procedural illegality of the nature contemplated under Section 100 C.P.C. No substantial question of law has been shown to arise so as to warrant interference by this Court.

13. Further, these being second appeals filed under Section 100 C.P.C., the High Court can interfere only where: (a) the decision is contrary to law or usage having the force of law; (b) the decision fails to determine some material issue of law or usage having the force of law; or (c) a substantial error or defect in procedure has possibly produced error in the decision on merits. In the instant matter, none of these grounds exist, and the appeals are therefore devoid of merit.

14. Accordingly, in view of the above discussion, present appeals are dismissed, being devoid of any merit.

JUDGE