IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

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

High Court Appeal No.275 of 2006

Appellant	:	Trading Corporation of Pakistan (Pvt.) Ltd. through M/s. Munim Masood and Barrister Irtafa-ur-Rehman, Advocates
Respondents	:	International Expert Traders and other Nemo.
Date of Hearing	:	17.08.2026
Date of Judgment:		28.08.2026

J U D G M E N T

Amjad Ali Sahito, J-. The instant appeal is directed against the Judgment dated 13.03.2006 and the Decree dated 27.05.2006, passed by the learned Single Judge of this Court, whereby the suit instituted by the appellant for recovery of a sum of Rs.39,55,283.30/- along with profit/interest was dismissed. The claim of the appellant arose out of a contract for handling, storage, clearing and forwarding of rice crop, which, according to the appellant, was terminated on account of the respondent's breach of contractual obligations, whereafter the work was entrusted to another contractor at the risk and cost of the respondent.

2. Briefly stated, the case of the appellant is that it had invited bids for handling, storage, clearing and forwarding of rice crop for the year 1985-86. In response thereto, several parties, including the respondent, submitted their bids; however, the contract was ultimately awarded to the respondent at a rate of 65% above the scheduled rates. Under the terms and conditions of the contract, the respondent was bound to duly perform the stipulated duties and services in accordance with the contractual obligations. It was further provided that, in the event of any breach or default on the part of the respondent, the appellant would be competent to terminate the contract and have the remaining work executed through another contractor at the risk and cost of the defaulting respondent.

3. It was the specific case of the appellant before the learned Single Judge that the respondent failed to make payment of wages to its labourers, as a consequence whereof the labour force refused to continue working, resulting in cessation of the operations. According to the appellant, despite repeated directions and opportunities afforded to the respondent to clear the outstanding wages and resume the contractual work, the respondent failed and neglected to comply therewith. It was further asserted that although the appellant considered extending financial assistance to the respondent, such assistance could not be provided as the respondent failed to furnish the requisite bank guarantee. Consequently, the contract was cancelled on 29.12.1986, and the work was thereafter entrusted to another contractor at a higher rate, resulting in additional financial liability to the appellant. The appellant accordingly claimed compensation for the loss so suffered under various heads, aggregating to Rs.39,55,283.30/-.

4. The respondent contested the suit and denied its liability. It was contended that the financial difficulties concerning payment of wages had arisen because one of the financiers had allegedly absconded after misappropriating a substantial amount, including the funds received from the appellant. The respondent further asserted that it had approached the appellant for financial assistance in accordance with the alleged past practice adopted by the appellant in similar circumstances; however, instead of extending such assistance, the appellant proceeded to terminate the contract in undue haste. The respondent also questioned the propriety of subsequently enhancing the contractual rate from 65% to approximately 81% above the scheduled rates within a short span of time, contending that such conduct on the part of the appellant was unjustified and had caused loss to the respondent.

5. The learned Single Judge framed the necessary issues relating, inter alia, to the alleged non-payment of wages, breach of contractual obligations, loss and damages, legality and validity of the cancellation of the contract, and the appellant's entitlement to the relief claimed. After recording and examining the evidence available on record, the learned Single Judge considered the issues collectively and concluded that the appellant had failed to satisfactorily establish its entitlement to the amount claimed. Consequently, the suit was dismissed. Being aggrieved and dissatisfied with the said judgment and decree, the appellant has preferred the instant High Court Appeal.

6. Learned counsel for the appellant has assailed the impugned judgment and decree primarily on the ground that the learned Single Judge failed to properly appreciate the contractual obligations undertaken by the respondent and the consequences flowing from its admitted failure to discharge the wages payable to its labour force. It has been contended that the appellant could not reasonably be expected to allow its operations to remain at a standstill, particularly when vessels were awaiting cargo at the ports. Learned counsel submits that the relevant contractual provision expressly authorized the appellant, in the event of default by the respondent, to terminate the contract and procure performance of the remaining work through another contractor at the risk and cost of the defaulting contractor.

7. It has further been contended that the learned Single Judge erred in treating the alleged past practice of extending financial assistance or advancing loans to contractors as creating a binding obligation upon the appellant to finance the respondent. According to learned counsel, any financial assistance contemplated by the appellant was subject to prescribed terms and conditions, including the furnishing of an appropriate bank guarantee by the respondent. Since the respondent failed to comply with the said condition, no enforceable obligation arose against the appellant to extend such financial assistance. It is, therefore, argued that the learned Single Judge could neither disregard the express terms of the contract nor substitute an independent arrangement for the contractual bargain voluntarily entered into between the parties, particularly when the respondent had failed to perform its essential contractual obligations.

8. Learned counsel has further submitted that undue significance was attached by the learned Single Judge to the fact that the subsequent contract was awarded at a higher rate. It is argued that once the respondent had committed a contractual default and failed to perform the work, thereby compelling the appellant to make alternative arrangements for completion of the contractual obligations, any additional expenditure reasonably incurred for securing such performance was recoverable from the respondent in terms of the risk-and-cost provision contained in the contract. On this premise, learned counsel has prayed that the impugned Judgment and Decree be set aside and that the suit instituted by the appellant be decreed in accordance with law.

9. None has appeared on behalf of the respondents despite repeated calls. No intimation for their non-appearance has been received. The record further reflects that the respondents have remained absent on the preceding dates of hearing as well. Their continued absence, coupled with the failure to furnish any explanation for non-appearance, indicates that the respondents are no longer interested in contesting the instant appeal. The appeal is, therefore, being proceeded with in their absence.

10. We have heard the learned counsel for the appellant and have carefully examined the record, including the pleadings, evidence and material available before us.

11. The principal controversy arising for determination in the present appeal is whether the respondent committed a breach of its contractual obligations by failing to discharge the wages payable to the labour force engaged for execution of the contract, thereby compelling the appellant to terminate the contract and arrange for completion of the remaining work through another contractor at the risk and cost of the respondent; and, consequently, whether the appellant succeeded in establishing its entitlement to the amount claimed by way of loss and damages allegedly occasioned as a consequence of such termination.

12. The case set up by the appellant is that Respondent No.2 entered into a contract dated 30.10.1985 for keeping and handling the stock at TPX and Qasim Rice Godowns, Landhi, pertaining to the crop year 1985-1986, on the terms and conditions stipulated in the tender. The said arrangement was subsequently confirmed by the appellant through its letter dated 17.12.1986 for a period of two years. According to the appellant, notwithstanding receipt of substantial payments against the work executed under the contract, the respondent failed to discharge its obligation of paying wages to the labourers engaged for performance of the contractual work. Consequently, the labour force refused to continue working, resulting in disruption and stoppage of the operations.

13. The appellant, through its letters dated 23.12.1986 and 24.12.1986, called upon the respondents to clear the outstanding wages payable to the workers within four days, failing which the contract would be cancelled and the respondents would remain solely responsible for the consequences thereof. As the respondent failed to resume the work or comply with the notice, the appellant cancelled the contract on 29.12.1986. Thereafter, the remaining work was entrusted to another contractor, namely M/s Syed Corporation, at the rate of 81.8% above the scheduled rate.

14. On the other hand, the stance of the respondents is that Respondent No.3 had absconded with an amount of Rs.26,67,833.27/-, thereby causing financial loss and resulting in delay in payment of wages to the labour force. In order to overcome the situation, the respondents approached the appellant through letter dated 20.11.1986, requesting financial assistance in the form of an advance in accordance with the appellant's past practice. Instead of extending such assistance, the appellant proceeded to terminate the contract and awarded the work to M/s Syed Corporation at the rate of 81.8% above the scheduled rate.

15. The appellant led evidence and maintained that, owing to non-payment of labour charges, the workers called a strike on 22.12.1986. Since ships were berthed at Bin Qasim Port, the appellant contended that it could not afford any delay in the handling operations. Consequently, on 23.12.1986, the work was entrusted to M/s Merchant Agency on an ad hoc basis. Thereafter, through notice dated 24.12.1986, the respondent was called upon to clear the outstanding wages payable to the labourers within four days, failing which the contract would stand cancelled. The appellant further stated that the respondent's request for an advance of Rs.23,00,000/- was considered but could not be acceded to because the respondent failed to furnish the requisite bank guarantee. Consequently, the contract was cancelled and the remaining work was subsequently awarded to M/s Syed Corporation at 81% above the scheduled rate.

16. The case of the respondents was that the appellant had acted precipitately in cancelling the contract and that the situation could have been resolved without resorting to termination. According to the respondents, they had followed its established practice of extending financial assistance to contractors in need, the interests of both the appellant and the respondent could have been protected and the contract could have continued without interruption.

17. The respondents alleged before the trial Court that the appellant’s conduct was mala fide, particularly because, within a period of less than one month, the rate applicable to the contract was increased from 65% to 81% above the scheduled rate while awarding the work to the new contractor. It was further asserted that the appellant had, in the past, advanced funds to contractors facing financial difficulties, and examples of such transactions were referred to in the affidavit-in-evidence.

18. The respondents further alleged that the cancellation was effected in undue haste. The appellant’s notice was issued on

24.12.1986; 25.12.1986 was a public holiday on account of the birth anniversary of Quaid-e-Azam Muhammad Ali Jinnah, while 26.12.1986 was observed as the weekly holiday. The appellant's office remained closed on 27.12.1986, being Saturday. On 28.12.1986, the respondent served a legal notice upon the appellant. Despite receipt thereof, and without properly considering its contents, the appellant proceeded to cancel the contract on 29.12.1986 and communicated the decision to the respondents on the same day.

19. The respondents further maintained before the trial Court that, at the time of cancellation of the contract, substantial amounts belonging to the respondent were already lying with the appellant, namely:

(i) Security deposit — Rs.25,00,000/-;

(ii) Retention money — Rs.14,00,000/-; and

(iii) Amount due under running bills — Rs.25,00,000/-.

Total — Rs.64,00,000/-.

20. It is also the case of respondent that the cancellation of the contract was wholly unjustified. It was also submitted that the Ombudsman had found the cancellation to be unjustified and attributable to maladministration on the part of the appellant. However, the said decision was subsequently set aside in appeal on the ground that the matter involved a monetary claim and that a suit in respect thereof had already been instituted before the High Court.

21. We have carefully scrutinized the documentary and oral evidence available on record. The appellant's own witness admitted that it had a practice of extending loans or financial assistance to contractors in cases of need and that such practice had continued until 1985. According to the witness, the practice was thereafter discontinued upon objections being raised by the auditors. However, the appellant neither produced any communication or report from the auditors in support of such assertion nor furnished any satisfactory explanation as to why the practice was discontinued precisely when the respondent was facing financial difficulties during the subsistence of the contract.

22. The appellant also failed to establish who ultimately discharged the outstanding wages of the labourers so as to enable them to resume work. If, as may be inferred, the wages were paid by M/s Merchant Agency, which had initially been engaged on an ad hoc basis, there ought to have been corresponding reimbursement by the appellant, particularly as the engagement of M/s Merchant Agency was admittedly for a limited period and the work was subsequently entrusted to M/s Syed Corporation.

23. The appellant itself furnished details of the payments made in the plaint, according to which an amount of Rs.3,55,271.44/- was paid to M/s Merchant Agency, while a further sum of Rs.12,96,236.36/- was incurred in respect of leftover stock. Had the requisite financial assistance been extended to the respondent in the form of an advance, there appears to have been no compelling necessity for the parties to suffer the losses subsequently claimed.

24. The appellant has further failed to furnish a satisfactory justification for the increase in the contractual rate from 65% to 81% above the scheduled rate within such a short period, or for cancelling the existing contract within days of issuance of the notice. It is significant that the notice was issued on 24.12.1986, followed by holidays on 25.12.1986 and 26.12.1986, closure of the appellant's office on 27.12.1986, and receipt of the respondent's legal notice on 28.12.1986. Nevertheless, the appellant proceeded to cancel the contract on 29.12.1986 without demonstrating that adequate opportunity had been afforded to the respondent to remedy the alleged default.

25. The appellant has also failed to effectively controvert the evidence establishing that an aggregate amount of Rs.64,00,000/- was lying with it under three separate heads, including Rs.25,00,000/- payable against running bills. In these circumstances, it would have been more appropriate, prudent and in the appellant's own interest to extend financial assistance to the respondent and permit continuation of the contract at the agreed rate of 65% above the scheduled rate, rather than abruptly disrupting the operations at the rice godowns and awarding the work, first on an ad hoc basis and subsequently to M/s Syed Corporation at 81% above the scheduled rate.

26. The difference of 16% above the existing contractual rate could, in the circumstances of the case, have been avoided by adopting a reasonable and sympathetic approach, particularly when such approach was allegedly consistent with the appellant's own past practice. We are, therefore, of the view that the appellant was not justified in cancelling the contract in the manner in which it did. The circumstances surrounding the cancellation, coupled with the appellant's failure to satisfactorily explain its conduct, give rise to a legitimate inference that the termination was not founded upon a fair and reasonable exercise of the contractual power. Consequently, the suit was rightly dismissed, with no order as to costs.

27. In the present appeal, the appellant has claimed various amounts under different heads, including additional payments allegedly made to M/s Merchant Agency, additional expenditure incurred in respect of leftover stock owing to the enhanced contractual rate, payments allegedly made to labourers on behalf of the respondent, penalty purportedly imposed on account of delay in completion of shipping documents, and the cost of damaged bags. Each of these claims was required to be established through cogent, reliable and legally admissible evidence demonstrating that the amounts were actually incurred, that the expenditure was directly attributable to the respondent's alleged breach, and that the same was legally recoverable from the respondent as damages. However, the appellant failed to discharge this burden through sufficient oral or documentary evidence.

28. We have examined the evidence produced by the parties in this regard and find material discrepancies in the appellant's case. Although the amount claimed in the plaint was stated to be Rs.39,55,283.30/-, the appellant subsequently mentioned an amount of Rs.46,77,515.09/- in its affidavit-in-evidence and during its deposition. Such a substantial discrepancy in the amount claimed constitutes a material circumstance requiring a satisfactory and convincing explanation. The appellant was under an obligation to establish, with precision and certainty, the amount actually recoverable under each individual head of claim. In the absence of such proof, the monetary claim could not lawfully be decreed merely on the basis of assertions contained in the pleadings or evidence.

29. Likewise, the mere fact that the appellant subsequently engaged another contractor at a higher rate does not, by itself, establish that the entire difference between the two rates constituted recoverable damages. The appellant was required to establish that the alternative arrangement was reasonably and necessarily undertaken as a direct consequence of the respondent's breach and, further, that the additional expenditure claimed represented the direct, foreseeable and legally recoverable loss resulting therefrom. Such causal nexus and quantum were not satisfactorily established by the evidence on record.

30. Furthermore, the existence of a contractual right to terminate the agreement cannot, in itself, confer an automatic entitlement upon the appellant to recover the entire amount claimed by way of damages. Even where termination is contractually permissible, the party seeking compensation is required to independently establish the factum, causation and quantum of the loss allegedly suffered. Upon a careful examination of the material placed before us, we find that the learned Single Judge's conclusion regarding the appellant's failure to satisfactorily establish its monetary claim is fully supported by the evidence on record and does not suffer from any illegality, misreading or perversity warranting interference in appellate jurisdiction.

31. Upon a careful and holistic examination of the impugned Judgment, we find that the learned Single Judge duly considered all material questions arising from the pleadings, evidence and submissions advanced by the parties. The appellant has failed to identify any material piece of evidence which was either ignored or excluded from consideration, or any finding which may legitimately be characterized as perverse, arbitrary, capricious, or the result of misreading or non-reading of the evidence. No jurisdictional defect, material irregularity or error of law has been demonstrated which could justify interference by this Court in exercise of its appellate jurisdiction.

32. For the foregoing reasons, the Judgment dated 13.03.2006 and Decree dated 27.05.2006 passed by the learned Single Judge are found to be in accordance with law and based upon a proper appreciation of the material available on record. The appellant has failed to establish any ground warranting interference by this Court in its appellate jurisdiction. Consequently, the instant High Court Appeal is **dismissed**, and the impugned Judgment and Decree are **maintained**. There shall be **no order as to costs**.

JUDGE

JUDGE

KAMRAN/PS