IN THE HIGH COURT OF SINDH AT KARACHI

Civil Revision Application No. S-108 of 2009

Applicants:	Peoples Steel Mills Ltd., and another *through* Mr. Zahid Hamid, Advocate
Respondent:	M/s Asian Counsel Engineer (Pvt.) Ltd., *through* Mr. Umar Sikandar, Advocate for the Respondent
Dates of hearing:	18.04.2025, 02.05.2025, 16.05.2025
Date of decision:	28.07.2025

J U D G M E N T

Muhammad Jaffer Raza, J.- Through the instant Revision Application, the Applicants have impugned judgment and decree dated 06.5.2009 and 13.5.2009, respectively.

2. Prior to noting the arguments of the respective counsels, it will be expedient to first give a succinct background of the dispute as the same is convoluted in its nature.

3. It is admitted that the above mentioned parties entered into a contract for Project of Balancing, Modernization and Rehabilitation to be carried out at the factory premises of Applicant No.1. Thereafter, a dispute arose between the parties, minute details of which are not relevant for the present purposes as will be elucidated below. The parties under the agreement referred the matter to two arbitrators namely Mr. Zafar Hussain Siddiqui and Mr. Shaikh Muhammad Zafar. Subsequently, the said arbitrators entered their respective references on 07.12.1996. Each of the respective arbitrators gave the reference in favour of the parties by whom they were appointed. Thereafter, due to the split decision of the above noted arbitrators, the matter was referred to the Umpire namely Justice Retired Muhammad Mazhar Ali who filed his Award dated 02.06.1999 before this Court. The said Award was converted into Suit No.868 of 1998 and the objections filed by the Applicant were dismissed for non-prosecution on 02.06.1998. The said

Award/rule of court was subsequently impugned by the Applicants in High Court Appeal No.246 of 1999. A Learned Divisional Bench of this Court remanded the matter for proper decision in the above noted suit. Due to the change in the pecuniary jurisdiction of this Court, the matter was consigned to the learned Civil Court and the old Suit No.868/1998 was converted into Suit No.80/2003. Subsequently, the Award was made Rule of the Court vide judgment dated 28.05.2003 and decree dated 31.05.2003. Thereafter, the Applicants filed Civil Appeal No.169/2003 and vide judgment dated 29.05.2004, the same was again remanded back for decision afresh. In the meanwhile, an application was preferred by the Applicants to transfer the suit to this Court and the said application was dismissed. Against the said dismissal Revision Application was preferred by the Applicants bearing No.243/2003, whereby it was observed that Civil Appeal No.169/2003 shall be decided on merits. Thereafter, as noted above in Civil Appeal No.169/2003, the matter was remanded back to the learned Civil Court and the Umpire's Award was made Rule of the Court vide judgment and decree dated 12.12.2005. Subsequent to the same, Civil Appeal No.02/2006 was preferred by the Applicants and the same was dismissed vide the impugned judgment and decree dated 06.05.2009 and 13.05.2009.

4. After noting the rather complex and peculiar background of the dispute it will now be expedient to note the contentions of the respective learned counsels.

5. It has been contended by the counsel for the Applicants that this Court has the power to set aside the judgment and decree and also to set aside the Award of the Umpire, which according to the learned counsel is "perverse". It has been contended by the learned counsel that the instant Revision Application is maintainable and this Court has jurisdiction to examine the merits of their claim minutely and render findings in the favour of the Applicants. The learned counsel was repeatedly probed by me to highlight specifically the error floating on the face

of the record. The learned counsel in reply only reiterated, in general terms, the arguments noted above.

6. Conversely, learned counsel for the Respondent has argued that the present revision application under Section 115 of the CPC is not maintainable. He has argued that no specific ground of misconduct has been raised on part of the Umpire by the learned counsel for the Applicants. Even otherwise, he has argued that the misconduct, if any, must be glaring in its nature as this Court, if at all, will exercise only supervisory jurisdiction as the same is not the Court of Appeal.

7. I have heard both the counsels of the respective parties and have perused the record.

8. Prior to rendering my finding on the instant revision application I would like to first address the question of maintainability. It was most vehemently argued by the learned counsel for the Respondent that the revision application is not maintainable under the law and the same ought to be dismissed. During the course of my own research I have come across the judgment in the case of ***Abdul Razzak Versus Mst. Qaiser Sultan and 2 others***[1] in which the learned Saleem Akhtar J. (as he then was) whilst adjudicating a second appeal under Section 100 CPC interpreted Section 39 of the Act and opined as under:-

> *"From this provision of law it is clear that order of the Appellate Court under section 39 of the Arbitration Act is not open to challenge in second Appeal. Reference can be made to 27 1 C 22 and 25 1 C 7. A second appeal will not lie against an order setting aside or refusing to set aside the award, as held in AIR 1941 Cal. 202. However, it is well-settled that the aggrieved party is entitled to file a revision application. The scope of Revision Application is limited and the Court can only interfere if the subordinate Court has exercised jurisdiction not vested in it by law, or has failed to exercise jurisdiction so vested, or has acted in exercise of its jurisdiction illegally or with material irregularity. Even if for argument sake I treat this second appeal as a revision application no ground for interference has been made out. For these reasons the appeal is dismissed."*

[1] 1984 M L D 147

9. A contrary view was taken by a learned single judge of the Lahore High Court whilst hearing a second appeal in the case of ***Muhammad Nawaz Versus Mian Khan and 4 others***[2] wherein it was held as under:-

> *"4. It is clear that no second appeal is competent against a judgment passed by the learned first appellate court as one remedy of appeal is provided under the Act, which has been exhausted before the learned first appellate court. I am further of the view that even a revision petition against the judgment passed by the learned Additional District Judge is not competent. A revision being a substantial right can only be exercised if same is provided under the statute. If no power of revision is provided under the statute i.e. Arbitration Act, 1940, same forum is not available against the appellate judgment rendered in accordance with section 39 of the Arbitration Act, 1940."*

10. I find myself in agreement with the finding rendered in the case of **Abdul Razzak** (supra) and hold that the present revision application is maintainable as under Section 39 of the Act no second appeal lies under the scheme of the Act. It will now have to be adjudged as to whether the grounds for revision have been made out by the counsel for the Applicant. For the said purpose, I shall now turn to the limited scope of the present application and adjudicate whether the present application falls within the scope noted above.

11. To adjudicate the same it will first be expedient to reproduce the scope of this Court and for the said purpose it will be further convenient to reproduce Section 30 of the Arbitration Act, 1940 **("Act")**.

> ***Section 30. Grounds for setting aside award.*** *An award shall not be set aside except on one or more of the following grounds, namely:-*
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> *(a) that an arbitrator or umpire has misconducted himself or the proceedings;*
>
> *(b) that an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under Section 35.*
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> *(c) that an award has been improperly procured or is otherwise invalid.*

12. The scope of interference under Section 30 of the Act, was comprehensively and painstakingly set out by the Hon'ble Supreme Court in the

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[2] 2019 C L C 413

case of ***Gerry's International (Pvt.) Ltd.v. Aeroflot Russian International Airlines***[3]. The Hon'ble Court after examining a plethora of judgments, both local and foreign, in paragraph No.8 of the said judgment laid down the principles governing the said scope. The ones relevant to the present adjudication are reproduced below for the sake of brevity:-

> *"8. The principles which emerge from the analysis of above case-law can be summarized as under:-*
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> *(1) When a claim or matters in dispute are referred to an arbitrator, he is the sole and final Judge of all questions, both of law and of fact.*
>
> *(2) The arbitrator alone is the judge of the quality as well as the quantity of evidence.*
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> *(3) The very incorporation of section 26-A of the Arbitration Act requiring the arbitrator to furnish reasons for his finding was to enable the Court to examine that the reasons are not inconsistent and contradictory to the material on the record. Although mere brevity of reasons shall not be ground for interference in the award by the Court.*
>
> *(6) The arbitrator could not act arbitrarily, irrationally, capriciously or independently of the contract.*
>
> *(9) To find out whether the arbitrator has travelled beyond his jurisdiction, it would be necessary to consider the agreement between the parties containing the arbitration clause. An arbitrator acting beyond his jurisdiction is a different ground from an error apparent on the face of the award.*
>
> *(10) The Court cannot review the award, nor entertain any question as to whether the arbitrators decided properly or not in point of law or otherwise.*
>
> *(11) It is not open to the Court to re-examine and reappraise the evidence considered by the arbitrator to hold that the conclusion reached by the arbitrator is wrong.*
>
> *(12) Where two views are possible, the Court cannot interfere with the award by adopting its own interpretation.*
>
> *(13) Reasonableness of an award is not a matter for the Court to consider unless the award is preposterous or absurd.*
>
> *(14) An award is not invalid if by a process of reasoning it may be demonstrated that the arbitrator has committed some mistake in arriving at his conclusion.*
>
> *(15) The only exceptions to the above rule are those cases where the award is the result of corruption or fraud, and where the question of law necessarily arises on the face of the award, which one can say is erroneous.*
>
> *(18) The Court does not sit in appeal over the award and should not try to fish or dig out the latent errors in the proceedings or the award. It can set aside the award only if it is apparent from the award that there is no evidence to support the conclusions or if the award is based upon any legal proposition which is incorrect.*
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> *(19) The Court can set aside the award if there is any error, factual or legal, which floats on the surface of the award or the record.*

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[3] 2018 SCMR 662

> *(25) While making an award rule of the Court, in case parties have not filed objections, the Court is not supposed to act in a mechanical manner, like a post office but must subject the award to its judicial scrutiny.*
> *(26) Though it is not possible to give an exhaustive definition as to what may amount to misconduct, it is not misconduct on the part of the arbitrator to come to an erroneous decision, whether his error is one of fact or law and whether or not his findings of fact are supported by evidence."*(Emphasis added)

13. Relying upon the judgement in the case of **Gerry's International** (supra) the Hon'ble Supreme Court recently in the case of ***Injum Aqeel v. Latif Muhammad Chaudhry***[4] further elaborated the scope of interference in the following words:-

> *"It is not open to the Court to re-examine and reappraise the evidence considered by the arbitrator to hold that the conclusion reached by the arbitrator is wrong. Where two views are possible, the Court cannot interfere with the award by adopting its own interpretation. The general principle underlying the concept of arbitration as translated in the scheme of the Arbitration Act, 1940 is that, as the parties choose their own arbitrator to be the Judge in the dispute between them, they cannot, when the award is good on the face of it, object to his decision, either upon law or fact. The error or infirmity in the award which rendered the award invalid must appear on the face of the award and should be discoverable by reading the award itself. The arbitrator is the final Judge on the law and facts and it is not open to a party to challenge the decision of the Arbitrator, if it is otherwise valid. An award cannot be lawfully disturbed on the premise that a different view was possible. Arbitration is a forum of the parties' own choice and is competent to resolve the issues of law and the fact between them, which opinion/decision should not be lightly interfered by the court while deciding the objection thereto, until a clear and definite case within the purview of the section noted above is made out. The Court does not sit in appeal over the award and should not try to fish for or dig out the latent errors in the proceedings or the award. It can set aside the award only if it is apparent from the award that there is no evidence to support the conclusions or if the award is based upon any legal proposition which is incorrect. The Court can set aside the award if there is any error, factual or legal, which floats on the surface of the award or the record."*(Emphasis added)

14. I shall now turn to examine the Impugned Judgement and ascertain as to whether the courts below erred in declining to set aside the Award. It is apparent from the perusal of the said Impugned Judgement, as well as the award, that the primary dispute between the parties is whether certain works undertaken by the

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42023 SCMR 1361

Respondent were beyond the scope of the contract. It was contended by the Applicant, as articulated in the Impugned judgement and not during the course of arguments before me, that the extra work undertaken by the Respondent was beyond the scope of the contract and the agreement ought to be void for "uncertainty". Whereas, the Award as well as the Impugned judgment, placing reliance on clause 51.1 of the General conditions of contract have rendered a finding that the agreement between the parties stipulated additional work. It is held that the there is no error, factual or legal, floating on the face of the record and I am therefore not inclined to interfere within the limited scope as outlined above. Further, the learned Appellate Court has correctly curtailed its jurisdiction by holding that the said court is not a court of appeal and the jurisdiction, even if liberally interpreted at the appellate stage, is of a supervisory nature.

15. In light of the pronouncements of the Hon'ble Supreme court, it has already been held above that the scope of interference is limited. It can therefore, logically and rationally be deduced that the scope of interference, in the jurisdiction of this court under Section 115 CPC, against concurrent findings of the court below, is further circumscribed. The learned counsel for the Applicants has failed to bring the present case within the constricted scope and therefore the instant Revision Application along with pending applications is dismissed with no order as to costs.

JUDGE