

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Suit No.894 of 2015 a/w
Suit Nos. 895, 896, 897, 898, 899 & 900 of 2015

Order with signature of Judge

Suit No.894 of 2015

For hearing of and maintainability of CMA No.13849 of 2019.

Suit No.895 of 2015

For hearing of and maintainability of CMA No.13851 of 2019.

Suit No.896 of 2015

For hearing of and maintainability of CMA No.13853 of 2019.

Suit No.897 of 2015

For hearing of and maintainability of CMA No.13855 of 2019.

Suit No.898 of 2015

For hearing of and maintainability of CMA No.13857 of 2019.

Suit No.899 of 2015

For hearing of and maintainability of CMA No.13859 of 2019.

Suit No.900 of 2015

For hearing of and maintainability of CMA No.13861 of 2019.

16.12.2019

Mr. Muhammad Masood Khan, advocate for the plaintiff in all Suits.
Mr. Barkat Ali Metlo, advocate for the defendant.

These applications have been filed under Section 151 CPC on behalf of the defendants, praying to annul order dated 17.01.2019, whereby, pursuant to letter dated 01.10.2018 issued by the Ministry of Law & Justice, a former Judge of this Court has been appointed as an 'Arbitrator'. Learned Counsel for the defendants has referred to various correspondence, annexed with this application and submits that Ministry of Defence is not agreeable for appointment of an Arbitrator and had approached the Ministry of Law & Justice, who has shown its inability and has instead ask the defendants to approach this Court. He further submits that the order has been passed without consideration of Clause-17 of the Agreement in question, whereas, the defendants were not properly informed by their earlier Counsel regarding passing of such orders. According to him the

Defendants also have objection to the very person who has been appointed as an Arbitrator. In these circumstances, he has prayed for allowing this application.

2. On the other hand, learned Counsel for the plaintiff has opposed this application and submits that firstly this is an application for reviewing the earlier orders including order dated 17.1.2019, and is not maintainable under Section 151 CPC, whereas, even otherwise under Arbitration proceedings, this Court lacks any powers of reviewing its orders in view of the judgment of the Hon'ble Supreme Court of Pakistan reported as ***RAHIM JAN vs. Mrs. Z. IKRAM GARDEZI and others (PLD 2004 Supreme Court 752)***.

3. I have heard both the learned Counsel and perused record. The order dated 17.01.2019, reads as under;

"1) Pursuant to order dated 17.09.2018 statement has been filed on behalf of the Plaintiff along with Letter dated 01.10.2018 issued by Ministry of Law & Justice nominating Justice Dr. Ghous Muhammad, former Judge of this Court as an arbitrator.

Accordingly, office is directed to issue intimation to the learned Judge regarding his appointment as Arbitrator along with copy of order(s) dated 09.08.2018 and 17.09.2018, for further proceedings."

4. Thereafter, on 09.10.2019, on an application filed by the plaintiff for enlargement / extension of time for completion of the Arbitration proceedings another order was passed, whereas, the defendants had opposed the said application. The order dated 09.10.2019, reads as under;

"Counsel for the Defendant No.2 has filed Vakalatnama in all Suits and submits that he needs time to file his objections on the listed application as well as appointment of the Arbitrator in question. However, I am not inclined to grant any such request for the simple reason, as this application under Section 28 of the Arbitration Act, 1940 is only seeking enlargement / extension of time for completion of the Arbitration proceedings. In this matter, it is not in dispute that there is an Arbitration clause in the agreement and these Suits were disposed of vide order dated 26.05.2017 with consent for settlement of issues or in the alternative go for Arbitration. Thereafter, since the Defendants are Government Organizations, pursuant to Clause 67 of the General Conditions of the Contract matter was referred to Ministry of Law, Justice and Human Rights Division, Government of Pakistan for nomination and appointment of Sole Arbitrator, and the Ministry has nominated the learned Sole Arbitrator who is a Retired Judge of this Court and such fact was recorded on 17.01.2019. Record further reflects from the Diary Sheets that the Defendants have knowingly and in defiance of their own conditions of contract and appointment of Arbitrator by the Ministry itself, have not proceeded with the Arbitration and time has since expired.

In the circumstances, no further objections are to be entertained as contended, whereas, the Ministry of Law pursuant to their own available list of the Retired Judges of this Court as well as of the Hon'ble Supreme Court, has appointed the Arbitrator. Accordingly, this application merits consideration as Section 28 empowers this Court to enlarge the time for making of the Award and reads as under:-

“28. Power to Court only to enlarge time for making award.__(1)

The Court may, if it thinks fit, whether the time for making the award has expired or not and whether the award has been made or not, enlarge from time to time the time for making the award.

(2) Any provisions in an arbitration agreement whereby the arbitrators or umpire may, except with the consent of all the parties to the agreement, enlarge the time for making the award, shall be void and of no effect.”

In view of hereinabove facts and circumstances of this case, the application is allowed. Time is enlarged for a further period of four months from today for completion of Arbitration proceedings. Office to communicate this order to the learned Arbitrator Justice (Retd.) Ghous Muhammad. Application stands disposed of. Office is directed to place copy of this order in all above connected Suits.’

5. It is not in dispute that all the above orders including the very first order of disposal of this Suit were never challenged in Appeal, whereas, the orders have been passed in presence of Defendants or their Counsel. Therefore, when these applications were filed, while issuing notice, the Counsel for the defendants was also confronted as to maintainability of these applications.

6. It appears that initially this Suit under Section 20 of the Arbitration Act, was disposed of vide order dated 26.05.2017 with certain directions; however, the said directions were not fully complied with and implemented for certain unknown reasons. Subsequently, the plaintiff filed an application for appointment of an Arbitrator, pursuant to Clause-67 of the General Conditions of Contract and since the defendants are a Government Organization, the matter was referred to Secretary, Ministry of Law & Justice for nomination and appointment of Sole Arbitrator. The said order of the Court was transmitted to the Ministry of Law & Justice and subsequently out of the three proposed names, the Ministry of Law & Justice vide its own letter dated 01.10.2018, nominated a former Judge of this Court as an Arbitrator who was then, vide order dated 17.01.2019 appointed as an Arbitrator. It may again be reiterated that none of these orders were ever objected to or challenged any further. In my view, the

present application in fact seeks review of the order dated 17.01.2019, which apparently is an order passed by the Court exercising its jurisdiction under the Arbitration Act, and such review is not permissible in view of the judgment of the Hon'ble Supreme Court in the case of *Rahim Jan (Supra)* relied upon by the learned Counsel for the plaintiff. Even otherwise, the defendants had all along knowledge and information about these proceedings as all the orders were passed either in presence of their representatives or their Counsel, whereas, none of the orders have been impugned before any Appellate Court. Resultantly, they have accepted the orders of the Court, which have attained finality and after appointment of the Arbitrator such an objection regarding non implementation and invoking of Clause-17 of the agreement cannot be entertained and appears to be unreasonable on the part of the defendants. Moreover, this Court has not appointed the Arbitrator on its own; rather it is the Ministry of Law and Justice which has done so by selecting one out of the three names proposed by the Court from their approved list of Arbitrators. If at all any objection which could be raised about the very person of the Arbitrator, it is in fact the Ministry of Law and Justice which could do so, and if so, then again Court will examine such request and also confront them as to how any objection could be raised on an Arbitrator which has been appointed on their recommendation from an approved list of Arbitrators maintained by them.

7. Therefore, insofar as the very appointment of the Arbitrator is concerned, it may be noted that such order has already attained finality and cannot be reviewed by this Court for lack of jurisdiction as well as for the fact that no such case for review is made out. The application was at the very outset misconceived and incompetent and therefore, learned Counsel for the defendants after a brief hearing and before passing of the short order, was given an option to withdraw these applications, failing which this Court may impose cost; however, learned Counsel pleaded no instructions.

8. In view of hereinabove facts and circumstances these applications do not merit any consideration; are rather misconceived and is an attempt, resulting in wastage of the precious time of this Court, and therefore, on 16.12.2019, by means of a short order, all these applications were

dismissed with cost of Rs. 10,000/- [Rupees Ten Thousand Only], to be deposited in the account of Sindh High Court Clinic and these are the reasons thereof.

JUDGE

Qurban/PA*