

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Suit No.510 of 2013
Muhammad Rafique
Versus
Raja Muhammad Usman & others

Date	Order with signature of Judge
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For hearing of CMA 5178/2015

Dated: 08.09.2015

Mr. Mohammad Mansoor Mir for plaintiff.
Mr. Khalil Ahmed Siddiqui for defendants.

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Muhammad Shafi Siddiqui, J.- This is an application under section 20 of Arbitration Act, 1940 in relation to two partnership deeds.

Brief facts of the case, as narrated by Mr. Mohammad Mansoor Mir, learned counsel for the plaintiff, are that the plaintiff and the defendant No.1 entered into an agreement for business dated 15.05.1994. Subsequently by two independent partnership deeds dated 15.06.1998 and 29.09.1998 respectively were executed, which are available at pages 21 and 25 respectively.

The agreement titled as “Agreement for Business Partnership” was executed for expansion of the business in the name and style of Civic Hotel International, 13 Blue Area, Islamabad. This agreement was executed on 15.05.1994 between Raja Muhammad Usman (proprietor of hotel) and Muhammad Rafiq son of Faqir Muhammad, both were stated to be residents of Islamabad followed by first partnership deed dated 15.06.1998 between plaintiff and defendants No.1. This Deed, as stated above, is in relation to expansion of Civic Hotel International and it contains an arbitration clause. It is urged by the learned counsel that since there is a dispute between parties, therefore, they be directed to

file Arbitration Agreement to refer the matter to the arbitration for resolution of the dispute between them.

The other partnership deed that has been relied upon by the learned counsel was executed between plaintiff and defendants No.1 to 6 but in relation to different subject i.e. business of Usmania Restaurant. The partnership claimed to have been executed on 29.09.1998.

It is the case of the plaintiff that he has not been paid his due share in the partnership and hence since both the partnership deeds contain arbitration clauses therefore the application under section 20 of the Act 1940 has been filed to direct the defendants to file the Arbitration Agreement and for referring the matter to the Arbitrator for resolution of the dispute.

In relation to second partnership deed, learned counsel for plaintiff submits that though the defendants are relying on the Deed of Dissolution of partnership, which is in relation to the second partnership deed, but such deed of dissolution is denied by the plaintiff. Even otherwise, he submits that since the dispute of accounts is raised therefore irrespective of such dissolution, the dispute in terms of arbitration clause may be referred to the Arbitrator, as being unsettled.

In support of his contentions, learned counsel has placed reliance on the case of Pakistan International Bulk Terminal Ltd. v. Maqbool Associates (Pvt.) Ltd. reported in 2014 CLD 773.

On the other hand learned counsel for the defendants, Insofar as the agreement followed by first business/partnership deed is concerned, submits that this Court has no territorial jurisdiction as the agreement was executed at Islamabad, the business that was subject matter of the agreement/partnership deed was at Islamabad and the cause of action,

if any, accrued also at Islamabad. Hence, in relation to the first partnership deed this Court has no jurisdiction.

Insofar as the second partnership deed, which relates to Usmania Restaurant is concerned, the parties have already settled their dispute amicably on the basis of Deed of Dissolution of Partnership which is available on record along with written statement. He submits that nothing is due and outstanding against the plaintiff insofar as the business of Usmania Restaurant is concerned. Hence, Deed of Dissolution was reduced into writing therefore section 20 of Arbitration Act could not be invoked. In support of this fact that the matter has been amicably settled in terms of Deed of Dissolution, counsel for the defendants has relied upon the case of Industrial Fabrication Company v. Managing Director Pak American Fertilizer Limited reported in PLD 2015 Supreme Court 154.

Heard the learned counsel and perused the record.

There is no cavil to the proposition that these are two independent partnership deeds and the parties are also different except few. I would like to see each partnership deeds independently as they read.

The first partnership deed dated 15.06.1994 was executed at Islamabad and the parties were also stated to be residing at Islamabad and the business was being run at Islamabad. Hence, I am of the view that if any cause of action accrued it would have been at Islamabad. The contention of learned counsel for the plaintiff in that regard that now the plaintiff is residing at Karachi is of no avail as the occurrence of cause is not shown to be at Karachi. Further this cause of action accrued at Islamabad cannot be seen with the one accrued at Karachi within the territorial limits of this Court in respect of the second partnership deed

and hence is not sustainable under the law since two causes of action are independent as there are two independent deeds i.e. one is in relation to Civil Hotel International, 13 Blue Area, Islamabad and the other is in relation to another business of Usmania Restaurant Clifton, Karachi and the parties are different too i.e. first Partnership Deed is between plaintiff and defendants No.1 and 7 to 10 and the second Partnership Deed is between plaintiff and defendants No.1 to 6. Hence, the two causes of action cannot be merged into one in order to avail the jurisdiction of this Court.

Insofar as second partnership deed, which is in relation to Usmania Restaurant, it appears that the dispute between them appears to have been resolved through a deed of dissolution of partnership though this deed of dissolution of partnership is vehemently opposed by learned counsel for the plaintiff but such dissolution itself is a contract, which provide that all disputes arising out of the second partnership deed were resolved.

The reliance was placed by learned counsel for the defendants on the case of Industrial Fabric Company (Supra) which provides that where a claim was raised and settled through accord and satisfaction by payment or adjustment there would be no existing dispute requiring resolution through arbitration. If the original contract was substituted through novation, lawful recession or alteration, the arbitration clause therein may also perish thereby precluding a reference to the arbitrators.

It was further observed by the Hon'ble Supreme Court in the above case that factum of such final settlement may be disputed and that settlement being a sub-specie of contract, its validity should be contested on the ground of having been obtained through exercise of undue influence or coercion, or on any other ground available under the

law. It was observed that acceptance of the settlement may be equivocal or without prejudice or substantial questions as to its true import meaning or effect may be raised by the opposite side.

Thus what Hon'ble Supreme Court emphasized is that it is the subsequent of Deed of Dissolution on the basis of which the parties could litigate and this subsequent deed of dissolution is devoid of any arbitration clause.

In view of the above and on the basis of reasoning provided by the Hon'ble Supreme Court in the case referred above I do not see any substance in the application, which is accordingly dismissed. However, in case the plaintiff finds any dispute in statement of accounts, if so advised, he may pursue his remedy in the ordinary jurisdiction on the basis of Deed of Dissolution of the partnership in relation to Usmania Restraint and as far as first agreement is concerned this Court has no territorial jurisdiction, as observed above.

Suit stands disposed of in above terms.

Judge