

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
J.M. No.36 of 2015

Date	Order with signature of Judge
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For hearing of Main Application

17.10.2017

Mr. Jamshed Malik, Advocate for Applicant
Agha Zafar Ahmed, Advocate for Respondent

Through this J.M. the Applicant has prayed that a fresh umpire be appointed pursuant to order dated **23.04.2015** passed in HCA No.58/2014, whereby, the award of the umpire was set-aside. Learned Counsel for the applicant submits that after remand of the matter no further proceedings have taken place before the learned umpire and therefore, in terms of section 11 of the Arbitration Act, 1940 this Court may appoint another Umpire to decide the matter.

Counsel for the Respondent has entered his appearance and concedes to the grant of this J.M. as respondents have no objection.

I have heard both the learned Counsel for the parties and perused the material on record. Since the award of the umpire stands set-aside by an order of the Division Bench of this Court as above and the matter stands remanded to the Umpire; for all legal and practical purposes and there is no award in field insofar as umpire is concerned. It is only the award of two different Arbitrators upon which the matter was sent to the Umpire. In such circumstances, the matter could be dealt with in terms of section 11 of the Arbitration Act, 1940, which reads as under:-

“11. Power to Court to remove arbitrators or umpire in certain circumstances.__(1) The Court may, on the application of any party to a reference, remove an arbitrator or umpire who fails to use all reasonable dispatch in entering on an proceeding with the reference and making an award.

(2) The Court may remove an arbitrator or umpire who has misconducted himself or the proceeding.

(3) Where an arbitrator or umpire is removed under this section, he shall not be entitled to receive any remuneration in respect of his service.

(4) For the purposes of this section the expression “proceeding with the reference” includes, in a case where reference to the umpire becomes necessary, giving notice of that fact to the parties and to the umpire”

Though objection was raised on the last date of hearing to satisfy the Court regarding applicability of section 11 in the present situation; however, after hearing both the learned Counsel and perusal of section 11 *ibid* I am of the view that since the award of the umpire is no more in field and the matter is deemed to be pending. Whereas, on remand the matter is sent back to the Court out of which it came for the purpose of having some action on it. This resultantly means that matter is before the Umpire as if no award was passed by him, and upon his failure to proceed any further, this Court can take notice of the same under Section 11 as above. It hardly matters that whether the matter is pending before the Umpire on original stage or after remand, therefore the provisions of section 11 can be invoked by the Court as apparently learned umpire has not proceeded further in this matter. In the circumstances, and by consent of the parties Mr. Justice (Rtd.) Amanullah Yasinzai Ex-Chief Justice Balochistan High Court, having office at House No.15, Survey No.144, Near NIC Quetta Cantt. Quetta, is appointed as umpire, who will decide the matter arising out of the awards passed by Arbitrators Mr. Justice (Rtd.) Ata-ur-Rehman through opinion dated **30.06.2010** and Mr. Tariq Saeed through his opinion dated **10.07.2010**. The fee and the manner it is to be paid shall be decided by the Umpire on his own unless otherwise any directions are needed from this Court. Since this is an old matter it is expected that the award will be finally passed by the Umpire preferably within 90 days from passing of this order.

The instant J.M. stands disposed of in the above terms.

JUDGE

Rafiq/P.A.