

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

Suit No. 2413 of 2016

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Date: Order with signature of the Judge  
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For hearing of Award / objection

**29.08.2023**

Mr. Shaiq Usmani, advocate for the plaintiff  
Mr. Agha Zafar Ahmed, advocate for defendant

The Award ("Award") was rendered by the learned Umpire, Justice (r) Atta-ur-Rehman, dated 25.10.2016 ("Award") and the same was filed to be made rule of court. The objections to the award were filed on 26.05.2017, *admittedly* beyond the period of limitation; however, for such reason an application under section 5 of the Limitation Act, 1908, was preferred. Vide order dated 03.09.2019, the application seeking to condone the admitted delay was dismissed. The operative constituent is reproduced herein below:

*"Having considered the submissions advanced, it is apparent that the notice of the suit clearly identifying the Suit Number and the Parties as well as purpose of the notice was duly served, and the apathy/carelessness on the part of the Defendant's functionary in examining/ processing the same cannot serve as a ground for condonation. The discrepancy identified in the notice is of itself not so consequential as to have impaired the judgment of a reasonable recipient. For that reason as well in view of the aforementioned precedents cited by learned counsel for the Plaintiff, CMA No.8792/2017 stands dismissed"*

The order herein dated 30.01.2023 records that since the time barred objections were not considered and the application seeking to condone the same was dismissed, therefore, in all fairness the Award ought to have been made rule of Court at the time that the section 5 application was dismissed. The order dated 21.02.2023 also records similar observations and it is for the said purpose that the matter is fixed today.

Per learned counsel for the plaintiff, since objections to the Award have not prevailed upon the court, therefore, the Award ought to be made rule of Court forthwith. In such regard he draws the court's attention to the two orders referred to supra.

Per learned counsel of the defendant, the objections were filed late and the application seeking to condone the delay was dismissed. It was submitted that an appeal in such regard was filed in the year 2019, however, that nothing has progressed therein and the same remains at the notice stage. Notwithstanding the foregoing, learned counsel contends that it is incumbent upon the court to consider the dismissed objections; as non-suiting the same on a *mere technicality of limitation* is contrary to settled law.

Heard and perused. At the very onset it is considered imperative to observe that the requirements of limitation are not *mere technicalities* and

disregard thereof would render entire law of limitation otiose<sup>1</sup>. The Courts have consistently maintained that it is incumbent to first determine whether the proceedings filed were within time and such an exercise ought to be conducted by the Court regardless of whether or not an objection has been taken in such regard<sup>2</sup>. It has been maintained by the honorable Supreme Court<sup>3</sup> that each day of delay had to be explained in an application seeking condoning of delay and that in the absence of such an explanation the said application was liable to be dismissed. In the present case, the application seeking to condone the delay has been dismissed and the dismissal order has neither been suspended nor set aside, hence, there is no occasion for this Court to delay the conclusion of this matter any further.

It is settled law that while considering the validity of an award, within the parameters of Section 30 of the Act<sup>4</sup>, the court does not assume to mantle of an appellate forum and eschews reappraisal of evidence recorded by the arbitrator<sup>5</sup>. In principle the award is considered final, in fact and in law, and interference therewith is only merited upon the specific grounds enunciated in the Act<sup>6</sup>. It has also been established that an award is exceptionable only in cases where there is a patent error on the face of the record not requiring scrutiny beyond the award for discovering the same and the court is discouraged from interfering in an award if on the basis of the evidence on record the court may have reached a different conclusion<sup>7</sup>. Notwithstanding the factum that the objections filed herein are not before the Court, the Award has been perused and nothing is apparent therefrom to warrant any interference by this Court<sup>8</sup>.

In view hereof, the Award is hereby made the rule of court. The office is directed to draw up a decree in terms of the Award.

**J U D G E**

Amjad/PA

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<sup>1</sup> *Mehmood Khan Mahar vs. Qamar Hussain Puri & Others* reported as *LDA vs. Sharifan Bibi* reported as 2019 MLD 249; PLD 2010 SC 705.

<sup>2</sup> *Awan Apparels (Private) Limited & Others vs. United Bank Limited & Others* reported as 2004 CLD 732.

<sup>3</sup> *Lt. Col. Nasir Malik vs. ADJ Lahore & Others* reported as 2016 SCMR 1821; *Qamar Jahan vs. United Liner Agencies* reported as 2004 PLC 155.

<sup>4</sup> 30. Grounds for setting aside award. An award shall not be set aside except on one or more of the following grounds, namely: (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; (c) that an award has been improperly procured or is otherwise invalid.

<sup>5</sup> PLD 2011 Supreme Court 506; PLD 2006 Supreme Court 169; PLD 2003 Supreme Court 301; PLD 1996 Supreme Court 108; 1984 SCMR 597;

<sup>6</sup> Section 30 of the Arbitration Act.

<sup>7</sup> 2014 SCMR 1268; PLD 1987 Supreme Court 393.

<sup>8</sup> Reliance is placed upon *Gerry's International (Private) Limited vs. Aeroflot Russian International Airlines* reported as 2018 SCMR 662.