ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 1244 of 2016

Date: Order with signature of the Judge

For hearing of main application

10.10.2023

Mr. Hassan Ali advocate for the plaintiff
Mr. Shah Bakht Pirzada, advocate for defendant No.1.

The admitted facts are that on 01.05.2010, a loss was purportedly suffered by the plaintiff, for which an insurance claim was preferred. Upon being dissatisfied with the response received from the defendant in such regard the plaintiff invoked the dispute resolution mechanism available thereto. The underlying agreement of insurance is available at page 25 of this court file and clause 13 thereof provides for dispute resolution, as follows:

> *"13. Dispute resolution*
>
> *13.1. If any dispute arises as to the insurer's liability under this policy of insurance, either the insured or the insurer may give notice to the other that it wishes the dispute to be referred to conciliation in accordance with and subject to the International Chamber of Commerce (I.C.C.) Rules of Conciliation or any modification thereof that is in force at that time.*
>
> *13.2. If the matter cannot be resolved by conciliation either the insured or the insurer may, within 28 days of either party deciding that the conciliation has failed, require that the matter shall finally be settled under the I.C.C. Rules of Arbitration by a panel of 3 (three) arbitrators in accordance with these rules"*

The aforesaid arbitration clause was in fact invoked and the request in such regard was escalated by the plaintiff before the International Chamber of Commerce on 18.09.2013. The applicant's request is available at page 187 and on the last page thereof, page 197, the plaintiff has also nominated its arbitrator.

The I.C.C. raised an invoice dated 06.11.2013, available at page 199, which *admittedly* has not been paid till date as a consequence thereof the arbitration, as contemplated vide clause 13 of the agreement *inter se could* not materialize. Notwithstanding the fact of the claim/occurrence was on

01.05.2010 and the application to I.C.C. was made in 2013, the present suit was preferred on 19.05.2016. It is considered illustrative to reproduce the prayer clause of the present suit.

"Prayer

1. *Permit the filing of the said agreement (Annexure "B") in this Hon'ble Court;*

2. *Refer the dispute to arbitration before ICC in terms of the arbitration clause 13 of the Arbitration Agreement;*

3. *Till the making of the Award by the Arbitrator, restrain the Defendants from repudiating the said agreement;*

4. *To grant any other relief (s) including the fixation of venue of Arbitration in Pakistan or alternately the direction to the State Bank of Pakistan to grant approval for foreign remittance to ICC under the head of Court fee which the Hon'ble Court deems fit and proper in the circumstances of the case"*

Learned counsel for the plaintiff submits that the plaintiff was unable to remit the requisite foreign exchange at the relevant time, hence, the arbitration before the I.C.C. could not materialize. In such regard directions are sought to the SBP, as apparent from prayer clause 4.

On the contrary, learned counsel for defendant submits that prayer clauses 1, 2 & 3 were *prima facie* redundant at the time of filing of this suit and that prayer clause 4 is perhaps outside the purview of section 20 of the Arbitration Act. Notwithstanding, the foregoing learned counsel submits that the limitation for filing of the suit itself governed by Article 86 of the Schedule to the Limitation Act, which prescribes period of 3 years from the date of occurrence. It is demonstrated that the date of occurrence is 01.05.2010, hence, the claim is time barred for a period of more than three years.

Heard and perused. While it is apparent that there is an arbitration agreement[1] between the parties, however, it is admitted that the arbitration did not take place due to the default of the plaintiff itself towards the I.C.C. It is manifest that it was not the defendant that precluded the matter from proceeding to arbitration, but due to the default of the plaintiff in paying the requisite I.C.C dues, the I.C.C itself did not proceed with the arbitration sought. No case has been made out before this Court to refer the matter to arbitration to an entity that has declined to proceed on account of the admitted default of the plaintiff itself. Notwithstanding the foregoing, the belated direction sought in prayer clause 4 is *prima facie* outside the purview of section 20 of Arbitration

[1] Clause 13 to the agreement *inter se*.

Act, hence, cannot be entertained. In so far as the objection of limitation is concerned, it may be appropriate to denote that the plaintiff's learned counsel articulated no cavil in such regard. In view hereof, this suit is found to be devoid of merit, hence, hereby dismissed.

J U D G E

Amjad/PA