

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

Suit 517 of 2020
Suit 546 of 2020

Date: Order with signature of the Judge

1. For hearing of CMA No.1751/2023
2. For hearing of CMA No.9889/2023
3. For hearing of main application

19.08.2024

Mr. Rashid Mahar, advocate for the plaintiff
Mr. Khalid Mehmood Siddiqui, advocate for defendant

1&3. Adjourned. 2. The allegation of contempt was raised by the learned counsel for the plaintiff (**Siemens Pakistan Engineering Company Limited**) against the defendant (**Civil Aviation Authority**); for having obtained ad interim orders herein dated 05.07.2024 allegedly through concealment and misrepresentation. The matter was adjourned to today to address the issue.

Briefly stated, a notice of Arbitration dated 07.02.2020 was issued by the plaintiff to the defendant arising in respect of prolongation costs. The said notice gave rise to the present suit and the same remains pending since 2020.

A subsequent and admittedly distinct notice of arbitration, dated 10.05.2024, was issued by the plaintiff to the defendant; arising in respect of the final payment certificate issued and claims of short payment received. The said notice is not an issue before this Court and the law enunciates that each distinct dispute under an arbitration agreement may entail independent proceedings; as observed by this court in 2001 YLR 758:

"Above referred definition postulate submission of present or future DIFFERENCES the plural use of "difference" clearly indicated that there be more than one differences that may arise if such is the case then each may be subject matter of separate reference. It, however, depends on the nature of the contract.

16. Commercial contract generally and more particularly building contract inherently are serial contract each series comprised of numerous stages, each State may comprise of bundle of reciprocal obligations, and each of the obligation may give rise to a claim and same if converted into a difference may give rise to a reference to an arbitration.

17. It is not always necessary that each and every dispute or difference may be subject-matter of reference. A situation may arise where a claim is made by one party and that claim is settled after negotiation. It is only those claims, which are not settled, may be converted into a dispute/difference worth to be referred to arbitration.

18. In cases of a serial contract, like one in hand, several claims at various stage of contract may be raised, and come under consideration at different level for resolution in the manner provided for in the agreement, at occasion one claim may take little longer time to mature into a difference/dispute worth agitation, by way of reference to the arbitration, then other. It is at the option of the party to the agreement to wait for as many number of claims maturing into

dispute/ difference to refer to arbitration together or separately as and when they arise.

23. From what has been discussed above it is clear that it is only a dispute that had been referred to arbitration, whether an award was given or not, cannot be the subject-matter of a subsequent reference and to that extent such dispute may be hit by the principle of res judicata and not otherwise. Disputes, which could have been raised when making a reference, but, were not raised, could not be said to be hit by the principle of constructive res judicata. There can be successive claims depending on nature of contract, maturing into a difference and at the option of party to the agreement may be subject-matter of reference. The moment a party exercises its option to convert a dispute into a reference, other party is obliged to enter into the arbitration and subject to limitation, same cannot be resisted on the ground that it was not raised at a particular point in time."

CMA No.9889 of 2024 was preferred in this suit by the defendant seeking a restraint upon arbitration proceedings initiated vide the subsequent and independent notice of arbitration dated 10.05.2024. Admittedly, the applicant (**Civil Aviation Authority**) is neither plaintiff nor counter claimant in this suit. There is also no cavil to the fact that the notice of arbitration under reference does not form subject matter of the dispute agitated vide the subject suit.

It is the contention of the plaintiff's counsel that irrespective of the fact whether this interim application could be entertained in this suit at all, the act of concealment of the final payment certificate and cheque of short payment amounts to interfering, obstructing, interrupting and / or abusing the process of law or the due course of judicial process.

Learned counsel for the defendant admitted that the present application ought not be entertained in this suit, hence, requested that the same be dismissed as withdrawn. Therefore, CMA No.9889 of 2024 is hereby dismissed as withdrawn.

In so far as the issue of concealment is concerned, it was admitted that the copies of the final payment certificate and cheque for short payment were neither attached with the application nor specifically mentioned in the memorandum of application / affidavit in support thereof. However, it was articulated that the same is mentioned in the plaintiff's notice and defendant's correspondence. Therefore, it was contended that the omission may not be treated as a concealment or contempt.

Let notice be issued to Mr. Arslan Ghous s/o Malik Ghulam Ghous, Deputy Director, Contract Management of the defendant and deponent in CMA 9889 of 2024, pursuant to section 17(1) of the Contempt of Court Ordinance, 2003 as to why proceedings may not be initiated there against for contempt of court. Adjourned to 16.09.2024.

Notice may be issued to the learned Advocate General Sindh, per Contempt of Court Ordinance 2003 as interpreted by a Division Bench of this Court in *Ekram ud Din Khan vs. DG FIA* reported as *PLD 2023 Sindh 90*, to appear in person (or designate an AAG) to assist initially with consideration of framing of charge, per Chapter XIX of the Code of Criminal Procedure 1908, and to act as prosecutor, if so required

Office is instructed to place copy of this order in connected matter.

Judge