

IN THE HIGH COURT OF SINDH AT KARACHI

H.C.A NOS.214 TO 219 OF 2011

**PRESENT: MR. JUSTICE NADEEM AKHTAR, &
MR. JUSTICE MUHAMMAD IQBAL KALHORO**

Appellant : Port Qasim Authority,
through Mr. Shaiq Usmani, advocate.

Respondent : Abdul Sattar Mandokhel,
Sole Proprietor of M/s. Techno International,
through Mr. Muhammad Masood Khan,
advocate.

Date of hearing : 28.01.2015.

ORDER

MUHAMMAD IQBAL KALHORO, J: Through present appeals, the appellants have called into question the order dated 09.09.2011 passed by the learned single Judge in Suit Nos.1032 to 1037 of 2004 filed by the respondent against the appellants whereby the award passed by the Arbitrator was made Rule of the Court on rejection of the objections. Finding it pertinent, we reproduce the impugned order for ready reference.

“Again request for adjournment has been made on behalf of Mr. Shaiq Usmani which is strongly opposed by Mr. Muhammad Masood Khan by inviting attention of this Court to order dated 06.05.2010, wherein, it was observed that in case Mr. Usmani is not available alternate arrangement should be made. Even on 10.08.2011 Mr. Usmani was called absent but in the interest of justice the hearing was adjourned for today and therefore, the request for adjournment is not reasonable and consequently, declined. Mr. Masood has

placed reliance on the judgment of the Apex Court in the case of *Lahore Development Authority vs. M/s. Khalid Javed & Co.* (1983 SCMR 718) and says that in the instant case also the matter was referred by consent of the parties to arbitration. Notwithstanding, since none is present on behalf of Objector to press the Objection, the same are rejected and the award is made Rule of the Court. Office is directed to draw decree accordingly.”

2. During hearing, learned counsel for the respondent has stated that on merits he may not be opposing the appeal and setting aside the impugned order with specific directions to the learned single Judge to decide the objections of the appellant to the award within a certain period. As, according to him, the appellant in the suit had been dragging its feet to proceed with the matter and due to its delaying tactics the matter could not be decided on merits. However, he states that he has a case on limitation as the appeal is barred by time. While explaining the same he states that so far *ad valorem* court fee payable in appeal preferred against the judgment of the Court passed in terms of award has not been paid by the appellant. The presentation of the appeal against the impugned order cannot be considered to have been validly done, thus the appeal would be regarded time barred. Confronted with this question, the learned counsel for the appellant has shown his readiness to pay *ad valorem* court fee according to Court Fee Act, 1970 within a period of 07 days. After which the learned counsel for the respondent has not offered much resistance to our view that in order to decide the cases on merits, the impugned order be set aside with directions to the learned single Judge to decide the matters on merits within a certain period. At this stage, learned counsel for the appellant undertakes

not to seek unnecessary adjournments before the learned Single Judge.

3. Keeping in view the referred circumstances; and in order to decide the dispute between the parties on merits rather than on technicalities, we deem it appropriate to exercise our discretion in allowing the appellant to pay *ad valorem* Court fee on each appeal within a period of 07 days and set aside the impugned order; remand the matters to the learned trial Court to decide the same afresh on or before 31st March, 2015 in accordance with law after affording opportunity of hearing to both the parties. The appellant is directed to pay the *ad valorem* Court fee on each appeal within the period of seven days. This order will take effect only after the appellants have paid the Court fee within the stipulated period.

4. By this common order, all the six listed appeals are disposed of in above terms with no order as to cost.

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