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Judgment Sheet

LAHORE HIGH COURT

BAHAWALPUR BENCH, BAHAWALPUR

JUDICIAL DEPARTMENT

C.R No.326 of 2022/BWP

Municipal Committee etc. *Vs.* *Jam Brothers*

JUDGMENT

Date of hearing: 25.03.2024

Petitioners by: Jam Muhammad Afzal Gasoora, Advocate.

Respondents by: Mr. Abdul Basit Khan, Advocate.

Shujaat Ali Khan, J: - Unnecessary details apart, the Municipal Committee, Liaqatpur (hereinafter to be referred as **the Committee**), District Rahim Yar Khan entered into a contract with M/s Jam Brothers (hereinafter to be referred as respondent-contractor) relating to improvement of water supply scheme. Upon completion of the work awarded to the respondent-contractor, it handed-over the scheme to the Committee but when the Committee withheld certain amount due to the respondent-contractor, it approached this Court by filing Writ Petition (No.4905 of 2012) which was disposed of through order, dated 24.10.2016, by referring the matter to the

Adjudicator, with consent of the parties, as per the contract. The Adjudicator decided the same in favour of respondent-contractor through its decision, dated 29.04.2017, by declaring it entitled to receive Rs.1,76,12,248/- from the Committee. Being dissatisfied with the decision of the Adjudicator, the Committee filed an application before the Civil Court, Liaqatpur (learned Trial Court) in terms of Section 20 of Arbitration Act 1940 (the Act, 1940), for appointment of the Arbitrator, which was accepted and with the mutual consent of the parties the Executive Engineer, Public Health Engineering Division, Rahim Yar Khan, was appointed as sole Arbitrator who gave its award, on 23.05.2018, by modifying the decision of the Adjudicator to the extent that respondent-contractor was declared entitled to recover Rs.1,59,96,950/- alongwith interest as per bank rate. Thereafter, respondent-contractor filed application before the learned Trial Court to make the award of the Arbitrator as rule of Court. In view of the objections raised by the Committee learned Trial Court, through order, dated 09.10.2019, remitted the matter back to the Arbitrator in terms of section 16 of the Act, 1940. The Arbitrator resubmitted the award before the learned Trial Court, on 04.12.2019. Though the respondent-contractor did not opt to file any objection against the award announced by the Arbitrator

but the Committee filed its objections. After considering objections of the Committee and hearing the arguments of both sides, the learned Trial Court, through order, dated 12.10.2020, accepted the application of the respondent-contractor and made the award as rule of the court. Being dissatisfied with the decision of the learned Trial Court, the Committee filed an appeal but without any success as the same was dismissed by the learned Additional District Judge, Liaqatpur (the learned Appellate Court), through judgment dated 22.01.2022; hence this petition.

2. Learned counsel for the Committee submits that as award announced by the Arbitrator was never brought on record, as per prescribed procedure, the decisions of the courts below are not tenable. Adds that due to frequent change of Provincial Government during the last four years, the Legal Advisors of the Committee had been changed, thus, the appeal filed by the Committee could not be pursued diligently. Further adds that since decree has been passed against TMA but the claim of the respondent-contractor against the Committee is not sustainable. Argues that though since the year 2015, TMA has been merged into District Council, it is liability of the District Council to liquidate the liability towards the respondent-contractor but the execution petition has been filed against the Committee.

3. Conversely, learned counsel appearing on behalf of respondent-contractor, while defending the impugned decision, states that since an amount of Rs.20,00,000/- has already been paid by the Committee to respondent-contractor towards satisfaction of the decree, it cannot claim that decree passed by the learned Trial Court cannot be executed against it; that since the Arbitrator was appointed with the consent of the parties, it does not lie in the mouth of the Committee to claim that award was not brought on record through proper procedure and that release of security amount of the respondent-contractor, coupled with issuance of the Appreciation Letter in its favour, stands proof of the fact that the work awarded to the respondent-contractor was completed satisfactorily but withholding of Rs.1,60,00,000/- is beyond the comprehension of man of prudent mind.

4. Learned counsel for the petitioner, while exercising his right of rebuttal, submits that payment of Rs.20,00,000/- was made by the Committee due to the coercive measures adopted by the learned Executing Court, thus, the said fact cannot be used against it.

5. I have heard learned counsel for the parties at considerable length and have gone through the documents appended with this petition.

6. It is admitted position that the Arbitrator was appointed with the consent of the parties, thus, at this stage the Committee cannot claim that the Arbitrator connived with the respondent-contractor. Moreover, if the Committee was not satisfied with the conduct of the Arbitrator it could conveniently move for change thereof while invoking provisions of sections 11 & 12 of the Act, 1940, but when the Committee acquiesced with the proceedings conducted by the Arbitrator, it has no authority to challenge the impartiality of the Arbitrator, at this stage.

While scanning the record, I have noted that the Arbitrator, while coming to the conclusion that the Adjudicator awarded excess amount as compared to the outstanding dues of respondent-contractor, curtailed the same reasonably which fact is sufficient to repel the contention of learned counsel representing the Committee that the Arbitrator announced the award after having been connived with respondent-contractor.

7. A perusal of the record shows that in view of the objections raised by the Committee, the learned Trial Court

remitted the matter to the Arbitrator in terms of Section 16 of the Act, 1940, through order dated 09.10.2019 and if the Committee was not satisfied with the findings of the learned Trial Court spurning its objection against the conduct of the Arbitrator, it could challenge the said order in appropriate proceedings but when the Committee acquiesced with order, dated 09.10.2019 it was not open for him to agitate the said issue again upon resubmission of the award by the Arbitrator.

8. A bird's eye view over the documents, appended with this petition, renders it crystal clear that conduct of the Committee, during the entire proceedings, remained sluggish. To fortify said fact, reference can be made to the following portion from the judgment of learned Appellate Court: -

> *"2. It is pertinent to mention here that multiple opportunities were given to the learned counsel for appellants for arguments but he failed to advance arguments so, as the appellants and learned counsel for appellants were earlier warned in this regard, in view of the esteemed case law cited as PLJ 2011 SC 82 after hearing arguments of the respondents and after going through the record, appeal is being decided accordingly……"*

When confronted with the above portion from the judgment of the learned Appellate Court, though learned counsel for the appellant tried to justify *dilly-dally* tactics on the part of the counsel for the Committee by submitting that due to frequent

change of the government at provincial level the Legal Advisor of the Committee kept changing but this Court does not find that justification acceptable for the reason that irrespective of change of the government, affairs of a government institution are run by the officers/officials.

9. During the course of arguments, learned counsel representing the Committee admitted that Rs.20,00,000/- has already been paid to the respondent-contractor towards satisfaction of the decree with the plea that the same has been paid due to the coercive measures adopted by the learned Executing Court. It does not appeal to man of ordinary prudence that when a judgment-debtor can assail any order of the learned Executing Court before any higher forum, as to how his/her assertion that he performed any act towards part satisfaction of the decree under coercion of the learned Executing Court. Though, learned counsel representing the Committee addressed the Court at reasonable length but has not been able to convince this Court that as to why the Committee did not take remedial measures against the coercive measures being adopted by the learned Executing Court especially when matter was pending before this Court. It is well established by now that when a decree holder takes any step, even partial, towards satisfaction of

the decree, it cannot challenge the validity of the said decree. Reliance in this regard is placed on the cases reported as *Silver Star Insurance Co. Ltd. Lahore though Chief Executive v. Messrs Kamal Pipes Industries, Lahore and another* (**2023 CLD 1342**) and *Province of West Pakistan v. Haji Muhammad Juman and another* (**PLD 1960 (W.P.) Karachi 908**). In the former judgment a learned Division Bench of this Court, while dealing with the effect on appeal filed by the judgment-debtor in the cases wherein he/she has already partly satisfied the decree, has *inter-alia* observed as under: -

> *"5. Undeniably, appellants freely and explicitly acknowledged the claim of respondent No.1, payment of partial claim to respondent and also showed readiness to settle the outstanding amount, which is tantamount to admission of its liability regarding the decretal amount. Needless to say that an admission/statement/undertaking, by a party, during the judicial proceedings has to be given sanctity while applying the principle of legal estoppel and estoppel by conduct as well as to respect moral and ethical rules. Hence, at any subsequent stage, a party cannot turn around to wriggle out from the consequence of such admission. If disclaimer therefrom is allowed as a matter of right, then it will definitely result into distrust of the public litigants over the judicial proceedings. Article 114 of the Qanun-e-Shahadat Order, 1984 provides that when a person has by his declaration, act or omission intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative is allowed in any suit or proceedings between the parties to deny the truth of that thing. This provision enacts a rule of evidence whereby a person is not allowed to plead contrary to a fact or a state of thing which he formerly asserted as existing and made*

the other party to believe it as such and then acted on it on such belief. In fact, this principle is founded on equity and justness with straightforward objective to prevent fraud and ensure justice. Reference can be made to Sardar Ali Khan v. State Bank of Pakistan and others (2022 SCMR 1454), Combined Investment (Pvt.) Ltd. v. Wali Bhai and others (PLD 2016 Supreme Court 730), Mst. Ghazala Zakir v. Muhammad Khurshid and 7 others (1997 CLC 167), Muhammad Majid Iqbal through Special Attorney v. Judge Family Court, Dunya Pur and 2 others (2021 CLC 644), Pakistan through Secretary, Ministry of Defence, Islamabad and 2 others v. Wadero Lal Bux (2021 CLC 1609) and Mushtaq Ahmad v. Mohsin Iqbal (2022 CLC 1461).”

10. Now coming to the plea of the learned counsel for the Committee that though the decree has been passed against the TMA which has already merged into District Council but the Execution Petition has been filed against the Committee, I am of the view that when the Committee itself has paid the aforesaid amount towards part satisfaction of the decree, it cannot shrug off its liability towards the satisfaction of the decree in its entirety.

11. It is well settled by now that civil court cannot sit as court of appeal on the decision of an Arbitrator as the Arbitrator is considered best Judge of the factual controversy between the parties. Reliance in this regard is placed on the cases of *Messrs Waheed Brothers (Pakistan) Ltd. Lahore through Chief Executive v. Messrs Izhar (Pvt.) Ltd. Lahore through Managing Director* (**2002 SCMR 366**) and *National Highway Authority*

through Director (Legal) v. Lilley International (Pvt.) Ltd. And another (**2020 CLC 608**). In the case of *Messrs Waheed Brothers (Pakistan) Ltd. Lahore through Chief Executive* (Supra), the Apex Court of the country, while dealing with role of the courts under the Act, 1940 *inter-alia* held as under: -

> *"14.*****The role of the courts under the Arbitration Act, 1940 principally is of supervisory nature and not that of appellate power under C.P.C……"*

If the pleas raised by learned counsel for the Committee are considered in the light of afore-referred judgment of Hon'ble Supreme Court of Pakistan, there leaves no ambiguity that the same are hardly sufficient to interfere with the matter in hand.

12. During the course of arguments, learned counsel for the Committee put much emphasis on the fact that as the Award was not brought on record of the learned Trial Court same could not be made as rule of Court. The said assertion of the learned counsel representing the Committee cannot be entertained simply for the reason that if award was not filed before the Court by the Arbitrator in terms of section 14 of the Act, 1940 as to how could the Committee submitted objections to the Award announced by the Arbitrator. A cursory glance over the order passed by the learned Trial Court shows that it made the award as rule of the Court after discussing every limb of the matter.

Even otherwise, it is well entrenched by now that while dealing with a matter under the provisions of the Act, 1940, the prime duty of the Court is to uphold the award instead of setting it aside for trivial reasons. Reliance in this regard is placed on the cases reported as *Durga Prosad Chamria and another v. Sewkishendas Bhattar and others* (**PLD 1949 Privy Council 187**) and *Ashfaq Ali Qureshi v. Municipal Corporation Multan and another* (**1984 SCMR 597**). In the former case, the Privy Council while dealing with the powers of the court to set aside an award has *inter-alia* held as under: -

> *"9.*****However, that may be, their Lordship are satisfied that the two points of law as to which it is said that the Arbitrator's error vitiates the award would be contrary to the well-established principles such as are laid down in In re King and Duveen (1) and F R Absalom Ltd. V. Greet West (London) Garden Village Society (2) for a Court of law to interfere with the Award even if the Court itself would have taken a different view of either of the points of law had they been before it."*

13. It is very strange to note that on the one hand the Committee has questioned the validity of the award which has been made rule of the court by the learned Trial Court but on the other has taken the stance that the decree cannot be executed against it rather the District Council being the successor of erstwhile TMA is bound to satisfy the same. Both these pleas do not coincide with each other. At the cost of repetition, it is

observed that when the Committee has already paid Rs.20,00,000/- towards part satisfaction of the decree, it cannot avoid the satisfaction of the decree in its entirety.

14. It is a classic case of red-tapism inasmuch as not only the completion certificate was issued in favour of respondent-contractor in token of satisfactory completion of the awarded work but also appreciation letter was issued to it. In this scenario, withholding of certain amount of respondent-contractor on the basis of the report of a company whose recommendations did not find favour at the hands of the Arbitrator is not understandable. Due to such uncalled-for conduct of the government functionaries the contractors lose their interest in execution of work in government departments. Had there been any deficiency on the part of respondent-contractor the Committee was under no obligation to issue completion certificate and appreciation letter.

15. As per law laid down by the apex Court of the country in the case of *Muhammad Idrees and others v. Muhammad Pervaiz and others* (**2010 SCMR 5**) concurrent findings of facts recorded by the courts below cannot be upset by this Court in exercise of its revisional jurisdiction in a casual manner until and unless the same are proved to be perverse or arbitrary or the same are based

on misreading or non-reading of evidence which is not the position in the case in hand.

16. For what has been discussed above, I see no force in this petition which is **dismissed** with no order as to cost.

Judge

Approved for Reporting.

Judge

Tanvir*