

Defence Housing Authority Lahore Vs. Peridot Properties Pvt. Ltd. etc

ORDER

30.04.2021


Present: Learned counsel for the petitioner.
Learned counsel for the respondent.

By way of this order, I would like to decide the question regarding maintainability of the application u/s 30 & 33 of Arbitration Act 1940 for setting aside the award dated 07.12.2018 filed by the petitioner DHA, Lahore.

2. On 28.10.2019, firstly the question regarding maintainability of the petition of the petitioner has come on record after filing the reply by the respondents.

3. It is the contention of the respondent No.1 that he has filed C.O.255301/18 u/s 6 of the Recognition & Enforcement (Arbitration Agreements & Foreign Arbitral Awards) Act 2011 before Hon'ble High Court for enforcement of award dated 07.12.2018, which is pending before the Hon'ble Lordship Justice Mr. Shahid Kareem. It is next contended by the learned counsel for the respondent that civil court has no jurisdiction to entertain the objection in respect of the Arbitration Agreement & Foreign Arbitral Awards, Act 2011. It is also highlighted by learned counsel for the respondents keeping in view Sec.2(d) of Arbitration Agreement & Foreign Arbitral Awards, Act 2011. Only jurisdiction for the enforcement of foreign award rest with the Hon'ble High Court and such otherwise the court shall decide the petition, keeping in view the contents of the application, superior courts in Pakistan has made, notified by the Federal Government of Pakistan in the official gazette.


4. Last but not least, learned counsel for the respondent has submitted that petitioner DHA, Lahore has also filed objections in the Hon'ble Lahore High Court, Lahore as a defence in their petition u/s 6 of the Recognition & Enforcement (Arbitration Agreements & Foreign Arbitral Awards) Act 2011. So, learned counsel for the respondent stated that the objection filed by the petitioner is not maintainable before this court and the same may kindly be rejected/dismissed.


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5. Learned counsel for the petitioner Mr. Ali Awais Advocate has adopted the arguments that all ingredients for the award are local and the award should have also been treated as domestic award instead of foreign arbitral award. It is also contended by the learned counsel that subject matter is local. Both the parties are local but the only proceedings of the award were carried out at Singapore. In this regard, learned counsel for the petitioner has also relied upon **Case Law AIR 1993 Supreme Court 998**. Besides, above case law Learned counsel for the petitioner has also referred case law **PLD 2012 Lahore 455 Taisei Corporation Vs. A M Construction Co.** Lastly, Learned counsel for the petitioner states that the objection filed by the petitioner are quiet appropriate and they are quiet sustainable in the eyes of law. Hence, the objections u/s 30 & 33 of Arbitration Act 1940 for setting aside award dated 07.12.2018 may kindly be treated as legal objections and the question regarding its maintainability may kindly be over ruled.

6. I have heard the arguments from both sides and also given anxious consideration to their respective contentions.

7. Record shows that vide order dated 28.10.2019 my learned predecessor after receiving the objection from respondents fixed the petition for its maintainability. After fixing upon the maintainability of objections filed by the petitioner arguments have invited from both sides. It is the contention of the respondent that the objections filed by the petitioner are not maintainable before the civil court as respondent No.1 Peridot Properties Pvt. Ltd. filed C.O255301/2018 u/s 6 of Recognition & Enforcement (Arbitration Agreements & Foreign Arbitral Awards) Act 2011. On the basis of the foreign award issued by **respondent No.2 Mr.Philip**. This petition is pending adjudication before the Hon'ble Lahore High Court, Lahore. It is also important to mention here that Hon'ble Lahore High Court, Lahore has required to file the defence in terms of Recognition & Enforcement (Arbitration Agreements & Foreign Arbitral Awards) Act 2011. Petitioner in compliance to the order of the Hon'ble High Court, Lahore has also filed the defence/objections before the Hon'ble High Court, the same matter is pending adjudication before the Hon'ble Lahore High Court, Lahore.


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8. Now the question has arisen that whether the objection u/s 30 & 33 of Arbitration Act 1940 can be filed before the Civil Court or not against the foreign award dated 07.12.2018. One thing is clear that the award issued by the respondent No.2 dated 07.12.2018 whose entire proceedings were conducted at Singapore keeping in view the arbitration clause of the contract carried out between the parties. The proceedings of the foreign award has duly been joined by the petitioner at Singapore and also raised certain objection during the proceedings of the award and the same objections particular regarding jurisdiction was decided by the arbitrator and held that the arbitration proceedings can be undertaken at Singapore in the light of agreement executed between the parties under ICC rules. At this moment, admittedly foreign arbitral award has been filed before Hon'ble High Court for its enforcement. The matter of the jurisdiction regarding the foreign arbitral award is being dealt by the Recognition & Enforcement (Arbitration Agreements & Foreign Arbitral Awards) Act 2011 whose Sec.2 (d) defines the court:

2(d) "Court means a High Court and such other superior court in Pakistan as may be notified by the Federal government in official gazette."

9. From the plain reading of the above referred definition one thing is crystal clear that the enforcement of foreign award can only be executed by the Hon'ble Lahore High Court, Lahore or the superior court if notified by the Federal Government of Pakistan. In this regard, this court has also sought guidance from the case titled **PLD 2019 Lahore 607 Orient Power Co. Pvt. Ltd Vs. Sui Northern Gas Pipelines Ltd.** In this esteemed judgment the Hon'ble Lahore High Court Lahore has determined this question whether High Court or Civil Court existed any concurrent jurisdiction under the Recognition & Enforcement (Arbitration Agreements & Foreign Arbitral Awards) Act 2011. Hon'ble Court as held that the High Court has exclusive jurisdiction to recognize and enforce foreign arbitral

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award and the jurisdiction of the Civil Court in terms of arbitration Act 1940 is totally impactiable.

10. So far the question raised by the learned counsel for the petitioner that this award should be treated a domestic award in the light of the judgment referred by him. Now the same question is pending adjudication before the Hon'ble Lahore High Court, Lahore wherein Learned counsel for the petitioner has raised similar objection. Propriety demands that the superior court rest the authority to decide this question, therefore, this court cannot make any observation regarding this issue. Another important aspect of the objection is that the party in whose favour foreign award has issued applied before the Hon'ble High Court for its enforcement. The question of enforcement of the award is not pending adjudication before this court; therefore, the question regarding its setting aside does not arise.

11. As a result of above discussion, it is obvious that enforcement of foreign award dated 07.12.2018 is pending before the Hon'ble High Court who vest exclusive jurisdiction to entertain the same in the light of Sec.3 of the Recognition & Enforcement (Arbitration Agreements & Foreign Arbitral Awards) Act 2011. This court lacks jurisdiction to entertain objections u/s 30 & 33 of Arbitration Act 1940 in terms of foreign arbitral award. Consequently, the petition filed by the petitioner stands rejected due to lack of jurisdiction. There is no order as to cost. Memo of cost be prepared by the reader of this court. File be consigned to record room after its due completion.

Announced

30.04.2021


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IN THE COURT OF MUHAMMAD ADEEL ANWAR, CIVIL JUDGE, 1ST
CLASS, LAHORE.

DECREE SHEET.

Civil Suit No:..... 297-21
Date of Institution: 12.03.2019
Date of decision:.....30.04.2021.

Defence Housing Authority Lahore.

Petitioner.

VERSUS

Peridot Properties Pvt. Ltd etc.

Respondents.


APPLICATION UNDER SECTION 30 READ WITH SECTION 33 OF THE
ARBITRATION ACT, 1940 FOR SETTING ASIDE THE AWARD DATED
07.12.2018

That enforcement of foreign award dated 07.12.2018 is pending before the Hon'ble High Court who vest exclusive jurisdiction to entertain the same in the light of Sec.3 of the Recognition & Enforcement (Arbitration Agreements & Foreign Arbitral Awards) Act 2011. This court lacks jurisdiction to entertain objections u/s 30 & 33 of Arbitration Act 1940 in terms of foreign arbitral award. Consequently, the petition filed by the petitioner stands rejected due to lack of jurisdiction. There is no order as to cost.

MEMO OF COSTS:

Sr. No.	Plaintiffs	Cost	Defendants	Cost
1	Stamp on plaint	-	Stamp of plaint	-
2	Power of attorney	02	Power of attorney	02
3	Fee of counsel	-	Fee of counsel	-
4	Process fee	04	Process fee	-
5	Misc. petition	02	Misc petition	-
6	Total	08	Total	02

This decree sheet is given under my hand and seal of this Court on
30.04.2021.


Muhammad Adeel Anwar,
Civil Judge 1st Class, Lahore