


Order
29.05.2021

Present: Learned counsel for the plaintiff/respondent
Mr. Rashid Mushtaq Advocate.
Learned counsel for the petitioner/defendant No.1 Mr.
Osman Khan Advocate.

By way of this single order, I would like to dispose of applications u/s 4 of the Recognition & Enforcement (Arbitration Agreements & foreign Arbitral Awards) Act 2011 r/w Sec.34 of the Arbitration Act 1940 and Order VII Rule 11 CPC.

2. This petition has strongly been contested by way of filing written reply as well as the oral and written arguments.

3. It has been argued on behalf of the petitioner that this suit cannot be maintained at Pakistan as according to the Import Agreement dated 01.05.2014. Both contracting parties have opted laws of the England under DIFC and LCIA. It is next argued by the learned counsel for the petitioner that respondent/plaintiff has already got initiated arbitral proceedings at Dubai in respect of his alleged breach of contract in the light of Import Agreement clause 16.9 and 16.11. It is also argued by the learned counsel that if any award comes in the favour of the plaintiff it can only be filed before the Hon'ble High Courts of Pakistan in the light of Section 3 of the Recognition & Enforcement (Arbitration Agreements & foreign Arbitral Awards) Act 2011. Therefore, the continuation of the present suit would be abused of


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process of law and thus prayed for the rejection of the plaint. Learned counsel for the petitioner has also drawn the attention of the court towards order passed by Hon'ble Sindh High Court on 31.08.2020 in which respondent/plaintiff has undertaken that he shall abide by the terms and conditions of the Import Agreement dated 01.05.2014.


4. Conversely, learned counsel for the plaintiff/respondent has refuted the arguments made by the learned counsel for the petitioner/defendant. It is argued by learned counsel for the respondent that during arbitration proceedings suit cannot be dismissed. It is next argued that the court can only stay the proceedings as made by the learned predecessor court in identical case between the same parties. It is also argued on behalf of the plaintiff/respondent that due to delay caused by the State Bank of the Pakistan petitioner/defendant in a very haste manner issued the letter dated 26.03.2020 and cancelled the Import Agreement unilaterally. Last but not the least, learned counsel for the respondent adopted the arguments that the petition filed by the petitioner may kindly be dismissed.

5. I have heard the arguments from both learned counsels and also perused the record available on file.

6. Before this court proceeds further to decide the applications of the petitioner, the following legal questions which are to be answered by this court in order to come just conclusion:-

- I) Whether this court can stop or dismiss the proceedings in the light of application u/s 4 of the Recognition & Enforcement (Arbitration Agreements & foreign Arbitral Awards) Act 2011?
- II) What is the impact of the order passed by the Hon'ble Sindh High Court dated 31.08.2020?
- III) Conclusion.

7. As far as the application u/s 4 of the Recognition & Enforcement (Arbitration Agreements & foreign Arbitral Awards) Act 2011 is concerned,


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petitioner has agitated this application keeping in view the arbitral clause available in their agreement. It would be quiet advantages to reproduce clause 16.9 and 16.11 of the Import Agreement dated 01.05.2014:-

16.9 *The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England.*

16.11 *If the representatives of each party that are referred to in Section 16.10 are unable to settle any dispute within ninety (90) days of such a dispute being referred to Porche and the Importer, any such dispute will be referred to arbitration in accordance with the Arbitration Rules of the DIFC-LCIA Arbitration Centre (Dubai International Financial Centre), which are deemed to be incorporated by reference into this Section. For the purposes of any arbitration proceedings commenced pursuant to this Section."*

8. From bare reading of the arbitration clause one thing is clear that respondent/plaintiff had already chosen the venue of the litigation in case of any dispute and laws underwhich dispute may be resolved i.e Laws of England. Admittedly, laws of the London is applicable to the Import Agreement dated 01.05.2014 for which in any dispute arise between the parties they may recourse to the DIFC at Dubai for redressal of their grievances. At the time of filing of the petition u/s 4 of the Recognition & Enforcement (Arbitration Agreements & foreign Arbitral Awards) Act 2011 by the petitioner, respondent/plaintiff has not approached DIFC acting under

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Later-on, after filing this suit, respondent/plaintiff went to Dubai and asked the jurisdiction of DIFC and the matter of their dispute is pending adjudication before Arbitral Tribunal. Now question has arisen whether plaintiff/respondent can approach to the court of the Pakistan for redressal of same grievances, which has agitated in Arbitral proceedings. The answer of

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this question is **NO** in the light of the clause 16.9 of Import Agreement dated 01.05.2014. No doubt, plaintiff continued his business under Import Agreement for almost six years by conceding his entire terms & conditions. At the same time, when he is allegedly aggrieved he interrupted in another to the Import Agreement in a different way and started litigation at Pakistan by way of filing civil suits in disregard of the clause 16.9 and 16.11 of Import Agreement.

9. It is next point whether this court can stop or dismiss the proceedings in the light Section 4 of the Recognition & Enforcement (Arbitration Agreements & foreign Arbitral Awards) Act 2011. Admittedly, respondent/plaintiff has resorted before arbitral tribunal at Dubai DIFC/LCIA and even if he remains successful in getting foreign award in his favour. For that award he can only file the petition for its execution before any Hon'ble High Court in Pakistan in the light of section 3 of the Recognition & Enforcement (Arbitration Agreements & foreign Arbitral Awards) Act 2011. This court has also been enlightened by the esteemed judgment recently passed by the Hon'ble Lahore High Court, Lahore. 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 esteemed Judgment the Hon'ble Lahore High Court, Lahore has candidly observed that only jurisdiction vests with the Hon'ble High Court and not with civil court for the enforcement of the foreign award in the light of the Recognition & Enforcement (Arbitration Agreements & Foreign Arbitral Awards) Act 2011.

10. In the light of above discussion, this court is of the considered view that not only the proceedings but also the plaint can be rejected u/s 4 of the Recognition & Enforcement (Arbitration Agreements & foreign Arbitral Awards) Act 2011. Besides, section 4 of the Recognition & Enforcement (Arbitration Agreements & foreign Arbitral Awards) Act 2011, petitioner has also prayed for dismissal of the entire proceedings u/o VII Rule 11 CPC in his petition. The

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proceedings u/s 4 of the Recognition & Enforcement (Arbitration Agreements & foreign Arbitral Awards) Act 2011.

11. Another important aspect of the case is that the Hon'ble Sindh High Court vide order dated 31.08.2020 has passed a specific order after the some undertaking by the plaintiff/respondent's counsel. The order of the Hon'ble Sindh High Court is reproduced as for ready reference:-

"For hearing of CMA No.7033/2020 (u/s 114 CPC)
31.08.2020.

Mr. Omair Nisar Khan Advocate for the plaintiff.
Mr. Muhammad Ali Lakhani, Advocate for the defendants.

Mr. Muhammad Ali Lakhani, learned counsel for the defendants states that he has consulted with his client, who has duly authorized him to make a statement that his client has agreed to be strictly abided by the Import Agreement dated 01.05.2014 entered into between both the sides in toto.

Upon these undertakings, learned counsel for the plaintiff states that since prayer clauses 1 and 2 of the instant suit had already become infructuous as the arbitration proceedings have commenced at DIFC-LCIA per clause 16.11 and parties have submitted to the jurisdiction of the said arbitral forum. With regards to prayer clause No.3, upon the affirmation of the learned counsel representing the defendants that his client is fully cognizant of the fact that the relationship between the parties is to be strictly governed in accordance with each and every clause of the Import Agreement, he wishes to have the instant suit alongwith all applications disposed of with such a consensus.

In the circumstances the suit is accordingly disposed of alongwith all pending applications with the aforementioned covenants and undertakings and parties to strictly adhere

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with and abided by each and every clause of the Import Agreement. Both the counsels also noted that in case of any violation of any of the clause of the Agreement, the aggrieved party shall only take appropriate action in accordance with the terms stipulated in the Agreement alone."

12. After careful examination of order passed by the Hon'ble Sindh High Court, petitioner/plaintiff has submitted before the court that he shall abide by the terms and conditions of the Import Agreement dated 01.05.2014. At the same time, plaintiff/respondent has apprised the Hon'ble Sindh High Court regarding initiation of the arbitration proceedings at Dubai. Any stopgap arrangement and conservative relief if required by the plaintiff/respondent he could approach to the arbitral tribunal in the light of the DIFC Rules 2016 clause 25.3. Besides, above mentioned circumstances, the principle of estoppel by conduct has also come in the way of the plaintiff/respondent proceedings. Once plaintiff/respondent undertakes before the court to remain within the terms and conditions of Import Agreement dated 01.05.2014 he cannot go beyond his undertaking obviously principle of estoppel by conduct is applicable in such back drop.

13. **Conclusion:**


In view of above discussion, it has become crystal clear that keeping in view the availability of arbitral clause as well as the option chosen by the plaintiff/respondent to resolve their disputes under the laws of the England. He cannot bring suit regarding dispute of the Import Agreement dated 01.05.2014 before Civil Court. So, in these circumstances, the plaint of the plaintiff is devoid from any legal force and clearly barred by the law. Consequently, petition u/s 4 of the Recognition & Enforcement (Arbitration Agreements & foreign Arbitral Awards) Act 2011 r/w Order VII Rule 11 CPC stands allowed and plaint of the plaintiff is rejected u/o VII Rule 11 CPC being barred by law. Parties are directed to bear their own costs.

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Decree sheet be prepared. File be consigned to record room, after its due completion.

Announced

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

DECREE SHEET.

Civil Suit No:..... 337/1/2021
Date of Institution: 21.04.2020
Date of decision:.....29.05.2021.

Performance Automotive Private Ltd Co.

Plaintiff.

VERSUS

Porche Middle East and Africa FZE Etc

Defendants.


SUIT FOR DECLARATION ALONGWITH PERMANENT INJUNCTION.

That keeping in view the availability of arbitral clause as well as the option chosen by the plaintiff/respondent to resolve their disputes under the laws of the England. He cannot bring suit regarding dispute of the Import Agreement dated 01.05.2014 before Civil Court. So, in these circumstances, the plaint of the plaintiff is devoid from any legal force and clearly barred by the law. Consequently, petition u/s 4 of the Recognition & Enforcement (Arbitration Agreements & foreign Arbitral Awards) Act 2011 r/w Order VII Rule 11 CPC stands allowed and plaint of the plaintiff is rejected u/o VII Rule 11 CPC being barred by law. Parties are directed to bear their own costs.

MEMO OF COSTS:

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

This decree sheet is given under my hand and seal of this Court on
29.05.2021.


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