

ORDER

04.06.2021

Present: Learned counsel for the petitioner Sabt Ullah Advocate.
Learned counsel for the plaintiff/respondent Adnan Ahmad Ch. And Ibrahim Pori Advocates.

By way of this single order, I would like to decide the application u/s 34 and 21 of Arbitration Act 1940 r/w Sec.4 of the Recognition & Enforcement (Arbitration Agreements & Foreign Arbitral Awards) Act 2011 r/w Sections 10 and 151 CPC 1908.

2. It is the contention of the petitioner that keeping in view Sec.4 of the Recognition & Enforcement (Arbitration Agreements & Foreign Arbitral Awards) Act 2011, the matter may be referred to the arbitration. Besides, this prayer petitioner has also prayed for stoppage of the proceedings u/s 34 of the Arbitration Act 1940. It is lastly prayed by the petitioner that proceedings may be stopped keeping in view of Sec.10 of CPC as the matter is sub judice before the Hon'ble Sindh High Court in terms of the same agreement/dispute between the parties.

3. On the other hand, reply of this petition could not be filed by the respondent/plaintiff despite availing numerous opportunities. So much so, revision petition twice a time of the plaintiff/respondent has been dismissed by the learned appellate court in which plaintiff has sought relief for filing the written reply of the petition. Since, no written reply of the applicaiotn has been field by the plaintiff/respondent. However, arguments at length has been heard on behalf of petitioner/defendant by learned counsel Mr. Adnan Ahmad Ch. And Ibrahim Pori Advocates upon petition.

4. After hearing arguments from both learned counsels, this court has come to the following conclusion:-


5. It is an admitted fact that plaintiff TCB Aviation has filed application u/s 20 of Arbitration Act 1940 before the Hon'ble Sindh High Court in suit No.657/2020. Plaintiff TCB Aviation has also sought stay/injunctive order against the defendant/petitioner Sri Lankan Airlines Ltd. in terms of GSA agreement before Sindh High Court. The Hon'ble Sindh High Court has referred the matter for the arbitration proceedings at

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Sri Linka. This order was assailed by the plaintiff on 19.05.2021 before Intra Court Appeal in which next date of hearing is fixed as 02.06.2021 and injunctive order has also been passed. This was the situation of the present case.

6. Since the matter is sub judice before the superior forum i.e Hon'ble Sindh High Court in respect of the same agreement, therefore, this court without making any observation in Sec.4 of the Recognition & Enforcement (Arbitration Agreements & foreign Arbitral Awards) Act 2011 as propriety demands that Honble Sindh High Court has already taken up the matter with regard to the foreign arbitration in the case in hand. The only application of the petitioner/defendant is justifiable i.e u/s 10 of CPC as the matter is directly and substantially is under adjudication before Honble Sindh High Court. So, the petition of the petitioner to the extent of Sec.10 of CPC is justifiable. The injunctive order passed by this court dated 19.01.2021 is of no use and has become infructuous in the light of the injunctive order passed by the Hon'ble Sindh High Court in the same matter, therefore, injunctive order dated 19.01.2021 is hereby vacated. Both parties are bound by the injunctive order passed by the Hon'ble Sindh High Court in terms of GSA agreement. The present suit is being consigned to record room **sine die** u/s 10 of CPC. File be consigned to record room, after its due completion.

Announced
04.06.2021


Muhammad Adeel Anwar,
Civil Judge 1st Class,
(Special Court for commercial cases)
Lahore.