

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE MUSHIR ALAM
MR. JUSTICE YAHYA AFRIDI

CIVIL PETITIONS NO.3148 & 3149 OF 2020

[Against the judgment dated 10.03.2020 passed by Islamabad High Court, Islamabad in F.A.O. Nos.92 & 238/2019]

AND

CIVIL PETITIONS NO.3225 & 3360 OF 2020

Capital Development Authority (CDA) through its Chairman CDA, Headquarters, Islamabad and another

...Petitioner(s)

VERSUS

M/s Habib Rafiq (Pvt) Ltd and others

...Respondent(s)

For the Petitioner(s):

Mr. Muhammad Munir Paracha, ASC
Raja Abdul Ghafoor, AOR

For Respondent-1:

Mr. M. Masood Khan, ASC

Date of Hearing:

25.03.2021

ORDER

MUSHIR ALAM, J.— Through the instant petition, the Petitioners [Capital Development Authority (CDA) through its Chairman and another] have assailed the common judgment dated 10.03.2020 rendered by the learned Islamabad High Court, Islamabad in F.A.O. No.92¹ & F.A.O No. 238/2019.² It is stated that the Arbitral Award dated 20.08.2018 was rendered in a dispute arising out of a contract dated 23.10.2011. Considering that the dispute arises out of arbitration proceeding, which is considered an expeditious method to resolve disputes, if allowed to be trapped into conventional legal proceeding would frustrate the purpose of arbitration. By consent, leave is granted, this petition is converted into appeal, the same is heard and decided in the following manner.

¹ Filed by the Claimant Habib Rafiq (Pvt) Ltd (HRL)

² Filed by the CDA

2. Precisely stated facts of the matter are that the parties, having contractual relationship agreed to advert to arbitration. Consequently, an application under section 20 of the Arbitration Act, 1940 was registered as a suit, and the Court, after due notice, appointed a Sole Arbitrator, vide order dated 1.11.2017.³ Reference was entered, arbitration proceedings were carried out, and parties participated into arbitration proceedings, led their respective evidence without any reservations. At the conclusions of arbitration proceedings, after due notice and, in presence of the parties, the learned Sole Arbitrator announced the award on 20.8.2018. Copies of the award was delivered to and acknowledged by both the parties.⁴

3. It appears that on 11.9.2018 a covering letter of the claimant (HRL) dated 27.8.2018 addressed to the learned arbitrator requesting to file the award in the court⁵ at Islamabad to be made rule of the court, in terms of section 14(2) of Arbitration Act, 1940 was put up in Court. The Court diary⁶ dated 11.9.2018 shows that the original award dated 20.8.2008 along with original covering letter of Ahmed and Ahmed, stamp paper of Rs.500/- accompanied by award books (i) and (ii) containing annexures were filed in the Court of Civil Judge, Islamabad (West) having plenary jurisdiction in the matter.

4. Notices were issued to the parties inviting objection to the award. CDA "*filed objections against making award rule of the court,*" under section 30 and 33 of the Arbitration Act⁷. In addition, filed an '*Application for the return of the Award having being filed in violation of section 14(2) of the Arbitration Act, 1940 read with all*

³ At page 16-B and 16-C of CPLA 3225/2020

⁴ At page 13 of CMA 2510/21

⁵ At page 69 of CPLA 3148/20

⁶ At page 87 of CMA 2150/21

⁷ At page 14 CMA 2510/2021

other enabling provisions of law', on the ground *inter alia* that the Award has not been filed by the Arbitrator, as required under Section 14(2) of the Arbitration Act, 1940. The learned Trial Court, *vide* order⁸ dated 15.05.2019, allowed the application and ordered return of the Award to the learned Arbitrator with a direction to resubmit the same within thirty days, which order was assailed by the respondent (*HRL*) before the learned High Court through *FAO 92/2019*, on the ground *inter alia*, that the award was in fact filed by the Arbitrator and not the claimant, and therefore it should be treated accordingly and objections to award be heard and decided on merits.

5. In another stream of proceedings pursuant to the order dated 15.05.2019 by the learned trial Court, the learned Arbitrator, on 20.9.2019, filed a *Statement*⁹ with a prayer to treat it as a covering letter to the award already filed in the court on 11.9.2018 which was again objected to by the Petitioner, *CDA*. The objections to such request of the arbitrator were dismissed and the request of the arbitrator to treat the *Statement* dated 20.9.2019 to be made part of record was accepted, *vide* order dated 22.11.2019, which order was assailed by the Petitioner/*CDA* through *FAO 238/2019*.¹⁰

6. It is contended by the learned counsel for the Petitioners that in terms of sub-section (2) of Section 14 of the Arbitration Act, at the request of any party to the agreement or any person claiming through them, or where so directed by the Court, it is the Arbitrator who may file the award along with entire record and no none other.

⁸ Pages 17-22 of CPLA 3148/2020

⁹ Page 23 of CPLA No. 3149/2020

¹⁰ Subject matter of CPLA No. 3149/20

7. In the case at hand, according to learned counsel for the CDA, the award was filed by the Counsel for the claimant, as reflected in the letter dated 27.08.2018.¹¹ We have examined the subject letter, which is by the counsel for the Claimant/HRL addressed to Mr. Justice Nasir Aslam Zahid, the Sole Arbitrator, requesting to file the award in Court. One of the diary sheets dated 11.9.2018 of the Court recorded the attendance of Bilal A. Khawaja, Advocate for the claimant/HRL, and notice to the parties was ordered by the learned Trial Court.¹²

8. Learned counsel representing the Claimant/ HRL submits firstly that the covering letter referred to, is by the Counsel for the Petitioner, addressed to the learned Sole Arbitrator requesting him to file the award in Court at Islamabad. According to him, the award was filed by the learned Arbitrator, pursuant to the request of the counsel, as is reflected from the letter attached to the Award, along with the deposition and the documents produced before him as required under sub-section (2) of Section 14 *ibid*; which fact was not recorded in the court diary¹³. Without prejudice to said submission, the counsel for HRL submitted that, in terms of the Rules and Orders of the Lahore High Court, Lahore¹⁴ as adopted by the learned Islamabad High Court,¹⁵ any party to the arbitration proceedings may file the Award¹⁶. It was, therefore, without prejudice, urged that no exception to filing of the award by the claimant, if at all, is called for. Learned Counsel for the Respondent/HRL very candidly and fairly pointed out that subject High Court Rules were adopted on 28.08.2019 and in instant matter

¹¹ Available at 23 of CPLA 3149/2020 and at Page-12 of CMA 2510/21

¹² Available at Page-87 of CMA 2510/21

¹³ Dated 11.9.2018 at page 87 CMA 2510/2021

¹⁴ Part-B, Chapter-4 of the Rules made by the Lahore High Court under Section 44 of the Arbitration Act, 1940

¹⁵ Rules were adopted by the learned Islamabad High Court, Islamabad, vide Notification dated 28.08.2019 (available at Page-1 of CMA 2510/21)

¹⁶ In terms of Rule 10 of the High Court Rules

letter of the claimant addressed to the learned Arbitrator to file the Award in court was filed in Court on 11.9.2018, which was prior to adoption of Rules, therefore, such rules may not apply retrospectively. Court appreciates such fair conduct of the learned counsel.

9. It was next pointed out by the learned counsel for the Respondent No.1/HRL that, pursuant to order of the learned trial court dated 11.5.2019, the Sole Arbitrator on 20.09.2019 filed a *Statement*,¹⁷ in the court with a prayer to treat said *Statement* as a covering letter to the Award and the deposition and documents earlier filed in court on 11.9.2018. The said *Statement* was made consequent to the order of the Court dated 15.05.2019, directing the Arbitrator to resubmit the award within 30 days. It was pointed out that in compliance to above order, the learned Arbitrator filed said *Statement* to the affect that the Award filed earlier, was in fact filed by the Arbitrator and the covering letter thereto could not be annexed inadvertently and the *Statement* filed by the Arbitrator be treated as a covering letter to such Award. Petitioner objected to such *Statement*, which were also dismissed by the learned trial court and the *Statement* by the arbitrator was treated as covering letter to the Award, vide order dated 22.11.2019.¹⁸ It was urged by the learned counsel for the Claimant/HRL that such fact alone meets the requirement of Section 14(2) of the Arbitration Act. In support, he relies on case reported as Province of the Punjab through its Secretary Communication & Works Department, Lahore vs. M/s M.A. Rashid Said Alam Khan.¹⁹

¹⁷ At Pages 5 & 6 of CMA 2510/21

¹⁸ Also impugned through CPLA 3149/2020

¹⁹ PLD 1990 Lahore 25

10. We have heard learned counsel for the Petitioners as well as Respondents and have also gone through the available record. Section 14(2) of the Arbitration Act reads as under:

“14. Award to be signed and filed. – (1) When the arbitrators or umpire have made their award, they shall sign it and shall give notice in writing to the parties of the making and signing thereof and of the amount of fees and charges payable in respect of the arbitration and award.

(2) The arbitrators or umpire shall, at the request of any party to the arbitration agreement or any person claiming under such party or if so directed by the Court and upon payment of the fees and charges due in respect of the arbitration and award and of the costs and charges of filing the award, cause the award or signed copy of it, together with any depositions and documents which may have been taken and proved before them, to be filed in Court, and the Court shall thereupon give notice to the parties of the filing of the award.”

[emphasis provided]

11. There is no specific provision in the Arbitration Act, 1940 imposing a duty or prohibition upon the Arbitrator to file the Award in Court on his own. Arbitrator is mandated to file the Award in the court of plenary jurisdiction at the request of any party to the Arbitration or on the directions of the Court or caused the award to be filed in Court. In the instant case, request of the counsel of the claimant/HRL to the sole Arbitrator is already on record. On examining the above provision, what emerges is that an Arbitrator/Umpire, having signed and made the award, under sub-section (1) of section 14 of the Act, 1940, is mandated to notify the parties in writing of making of and signing of the Award. Arbitrator, is also required to notify the parties of the amount of the arbitration fee and charges due and outstanding, if not already paid. Once the Award is signed and made, and parties are notified of the same, it is up to the parties or any person claiming under them to request the Arbitrator to file the Award in Court to be made rule of the court and

pronounce judgment followed by a decree thereon.²⁰ It may be observed that unless the award is filed in Court, it cannot be objected to, nor a party may seek its modification or correction in certain circumstances²¹ nor, it could be remitted²² from time to time to the arbitrators for reconsideration and return within the time fixed by the court. Once award undergo all challenges and judicial scrutiny on the parameter.²³ *"Where the court sees no cause to remit the award or to set aside the award, the court shall, after the time for making an application to set aside the award has expired, or- such application having been made, after refusing it, proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except on the ground that it is in excess of, or not otherwise in accordance with, the award."*²⁴ Unless the award is made rule of the Court and, judgement is pronounced thereon followed by a decree, it is of no legal significance and cannot be executable through Court, nor it could be challenged in appeal.²⁵

12. The significance of the written notice by the Arbitrator to the parties in terms of sub-section (1) of Section 14 of the Act, 1940 is relevant for the purposes of computing period of limitation, Article 158 of the Limitation Act, lays down that an application to set aside an award or to get it remitted, must be filed within thirty days of the date of service of the notice by the Court of the filing of the award. Article 178 of the limitation Act, provide starting point for limitation of 90 days for an application under Section 14 (2) of the Arbitration Act for the filing in the

²⁰ Section 17 of the Arbitration Act, 1940.

²¹ Section 15 *ibid*

²² Section 16 *ibid*

²³ Section 14, 17 & 30 *ibid*

²⁴ Section 17 *ibid*

²⁵ Section 16 *ibid*,

court of an award from the date of service of the notice of the making of the award by the arbitrator as required under Section 14(1) *ibid*; of the making of award rule of the Court²⁶ within which period a party may apply to the Arbitrator to file the award in Court to make it rule of the Court and pass decree thereon²⁷ challenge the validity²⁸ of the award or seeking its modification²⁹ or be remitted³⁰ for reconsideration, once it is filed in the court. In case, the award is not filed by the Arbitrator in court despite request of a party to the arbitration. Any party or any person acting on the behalf of the parties may seek the direction of the Court for the arbitrator to cause the award or signed copy of it, together with any depositions and documents which may have been taken and proved before them, to be filed in Court.³¹.

13. From perusal of the record placed before us, it is evident that the award was signed, made and announced by the Sole Arbitrator after due notice in writing to the parties as required under section 14 (1) of the Act, 1940 and in presence of the parties on 20.8.2018. The award along with all the deposition and annexures indeed was filed in Court on 11.9.2018, though it is disputed whether it was filed by the counsel for the claimant/HRL or by the Arbitrator, at the request of the claimant under section 14 (2) of the Arbitration Act. It is also a matter of record that, on the objections raised by the Petitioner/CDA, on the ground *inter alia* that the award since not having been filed in accordance with section 14(2) should be returned to the arbitrator. The Trial Court

²⁶ Article 158 the Limitation Act for modification. and Article 178 the Limitation Act for the award to be remitted.

²⁷ Section 17 *ibid*

²⁸ Section 30 and 33 of the Arbitration Act, 1940.

²⁹ Section 15 *ibid*.

³⁰ Section 16 *ibid*.

³¹ Sub-Rule (c) of Rule 10, Part-B, Chapter-4 of the Rules made by the Lahore High Court under Section 44 of the Arbitration Act, 1940

vide order dated 15.08.2019 remitted/returned the Award to the learned Arbitrator to resubmit the same within 30 days.

14. It is matter of record that during pendency of the FAO 92/2019, the learned Arbitrator on 20/9/2019 filed a *Statement* (Page 5 to CMA 2510/2021), with a request to treat the *Statement* as covering letter to the award that was already filed in court on 11.9.18. The *Statement* records that the letter of Mr. Bilal A. Khawaja, dated 27.08.2018, was in fact addressed to the Arbitrator requesting him, to file the award in Court, which letter of the counsel, is being treated as covering letter to the award. The learned trial Court in consideration of such fact noted that in terms of section 14(2) of the Arbitration Act, the award could be caused to be filed by the Court, and since the Arbitrator has caused the award to be filed in court is due compliance of Section 14(2) of the Act, 1940 and, treated the *Statement* of the Arbitrator as covering letter to the award. The objections filed by the CDA to such *Statement* of the arbitrator, were also dismissed vide order dated 22.11.2019 and matter was adjourned for hearing of objection to the award to 10.12.2019. Order dated 22.11.2019, treating *Statement*, filed by the Arbitrator as covering letter to the award, is subject matter of CPLA 3149/20. It was stated by both the learned Counsel, that in case CPLA 3148/ 2020 is dismissed, CPLA 3149/20 will become infructuous.

15. It is an admitted position in law that the court of plenary jurisdiction could remit the award on any ground as recognized under Section 16 of the Act of 1940, as rightly held in the impugned judgment, once the award was filed in Court and a dispute arose, whether it was filed by the Arbitrator or otherwise, could effectively be resolved by issuing notice to the Arbitrator seeking clarification rather than remitting the award, as was done in

the instant case. The Arbitrator/Umpire is bestowed authority to file the Award in Court at the request of any party or any person claiming through such authority. In the present case, it appears that Sole Arbitrator, through his *Statement* as noted in order dated 20.09.2019, acknowledged that the Award was filed by him, at the request of Claimant, which course was approved through impugned judgment.

16. Taking stock of the factual and legal aspects of the matter, we see no impropriety in the impugned judgment. Accordingly, Leave Petition converted into appeal, is dismissed for the reasons noted above.

CPLA No. 3149 of 2020

17. Since the connected petition [CPLA 3148/19], arising out of the same judgment, the Award has been held to be validly filed. Therefore, this petition, arising out of incidental order dated 12.11.2019, has become infructuous. Dismissed accordingly.

CPLA No.3225 of 2020

18. Subject CPLA impugns the judgment dated 10.3.2020 rendered in FAO No. 122/2019, whereby, the Islamabad High Court maintained the order dated 01.11.2017 passed by the learned Civil Judge appointing the sole Arbitrator in a matter arising out of dispute emanating from a building contract dated 23.10.2011. Mr. Muhammad Munir Paracha, learned ASC for the Petitioner's states that it is an entirely new controversy. He needs time to obtain instructions as to whether the Petitioner would be contesting appointment of the Arbitrator or otherwise. Let the needful be done before the next date of hearing and if at all his effort fails, he will proceed with the matter on the next date of hearing.

CPLA No.3360 of 2020

19. Subject CPLA impugns the judgment dated 10.03.2020 rendered in Civil Revision No. 264/2018, whereby the Islamabad High Court maintained the order dated 01.11.2017, on the ground that no terms of reference for the Arbitrator were settled, fixation of arbitration fee, and replacement of the Arbitrator were declined. Mr. Paracha, learned ASC for the Petitioner requests time to obtain instructions in this matter. Also, the learned Counsel for the Respondent has no objection, but states that these matters have lingered for long and be fixed at an early date. Both the cases are adjourned to a date after four weeks.

Sd/- J

Sd/- J

Judge

ISLAMABAD
25th March, 2021

Not Approved for Reporting

