

**Judgment Sheet**

**IN THE LAHORE HIGH COURT, LAHORE**  
(JUDICIAL DEPARTMENT)

....

**Civil Revision No.1525 of 2015**

(Tafazzal Abbas, etc. Vs Saif-ur-Rehman, etc.)

**JUDGMENT**

Date of hearing: **16.10.2024**

Petitioners by: Ghulam Fareed Sanotra, Advocate.

Respondents No.1 to 4 by: Syed Tahir Abbas & Ch.Zahid Imran,  
Advocates.

**AHMAD NADEEM ARSHAD, J.** Through this civil revision the petitioners have assailed the vires of judgments/orders of the courts below whereby application of respondent No.1 (*Saif-ur-Rehman*) for making the '*Award*' as rule of the court, was allowed, concurrently.

2. Facts in brevity are that Syed Jaffer Hussain, respondent No.2/ predecessor of petitioner No.1 and respondents No.2(i,a) & 2(ii, a) (*hereinafter referred to as 'respondent No.2'*) agreed to sell his house bearing No.4-S-21, Block No.12, Sargodha situated in *Khasra* No.18/2/1 measuring 01 Marla 01 square foot and upper portion of *Khasra* No.18/2/2, 18/2/3, 18/2/4 measuring 37x21 feet (*hereinafter referred to as 'suit house'*) to respondent No.1 (*hereinafter referred to as respondent No.1*) and received Rs.5000/- as an earnest money however, the price of the suit house was not settled as the suit house had not formally transferred to him, therefore, they settled that after conclusion of the case, resolution of the dispute and sanction of mutation in his (respondent No.2) favour, registered sale deed will be executed in favour of respondent No.1 and they will also settle the price of the suit house at that time. However, they failed to settle the price of the suit house amicably and through an agreement dated 03.06.1982 appointed respondent No.3 (*Syed Kazim Hussain*) and Syed Shabbir Hussain as arbitrators on behalf of respondent No.2 (Syed Jaffer Hussain) whereas respondent No.4 (*Malik Muhammad Anwar*) and

respondent No.5 (Jahangir Sarwar Sheikh) were appointed as arbitrators on behalf of respondent No.1 (*Saif-ur-Rehman*). Despite their efforts, said arbitrators could not succeed to give their arbitration decision/award, as a result of which, respondent No.1 filed an application under Sections 11 & 20 of the Arbitration Act, 1940 (*hereinafter referred to as ‘Act, 1940’*) before the Civil Court at Sargodha for removal of the arbitrators appointed by respondent No.2 and also sought a direction to the arbitrators to pass arbitration decision/award. During the proceedings of said application, parties (*respondents No.1 & 2*) of the arbitration agreement dated 03.06.1982 agreed to appoint Malik Mehar Ali, the then Naib Tehsildar as their ‘**Umpire**’. Learned trial court with the consensus and concurrence of the parties appointed aforesaid Naib Tehsildar as their Umpire and directed him to submit arbitration decision in the court who, in compliance of said direction passed arbitration decision/award on 07.09.1983 and submitted the same in a sealed envelope to the court. The learned trial court found that the Umpire had written down the award on a judicial paper instead of stamp paper, therefore, directed him to reduce the said decision/award in verbatim on a stamp paper. In compliance of it he submitted the arbitration decision/award dated 26.02.1984 to the Court on 28.02.1984. In the light of said arbitration decision/award, respondent No.1 while withdrawing his earlier application under Section 11 & 20 of the Act, 1940 moved an application under Sections 14/17 of the Act, 1940 for making the said decision/award as rule of the court. On the other hand, respondent No.2 (Syed Jaffer Hussain) resisted the application by filing contesting written reply wherein he raised certain objections upon the award to the effect that the same is just a report which cannot be made rule of the Court; that the award is barred by time; that the award is collusive between respondent No.1 and the Umpire; that the evidence produced by him was brushed aside unilaterally by the Umpire; that he never received Rs.5000/-; that the award is result of misconduct and prayed for dismissal of the application for making award rule of the Court. Respondent No.2 also moved separate

objection petition on the award by making similar type of objections and prayed for setting aside of the award. Respondent No.1 filed its reply.

Later on, Syed Jaffer Hussain sold a part of the suit house to petitioner No.2 (*Syed Sajjad Haider*) and petitioner No.3 (*Syed Iftikhar Hussain represented by his LRs (3(i) to 3(vi))*) for a consideration of Rs.1,50,000/- through registered sale deed No.1392 dated 08.07.1984. Subsequent, purchasers moved an application for their impleadment in the case and they were impleaded as party in the array of respondents as respondents No.7 & 8 (herein after referred to as **petitioners No.2 & 3**). They also filed objection petition upon the award. Learned trial court in the light of divergent stances taken by the parties framed necessary issues and invited the parties to produce their respective evidence. After recording evidence of the parties pro & contra, oral as well as documentary allowed the application in the following terms:

#### ***“Relief***

*As a consequence of what has been discussed above, the award of the umpire dated 07.09.1983/26.02.1984 is made rule of the court subject to deposit of Rs.10,00,000/- within a period of two months by the petitioner for onward payment to the subsequent purchasers/contesting respondents during the pendency of the proceedings failing which the award shall be deemed to have been turned down. There is no order as to costs....”*

Feeling aggrieved, the petitioners preferred an appeal which was dismissed vide judgment dated 28.02.2015. Being dis-satisfied, they filed the instant civil revision.

3. I have heard learned counsel for the parties at full length and perused the record with their able assistance.

4. Respondent No.2 filed written reply of the respondent No.1's application for making award rule of the Court on 24.03.1984, whereas he also filed objection petition upon the award on 08.10.1984. Petitioners No.2 & 3 also filed their independent objection petition on 08.10.1984. Respondent No.1 filed contested written reply on 28.10.1984. Perusal of the objections raised by the petitioners and respondent No.2 it appears that they questioned the

partiality and alleged misconduct of the Umpire with regard to giving the award.

5. Section 30 of the Act, 1940 provides that an award can be challenged on the grounds that arbitrator or Umpire has misconducted himself or the proceedings; secondly, the award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under Section 35 of the Act *ibid*; thirdly, the award has been improperly produced or is otherwise invalid. For better understanding the aforesaid Section 30 is reproduced as under:-

**"30. Grounds for setting aside award---An award shall not be set aside except on one or more of the following grounds, namely,**

- (a) *That an arbitrator or umpire has misconducted himself or the proceedings;*
- (b) *That an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under section 35;*
- (c) *That an award has been improperly procured or is otherwise invalid.*

Bare perusal of said provisions of Section 30, it appears that an award can be set aside on the following grounds: -

- i) *that the arbitrator or Umpire has misconducted himself;*
- ii) *that the arbitrator or the Umpire misconducted the proceedings;*
- iii) *that the award was made after the arbitration was superseded;*
- iv) *that the award was made after the proceedings became invalid under section 35;*
- v) *that the award was improperly procured and*
- vi) *that the award was otherwise invalid.*

6. Any party to an arbitration agreement or any person claiming under him desiring to challenge the existence or validity of an arbitration agreement or an award or to have the effect of either determine shall apply to the Court and the Court shall decide the question on affidavit. For care Section 33 of the Act, 1904 is reproduced as under:-

**"33.Arbitration agreement or award to be contested by application.-Any party to an arbitration agreement or any person claiming under him desiring to challenge the existence or validity of an arbitration agreement or an award or to have the effect of**

*either determined shall apply to the Court and the Court shall decide the question on affidavit*

*Provided that where the Court deems it just and expedient, it may set down the application for hearing on other evidence also, and it may pass such orders for discovery and particulars as it may do in a suit."*

In this regard Section 33 of the Act, 1940 provides as under: -

- (i) *When it is desired to challenge the existence of an arbitration agreement or an award;*
- (ii) *When it is desired to challenge their validity; and*
- (iii) *When it is desired to have their effect determine.*

A person who is party to an arbitration agreement or award can challenge its existence or validity either by filing an independent application or in the reply submitted to the application filed by other side, seeking indulgence of the Court to make the award as rule of the Court.

7. The august Supreme Court of Pakistan while keeping in mind the scope of Sections 30 & 33 of the Act, 1940 observed that the Court while examining the award is not supposed to sit as a Court of appeal and fish for the latent errors in the arbitration proceedings or the award, therefore, the Court cannot undertake reappraisal of evidence recorded by the arbitrator in order to discover the error or infirmity in the award and in a case titled as "M/s JOINT VENTURE KG/RIST through D.P. Giesler G.M. Bongard Strasse 3,4000, Dusseldorf-30, Federal Republic of Germany, C/o 15-Shah Charagh Chambers, Lahore and 2 others vs. FEDERATION OF PAKISTAN, through Secretary Food, Agricultural & Coop: and another" (**PLD 1996 Supreme Court 108**) it was held as under: -

*"....the Court while examining the validity of an award does not act as a court of appeal. Therefore, a Court hearing the objections to the award cannot undertake reappraisal of evidence recorded by the arbitrator in order to discover the error or infirmity in the award. The error or infirmity in the award which rendered the award invalid must appear on the face of the award and should be discoverable by reading the award itself. Where reasons recorded by the arbitrator are challenged as perverse, the perversity in the reasoning has to be established with reference to the material considered by the arbitrator in the award."*

Said findings were also endorsed by Hon'ble Supreme Court of Pakistan in a case titled "FEDERATION OF PAKISTAN through Secretary Ministry of Food, Islamabad and others vs. Messrs JOINT VENTURE KOCKS K.G/RIST" (**PLD 2011 Supreme Court 506**).

8. The basic principles, which should prevail with the Court while considering the objections to an award and the criteria on the basis of which, an award should be set aside are clearly provided in Sections 30 and 33 of the Arbitration Act. And on the basis of catena of judgments of the superior Courts of our country, it is well-settled by now that an arbitration is a forum, which is chosen by the parties out of their own free-will and consent, for the resolution of the dispute *inter se* them; such forum has the sanctity of the confidence of the parties reposed upon it and to all intents and purposes, the Arbitrators are the Judges of law and fact and can accordingly decide the dispute. It also cannot be disputed that the Arbitrators have the full authority to appreciate the facts of the case, according to their own perception, expertise, knowledge and wisdom, and such appreciation of facts, if not suffering from the vice of any misreading and non-reading of the record, shall not be interfered with by the Court only on account that another conclusion is possible. There also can be no cavil that the Court while considering the validity of the award should not sit as a Court of appeal, trying to fish or dig out the latent errors in the proceedings or the award, but should only confine to examining the award by ascertaining, if there is any error, factual or legal, which floats on the surface of the award or the record and if such an amiss is allowed to remain, grave injustice shall be done to the aggrieved party. The perversity about the reasoning, in view of the dictum of the Hon'ble Supreme Court, though is a ground for the interference in the award, but the Court should not infer the perversity because of the factual conclusion being wrong, rather it should be taken to be analogous and akin to "perverse verdict" which means that the factual conclusion drawn is against the law; obviously this shall include the decision of the Arbitrator on the facts of the case being based upon the misreading

and the non-reading of the evidence/record. The award of an Arbitrator, who is the Judge selected by the parties themselves, should not be lightly interfered with un-till and unless it is established that the error committed by him is so glaring that if it is overlooked, it shall lead to miscarriage of justice. But certainly, the award cannot be intercepted on the ground that on the reading of the evidence, a conclusion other than arrived at by the Arbitrator, is possible. (See Premier Insurance Company and others vs. Attock Textile Mills Ltd., PLD 2006 Lahore 534).

9. The arbitrator/Umpire is a Judge who is performed the functions of a Judge. There are two *latin* maxims: “*Compromissarii sunt judices*”, meaning that arbitrators are Judges and “*arbitrium est judicium*,” meaning that an award is a judgment. However, an award is not a divine word. It is neither impregnable nor exempt from judicial scrutiny. An award can be nullified and set aside in view of the statutory provision contained in sub clause (a) of Section 30 ibid if an arbitrator has “misconduct himself or the proceedings”. “Misconduct” contemplated by Section (a) is thus of two kinds, “legal misconduct” and “moral misconduct”.

“Legal misconduct” means that misconduct in the judicial sense of the word, for example, some honest, though erroneous, breach of duty causing miscarriage of justice; failure to perform the essential duties which are cause on an arbitrator; and any irregularity of action which is not consistent with general principles of equity and good consensus. If an arbitrator’s act arbitrarily or unreasonable, the award will be invalid.

“Moral misconduct” difficult to define executively and exact what amounts to misconduct on the part of an arbitrator. The expression is of void import, and it means that which is misconduct by any standard. In a case of arbitration where the parties interest their fate into the hands of an arbitrator, he becomes a Judge in the case. Therefore, it is essential that their must be abandoned good faith and the arbitrator must be absolutely disinterested and impartial, as he is bound to act with scrupulous regard to the ends of justice.

An arbitrator must be a person who stands indifferent between the parties. A Division Bench of this Court in a case titled “Sh. Saleem Ali vs. Sh. Akhtar Ali and 7 others” (**PLD 2004 Lahore 404**) elaborated the grounds for setting-aside of the award. This Court in another case titled “Khalid Abbas vs. Hafiz Muhammad Farooq” (**2004 YLR 274**) highlighted the elements treating or constituting misconduct on the part of the arbitrator as under: -

*“It would be convenient to mention here the elements treating or constituting the misconduct on the part of the arbitrators, namely: -*

- (a) *neglect of duties and responsibilities by arbitrators;*
- (b) *something contrary to what the Courts of justice expect from them before allowing finality to their awards;*
- (c) *if the arbitrator has refused to postpone a meeting for purpose of allowing a party to engage a counsel when the other party unexpectedly turns up with a counsel;*
- (d) *if the award is made without having heard all the evidence;*
- (e) *if the evidence of the witnesses is recorded behind the back of a party;*
- (f) *if a party has not been allowed reasonable opportunity of proving his case;*
- (g) *if the arbitrator has not brought to the notice of opposite-party a document received by him from his adversary or not given him an opportunity of meeting the inferences deducible from them;*
- (h) *if the irregularities in the proceedings are proved which amount to no proper hearing of the matter in dispute;*
- (i) *if the finding is perverse or unsupported by the evidence before him;*
- (j) *if the arbitrator decides a disputed question without going into evidence as he would in such a case be said to have decided blindly;*
- (k) *if there is indication of gross negligence or recklessness on the face of the record;*
- (l) *if there is some mistake of fact provided it is either admitted or at least clearly beyond reasonable doubt.”*

10. Keeping in view the above principles, now I proceed to examine whether the award in question was liable to be set-aside on the established facts. From scanning of the record, it appears that the parties (*respondents No.1 & 2*) agreed to refer their dispute to the arbitrators with regard to fixation of the price of suit house through written arbitration agreement dated 03.06.1982 (Exh.A-2). In this regard, a set of two arbitrators from each side was appointed by each party. Respondent No.2 appointed Syed Kazim Hussain and Syed

Shabbir Hussain as his arbitrators and respondent No.1 appointed Malik Muhammad Anwar and Jehangir Sarwar Sheikh as his arbitrators. Both sides with mutual understanding gave them authority to pass arbitration decision/award with regard to the price of the suit house. It was also settled that if the arbitrators failed to give any decision/award, then parties will be bound to appoint an Umpire and in that eventuality decision/award rendered by Umpire will be acceptable to both parties and the same will not be challengeable before any Court of law. Said agreement was witnessed by Sufi Nisar Ahmed and Muhammad Umer Baig. Said agreement was not disputed by respondent No.2 (Syed Jaffar Hussain) rather admitted it as correct. For better understanding said agreement is reproduced in verbatim as under:-

"میانکہ سید جعفر حسین شاہ ولد سید مہندی علی قوم سید فخریق اول، سیفے  
الرحمٰن ولد محمد حسین راجپوت فخریق دوئم کنانے بلاک نمبر 12 سرگودھا کے  
بیٹے۔ جو کہ فخریق اول مالک مکان نمبر 21-S-4 بلاک نمبر 12 سرگودھا  
خربہ 1/2/18 رقم 01-1 مسلم مشتمل بر ایک کمرہ زیریں، ایک کمرہ بالائی  
فترش تا عرض و خربہ 2/2/18، 18/2/3، 18/2/4، 18/2/5 رقم  
بیٹش (37x21) فٹ صرف بالائی منزل مشتمل ایک کمرہ ہال، 2 کمرہ چھوٹے مع  
صحن ہے۔ کافی عرصہ ہوا فخریق اول نے مکان مذکور کا سودا بیج بdest فخریق دوئم طکر کے  
مبلغ پانچ ہزار روپے (5000) بطور بیان پیشگی وصول کیا ہوا ہے مگر فخریقین کے مابین مکان  
مذکورہ کی قیمت کا تعین نہ ہوا تھا۔ افتراریے طے پایا تھا کہ مکان مذکورہ کی بابت جو کیس  
اس وقت زیر سماعت تھا ختم ہونے پر جب انتقال فخریق اول کے نام ہو جائیگا  
بینام رجسٹری فخریق دوئم کے نام کراوی جائیگی۔ اس وقت انتقال فخریق اول کے نام  
درج و تصدیق ہو چکا ہے اس لیے اب ما فخریقین مکان مذکورہ کی قیمت کا تعین آپس میں  
طے کرنے سے وთاڑیں۔ چنانچہ ما فخریقین قیمت مکان مذکورہ کی تعین کیلئے فخریق اول  
اپنی جانب سے سید کاظم حسین شاہ ولد سید شریف حسین شاہ۔ سید شیر  
حسین ولد علی حسین بلاک نمبر 2 سرگودھا اور فخریق دوئم اپنی جانب سے ملک  
محمد انور ولد حنан محمد اعوان سول لائن سرگودھا وجہانگیر سرور شیخ ولد شیخ محمد  
امین استقلال آباد کالونی سرگودھا کو ٹالشان مقرر کر کے اختیار دیتے اور لکھ دیتے ہیں کہ  
ٹالشان مذکوران امر متازع کا فیصلہ ثالثی دیں۔ اگر خدا نخواستہ ٹالشان مذکوران امر  
متازع کا آپس میں فیصلہ نہ کر سکیں تو وہ ایک سرپنچ مقرر کرنے کے پابند  
ہو گے۔ فیصلہ ثالثی مصدرہ ٹالشان و سرپنچ ما فخریقین کو من و عن منظور و قبول اور قابل عمل  
ہو گا۔ فیصلہ ثالثی کو ما فخریقین کسی بھی عدالت میں چیلنج نہ کر سکیں گے۔ لہذا  
افتار نام تقریبی ٹالشان ما فخریقین نے برضامنی خود بقاگی ہوش و حواس  
خوبشیات عقلي تحریر کر دیا کہ سند ہو۔ المس قوم مور حنہ 82-6-3"

11. It is a matter of record that the arbitrators failed to give arbitration decision, therefore, respondent No.1 filed an application under Sections 11 & 20 of the Act, 1940 on 11.11.1982 (Exh.A-8) with the contention that he and respondent No.2 appointed arbitrators but said arbitrators failed to give their arbitration decision, therefore, arbitrators appointed by respondent No.2 be removed and fresh arbitrators be appointed and notice be issued to the respondents of the application to file arbitration decision in the Court. Respondent No.2 filed its contesting written reply on 23.01.1983 (Exh.A-9) by raising certain preliminary objections to the effect that applicant did not come to the Court with clean hands; that the applicant has no cause of action; that the arbitrators failed to give their arbitration decision within a period of four months from the date of their appointment i.e. 03.06.1982, therefore, the arbitration agreement became void and while replying on facts maintained that his arbitrators always ready to perform their duty but the applicant's arbitrators are not ready to hold the meeting. The arbitrators of respondent No.2 filed their written reply on 26.01.1983 (Exh.A-10) and respondent No.1's arbitrators filed their reply on 02.02.1983 (Exh.A-11). The learned trial Court, who ceased of the matter, vide order dated 06.03.1983 directed as under: -

*"All the arbitrators except Syed Shabbir Hussain are present today. They have requested the court that they may be provided some time so that they may complete the arbitration proceedings and submit the award in the court and accordingly they are granted time up-till 30.03.1983 by which they should complete the proceedings and submit the award on duly stamped paper before the court on or before 30.03.1983. The meeting of all the arbitrators and the parties shall be called by Sh. Jahangir Sarwar Advocate and the proceedings will be completed in his hand-writing. To come up for the presentation of the award on 30.03.1983."*

On 30.03.1983 award was not submitted and prayed for an adjournment. The case was adjourned to 16.04.1983. On the said date case was adjourned to 24.04.1983. The arbitrator Sh. Jahangir Sarwar Advocate submitted his interim report dated 15.04.1983 (Exh.A-15). The said arbitrator in his report maintained that the arbitrators of Jaffar Hussain (respondent No.2) assessed the market

value of suit house in the year 1974 as 40/50 thousand rupees and assed the present value as Rs.300,000/-, whereas, the arbitrators of Saif-ur-Rehman (respondent No.1) assessed the market price of the suit house in the year 1974 as Rs.40,000/-, whereas, in the year 1983 as Rs.150,000/-. He further narrated in his report that a dispute arose whether market value of the suit house was to be assessed according to the market price prevailing in the year 1974 or in present and they (arbitrators) are unable to agree upon it, therefore, an Umpire be appointed to decide the controversy. The order sheet available on the record as Exh.A-14 further reveals that on 23.05.1983 respondent No.1 moved an application for appointment of the Umpire. The case was adjourned to 20.06.1983 and on said date respondent No.2 filed the written reply and learned counsel for the parties (respondents No.1 & 2) got recorded their statement to the effect that if the arbitrators failed to reach a consensus then they have no objection if Malik Mahr Ali, Naib Tehsildar be appointed as an Umpire. In the light of said statement of learned counsel for the parties, the learned trial Court vide order of the same date appointed Malik Mahr Ali, Naib Tehsildar as an Umpire with a direction to give his arbitration decision after providing opportunity to the parties and adjourned the proceedings to 26.07.1983. On said date, interim report was submitted, and proceeding was adjourned to 10.09.1983. On said date, a sealed envelope containing the award dated 07.09.1983 of Naib Tehsildar Sargodha was received and opened in presence of the parties and their learned counsel and directed the parties to file their objections. Copy of order sheet (Exh.A-14) further reveals that on 08.01.1984 the learned trial Court took a notice that the award is on a judicial paper rather the same be written on a stamp paper and directed the Umpire to submit the award after writing it on a stamp paper and adjourned the matter to 28.02.1984. On 28.02.1984 award dated 26.02.1984 (Exh.A-1) was produced before the Court. Copies of the evidence oral as well as documentary produced by the parties before the Umpire were also attached with the award (Exh.A-23). Perusal of the award dated 26.02.1984 (Exh.A-1) it appears that the

Umpire not only recorded the evidence of the parties oral as well as documentary but also visited the suit house. In the light of evidence he reached to a conclusion that the market price of the suit house was to be settled, as was prevalent in the year 1974 when the earnest money was paid and maintained that in the year 1974 when the earnest money of Rs.5000/- was paid to respondent No.2, at that time market value of the suit house was Rs.50,000/- and declared that as the vendor (respondent No.2) received an amount of Rs.5000/- from the vendee (respondent No.1), therefore, respondent No.1 after payment of remaining consideration amount of Rs.45,000/- is entitled to get registered the sale deed of the suit house in his favour. However, the learned trial Court enhanced the consideration amount from Rs.50,000/- to Rs.10,00,000/- and made the award dated 07.09.1983/26.02.1984 as rule of the Court subject to deposit of Rs.10,00,000/- within a period of two months by respondent No.1 for onward payment to the subsequent purchasers failing which the award shall be deemed to have been turned down.

12. It is also matter of record that respondent No.1 in order to prove the award produced the Umpire namely Malik Mahr Ali the then Naib Tehsildar as AW-1 who in his statement maintained that he remained Naib Tehsildar from March 1983 to September, 1983 in Sargodha and in the light of Court's order he gave notices to the parties, heard them, inspected the spot and recorded the evidence produced by the parties. He further deposed that initially he submitted award on a plain paper but later on upon the direction of the Court he submitted award dated 26.02.1984 on a stamp paper (Exh.A-1) which is in his hand-writing and bears his signature. During cross examination he maintained that he informed the parties with regard to the arbitration decision. He also maintained that he assessed the price of the house bona fide in the light of the documents produced before him. He also deposed that no one boycott the arbitration proceedings and they posed their confidence upon him. He denied the suggestion that he was forced by Malik Muhammad Aslam Khechala Member National Assembly to give

decision in favour of respondent No.1. He also maintained that he kept in view the agreement for appointment of arbitrators. He remained affirm during lengthy cross examination. Respondent No.1 produced Muhammad Sarwar deed writer as AW-4 who maintained that he scribed the arbitration agreement dated 03.06.1982 (Exh.A-2). One of the attesting witnesses of the said arbitration agreement namely Nisar Ahmad son of Muratab Ali got recorded his statement as AW-5. Jahangir Sarwar Sheikh one of the arbitrators appeared as AW-6 and respondent No.1 got recorded his statement as AW-7. On behalf of the petitioners Azmat Khan *Wasiqa Navees* appeared as RW-1. Nisar *Wasiqa Navees* appeared as RW-2, Syed Kazim Hussain, one of the arbitrators from respondent No.2's side was appeared as RW-3 and Fida Hussain general attorney of respondent No.2 as RW-4. RW-4 produced copy of power of attorney as Exh.R-5 and copy of sale deed as Exh.R-6. The petitioners also produced copy of register *Wasiqa* as Exh.R-1, copy of register *Wasiqa* as Exh.R-2, copy of P.T-1 Form as Exh.R-3, certified copy of the consolidated judgment and decree dated 18.12.2009 passed in a suit for permanent injunction and declaration as Exh.R-4.

13. The Umpire concluded in his award that in the year 1974 when earnest money of the suit house was paid the market value of the suit house at that time was Rs.50,000/- . In the report dated 15.04.1983 (Exh.A-15) submitted by Jahangir Sarwar Sheikh Advocate maintained that arbitrators appointed by respondent No.2, assessed the market value of the suit house in the year 1974 as Rs.40,000/50,000/-, whereas, respondent No.1's arbitrators assessed the market value of the suit house in the year 1974 as Rs.40,000/-. In this way the Umpire followed the market value of the suit house as assessed by respondent No.2's arbitrators.

14. The learned trial Court keeping in view that award was delivered in the year 1983 *i.e.* 27 years back and since then the value of the currency has decreased manifold, therefore, directed respondent No.1 to deposit Rs.10,00,000/- in the Court within a period of two months for onward payment to the subsequent

purchasers (*petitioners No.2 & 3*) who stepped into the shoes of deceased Syed Jaffar Hussain (*respondent No.2*) and in this way safeguarded the interest of the petitioners and respondent No.2.

15. Neither the petitioners nor Syed Jaffar Hussain (*respondent No.2*) appeared before the learned trial Court in support of their objections. Although general attorney of respondent No.2 appeared as RW-4 but he did not utter a single word with regard to misconduct of the Umpire. Respondent No.2 with his free will gave his consent with regard to appointment of Malik Mahr Ali, Naib Tehsildar as an Umpire and remained appearing before the Umpire and also produced oral as well as documentary evidence and during said proceedings he did not raise any objection with regard to partiality and misconduct of the Umpire.

16. From scanning of the evidence oral as well as documentary and keeping in view the principles highlighted by this Court as well as Hon'ble Supreme Court of Pakistan it appears that respondent No.2 as well as the petitioners failed to establish on record that either Umpire misconducted himself or misconducted in the proceedings while giving the award.

17. Question of limitation was also raised by maintaining that award was barred by time. In this regard the learned trial Court framed issue No.3 and decided the same against respondent No.2 & petitioners. Said findings were upheld by the learned appellate Court.

The first schedule of the Act, 1940 Rule 3 provides four months' time for giving the award in the following terms: -

*"3. The arbitrators shall make their award within four months after entering on the reference or after having been called upon to act by notice in writing from any party to the arbitration agreement or within such extended time as the Court may allow."*

Although through arbitration agreement dated 03.06.1982, the parties appointed their arbitrators for settlement of the price of the suit house but said arbitrators failed to give their arbitration decision, therefore, with consent of the parties the learned trial Court, who ceased of the matter, vide order dated 20.06.1983 appointed Malik Mahr Ali, Naib Tehsildar as an Umpire who gave the award on

07.09.1983 and submitted to the Court through sealed envelope which was opened in presence of the parties and their counsel on 10.09.1983. Later on the learned trial Court observed that said agreement was written on judicial paper rather on a stamp paper and directed the Umpire to submit the award by writing down on stamp paper and adjourned the proceedings to 28.02.1984 and on the said date the Umpire submitted the award dated 26.02.1984 written on stamp paper. Respondent No.2 remained participating in the proceedings. The Umpire submitted the award within prescribed period of limitation and the findings of the Courts below with regard to issue No.3 are maintained and upheld.

18. Learned counsel for the petitioners has failed to point out any illegality, irregularity, mis-reading, non-reading or jurisdictional defect in the impugned judgments of learned Courts below warranting interference by this Court while exercising its revisional jurisdiction under Section 115 C.P.C. Even otherwise, they failed to establish on record with regard to misconduct of the Umpire and failed to establish the grounds as enumerated above for setting-aside of the award.

19. In view of the above, I find no substance in the arguments advanced by learned counsel for the petitioners. Consequently, this civil revision is **dismissed** being meritless with no order as to costs.

**(AHMAD NADEEM ARSHAD)**  
**JUDGE**

*Approved for reporting:*

**JUDGE**