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Judgment Sheet

LAHORE HIGH COURT

BAHAWALPUR BENCH, BAHAWALPUR

JUDICIAL DEPARTMENT

Civil Revision No.235 of 2016/BWP

Province of Punjab through DOR/ADC & others
Vs.
Firm Friends & Engineers Bahawalpur & others.

JUDGMENT

Date of hearing: 27.03.2024.

Petitioners by: Hafiza Mehnaz Nadeem Abbasi, Assistant Advocate General alongwith M. Shafique, SDO Highway Department.

Respondent by: Mr. Irfan Karim ud Din, Advocate.

Shujaat Ali Khan, J: - Unnecessary details apart, the facts, as spelt out in this petition, are that contract for construction of metalled road from Qaimpur to Baqainwala district Bahawalpur was awarded to Firm Friends & Engineers, Bahawalpur (hereinafter to be referred as **"the respondent-contractor"**) pursuant to letter bearing No.54/W/9121, dated 16.04.1986, addressed by the Executive Engineer, Highway Division, Bahawalpur. Due to issuance of an injunctive order by the civil court, the respondent-contractor failed to execute

the awarded work within the stipulated time, as a result, the respondent-contractor applied for extension of time. The Superintending Engineer, Highway Circle, Bahawalpur, acceded to the request of the respondent-contractor for extension of time through letter dated 12.09.1987 and it was allowed to complete the work till 15.10.1987 subject to payment of penalty at the rate ½ per cent of the agreement amount. Since the respondent-contractor could not complete the assigned work even within the extended period, it applied for another extension which was allowed by the Superintending Engineer Highway Circle, Bahawalpur *vide* letter dated 12.12.1989 and it was permitted to complete the work upto 30.10.1989 subject to further penalty of 0.5%. As the respondent-contractor could not accelerate the pace of work at site it was issued repeated notices by the Executive Engineer Highway and Sub Divisional Officer to gear up the construction work at site. Finally, the Superintending Engineer Highway Circle, Bahawalpur on the recommendations of the Executive Engineer, Highway Division, Bahawalpur, declared the respondent-contractor as defaulter through letter dated 24.01.1988. In view of differences between the parties, the respondent-contractor submitted application before relevant

authority for settlement of the dispute through arbitration as per terms of the agreement whereupon Mr. Muhammad Naeem Chughtai was appointed as Arbitrator, who subsequently withdrew his name on 16.01.2003. As a result, the respondent-contractor filed complaint before the Ombudsman, Punjab, highlighting maladministration on the part of the departmental authorities in respect of release of outstanding dues etc. The Ombudsman, Punjab, *vide* order, dated 22.08.2006, directed the departmental authorities to get the matter resolved through arbitration whereupon M/s Ch. Muhammad Rafique and Fayyaz Ahmad Nangiana, Superintending Engineers (**respondents No.2 & 3/Arbitrators**), were appointed as Arbitrators who announced their Award on 08.05.2007 and sent the Award alongwith the record to the Chief Engineer (South), Provincial Highway Department, Lahore. The respondent-contractor filed multiple applications before the Chief Engineer (South), Provincial Highway Department, Lahore for provision of copy of the Award which was sent to it through letter bearing Dispatch No.DA/84, dated 26.06.2007 (Exh.A/4). Upon receipt of copy of the Award, the respondent-contractor filed application before the learned Senior Civil Judge, Bahawalpur for production of the Award alongwith record before the court;

for modification of the Award and making the same as rule of the Court which was marked to the learned Civil Judge, 1st Class, Bahawalpur (**learned Trial Court**) who, through judgment and decree, dated 30.11.2012, while making the Award as rule of the Court, modified the same to the effect that the respondent-contractor would be entitled to recover the amount of Award (Rs.2,63,028/-) alongwith 15% interest from the year 1989 till payment of the amount. Being aggrieved of the judgment & decree passed by the learned Trial Court, the petitioners preferred an appeal (bearing No.35 of 2013) before the learned District Judge, Bahawalpur, whereas the respondent-contractor, instead of challenging the judgment and decree of the learned Trial Court through independent appeal, filed cross-objections (bearing No.123 of 2013). The learned Additional District Judge, Bahawalpur (**learned Appellate Court**) through consolidated judgment & decree, dated 22.05.2015, while dismissing the appeal of the petitioners accepted the cross-objections filed by the respondent-contractor and modified the findings of the learned Trial Court to the extent that the respondent-contractor would be entitled to interest at the rate of 15% per annum on the awarded amount.

Being aggrieved of the decisions of the courts below, the petitioners have filed this civil revision petition.

2. The submissions made by the learned Assistant Advocate General, representing the petitioners, at bar and those encapsulated in the revision petition, are to the effect that the Award can only be modified by the Court if the conditions, enumerated under Section 15 of the Arbitration Act, 1940 (**the Act, 1940**) are fulfilled but in the present case none of the conditions postulated under the said provision was attracted, thus, the impugned decisions of the courts below are not sustainable; that when the respondent-contractor did not file any objection against the Award announced by the Arbitrators, he could not reopen the matter before the Civil Court through an application for making the award as rule of the Court; that since the application filed by the respondent-contractor was barred by the law of limitation, the same could not be entertained by the Civil Court, thus, both the courts below did not appreciate the point of limitation in its true perspective; that learned Appellate Court did not give its findings on each *Issue* rather decided the matter in a slipshod manner, hence, its decision does not qualify the test of a judicial verdict; that without exhausting

departmental remedies, the respondent-contractor could not approach the Civil Court; that since *Issues* were not properly framed, both the courts below did not decide the controversy between the parties in its true perspective and that the impugned judgments & decrees of the courts below being result of misreading and non-reading of evidence are not sustainable. In support of her contentions, learned Law Officer, representing the petitioners, has relied upon the cases reported as *Province of the Punjab through Collector District Khushab, Jauharabad and others v. Haji Yaqoob Khan and others* (**2007 SCMR 554**), *Muhammad Ali v. Province of Punjab and others* (**2005 SCMR 1302**), *Muhammad Yousaf and others v. Haji Murad Muhammad and others* (**PLD 2003 SC 184**), *Muhammad Afzal and others v. Province of Punjab through Collector, Multan and others* (**2001 SCMR 593**), *Mst. Sughran Bibi and others v. Mst. Jameela Begum and others* (**2001 SCMR 772**), *Alam Sher through Legal Heirs v. Muhammad Sharif and 2 others* (**1998 SCMR 458**), *Bakht Zamin v. Said Sajid* (**1989 SCMR 1719**), *Aslam and another v. Abdul Sattar* (**2007 YLR 2472**), *Muhammad Khalid and another v. Muhammad Iqbal and another* (**2005 CLC 970**), *Ms. Benazir Bhutto v. News Publications (Pvt.) Ltd and 4 others* (**2000 CLC 904**), *Raza*

Hussain v. Haji Qaisar Iqbal and 7 others (**1996 MLD 55**), *Mansab Ali v. Hafizan and 5 others* (**PLD 1993 Lahore 1**) and *Azizur Rehman v. L.D.A.* (**1985 CLC 2028**).

3. Conversely, learned counsel representing the respondent-contractor, while defending the impugned judgments & decrees of the courts below, argues that since the department failed to clear the outstanding liability of the respondent-contractor, no illegality was committed by both the *fora* below while awarding 15% interest against the outstanding amount; that when the petitioners did not file any objection against the Award announced by the Arbitrators, within prescribed period of limitation, they have no justification to question the validity of the said Award before this Court; that since the respondent-contractor filed application before Civil Court within prescribed period of limitation, the same was within time and the objection raised by the learned Law Officer, representing the petitioners, is not sustainable. To fortify his contentions, learned counsel has relied upon the cases reported as *National Highway Authority through Chairman, Islamabad v. Messrs Sambu Construction Co. Ltd Islamabad and others* (**2023 SCMR 1103**), *Shahbaz Gul and others v. Muhammad Younas Khan*

and others (**2020 SCMR 867**)**,,** *Safdar Ali Khan v. Azad Government of the State of Jammu and Kashmir through Chief Secretary and 2 others* (**2012 CLC 1097**)**,,** *Messrs Tribal Friends Co. v. Province of Balochistan* (**2002 SCMR 1903**), *National Highway Authority through Director (Legal) v. Lilley International (Private) Ltd. and another* (**2020 CLC 608**), *Nasir Khan v. Zamin Shah and another* (**2019 CLC 741**), *Messrs DIR Wood Works through proprietor v. Secretary, Works and Communication Department Government of NWFP and 3 others* (**2016 YLR 1687**), *Lahore Development Authority through Managing Director, WASA Lahore v. Messrs Faisal International Construction Corporation Ltd* (**2004 CLC 594**), and *Dil Muhammad v. Additional District Judge Sahiwal and 3 others* (**1991 MLD 2068**).

4. I have heard learned counsel for parties at considerable length and have also gone through the documents appended with this petition in addition to the case-law cited at the bar.

5. Firstly taking up the point of limitation, I am of the view that where notices are issued to the parties by the Arbitrator(s), in terms of section 14 of the Act 1940, the period of limitation to file Award in the court by the Arbitrator or to move an

application by any of the parties seeking direction for filing of Award in the Court and to make the same as rule of the court, is governed under Article 178 of the Limitation Act, 1908. As far as the case in hand is concerned, no such notices were issued, thus, the period of limitation for the respondent-contractor to file the application, subject matter of this petition, was to be governed under residuary Article 181 of the Limitation Act, 1908. Reliance in this regard can be placed on the case reported as *Inayatullah Khan v. Obaidullah Khan and others* **(1999 SCMR 2702)** wherein the query, under discussion, has been responded in the following manner: -

> *"6. Moreover, in view of the special Article 178 of the Limitation Act which governs an application for filing in Court of an award to be made rule of the Court under the Arbitration Act the question of applying the residuary Article 181 of the Limitation Act would not arise. In Article 178 the period is 90 days from the date of service of notice of the making of the award as rule of the Court and in the circumstances of this case the said Article would apply……"*

Insofar as the case in hand is concerned, both sides are unanimous on the point that the Arbitrators announced their Award, on 08.05.2007, without issuing notice to the parties in terms of section 14 of the Act, 1940. Resultantly, the respondent-contractor filed various applications (Exh.A/2,

Exh.A/3 & Exh.A/6) before the departmental authorities for provision of copy of the Award which was dispatched to it through letter bearing No.DA/84, dated 26.06.2007 (Exh.A/4) whereas the respondent-contractor filed application under sections 14, 15 and 17 of the Act, 1940 before the learned Senior Civil Judge, Bahawalpur on 31.07.2007. In this backdrop, the application of the respondent-contractor could not be considered as time barred, even if the limitation was to be governed under Article 178 *ibid* thus the findings of the courts below on the said point being totally in line with the settled law on the subject are immune from interference by this court in exercise of its revisional jurisdiction.

6. While addressing the Court, learned Law Officer, representing the petitioners, took specific plea that as no objections were filed by the respondent-contractor against the Award announced by the Arbitrators, he could not move the Court for modification of the same. In this regard, I do not see eye-to-eye with the learned Law Officer for the reason that section 15 of the Act, 1940 empowers the Court to modify an Award announced by the Arbitrator(s) while dealing with an application filed under the Act, 1940 provided the conditions

stipulated under the said provision are fulfilled. The said question has been dilated upon by Hon'ble Supreme Court of Pakistan in the case of *ASCON Engineers (Pvt.) Ltd. v. Province of Punjab through Secretary, Housing and Physical Planning Department* (**2002 SCMR 1662**) by *inter-alia* observing as under: -

> *"6.***** Therefore, we are of the opinion that even if it is assumed for the sake of arguments that there was no objection but the Court had the authority to correct the error by modifying the award. Reference in this behalf may be made to the judgment of Messrs Awan Industries Limited v. Executive Engineers, Lined Channel Division and another (1992 SCMR 65)……."*

Insofar as the case in hand is concerned, the respondent-contractor sought modification of the Award to the extent that he was entitled for interest from the date when the payment was due till its realization, thus, no illegality was committed by both the courts below while modifying the findings of the Arbitrators, on the point of interest, payable to the respondent-contractor.

It is relevant to note that Section 29 of the Act, 1940, empowers the Arbitrator to grant interest on Awards which for convenience of reference is reproduced herein below: -

> *"**29.Interest on award**.—Where and in so far as an award is for the payment of money the Court may in the decree, order interest, from the date of, the decree at such rate as the Court deems reasonable, to be paid on the principal sum as adjudged by the award and confirmed by the decree."*

A bare reading of the afore-quoted provision renders it crystal clear that the respondent-contractor was entitled for grant of interest against the unpaid amount. Further, this question came under discussion before the Hon'ble Supreme Court of Pakistan in the cases of *Dawood Cotton Mills Ltd. v. K.F. Development Corporation Ltd.* (**2006 SCMR 1555**) and *Province of Punjab through Secretary, Housing and Physical Planning, Lahore and others v. Ilam Din* (**1998 SCMR 110**). In the latter case, the Apex Court of the country, while dealing with question relating to power of the Court to award interest/mark-up on the decreed amount, has *inter-alia* held as under: -

> *"4.***** Learned trial Court, however, proceeded to give determination on merits. In the circumstances, the learned Judge in the High Court was right in holding that the Courts below did not commit any illegality in making the award rule of the Court and awarding the interest at the rate of 2 per cent, above the bank rate and as such no case was made out for interference in revisional jurisdiction."*

7. Now coming to the plea of learned Law Officer representing the petitioners that since the respondent-contractor

failed to complete the awarded work within the prescribed period, he was not entitled to any amount or interest thereon, I am of the view that the same does not hold any water for the reason that initial period stipulated between the parties, for completion of the work, was extended twice upon request of the respondent-contractor and it completed the work within the extended period except a patch which was subject matter of civil litigation, thus, it does not lie in the mouth of the petitioners to attribute entire delay to the respondent-contractor especially when they themselves extended the period of contract, subject to imposition of penalty and admitted that at a particular point the work was halted due to issuance of injunctive order by the civil court.

8. It has not been denied by the petitioners side that in case of any difference between the parties the dispute was to be settled through arbitration as per contents of the agreement and instead of discharging their liability towards settlement of any dispute through arbitration, of their own, the petitioners resorted to the said *via-media* firstly on the written move of the respondent-contractor and secondly pursuant to a direction

issued by the Provincial Ombudsman which speaks volumes about sluggishness on their part.

Even otherwise, both sides being signatories of the agreement were bound to honour their commitments and if any of them failed to perform its part, the other side could resort to arbitration but *dilly-dally* tactics used by the petitioners to avoid resolution of the matter through arbitration stands proof of the fact that instead of maintaining their trust amongst the contractors, the petitioners prolonged the matter on flimsy grounds which ultimately resulted into extra burden on the national exchequer in the shape of interest. The said conduct of the petitioners becomes more clearer when seen in the light of the fact that though the Award, announced by the Arbitrators, was made rule of the court through judgment, dated 30.11.2012, but till date they have not deposited even a single penny to avoid future interest. Such conduct deserves to be deprecated at all levels and the officials/officers involved in such slackness should be taken to task to make them a precedent for the others.

9. This Court agrees with learned Law Officer that national exchequer should be guarded against any attempt by unscrupulous person but at the same time government

authorities are bound to clear any outstanding liability of a citizen without any fault and in case they withhold due amount, without any justification, they cannot be given any exception on the pretext of safeguarding of the national exchequer. At the cost of repetition it is observed that petitioners' stubbornness is evident from the fact that they did not bother to deposit even a single penny despite making the Award as rule of court by learned Trial Court. If the petitioners were so sincere to safeguard the national exchequer there was no one impeding their way to deposit the amount determined by the Arbitrators to avoid any future liability in respect of interest but when they failed to perform their duty they have no justification to denounce the claim of the respondent-contractor regarding interest which has been validated by the two *fora* below.

10. Now coming to the contention of the learned Law Officer, representing the petitioners, that the judgment passed by learned Appellate Court offends against clear cut provisions of Order XX rule 5 CPC as independent findings have not been given on all *Issues*, I am of the view that in routine if a court fails to give its independent findings under each *Issue* same is not sustainable, however, when controversy between the parties

has been clinched in an exhaustive manner, the decision of a court cannot be set aside merely on the ground that independent findings on all *Issues* have not been given. Reliance in this regard is placed on the cases reported as *Muhammad Iftikhar v. Nazakat Ali* (**2010 SCMR 1868**), *Muhammad Riaz and others v. Mst. Ameer Bivi and others* (**2008 SCMR 1427**) and *Muhammad Aamir through L.Rs. v. Muhammad Sher* (**2006 SCMR 185**). In the last mentioned case, the Apex Court of the country, while dealing with the controversy, under discussion, has *inter-alia* observed as under:-

> *5.*****It is well-settled by now that a judgment which deals with all the points raised, fulfills the requirements of law even though it may not have discussed each issue separately cannot be termed as "illegal or ab initio void" as pressed time and again by the learned Advocate Supreme Court on behalf of the petitioner. If any reference is required the dictum laid down in Umar Din v. Ghazanfer Ali 1991 SCMR 1816 can be referred."*

If the objection raised by the learned Law Officer, under discussion, is considered in the light of afore-quoted judgments of the Hon'ble Supreme Court of Pakistan there leaves no doubt that learned Appellate Court committed no illegality while passing impugned judgment & decree especially when it validated the findings of the learned Trial Court and introduced

modification to the extent that 15% interest against awarded amount would be payable annually.

11. Learned Law Officer, representing the petitioners, ferociously argued that since the *Issues* were not framed according to pleadings of the parties, dispute between the parties was not decided as per law. In this regard, I am of the view that court can add or delete an *Issue* in terms of Order XIV CPC, on its own or on the move of any party. It is not the case of the petitioners that they ever moved any application before learned Trial Court or learned Appellate Court for amendment/addition or deletion of any *Issue* or raised oral objection against framing of *Issues* by learned Trial Court, thus, they cannot be allowed to vouch said objection in these proceedings. Further, a cursory glance over the *Issues* framed by learned Trial Court brings it to limelight that they are in consonance with the pleadings of the parties.

12. Even otherwise, when a party opts to lead evidence and gets decision of a matter, without raising any objection against framing of *Issues* by the court of first instance, it cannot be allowed to raise such objection at some subsequent stage. Reliance in this regard is placed on the cases reported as *Najaf*

Iqbal v. Shahzad Rafique (**2020 SCMR 1621**) and *Muhammad Din and others v. Mst. Naimat Bibi and others* (**2006 SCMR 586**). In the former case the Apex Court of the country while dilating upon the consequences of non-raising of objection against framing of *Issues* before the court of first instance, has *inter-alia* observed as under: -

> *"6.***** So far as objection of learned counsel for the appellant that the proper issues were not framed, we are afraid that at this stage when the pleadings of the parties were in their knowledge and both the parties have led evidence of their own choice in the shape of oral as well as documentary, the objection of non-framing of proper issues is not relevant at this stage."*

13. Though the petitioners are contesting the matter before this Court tooth and nail but continuation of injunctive order, issued by the Civil Court, till eruption of dispute between the parties speaks volumes about their sluggish attitude. Had the petitioners been able to establish that the entire delay was attributable to the respondent-contractor, they were well within their right to object to the claim of the respondent-contractor and withhold a portion of the outstanding amount but when they themselves failed to perform their duty towards vacation of stay order, issued by the civil court, they were not justified to blame the respondent-contractor in that regard.

14. It has not been denied by the learned Law Officer, appearing on behalf of the petitioners, that the Arbitrators were appointed with mutual consent of the parties, thus, without establishing that the said Arbitrators misconducted on any point the petitioners were bound to honour the Award announced by them. Though, learned Law Officer has addressed the Court at certain length but has not been able to point out any material illegality in the impugned judgments & decrees of the courts below justifying interference by this Court in exercise of its revisional jurisdiction.

15. While addressing the Court learned Law Officer, representing the petitioners, took specific plea that as no objections were filed by the respondent-contractor before the Arbitrators, its request before the Civil Court for modification of the Award was not entertainable. In this regard, I do not find myself in agreement with learned counsel for the petitioner for the reason that while dealing with an application for making an Award as rule of the court, the Court is supposed to consider as to whether the request can be acceded to or not notwithstanding the fact as to whether any objection was filed by the either side or not. In this regard, I stand guided by the judgment of the

Hon'ble Supreme Court of Pakistan, reported as *A Qutubuddin Khan v. CHEC Millwala Dredging Co. (Pvt.) Ltd.* (**2014 SCMR 1268**) wherein the power of the Court to decide as to whether an Award be made rule of the Court or not has *inter-alia* held as under: -

> *"11. It is settled principle of law that the award of the Arbitrator who is chosen judge of facts and of law, between the parties, cannot be set aside unless the error is apparent on the face of the award or from the award, it can be inferred that the Arbitrator has misconducted himself under sections 30 and 33 of the Act. However, even if no objection under sections 30 and 33 of the Act has been filed, the Court at the time of making award rule of Court can see that award does not suffer from patent illegality." (emphasis provided)*

16. As per law laid down by the apex Court of the country in the cases of *Hajid Wajdad v. Provincial Government through Secretary Board of Revenue, Government of Balochistan, Quetta and others* (**2020 SCMR 2046**) and *Muhammad Idrees and others v. Muhammad Pervaiz and others* (**2010 SCMR 5**) concurrent findings of facts recorded by the courts below cannot be upset by this Court in exercise of its revisional jurisdiction in a casual manner until and unless the same are proved to be perverse or arbitrary or the same are based on

misreading or non-reading of evidence which is not the position in the case in hand.

17. Now coming to the case-law relied upon by the petitioners, I am of the view that the same is inapplicable to the facts and circumstances of the present case inasmuch as in the case of *Province of the Punjab through Collector District Khushab, Jauharabad and others* (*Supra*) the Apex Court of the country has held that when Appellate Court decides to reverse findings of learned Trial Court it is bound to give reasons whereas in the instant case learned Appellate Court has endorsed the findings of learned Trial Court with minor modification that interest would be payable annually. In the case of *Muhammad Ali* (*Supra*) the question in pith and substance revolved around power of the Civil Court to reject plaint of a suit which was filed while bypassing the remedies before the revenue authorities which is not the position in the case in hand. Likewise, in the case of *Muhammad Afzal and others* (*Supra*) the controversy related to tenancy and grant of proprietary rights which has not remotest connectivity with the issue involved in this petition. So far as the cases of *Mst. Sughran Bibi*, *Bakht Zamin*, *Muhammad Yousaf and others*,

Mansab Ali, *Muhammad Khalid and another*, *Aslam and another*, *Raza Hussain*, *Ms. Benazir Bhutto* and *Azizur Rehman* (*Supras*) are concerned, in the said cases the Apex Court of the country reversed the findings of the *fora* below on the ground that *Issues* were not properly framed whereas in the instant case no such deficiency has been noted by this Court, thus, said cases also stand distinguished. Coming to the case of *Alam Sher through Legal Heirs* (*Supra*), I have observed that the proposition in the said case related to jurisdiction of civil court to interfere in the order passed by the revenue authorities under the Colonization of Government Lands (Punjab) Act, 1912 which is not the position in the case in hand.

18. For what has been noted above, I see no force in this petition which is accordingly **dismissed** with no orders as to costs.

(Shujaat Ali Khan)
Judge

Approved for Reporting.

Judge

Announced in open Court today i.e. 19.04.2024.

Judge

G.R.