

**JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE.
JUDICIAL DEPARTMENT**

RFA No.10241 of 2023

Silver Star Insurance Company Limited, Lahore

Versus

M/s Kamal Pipes Industries, Lahore & another

JUDGMENT

Date of hearing: 16.02.2023.
Appellants by: Barrister Husnain Ali Ramzan, Advocate.
Mr. Muhammad Zain Qazi, Assistant Attorney General on Court's call.

MUHAMMAD SAJID MEHMOOD SETHI, J.- This consolidated judgment shall decide instant appeal, along with following connected appeals, as common questions of law and facts are involved in these cases:-

1. **RFA No.10237 of 2023** titled Silver Star Insurance Company Limited, Lahore v. M/s Yaqoob Industries, Lahore & another.

2. **RFA No.10255 of 2023** titled Silver Star Insurance Company Limited, Lahore v. M/s KB Steel Industries (Pvt) Ltd., Lahore & another.

3. **RFA No.10262 of 2023** titled Silver Star Insurance Company Limited, Lahore v. Hamza Industries, Lahore & others.

2. Through instant appeal, appellant has called into question judgment dated 23.12.2022, passed by learned Insurance Tribunal, Lahore, whereby insurance petition, filed by respondent No.1, was allowed and the claim was partly decreed to the extent of remaining amount of Rs.13,038,867/- along with the liquidated damages from the date of filing of the claim till the realization of the amount.

3. Learned counsel for appellants submits that without deciding appellants' applications for impleading Pakistan Re Insurance

Company Limited and seeking amendment in the written reply, impugned judgment is not sustainable in the eye of law.

Learned counsel for appellants, at the very outset, was confronted with Para 8 of the impugned judgment, whereby insurance petition was decided on the basis of certain admissions made by the appellants, which reads as under:-

“8. Since the claim of the petitioner is admitted by the respondent No.1, partial payment of the claim has already been made by the respondent No.1 and categorically stated that the remaining amount would be paid as and when the funds would be available with the respondent No.1, therefore, the petitioner is entitled for the relief claimed in the prayer.”

It is also noted by learned Insurance Tribunal that appellant in its written reply to the insurance petition unconditionally acceded the claim of respondent No.1, specifically mentioning the amounts paid and willingness to pay the remaining amount in installments as allegedly appellant was facing financial hardships.

In response, learned counsel for appellants could not rebut the above facts.

4. Heard.

5. Undeniably, appellants freely and explicitly acknowledged the claim of respondent No.1, payment of partial claim to respondent and also showed readiness to settle the outstanding amount, which is tantamount to admission of its liability regarding the decretal amount. Needless to say that an admission / statement / undertaking, by a party, during the judicial proceedings has to be given sanctity while applying the principle of legal estoppel and estoppel by conduct as well as to respect moral and ethical rules. Hence, at any subsequent stage, a party cannot turn around to wriggle out from the consequence of such admission. If disclaimer therefrom is allowed as a matter of right, then it will definitely result into distrust of the public litigants

over the judicial proceedings. Article 114 of the Qanun-e-Shahadat Order, 1984 provides that when a person has by his declaration, act or omission intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative is allowed in any suit or proceedings between the parties to deny the truth of that thing. This provision enacts a rule of evidence whereby a person is not allowed to plead contrary to a fact or a state of thing which he formerly asserted as existing and made the other party to believe it as such and then acted on it on such belief. In fact, this principle is founded on equity and justness with straightforward objective to prevent fraud and ensure justice. Reference can be made to Sardar Ali Khan v. State Bank of Pakistan and others (2022 SCMR 1454), Combind Investment (Pvt.) Ltd. v. Wali Bhai and others (PLD 2016 Supreme Court 730), Mst. Ghazala Zakir v. Muhammad Khurshid and 7 others (1997 CLC 167), Muhammad Majid Iqbal through Special Attorney v. Judge Family Court, Dunya Pur and 2 others (2021 CLC 644), Pakistan through Secretary, Ministry of Defence, Islamabad and 2 others v. Wader Lal Bux (2021 CLC 1609) and Mushtaq Ahmad v. Mohsinn Iqbal (2022 CLC 1461).

6. The Latin maxim “*Qui Approbat non Reprobat*” quite literally translates to “*the one who approbates, cannot reprobate*” or “*that which I approve, I cannot disapprove*”. The Doctrine of Approbate and Reprobate was established upon the Scottish laws and is now an essential principle of equity. To approve or reject anything is to approbate or reprobate. A person cannot approbate and reprobate something simultaneously, according to the law. The Doctrine of Approbate and Reprobate is also commonly known as the ‘Doctrine of Election’ in English Law. The Doctrine of Election bases itself upon the maxim “*Allegans contraria non est audiendus*” which means when

people make comments that contradict one another, they will not be heard. Certain principles for application of doctrine of Approbate and Reprobate were also enunciated by High Court of Justice Queen's Bench in the case of *MBP v. LGK [2020] EWHC 90 (TCC)*, which read as under:-

"58. All the same, certain principles arise from the case law taken as a whole:

- i) The first is that the approbating party must have elected, that is made his choice, clearly and unequivocally;
- ii) The second is that it is usual but not necessary for the electing party to have taken a benefit from his election such as where he has taken a benefit under an instrument such as a will;
- iii) Thirdly, the electing party's subsequent conduct must be inconsistent with his earlier election or approbation.

In essence, the doctrine is about preventing inconsistent conduct and ensuring a just outcome."

In these cases, the appellants in unequivocal terms agreed to pay back the remaining claim of respondents, which resulted into passing the impugned judgment; therefore, they are not allowed to challenge the same decision by filing the appeals. Reliance is placed on *Haji Ghulam Rasool and others v. The Chief Administrator of Auqaf, West Pakistan (PLD 1971 Supreme Court 376)*, *Muhammad Sharif and 13 others v. Inayat Ullah and 24 others (1996 SCMR 145)*, *Overseas Pakistanis Foundation and others v. Sqn. Ldr. (Retd.) Syed Mukhtar Ali Shah and another (2007 SCMR 569)* and *Shahzada Aman-e-Room and others v. Sher Bahadar Khan and others (2022 YLR 2295)*.

7. There is only one contention of learned counsel for appellants that learned Insurance Tribunal was obliged to dispose of applications for impleading Pakistan Re Insurance Company Limited as party and seeking amendment in written reply before deciding the main petition. It is observed that in view of afore-noted

admissions of appellants, these applications have no material bearing on the merits of the case. Even otherwise, Pakistan Re Insurance Company, Limited is not privy to the contracts executed between appellants and respondents and the stance of appellants is that they had made arrangements for reinsurance with aforesaid insurance company, whereby said company is bound to share the loss out of which certain payments had already been made to appellants, however the remaining was not being paid without lawful excuse. In our opinion, such claim / stance has no link with the respondents' claim and cannot be a basis for impleading the said insurance company as party in litigation between respondents and appellants. Moreover, it is not persistent rule that in all eventualities, the miscellaneous applications ought to have been decided before final determination of the controversy because this principle is adhered to for the sake of justice. If the matter is otherwise conclusively determined by the Court, the sole factum of indecision of some application(s) shall not frustrate the proceedings / verdict of the Court. Guidance can be taken from dictum laid down in *Peer Bakhsh and others v. Nabi Bakhsh and others (2002 YLR 1630)*, *Hashwani Hotels Limited through Senior Manager v. Sindh Insurance Tribunal, Karachi and 3 others (2016 CLD 1790)* and *Mst. Mairaj Bibi and 4 others v. Muhammad Shafique through L.Rs. and others (PLD 2020 Lahore 888)*.

8. In view of the above, instant as well as connected appeals, being devoid of merits, are ***dismissed in limine***.

(Asim Hafeez) (Muhammad Sajid Mehmood Sethi)
Judge Judge

APPROVED FOR REPORTING

Judge