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JUDGMENT SHEET

LAHORE HIGH COURT
MULTAN BENCH MULTAN

JUDICIAL DEPARTMENT

Civil Revision No.931-D of 2018

Sultan Mehmood Rana *Vs.* Naeem Ahmad, etc.

J U D G M E N T

Date of Hearing:	19.02.2024
Petitioner by:	Syed Kabeer Ahmad Mehmood, Advocate.
Respondent No.1 by:	Mr. Abdul Salam Alvi, Advocate.

Anwaar Hussain, J. The petitioner, Sultan Mehmood Rana and respondent No.1, Naeem Ahmad ("**the respondent**") with their mutual consent appointed respondents No.2 to 6 as Arbitrators/Umpire ("**Arbitrators**") to decide the controversy between them. An award dated 04.06.2015 was rendered by the Arbitrators. On 27.06.2015, the respondent filed an application for cancellation/setting aside of the award, whereas, on 28.01.2016, the petitioner filed an application for making the award a Rule of the Court. Through consolidated judgment dated 09.12.2017, Civil Judge Class-II, Jahanian dismissed the application of the respondent and accepted the application of the petitioner and made the award Rule of the Court. An appeal was preferred by the respondent and *vide* impugned judgment and decree dated 26.02.2018, the Appellate Court below, without touching the merits of the case, held that the award cannot be made Rule of the Court as it was not filed by the petitioner within 90-days time period stipulated under Article 178 of the Limitation Act, 1908 ("**the Act 1908**").

2. Learned counsel for the petitioner submits that the judgments of the Courts below are at variance. Adds that while the findings on the merits of the award has been maintained including dismissal of the application of the respondent to the extent of cancellation/setting aside of the award, it is erroneous on part of the Appellate Court below to hold that the application of the petitioner was time barred as no formal notice was issued by the Arbitrators regarding making and signing of the award in terms of Article 178 of the Act 1908. Adds that the question of limitation was not raised by the respondent and the findings of the Arbitrators cannot be set aside on the basis of technicalities.

3. Conversely, learned counsel for the respondent has supported the findings of the Appellate Court below and avers that there was no need of issuance of any formal notice to the petitioner by the Arbitrators inasmuch as the respondent and the petitioner gave security cheque(s) to the Arbitrators and when it was found by the Arbitrators that respondent is liable to pay an amount of Rs.954,018/-, to the petitioner, the security cheque issued by the respondent was filled and handed over to the petitioner, by the Arbitrators, who admittedly submitted the same in his bank, which fact indicates that no formal notice was required in terms of Article 178 of the Act 1908 and the petitioner was well aware of making and singing of the award.

4. Arguments heard. Record perused.

5. Interplay of the factual matrix of the case and the applicable law raises following questions to be answered by this Court:

i. Whether the limitation period envisaged under Article 178 of the Act 1908, for filing an application to make the award a Rule of the Court commences from the date of issuance of formal notice in writing by the Arbitrator(s) to the parties or the general

knowledge of the parties about making and signing of the award is sufficient to non-suit a litigant on question of limitation?

ii. Can a Court dismiss the objections to the award but at the same time refuse to make the award a Rule of the Court on the ground that the application to that effect was not within limitation?

6. Factual matrix of the case is not disputed. The sole ground on which the appeal of the respondent has been allowed while maintaining the findings on merits of the case and the petitioner's application for making the award Rule of Court has been dismissed is point of limitation. This Court has gone through the impugned judgment, which proceeds on the premise that since the award was made in presence of the petitioner, therefore, he had notice of making of the award on the said date as cheque given by the respondent, dated 08.06.2015, was handed over to the petitioner, which was admittedly presented and was dishonoured, therefore, the petitioner had the notice for making of award on the said date. Before rendering the opinion on the points of determination formulated hereinabove, it will be advantageous to reproduce Article 178 of the Act 1908 as also Section 14(1) of the Arbitration Act, 1940 ("**the Act 1940**") as the inter play of the said legal provisions regulates as to how the limitation period prescribed for filing an application for making the award a Rule of the Court is to be reckoned. Article 178 of the Act 1908 reads as under:

Description	**Period of limitation**	**Time from which period begins to run**
178.– Under the Arbitration Act, 1940,(X of 1940) for the filing in Court of an award.	Ninety days.	The date of service of the notice of the making of the award.

Whereas Section 14(1) of the Act 1940 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.

Article 178 of the Act 1908 clearly depicts that the limitation starts from "*the date of service of the notice of the making of the award*". Section 14(1) of the Act 1940 makes it clear that the Arbitrators after making and signing of the award have to give a notice, in writing, of the making and signing of the award to the parties. The requirement of a notice in writing is important as the service of notice is the point from which the limitation for making an application to the Court for filing the award commences per Article 178 of Act 1908. This Section is to be also read with Section 42 of the Act 1940, which provides that any notice that is required to be served by an Arbitrator shall be served in the manner provided in the arbitration agreement or if there is no such provision then by delivering it to the person on whom it is to be served or by sending it by post at the usual address of such person. Section 42 of the Act 1940 reads as under:

> **42. Service of notice by party or arbitrator**. Any notice required by this Act to be served otherwise than through the Court by a party to an arbitration agreement or by an arbitrator or umpire shall be served in the manner provided in the arbitration agreement, or if there is no such provision, either—
>
> (a) by delivering it to the person on whom it is to be served, or
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> (b) by sending it by post in a letter addressed to that person at his usual or last known place of abode or business in [Pakistan] and registered under Chapter VI of the Post Office Act, 1898.

The afore-noted provisions make it clear that the Act 1940 provides a clear and specific manner in which the notice is to be served by the Arbitrator(s). There is no room of implied notice under the law in respect of making and signing of the award. The above quoted provisions of law have technical meanings and can only be construed as requiring of issuance of a separate notice in writing by the Arbitrator(s) notwithstanding the fact that a party has knowledge of the passing of the award through receipt of any instrument (cheque in the instant case) handed over to him for satisfaction of amount awarded by the Arbitrator(s). Suffice to observe that the law of limitation contemplates general principle of administration of justice, which has the effect of preventing a party from having recourse to redressal of rights through judicial process even where such rights subsist and therefore, any law whereby the recourse to the Court(s) is restricted, must be construed strictly. This Court is of considered opinion that the proceedings should only be held to be barred by time if the chicaneries of law of limitation are made applicable in strictest sense. Case reported as "*Muhammad Shafi and others v. Muhammad Sabir and others.*" **(PLD 1960 Lahore 591)** is referred in this regard. A question also arises as to how the limitation is to be governed, if no notice is given by the Arbitrator(s) to the party. This Court is of the opinion that in such eventuality it is Article 181 of the Act 1908, which is residuary clause that will be applicable and the same contemplates a period of three years.

7. There is another angle from which the first legal question formulated hereinabove can be analysed. The Act 1940 makes it amply clear that after an award is rendered, any party thereto or any person claiming thereunder may request the Arbitrator(s) or the Umpire to cause the award or its signed copy thereof, together with any disposition or the document, which may have been taken and/or

proved, to be filed in the Court. It is pertinent to mention here that no limitation has been provided under the Act 1908 whereby the party is required to make a request to the Arbitrators or the Umpire to cause the award to be filed in the Court and again residuary Article 181 of the Act 1908 is applicable and a party to arbitration proceedings can make such a request to the Arbitrators within three years time period from the date of making and signing of the award. Here it is imperative to observe that the object of giving notice to the parties is to enable them to file an application for setting aside the award. It is worth mentioning that when the respondent filed an application for cancellation of the award, he also categorically acknowledged that the Arbitrators have not issued any formal notice, in writing, to the parties regarding making of the award. Para No.4 of the application of the respondent reads as under:

> "4. یہ کہ مبینہ فیصلہ ثالثی کا علم من سائل کو مورخہ 9.6.15 کو اس وقت ہوا جب کہ مسئول علیہ نمبر 1 نے گھر میں کہا کہ ثالثان نے مجھے ضمانتی چیک پُر کر کے دے دیا ہے جسپر من سائل نے رانا عبدلروف مسئول علیہ نمبر 2 سے دریافت کیا تو اس نے کہا کہ ہاں میں نے فیصلہ بھی کر دیا ہے اور چیک پر کر کے حوالے مسئول علیہ کرنے کا فیصلہ کیا ہے **چونکہ من سائل کو ثالثی فیصلہ کا کوئی علم نہ تھا اور اس کی فوٹو کاپی نہ مل سکی تھی** جسپر من سائل نے دعوی حکم امتناعی دائر کیا جو کہ عدالت جناب محمد یامین صاحب سول جج درجہ دوم زیر سماعت ہے فیصلہ کی فوٹو کاپی حاصل ہونے پر دعوی ہذا دائر کیا گیا ہے اور دعوی متذکرہ واپس لے لیا جائے گا۔"

(Emphasis supplied)

8. Adverting to the second question as to whether a Court can dismiss the objections to the award but at the same time refuse to make the award a Rule of the Court on the ground that the application of a party for filing/making the award a Rule of the Court was not within limitation, it is pertinent to mention that once an award is before the Court, either through the Arbitrator(s) or any party (for example the respondent), then in terms of Section 17 of the Act 1940, it is the duty of Court to examine the same and see whether it suffers from any

patent illegality or if there is any cause to remit the award to the Arbitrator(s) irrespective of the fact that opposite party (the petitioner in present case) has not approached the Court within time. Section 17 of the Act 1940 reads as under:

> **17. Judgment in terms of award**. Where the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration 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.

The above quoted provision of the Act 1940 is couched in mandatory terms as the same is signified by use of the word "shall" and cast a duty upon the Court to pass a decree if it sees no cause to remit or set aside the award. The proceedings under Section 17 commence once an award has been filed in the Court. The very fact that the respondent filed an application seeking cancellation/setting aside of the award means that it was admitted that the award had been made and that the proceedings under Section 17 of the Act 1940 would commence. In case reported as "*Noor Muhammad vs ADJ Nankana Sahib etc.* **(1996 CLC 268)**, it has been held as under:

> "*6……The provisions of section 17 of the Act deal with cases where the award actually comes before the Court either through a party or the arbitrator.* ***Once an award comes before the Court then the Court has got jurisdiction to take further proceedings in accordance with the law and pass a decree thereon.*** The scheme of section 17 of the Act is that after an award is filed in the Court then an opportunity is given to the party challenging its legality or correctness to file an objection petition to set aside the award. Such a petition has to be filed within a period of 30 days under Article 158 of the Limitation Act, failing which the party in whose favour

> the award is made is entitled to a decree in his favour. ***If the objection petition is dismissed on merits, then also the party holding the award in his favour is entitled to a decree.*** The above exercise contemplated under section 17 of the Act is necessary if the award has been filed in the Court."
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> (***Emphasis supplied***)

Similarly, in case reported as "*M/s. Awan Industries Ltd. v. The Executive Engineer, Lined Channel Division and another.*" **(1992 SCMR 65)**, it has been observed as under:

> "17……the court has power under section 17 of the Act to set it aside without waiting for an objection to award being filed or without considering any application for setting it aside, if there be any, irrespective of the question whether or not any objection to the award was filed or whether the objection, if filed, was not within time."

Law laid down in case of *M/s. Awan Industries Ltd., supra* was followed by the Supreme Court in case reported as "*A. Qutbuddin Khan v. Chec Milliwala Dredging Co. (Pvt.) Ltd.,* (**2014 SCMR 1268**).

9. The preceding discussion leads to an ineluctable conclusion that once the award is before the Court, it is the duty of the Court to scrutinize the award, which is independent of the fact whether any side has objected to the same or not or the application of one of the parties to arbitration proceedings is time barred. In present case, the Trial Court discharged that duty and passed the decree on the basis of the award in favour of the petitioner whereas the Appellate Court has upended the said findings without touching the merits of the case by merely holding that the application of the petitioner to make the award a Rule of Court was time barred which in-fact was not as examined hereinabove, and hence, the finding of the Appellate Court below is erroneous and not sustainable.

10. Therefore, without touching the merits of the case, lest it may prejudice the case of either side, the present petition is **allowed** and the impugned judgment rendered by the Appellate Court below is set aside. As a corollary, the appeal of the respondent shall be deemed to be pending, which shall be decided on its merits after extending an opportunity of hearing to the parties. It is expected that the matter will be decided, expeditiously, preferably within a period of 02-months from the receipt of certified copy of this judgment. No order as to costs.

(ANWAAR HUSSAIN)
JUDGE

Approved for reporting

Judge

Maqsood