

JUDGMENT SHEET
IN THE LAHORE HIGH COURT,
RAWALPINDI BENCH, RAWALPINDI
JUDICIAL DEPARTMENT

F.A.O.No.88 of 2023

Waqas Yaqub V/S *Adeel Yaqub and another*

JUDGMENT

Date of hearing	07.05.2024
Appellant(s) by	M/s Qazi M. Waqas Arif and Syeda Nida Zahra, Advocates.
Respondent(s) by	Mr. Sameed Khalid, Advocate.
	Mr. Arshad Mahmood Malik, Assistant Attorney General with Barrister Sibah Farooq. Mr. Abid Aziz Rajori, Assistant Advocate-General. Zarmeena Rahim, Advocate, Syed Bulent Sohail, Advocate/Arbitrator. Barrister Talha Ilyas Sheikh, MCIArb.

In order to deprive a defendant of his recourse to arbitration a “step in the proceedings” must be one which impliedly affirms the correctness of the proceedings and the willingness of the defendant to go along with a determination by the Courts of law instead of arbitration.

Lord Denning MR in Eagle Star Insurance Co Ltd v Yuval Insurance Co Ltd [1978] 1 Lloyd's Rep 357

JAWAD HASSAN, J. The Appellant filed this First Appeal under Section 39 of the Arbitration Act, 1940 (the “*Act*”) against order dated 22.07.2023 whereby learned Civil Judge 1st Class, Rawalpindi, proceeded to dismiss his application under Section 34 of the “*Act*”. This judgment will decide the issue of **stepping into proceedings** in connection with application under aforementioned Section 34 of the “*Act*” in a suit pending between the parties before the civil Court where there is exclusive written agreement between the parties with specific arbitration clause. The Court will also determine the test laid down by the Supreme Court of Pakistan in numerous judgments as the Civil Court has dismissed the application for stay of proceedings under Section 34 of the “*Act*”, which will eventuate in creating hindrance in

promoting the ADR in Pakistan and building its ecosystem in context to the global development in ADR. It is the duty of the Courts to promote ADR by way of developing the confidence of the parties to adopt ADR without lengthy litigation before the Courts, which practice would definitely strengthen the ecosystem of ADR to promote foreign investment in Pakistan. The Courts and the ADR have symbiotic relationship with critical interdependence as the Supreme Court of Pakistan in various judgments has emphasized upon strengthening of ADR, arbitration and mediation and has settled the principles that there should be minimal interference by the Courts in such process to make way for speedy, amicable, efficacious and expeditious resolution of arbitrable disputes. In this case, instead of referring the matter to arbitration, the Civil Court dismissed the stay application under Section 34 of the "Act" without any solid and justified reasons.

I. CONTEXT

2. The Appellant and the Respondent No.1 are real brothers inter se and partners in the business of manufacturing and sales of wood furniture under the name and style of M/s Unique Wood Working Company duly incorporated and registered under the Partnership Act, 1932 with Registrar of Firms, Rawalpindi by virtue of a partnership deed dated 15.06.1983 executed between them which was later on changed/ altered firstly on 07.01.2012 and then on 07.09.2021, respectively. The initial partnership deed dated 15.06.1983 had a dispute settlement clause i.e. Clause No.9 to which extent no change/alteration was made in the subsequent partnership deeds. The said Clause reads as follows:

"9. That in the event of any dispute arising among the parties the matter shall be referred to any arbitrator appointed with the mutual consent of all the partners and his decision shall be binding on all of them."

II. PROCEEDINGS IN TRIAL COURT

3. On 19.05.2023, a dispute arose between the parties which prompted the Respondent No.1 to file a suit for dissolution of initial partnership deed dated 15.06.1983, rendition of accounts, recovery of

amount and mesne profit damages and permanent injunction, wherein the Appellant appeared and filed memo of appearance on 08.06.2023 and the trial Court passed following order:

کو نسل مدعی حاضر
کو نسل مدعاعلیہ نمبر 1 حاضر
رپورٹ تعییں کنندہ موصول شد۔ رسیدات رجسٹری داخل شد۔ منجانب مدعاعلیہ نمبر 1، میمو
حاضری داخل شد۔ افسر جلیس محکمانہ کورس پر ہیں۔ ملتی ہو کر برائے ادخال و کالات نامہ، جواب
دعویٰ، جواب درخواست، مدعاعلیہ نمبر 1 و مکرر طلبی مدعاعلیہم حسب الحکم سابق مثل آئندہ تقرر
پیش ہوئے۔ سنایا گیا 24.06.2023

On 24.06.2023, learned counsel for the Appellant filed power of attorney and proceedings in the learned trial Court depicted in following manner:

کو نسل مدعی حاضر
کو نسل مدعاعلیہ نمبر 1 حاضر
افسر جلیس رخصت اتفاقیہ پر ہیں۔ منجانب مدعاعلیہ نمبر 1 و کالات نامہ داخل شد۔ رسید رجسٹری
داخل شد۔ ملتی ہو کر مکرر طلبی بقیہ مدعاعلیہم بذریعہ سمنات باخذ طلبانہ لفافہ رجسٹری یوائیم اس و
ادخال جواب دعویٰ، جواب درخواست مدعاعلیہ نمبر 1 مثل آئندہ تقرر 06.07.2023 پیش
ہوئے۔ سنایا گیا۔

On 06.07.2023, the counsel for the Appellant sought an adjournment for filing written statement/written reply, and the trial Court passed following order:

کو نسل مدعی حاضر
نما آئندہ کو نسل مدعاعلیہ نمبر 1 حاضر
جواب کے لیے منجانب مدعاعلیہ نمبر 1 مزید مهلت کی استدعا ہے۔ حسب استدعا بغرض انصاف
ملتی ہو کر قطعی آخری موقع برائے ادخال جواب دعویٰ، جواب درخواست مدعاعلیہ نمبر 1 و مکرر
طلبی بقیہ مدعاعلیہم بذریعہ سمنات باخذ طلبانہ لفافہ رجسٹری AD یوائیم اس سہہ یوم داخل ہو کر
مثل آئندہ تقرر 22.07.2023 پیش ہوئے۔ بصورت دیگر حق جواب مدعاعلیہ نمبر 1 ختم کر
دیا جائے گا۔ سنایا گیا۔

Meanwhile, the Appellant filed an Application under Section 34 of the Act, whereupon the learned trial Court, after hearing the Parties, passed the impugned order dated 22.07.2023, operative part of which is as follows:

7. *This court seeks clear guidance from above referred judgment that, had the*

defendants intending for an arbitration settlement, they might had filed application under Section 34 of the Arbitration Act, 1940 at the earliest or at first opportunity but they filed same after availing couple of adjournments and that too for filing of written statement. For these reasons, the plea taken by the defendant No.1 is repelled and consequently application u/s 34 of the Arbitration Act, 1940, preferred by the defendant No.1 stands dismissed.

8. As discussed above, ample opportunities has been granted to defendant No.1 for filing of written statement/written reply. Stipulated period as provided under Civil Procedure Code, 1908 has also been elapsed. Therefore, right of defendant No.1 for filing written statement/written reply stands struck off. ... ”

Hence this appeal under Section 39 of the “*Act*”.

III. APPELLANT’S SUBMISSIONS

5. Qazi M. Waqas Arif, Advocate *inter alia* argued that the Appellant never ever stepped into the proceedings of the main suit before the learned trial Court, rather he filed application under Section 34 of the “*Act*”, which was wrongly dismissed vide impugned order; that on 08.06.2023, learned Presiding Officer concerned was on leave for some departmental course and learned counsel for Appellant whilst appearing in Court informed the Court Reader that the Appellant was inclined to file an Application under Section 34 of the “*Act*” for staying the proceedings of the suit and referring the matter to the arbitrator but despite that the case was adjourned to 24.06.2023 for filing of written statement; that on fixed date, the learned Presiding Officer was again on casual leave, therefore, learned counsel for Appellant placed the Application before the Court Reader, which was not taken on record and the case was adjourned to 06.07.2023; that on 06.07.2023, learned counsel for Appellant filed aforesaid Application under Section 34 of the “*Act*” but the learned trial Court refused to accept the same on the pretext that the case was fixed for filing of written statement and adjourned it for 22.07.2023; that on 22.07.2023,

the Appellant again submitted aforesaid application, which was wrongly dismissed vide impugned order. Learned counsel for the Appellant has vehemently agitated that the Court while passing the impugned order dated 22.07.2023 did not probe into the main issue; that arbitrary powers were used by the Presiding Officer concerned and his Reader for insisting the Appellant to file written statement despite of the fact that the Appellant repeatedly tried to submit his Application under Section 34 of the "Act"; that the learned trial Court has ignored the aforesaid material facts and objections raised by the Appellant. Lastly, in support of his arguments, he has placed reliance on the judgments reported as "Pakistan International Airlines Corporation versus Messrs Pak Saaf Dry Cleaners" (**PLD 1981 SC 553**), "Pakistan Stone Development Company Limited through Chief Executive Officer v. Muhammad Yousaf and another" (**2018 CLC 877**), "Province of Punjab through Secretary to Government of Punjab, Communication and Works Department and 4 others" (**1986 CLC 2800**) and "MD. ESACK v. Raja Miah and another" (**PLD 1969 Dacca 719**).

IV. RESPONDENTS' SUBMISSIONS

6. Conversely, learned counsel for the Respondents Mr. Sameed Khalid, Advocate refuted the arguments of learned counsel for the Appellant while submitting that it is well settled principle of law that seeking even a single adjournment amounts to "stepping in proceedings" and in this case the Appellant obtained consecutive three (03) adjournments, hence, he stepped into the proceedings of the suit, therefore, his Application under Section 34 of the "Act" was rightly dismissed. He added that the learned trial Court while passing the impugned order has rightly observed that Application to stay legal proceedings should have been filed before taking any further steps in proceedings, that too, at the earliest possible opportunity. He has submitted that impugned order has been passed in accordance law. In support of his contentions, he has relied on the judgments reported as "Muhammad Farooq v. Nazir Ahmad and others" (**PLD 2006 SC 196**), "Muhammad Ilyas Khokhar versus Ihsan Ilahi Mughal" (**2000 CLC 206**), "Muneer Flour Mills (Private) Limited and 4 others v.

National Bank of Pakistan through Chief Manager and 2 others” (**2005 CLD 1019**), “Government of the Punjab and others v. Messrs Muhammad Asad & Co.” (**2021 CLC 2135**), “Aftab Ahmad Khan and another v. Wazir Ahmad and 4 others” (**2014 CLC 1401**), “Union of India, Applicant v. Girish Ghandra and others, Opposite Party” (**AIR 1953 ALL. 149 (Vol.40, C.N. 66) (LUKHNOW BENCH)**), “Abdul Quddoos Dost Mohammad Momin and another, Plaintiffs-Appellants v. Abdul Ghani Abdul Rahman and another, Defendants-Respondents” (**AIR 1954 NAGPUR 332) (Vol. 41, C. N. 115**)

7. Arguments heard. Record perused.

V. DETERMINATION BY THE COURT

8. In order to resolve the issue in hand, the only moot point requiring adjudication is whether request for adjournment and filing of power of attorney or Application under Section 34 of the Act, without filing anything else amounts to “*stepping into proceeding*”. Before proceeding further, it would be advantageous to reproduce Section 34 of the “Act” dealing with the matter in hand which reads as:

“34. Power to stay legal proceedings where there is an arbitration agreement.- Where any party to an arbitration agreement or any person claiming under him commences any legal proceedings against any other party to the agreement or any person claiming under him in respect of any matter agreed to be referred, any party to such legal proceedings may, at any time before filing a written statement or taking any other steps in the proceedings, apply to the judicial authority before which the proceedings are pending to stay the proceedings; and if satisfied that there is no sufficient reason why the matter should not be referred in accordance with arbitration agreement and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, such authority may make an order staying the proceedings.”

Plain reading of above provision of law makes clear the concept of “step in proceedings” which requires to display

unequivocal intention to proceed with the suit and to abdicate right to have matter disposed of through arbitration.

VI. ACT FALLING IN AMBIT OF “ANY OTHER STEP INTO PROCEEDINGS”

10. It is important to mention here that to ascertain “**any other step into proceedings**” and “**not step into proceedings**” falling in domain of Section 34 of the “*Act*”, there are *pro and contra* views determined, opined and observed by the Courts. However, undoubtedly, plain reading of above reproduced Section 34 of the “*Act*” makes it abundantly clear, that if in a contract, there is provision of resolution of dispute between the parties by way of arbitration, and parties have agreed to such forum, then such forum is to be resorted to and given preference over filing of suit. If one of the parties to the contract by-passing forum of arbitration files a suit, then the other party can file application for stay as contemplated under section 34 of the “*Act*” and if the Court is satisfied then order for stay of proceedings in the suit can be passed to enable resolution of dispute between the parties by way of arbitration only. Conditions precedent for application under Section 34 of the Act are that the party applying for stay has not filed written statement or taken “any other steps in the proceedings” indicating that right to invoke arbitration clause is intentionally abandoned in favour of Court proceedings. Whether to grant stay or not is dependent upon satisfaction of the Court and such order is to be passed by the Court only when it is satisfied that all the requirements and preconditions enumerated have been fulfilled. However, the Court has to necessarily satisfy itself that the party applying for stay has not relinquished or abandoned his right of invoking arbitration clause after filing of suit. In coming to such conclusion the facts and circumstances of each particular case are to be examined in the light of pleas and other steps taken by the parties.

11. The primary duty of a Court is to look into the facts of the case fairly and squarely and then to decide whether the conduct of the applicant is such as would amount to a participation in the suit itself or

an indication of acquiescence in its proceedings. If so, an application under Section 34 of the "Act" would be barred for the simple reason that a party is not allowed to ask for staying the proceeding when he has clearly and willingly participated in them in a manner which can be construed acquiescence therein. If his conduct is such as would indicate that he has acquiesced in the suit, he is shut out from claiming the benefit of the Section 34 of the said Act. The law required that the conduct of the Appellant, in order to be termed as "a step in the proceedings" should have been such as would manifestly display an unequivocal intention to proceed with the suit and give up the right to have the matter disposed of by arbitration. In this connection, the proceedings of the suit reproduced above depict that Appellant had joined Court proceedings on 08.06.2023, when the Presiding Officer was not available on account of some departmental training and on very next date on 24.06.2023 again the Presiding Officer concerned was on casual leave, whereas next order dated 06.07.2023 reflects the only adjournment granted by the Trial Court itself on request of the Appellant for filing of written statement. In such like situation, it has been held in the judgment cited as "Messrs SGEC-AMC JV through Authorized Officer Vs. National Highway Authority through Chairman" (**2024 CLD 301**) that "*a single adjournment granted by the Court in routine, requiring the defendant to file a power of attorney and/or the written statement cannot be termed as 'a step in the proceedings'.*" Moreover, it is observed in case "BNP (Pvt.) Limited Vs. Collier International Pakistan (Pvt.) Limited" (**2016 CLC 1772**) that "*a single adjournment granted by the Court in routine, requiring the defendant to file a power of attorney and a written statement cannot be termed as 'a step in the proceedings'.*"

12. Though a two (02) member Bench of the Supreme Court of Pakistan in the peculiar circumstances of the case "Muhammad Farooq Vs. Nazir Ahmad and others" (**PLD 2006 S.C 196**) observed that frequent requests for adjournment for filing written statement would fall within the purview/ambit of the phrase "taking any other steps in the proceedings" within the meaning of Section 34 of the

Arbitration Act, but the provision of the Section 34 of the “*Act*” was beautifully and attractively considered and interpreted by the three (03) member Bench of the Supreme Court of Pakistan in the judgment reported “*Pakistan International Airlines Corporation v. Messrs Pak Saaf Dry Cleaners*” (**PLD 1981 SC 553**) (*PIA Case*), wherein the question came into consideration whether an application made for adjournment of a case with a view to enable the party to file written statement is to be treated as a matter of law “a step in the proceedings”. After, exhaustively examining the precedent law the Supreme Court of Pakistan has laid down the test for determining whether an act is tantamount to a step in the proceedings or not. The relevant part of the said judgment is reproduced as under:

“...*In my opinion, the true tests for determining whether an act is a step in the proceedings is not so much the question as to whether the party sought an adjournment for filing the written statement although of course that would be a satisfactory test in many cases but whether taking into consideration the contents of the application as well as all the surrounding circumstances that led the party to make the application display an unequivocal intention to proceed with the suit, and to give up the right to' have the matter disposed of by arbitration. An application of such nature, therefore, should prima facie be construed as a step in the proceedings within the meaning of section 34, and the whole burden should be upon the party to establish why effect should not be given to the prima fade meaning of the application.*”

13. Whilst relying upon PIA case mentioned supra, the Islamabad High Court in the judgment reported as “*Pakistan Stone Development Company Limited through Chief Executive Officer v. Muhammad Yousaf and another*” (**2018 CLC 877**) rendered by Mr. Justice Athar Minallah, (now Judge of Supreme Court of Pakistan) has held that “*whether or not a party seeking a stay of the proceedings under section 34 of the Act of 1940 has taken steps in the proceedings would essentially depend on the facts and circumstances of each particular case. The Court, therefore, has to be satisfied on the basis*

of the facts and circumstances in each case that the conduct of the party seeking a stay of the proceedings displays an unequivocal intention to proceed with the suit and to give up the right to have the matter disposed of through arbitration. It is thus the duty of the court to carefully examine the facts in each case so as to determine whether the conduct of the party seeking the stay amounts to pursuing the suit. The conduct of the party seeking a stay of the proceedings ought to manifestly reflect willingness to participate in the proceedings and thus the factor of acquiescence must not be in doubt.”

VII. TEST OF “STEP IN PROCEEDINGS”

14. As discussed above, the Supreme Court of Pakistan has already made test regarding stepping in proceedings in “PIA case” supra which was further followed by Islamabad High Court in “Pakistan Stone” case, supra distinguished other views reiterating that requesting a single adjournment would tantamount to stepping in the proceedings by the party seeking a stay of the proceedings. Returning to case in hand, Section 34 of the “*Act*” permits an application seeking stay of proceedings of a suit with intent to proceed ahead separately for the arbitration as per the settlement of parties in their agreement. According to aforementioned, Section 34 of the “*Act*”, where any party to an arbitration agreement commences any legal proceedings against any other party to the agreement in respect of any matter agreed to be referred for arbitration, the party sued against, may at any time make an application before the Court dealing with such suit for staying down proceedings thereof, but such move may be geared only before filing a written statement or taking any other steps in the proceedings. The narration of Section 34 ibid makes intent of legislature quite clear that purpose thereof is to drive parties to approach the medium of arbitration first prior to setting in litigation through any other suit, as per their own agreement. The course and mode of arbitration is globally recognized for the purpose of fair and efficient settlement of dispute arising in domestic and international commercial relations. The Courts are always required to support the

arbitration proceedings and process to meet with object of the “*Act*” destined at for cost free, efficacious, effective and amicable resolution of disputes amongst parties. Intervention or interference in such process or proceedings have never been discouraged by the Supreme Court of Pakistan in a number of judgments.

15. Like the case in hand, the limits of the Courts, while dealing with litigation involving the arbitration agreements, amongst parties, has been discussed in detail by the Supreme Court of Pakistan in “KARACHI DOCK LABOUR BOARD versus Messrs QUALITY BUILDERS LTD.” (**PLD 2016 Supreme Court 121**) holding that

“It may also be stated that there are three modes and approaches to arbitration: (i) without the intervention of the court; (ii) with the intervention of the court (see Section 20 of the Act); and (iii) again with the intervention of the court but where a suit/ lis is pending between the parties and they agree for the resolution of their disputes through the mechanism of arbitration, keeping the suit pending and that the fate thereof (suit) be decided on the basis of the decision rendered by the arbitrator”.

16. In another judgment in case titled “NATIONAL HIGHWAY AUTHORITY through Chairman, Islamabad versus Messrs SAMBU CONSTRUCTION CO. LTD. ISLAMABAD and others” (**2023 SCMR 1103**), Hon’ble Mr. Justice Syed Mansoor Ali Shah of Supreme Court of Pakistan discussed the scope of arbitration and permissible interference of Courts whilst observing that frivolous litigation clogs the pipelines of justice causing delay in deciding genuine claims which vexatious and frivolous petitions add to the pendency of cases over-burdening the Court dockets and slowing down the engine of justice and further held that *“An over-intrusive approach by courts in examination of the arbitral Awards must be avoided... The jurisdiction of the Court under the Act is supervisory in nature... Interference is only possible if there exists any breach of duty or any irregularity of action which is not consistent with general principles of equity and good conscience.*

The arbitrator alone is the judge of the quality as well as the quantity of the evidence. He is the final arbiter of dispute between the parties. He acts in a quasi-judicial manner and his decision is entitled to utmost respect and weight...The arbitration is a forum of the parties' own choice its decision should not be lightly interfered by the court, until a clear and definite case within the purview of the section 30 of the Act is made out...The arbitration falls within the domain of alternate dispute resolution ("ADR") and the parties having once recourse to out of court dispute resolution, they must abide by the decision of the Arbitrators rather than challenging the same in the court of law, as it defeats the purpose of ADR".

17. Recently, again dealing with subject of interreference on part of Courts in dispute pertaining to the arbitration agreements between parties, Hon'ble Syed Mansoor Ali Shah J. of Supreme Court of Pakistan in case titled "TAISEI CORPORATION and another versus A.M. CONSTRUCTION COMPANY (PVT.) LTD. and another" (**2024 SCMR 640**) has held that "*Arbitration thus embodies the principles of autonomy and voluntariness, respecting the parties' freedom to design a process that best suits their needs. It reflects a philosophical shift towards self-governance in dispute resolution, allowing parties to choose their arbitrators and the applicable law, thereby creating a more tailored and potentially equitable outcome. The role of courts in the context of arbitration has therefore evolved with a trend towards minimal interference...More significant is the minimal interference in international commercial arbitration that stands as a cornerstone in the resolution of cross-border commercial disputes, offering a preferred alternative to litigation in national courts for businesses worldwide. One of the foundational aspects of international commercial arbitration is its emphasis on neutrality, expeditiousness, efficiency and the ability to provide solutions tailored to the needs of international business transactions. International commercial arbitration plays a crucial role in*

resolving disputes arising from cross-border trade and commerce, expeditiously and efficiently. The global view on international commercial arbitration is therefore overwhelmingly positive, with businesses and legal professionals alike recognizing its benefits over traditional litigation”.

18. It is settled principle that where the Supreme Court deliberately and with the intention of settling the law, pronounces upon a question of law, such pronouncement is the law declared by the Supreme Court within the meaning of Article 189 of the Constitution and is binding on all Courts in Pakistan. Narration of Section 34 of the “*Act*” and esteemed guidelines laid by the Supreme Court of Pakistan in the “PIA case” make abundantly clear that the test for stepping in proceedings for the purpose of said provision of law are:

- i. *whether the party sought an adjournment for filing the written statement;*
- ii. *whether the moved application, the contents whereof as well as all the surrounding circumstances that led the party to make the application, display an unequivocal intention to proceed with the suit, and to give up the right to have the matter disposed of by arbitration.*
- iii. *An application of such nature, therefore, should prima facie be construed as a step in the proceedings within the meaning of section 34.*

19. In this particular case, no written application finds moved on behalf of the Appellant in proceedings of relevant suit seeking adjournment for filing written statement construing the conduct of the Appellant, in order to be termed as 'a step in the proceedings', was such as would manifestly had displayed an unequivocal intention to proceed with the suit and giving up the right to have the matter disposed of by arbitration. Likewise, record does not reflect at all any statement on behalf of the Appellant or his counsel with above mentioned disclosure and intent signed by them. The learned trial

Court went on to grant adjournments for the purpose of submission of written statement in quite casual and routine manner without taking into consideration the law in field related with the matter in dispute as well as time to time laid interpretations and guidelines of the Supreme Court of Pakistan in said regard. At the cost of repetition, it is high time to encourage parties to return to the medium of arbitration for the resolution of their disputes, instead to frustrate the law in field, protecting intent of parties for resolution, through arbitration of their disputes as per their already settled agreements. The Courts in said regard are always desired to refrain from interference eventuating in unwanted delay in resolution of disputes of parties. In the matter in hand, there existed duly executed agreement between the parties including an arbitration Clause 9 as that in the event of any dispute arising among the parties the matter shall be referred to any arbitrator appointed with the mutual consent of all the partners and his decision shall be binding on all of them. Not only the parties, but the Court was also required by law to honour and to first return to actuate the object of said clause prior to proceeding ahead with the civil suit in question, which learned trial Court has remained fail to comply with. The judgment relied upon by learned trial Court in impugned order did not confirm to the facts of the issue in hand and the guidelines pronounced by the Supreme Court of Pakistan were not visited rather altogether ignored.

VIII. OPINION OF COURT

20. Any written application apart, the pertaining situation shows that in presence of the learned Presiding Officer concerned only one adjournment was granted on 06 07 2023 for purpose of filing of written statement/written reply purportedly mere on basis of oral request, that too, placed by representative/associate of learned counsel for the Appellant. In addition thereto, preceding two orders depicting mechanical adjournments for filing written statement/written reply on behalf of the Appellant were in absence of the learned Presiding Officer concerned. Importantly, no written statement was filed on behalf of the Appellant till arrival of his

application under Section 34 of the Act. Significant to mention here that none of the proceedings of the main suit or the hard agitated requests made for adjournments for filing of written statement indicate conduct or intent of the Appellant that he had abdicated his claim to have the dispute decided under the arbitration clause and to have thereby forfeited his right to claim stay of the proceedings in the Court. Nothing is available over surface of record to construe that Conduct of the defendant, in order to be termed as 'a step in the proceedings', was such as would manifestly had displayed an unequivocal intention to proceed with the suit and giving up the right to have the matter disposed of by arbitration. The learned Trial Court has passed impugned order in utter disregard of parameters and criteria for test laid down by the Supreme Court of Pakistan in "*PIA case*" mentioned supra, later followed by the Islamabad High Court in "Pakistan Stone" case, mentioned supra for ascertainment and determination of act of Appellant in order to be termed as 'a step in the proceedings'.

IX. CONCLUSION

21. In view of above, this Appeal is allowed, the impugned order dated 22.07.2023, passed by the Civil Judge 1st Class, Rawalpindi, is hereby set aside. Consequently, the Application under Section 34 of the "Act" shall be deemed to be pending. The learned trial Court, after affording an opportunity of hearing to the Parties, shall decide the said Application in accordance with the principles and law discussed above.

(JAWAD HASSAN)
JUDGE

Approved for Reporting

JUDGE