

Stereo.HCJDA 38.
Judgment Sheet
LAHORE HIGH COURT
RAWALPINDI BENCH RAWALPINDI
JUDICIAL DEPARTMENT

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CIVIL REVISION NO.326 OF 2024

M/S 7SKY DIGITAL MARKETING Pvt. LIMITED

Versus

M/S ASR BUILDERS and another

JUDGMENT

Date of hearing: **12.09.2024**

Petitioner by: M/s Qausain Faisal Mufti and
Muhammad Saifullah Khan,
Advocates.

Respondent No. 1 by: M/s Muhammad Habib-ullah Khan
and Faisal Shakrani, Advocates.

Respondent No.2 by: Sardar Muhammad Obaid Khan,
Advocate.

MIRZA VIQAS RAUF, J. This petition in terms of Section 115 of the Code of Civil Procedure (V of 1908) (hereinafter referred to as “CPC”) arises out of order dated 2nd April, 2024, whereby learned Civil Judge Class-I, Rawalpindi proceeded to consolidate two petitions titled “*M/s ASR Builders versus Dr. Sardar Muhammad Kaleem Ullah, etc.*” and “*7 Sky Builders Vs M/s ASR Builders etc.*” and framed consolidated issues, arising therefrom.

2. Facts in brevity, necessary for adjudication of instant petition, are that the petitioner filed a petition under Section 14 read with Section 17 of the Arbitration Act, 1940 (hereinafter referred to as “Act, 1940”) seeking a direction to respondent No.2, being the arbitrator to issue, sign and file arbitration award in the court so as the same be made rule of the court. The petition was resisted by

respondent No.1 (hereinafter referred to as “respondent”) through written reply, who also filed a petition under Sections 5 and 11 of the “Act, 1940”. As the issue involved in both the petitions was with regard to the same cause so order for consolidation of the petitions was passed and consolidated issues were framed, which is now under challenge.

3. Learned counsel for the petitioner contended that “Act, 1940” does not permit consolidation of two petitions. He added that provisions of “CPC” are not *stricto sensu* applicable to the “Act, 1940”. Learned counsel maintained that in terms of Section 33 of the “Act, 1940”, the civil court was obliged to decide the dispute on the basis of affidavit and as such the impugned order is not tenable.

4. Conversely, learned counsel for the “respondent” seriously resisted this petition whereas respondent No.2 is on same page with the petitioner.

5. Arguments heard, record perused.

6. The petitioner and “respondent” entered into an agreement dated 15th February, 2020 for the construction/sale marketing of multi-storey building namely “IRENIC-II”. The “respondent” was responsible for the construction of the project whereas the petitioner had the exclusive rights of advertisement, marketing, sale, issuance of allotment letters and collection of funds. On account of dispute, the petitioner and “respondent” initially indulged in civil and criminal litigation, however, ultimately they agreed on settlement of their dispute through arbitration in furtherance of which, respondent No.2 was appointed as sole arbitrator to whom the matter was referred. As respondent No.2 failed to issue the arbitration award, the petitioner filed a petition under Section 14 read with Section 17 of the “Act, 1940”, in response to which, the “respondent” also filed a petition under Section 5 read with Section 11 of the “Act, 1940”. Through the impugned order, both the petitions were consolidated and as a result, consolidated issues were framed.

7. Before advertng to the moot point involved in this petition, it would be advantageous to first have glimpse of the historic background of the arbitration laws in Pakistan. It would not be out of context to mention here that before independence, there was no specific law on resolution of the disputes through arbitration and it was only invented in the first instance in British Rules through Indian Arbitration Act 1899. In the year 1940, for the first time, comprehensive and uniform law on the subject was introduced in the shape of “Act, 1940” by virtue of which, the previous law *i.e.* the Indian Arbitration Act, 1899 was repealed alongwith second schedule of the “CPC”. The purpose of the “Act, 1940” was to provide a domestic tribunal for settlement of disputes by and between the parties and provide expeditious relief strictly unhampered by the rules or procedure laid down in the “CPC” and The Evidence Act, 1872, which is now Qanun-e-Shahadat Order 1984. The arbitration procedures are in fact consolatory in nature and the arbitrator is a person in whom the parties repose their confidence. In other words, the arbitration is one of alternate modes of resolution of the disputes interse the parties.

8. There is no cavil that in terms of Section 33 of the “Act, 1940” any party to an arbitration agreement desiring to challenge the existence or validity of an arbitration agreement or an award or to have the effect of either determined may apply to the court and the court shall decide the question on affidavit. The proviso to Section 33 of the “Act, 1940”, however, ordains that where the court deems it just and expedient, it may set down the application for hearing and other evidence also, and it may pass such order for discovery and particulars as it may do in a suit. Section 41 of the “Act, 1940” provides procedure and powers of the court and in terms of Sub-Section (a) of Section 41 of the “Act, 1940”, the provisions of “CPC” are applicable to all the proceedings before the court under the “Act, 1940”. Needless to mention that the applicability of the provisions of “CPC” are not meant to hamper the arbitration proceedings but for ensuring the advancement of ends of justice.

9. After having the joint reading of the above two provisions, there remain no cavil to hold that the contention of learned counsel for the petitioner that under the “Act, 1940”, framing of issues is not permissible is thus highly ill-founded and misconceived in the circumstances. Even otherwise, it is apparent from the record that the petitioner itself moved an application under Order XIV, Rule 5 of “CPC” for framing of additional issue as such it is estopped by words and conduct. Since there is no specific impediment in the way of the court, proceeding under the “Act, 1940”, so consolidation of the petitions and framing of consolidated issues, through the impugned order, does not warrant to invoke revisional jurisdiction. Resultantly, this petition fails and is **dismissed** accordingly.

(MIRZA VIQAS RAUF)
JUDGE

Sajjad

APPROVED FOR REPORTING

Judge