

(Appellate Jurisdiction)

MR. JUSTICE MANZOOR AHMAD MALIK
MR. JUSTICE AMIN-UD-DIN KHAN

(Against judgment dated 26.5.2011, passed by the Lahore High Court, Multan Bench, in C.R. No.574 of 1992)

Versus

Date of Hearing : 28.02.2020

AMIN-UD-DIN KHAN, J.- Through this Civil Petition filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973, leave has been sought against the judgment dated 26.05.2011, passed by the Lahore High Court, Multan Bench, whereby Civil Revision bearing No.574 of 1992, filed by the Petitioners, was dismissed.

2. On 10.06.2014, the titled case was fixed before this Court and after noting some assertions of the learned counsel

for the Petitioners with regard to extension of time granted by the court for announcement of award and necessity of issuance of notice by the arbitrator to the parties.

3. We have heard the learned counsel for the parties and gone through the available record.

4. Initially, a Suit for Specific Performance was filed by the Petitioners/Plaintiffs on 22.06.1989, on the basis of an Agreement to Sell dated 04.12.1968. As per the learned counsel for the Petitioners, during pendency of the Suit, the matter was referred to the Arbitrator with the consent of the parties. An Award in favour of the Petitioners/Plaintiffs was announced on 30.05.1989. Objections were raised by the Defendants/Respondents on the Award. The learned Trial Court was pleased to make the Award, Rule of the Court, vide order dated 25.07.1990 and objections raised by the Defendants/Respondents against the Award, were rejected. Thereafter, an Appeal was preferred by the Defendants/Respondents. The learned Appellate Court was pleased to allow the Appeal and remand the case to the learned Trial Court to decide the same on merits vide order dated 25.07.1992. A Revision Petition was filed by the Plaintiffs/Petitioners before the learned Lahore High Court, Multan Bench, which was dismissed vide impugned judgment

dated 26.05.2011. Hence, this Civil Petition for Leave to Appeal.

5. Adverting to the relevant facts of this case, the last portion of the Award is very important, which is reproduced herein below for ready reference:

"..ان حالات میں دعویٰ مدعیان یکطرفہ طور پر بحق مدعیان برخلاف مدعلہم ڈگری کیا جاتا ہے مدعیان بقیہ زرٹمن مورخہ 15.06.89 عدالت میں داخل کریں اور عدالت کے ذریعے دعویٰ تعمیل مختص کی تکمیل کے سلسلہ میں اپنے نام رجسٹری بیع کی تکمیل کرا لویں خرچہ فریقین بزمہ فریقین حکم سنایا گیا 30.05.89"

It transpires from the record that the matter for grant of a decree was sent to the Arbitrator by the Court, which is not permissible under the law. Even if the same is treated as an irregularity, the learned Trial Court was required to assess the Award for adjudging as to whether there were any apparent errors in the same. However, a perusal of the learned Trial Court judgment shows that the objection petition was dismissed but the Award itself was not appraised before being made Rule of the Court. Further, the defects noted by the learned First Appellate Court as well as the learned High Court could not be contradicted by the learned counsel for the Petitioners. The learned First Appellate Court in paragraph-9 of the judgment has noted that Parties No.10 to 12 were minors and there is nothing on record to show that before entering into the said Agreement or making the reference, any permission of the Court was obtained for

entering into said Agreement. The learned counsel for the Petitioners placed reliance upon the judgments in the cases reported as Jaffar Abbas and 2 others v. Ahmad and another (PLD 1991 SC 1131), Sh. Ghulam Mohammad and another v. The Bank of Bahawalpur Ltd. and 21 others (1971 SCMR 148), Dr. Ansar Hassan Rizvi v. Syed Mazahir Hussain Zaidi and 3 others (1971 SCMR 634), Muhammad Ibrahim Khan and others v. Maulvi Behram (through his heirs) (1972 SCMR 608), Ashfaq Ali Qureshi v. Municipal Corporation, Multan and another (1984 SCMR 597), Messers Qamaruddin Ahmad & Co. v. Government of Pakistan (1985 SCMR 1775), Muhammad Mansha and 7 others v. Abdul Sattar and 4 others (1995 SCMR 795), Jameel Ahmad v. Late Saifuddin through Legal Representatives (1997 SCMR 260), Civil Aviation Authority, Karachi v. Rist Consultants (Pvt.) Ltd., Lahore (1998 SCMR 2393), Attiquallah v. Kafayatullah (PLJ 1981 SC 330), Tariq Hussain and another v. Additional District Judge, Vehari (2006 CLC 514), The Project Director, Peoples Programme v. Khawaja Muhammad Sarwar (1989 CLC 1030), Muhammad Jamil v. Municipal Committee, Mandi Bahauddin through Chairman and another (2001 MLD 568) and Syed Mukhtar Hussain Naqvi v. Mst. Hajiani Zubeda and another (2003 YLR 3289). None of these judgments answer our queries put to the counsel and are on

the point of extension of time and service of notice to the counsel. We have duly considered the same.

6. There is no cavil to the case law referred to by the learned counsel for the Petitioners but it is hardly applicable to the facts of the instant case. In these circumstances, the learned counsel for the Petitioners failed to make out a case for grant of leave.

7. Consequently, this Civil Petition is dismissed and leave declined.

JUDGE

Lahore, the
28th of February, 2020
'NOT APPROVED FOR REPORTING'
*Mahtab H. Sheikh/***

JUDGE