

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

R.F.A.No.145 of 2016
Pak-Telecom Mobile Limited
Versus
M/s Dynamic Engineering Services

Dates of Hearing: 26.01.2022, 06.12.2023 & 08.04.2024
Appellant by: Khawaja Hasan Riaz, Mr. Jamil Ahmad Abbasi, and Malik Talat Hussain, Advocates.
Respondent by: Ch. Mushtaq Hussain, Mr. Muhammad Azam Khan Niazi, and Mr. Raheel Azam Khan Niazi, Advocates.

MIANGUL HASSAN AURANGZEB, J:- Through the instant regular first appeal the appellant, Pak-Telecom Mobile Limited (“PTML”), impugns the judgment and decree dated 21.06.2016 passed by the Court of the learned Civil Judge, Islamabad whereby the suit for declaration, recovery of Rs.75,377,250/- and permanent injunction instituted by the respondent, M/s Dynamic Engineering Services (“Dynamic”) was decreed.

2. The facts essential for the disposal of the instant appeal are that on 12.05.2008, PTML and Dynamic entered into an agreement for “BTS Site Identification / Acquisition and Authorities’ Civil NOCs in the South, North Centre-I & II Regions” (“the First Agreement”). The terms of the said agreement required Dynamic to identify and acquire sites for setting up PTML’s Base Transceiver Stations (“BTS”) and to obtain a No Objection Certificate (“NOC”) for the said purpose from different public sector authorities including the Tehsil Municipal Administration (“TMA”) and the Environmental Protection Agency (“EPA”). Dynamic was to fulfill its obligations under the said agreement within a period of one month.

3. Clause 5.1 of the said agreement obligated PTML to pay Rs.35,000/- for the acquisition of each site in South, Central-I, Central-II, and North Regions. This amount had to be paid at the time of the signing of the lease agreement between the parties. Additionally, upon submission of the original NOCs for the Central-I, Central-II and North Regions, fees were required to be paid by PTML at the rate of Rs.25,000/- for each site,

and upon submission of the original NOCs for the South Region, fees at the rate of Rs.45,000/- for each site had to be paid by PTML.

4. The First Agreement was signed on behalf of Dynamic by its Managing Partner and Manager Operations, whereas the name and designation of the person signing on behalf of PTML is not discernable. The said agreement was also signed by just one witness.

5. On 11.08.2008, the parties entered into an agreement captioned as "Modification Deed" ("the Second Agreement"), whereby amendments were brought about in the First Agreement. Clause-C of the said agreement explains that the need for the execution of the Second Agreement arose due to Dynamic's inability to perform its obligations under the First Agreement caused by inflation and price hikes. Through the terms of the Second Agreement, the consideration agreed between the parties under the First Agreement was modified in the following terms:-

- "(i) Site acquisition charges for all regions were enhanced from Rs. 35,000/- to Rs. 55,000/-;*
- (ii) NOC charges were divided into two sub-categories i.e. (a) NOC from TMA etc and (b) NOC from Environment Protection Agency; and*
- (iii) the charges for obtaining NOC from TMA etc for Central-I, Central-II and North Regions were enhanced from Rs.25,000/- to Rs.35,000/- and the charges for NOC from EPA for all regions were fixed at Rs.45,000/-."*

6. It was also agreed that "*if any site is rejected due to any reason attributable towards PTML at a stage where [Dynamic] has provided services with respect to that site which has been rejected by PTML will be paid amount up to 50% of the agreed acquisition charges.*"

7. On behalf of Dynamic, the Second Agreement was signed by its Managing Partner and Director Operations, Muhammad Rizwan, and on behalf of PTML it was signed by its Senior Advisor (Site Acquisition and Civil Works) Abdur Rauf. It was signed by one witness, Syed Nasir Ali Shah, Senior National Manager (Site Acquisition), PTML. It ought to be noted that during the recording of evidence before the learned trial Court, PTML did not produce the person who had signed the Second Agreement on its behalf.

8. PTML asserts that on 05.04.2009, it entered into yet another agreement ("the Third Agreement") with Dynamic, whereby the parties agreed to amend the scope of the First and Second Agreements. The Third Agreement was said to have been given retrospective effect from

the dates of the execution of the First and Second Agreements. According to PTML, the Third Agreement further modified the billing and payment arrangement under the Second Agreement. It was asserted that the Third Agreement provided that upon submission of the original NOC, all the fees to be paid by PTML shall be at the rate of Rs.26,500/- for Punjab and Rs.23,500/- for all other areas, excluding the fee payable to EPA.

9. Additionally, PTML asserts that an undated Modification Deed was executed by Dynamic modifying the charges provided in the Third Agreement for obtaining an NOC from EPA. PTML asserts that Dynamic had executed an Undertaking to the effect that the full and final charges to be paid by PTML to Dynamic under the terms of the Third Agreement came to Rs.9,539,000/-.

10. On 02.06.2009, Dynamic filed a suit for declaration to the effect that the Third Agreement dated 05.04.2009 was executed due to undue pressure and coercion exerted on Dynamic and was therefore null and void. Dynamic had sought a recovery of Rs.75,377,250/- besides a permanent injunction to restrain PTML from cancelling the contract executed with Dynamic's sister concern, HRTS Communication (Pvt.) Ltd. In the said suit, it was *inter alia* pleaded that Dynamic had started performing work pursuant to the terms and conditions of the First Agreement; that Dynamic had performed work on 1,590 sites for which PTML had paid a sum of Rs. 67,257,000/- after deduction of tax; that after completion of work on the said 1,590 sites, PTML had given another batch of 1,659 sites on which work was completed by Dynamic and for such work, the billed amount came to Rs.74,655,000/-, out of which only Rs.9,539,000/- has been paid by PTML and that the remaining Rs.65,116,000/- was yet to be paid; that from 30.03.2009 to 12.05.2009, Dynamic worked for PTML on different sites for which an amount of Rs.10,261,250/- was also outstanding; that it was after Dynamic had raised invoices for an amount of Rs.75,377,250/- that PTML on 05.04.2009 obtained signatures of Dynamic's partner, Muhammad Rizwan, on blank papers by exerting undue influence and coercion; that on the said blank papers, PTML printed the Third Agreement, the Modification Deed and the Undertaking; that PTML had obtained a stamp paper on 06.04.2009 for the purpose of executing an agreement with

Dynamic; that in response to Dynamic's demand for the payment of its outstanding dues, PTML took the position that under the terms of the Third Agreement, no amount was payable to Dynamic; and that PTML is threatening to cancel the contract executed with Dynamic's sister concern. In the said suit, Dynamic had prayed for a decree (i) declaring the Third Agreement to be null and void, *ab initio* and the result of coercion and undue influence; (ii) recovery of Rs.75,377,250/-, and (iii) permanent injunction restraining PTML to cancel the contract with HRTS Communication (Pvt.) Ltd.

11. PTML contested Dynamic's suit on merits by pleading in its written statement that Dynamic's partner, Muhammad Rizwan, was in collusion with two of PTML's employees and that they had deceitfully gotten the Second Agreement executed without having obtained approval of the rates mentioned therein; that on discovering that huge payments were being made to Dynamic, PTML scrutinized the transactions and thereafter it came to the fore that no valid contract for the said payments exists; that thereafter, Muhammad Rizwan and PTML's employees were asked to explain how the rates mentioned in the First Agreement had been changed; that after this, Muhammad Rizwan agreed to change the rates mentioned in the so-called Second Agreement; that the Third Agreement was duly executed between the parties; that Dynamic had submitted an offer on its letterhead and had also provided the Modification Deed; that Dynamic had also sworn an Undertaking to the effect that full and final payment had been made to it; and that Dynamic is still providing services to PTML through its sister concern.

12. The learned Trial Court framed the following issues out of the divergent pleadings of the parties:-

- “1. Whether the novation of agreement dated 12.05.2008 vide modification deed dated 11.08.2008 ([sic] Second Agreement) was a result of deceit/fraud? OPD
2. Whether the agreement dated 05.04.2009 ([sic] Third Agreement) was a result of coercion? OPP
3. Whether an amount of Rs.75,377,250/- is outstanding against the defendant? OPP
4. Relief.”

13. After the contesting parties filed the amended plaint and written statement, the learned Trial Court, vide order dated 09.09.2015, framed the following additional issues:-

- 3A. Whether the agreement signed on 05.04.2009 is a result of undue coercion and is, therefore, illegal and void ab initio? OPP*
- 3B. Whether the modified deed dated 11.08.2008 of the original agreement (dated 12.05.2008) was signed deceitfully without the knowledge and legal authorization of the defendant authorities? OPD*
- 3C. Whether the defendant has paid the amount of Rs.9,539,000/- as full and final payment against all claims of plaintiff? OPD*
14. Dynamic produced Chaudhry Badar-ud-Din, stamp vendor, as PW-1 who produced stamp paper entries in his register as Exh.P-1 and Exh.P-2. Dynamic's partner, Muhammad Rizwan (PW-2), produced the First Agreement dated 12.05.2008 as Exh.P-3, the Third Agreement dated 05.04.2009 as Exh.P-4, stamp paper for the Third Agreement as Exh.P-5, and several invoices as Exh.P-6 to Exh.P-9.
15. For PTML Syed Faraz Ali Shah, Assistant Manager (Site), appeared as DW-1 and deposed in support of PTML's stance. He produced his authority letters as Exh.DW-1/1 and Exh.DW-1/2; the Third Agreement as Exh.D-2 and its receiving by Dynamic's Assistant Manager as Exh.D-3; the Undertaking as Exh.D-4; the Modification Deed as Exh.D-5; invoices as Exh.D-6 to Exh.D-9; and the Second Agreement dated 11.08.2008 as Mark-A. Syed Faraz Ali Shah, Assistant Manager (Site) PTML also appeared as Court witness in compliance with the Court order dated 25.02.2016.
16. After recording the evidence and hearing the parties, the learned trial Court vide judgment dated 21.06.2016 decreed Dynamic's suit against PTML. The said judgment and decree dated 21.06.2016 has been assailed by PTML in the instant appeal.
17. Learned counsel for the appellant, after narrating the facts leading to filing of the instant appeal, submitted that the impugned judgment and decree dated 21.06.2016 is based on mis-reading and non-reading of the evidence; that Muhammad Rizwan, who appeared as PW-2, admitted receiving payment under the terms of the Third Agreement; that Muhammad Rizwan admitted to have encashed the cheque given to him as final settlement; that Dynamic's objection with regard to non-registration of the Third Agreement was baseless as the First Agreement was also not registered; that he also admitted his signatures on the Third Agreement; that he did not deny the fact that a copy of the Third Agreement had been duly received by Dynamic's Assistant Manager

Finance; and that Muhammad Rizwan also admitted his signatures on the Undertaking and the Modification Deed executed on 05.04.2009.

18. Learned counsel further submitted that Dynamic had not prayed for the cancellation of the Third Agreement but had only sought declaratory relief and therefore the suit was not maintainable; that Section 19 of the Contract Act, 1872 ("the Contract Act") makes an agreement voidable where consent of the party to such an agreement is obtained through coercion, and therefore it was obligatory on Dynamic to have sought the relief of cancellation of the Third Agreement; that coercion is to be pleaded with particularity as envisaged under Order VI, Rule 4 C.P.C.; that Dynamic, in its plaint, did not plead with particularity the details of the alleged coercion as required by Section 15 of the Contract Act; that Dynamic did not state with specificity the nature of coercion and undue influence exerted by PTML on Dynamic for executing the Third Agreement; that Dynamic had failed to discharge its burden of proving that the Third Agreement was executed as a result of coercion and undue influence; that Muhammad Rizwan (PW-2) admitted that no criminal proceedings had been initiated with regard to the undue influence and coercion supposedly exerted on Dynamic; that since in the case at hand coercion had not been proved, as such the learned Trial Court could not have gone against the terms of the Third Agreement executed between the parties; that after receiving the amount as agreed under the Third Agreement, Dynamic's claim was hit by the principle of estoppel; and that the impugned judgment and decree is not sustainable under the law laid down by the Superior Courts. Learned counsel for PTML prayed for the appeal to be allowed and for the impugned judgment and decree to be set-aside. In making his submissions, learned counsel for PTML placed reliance on the law laid down in the judgments reported as Dilber Hussain Hashmi Vs. Muslim Commercial Bank (2001 SCMR 265), Faisal Fabrics Limited Vs. Town Committee, Khurrianwala (2000 CLC 4), Hamida Begum Vs. Murad Begum (PLD 1975 SC 624), Federation of Pakistan Vs. Javaid Nasim (PLD 1994 Lahore 303), and Ijaz Ahmed Khan Vs. Jahanzeb Khan (2016 CLC Note 128).

19. On the other hand, learned counsel for Dynamic defended the impugned judgment and decree by submitting that during the recording of evidence, PTML's witness, Syed Faraz Ali Shah (DW-1), admitted the

execution of the First Agreement and that the rates set out in the said agreement were revised through the Second Agreement; that the Third Agreement was signed on Sunday, 05.04.2009 while the stamp paper for the purpose of executing the Third Agreement was purchased by PTML the next day through its employee, Muhammad Imran; that the said stamp paper was not purchased by Dynamic; that Muhammad Imran had purchased other stamp papers on the same day which were used for PTML's agreements with other parties; that the Third Agreement was not signed by any witness and therefore the same was violative of the requirements of Articles 17 and 79 of the *Qanun-e-Shahadat* Order, 1984; that the Undertaking was not printed on a stamp paper but on Dynamic's letterhead; that the overwritten print on the letterhead shows the dubious nature of the said document; that the manner in which the Undertaking was prepared was not consistent with the previous practice since no Undertaking accompanied the First or Second Agreement; that PTML did not cross-examine Dynamic's witness, Muhammad Rizwan, on the allegation of *malafide* levelled by him against PTML during his examination-in-chief; that such allegation would be deemed to have been admitted; that since PTML did not file a suit for the cancellation of the Second Agreement, this implies that it was duly executed between the parties; and that on behalf of PTML, arguments that had been advanced were contrary to its pleadings. Learned counsel for Dynamic prayed for the appeal to be dismissed. In making his submissions, learned counsel for Dynamic placed reliance on the law laid down in the judgments reported as Sardar Ahmad Hayat Vs. Member(Colonies) Board of Revenue (2020 CLC 31), Muhammad Iqbal Vs. Mehboob Alam (2015 SCMR 21), Munir Alam Vs. Mehboob Alam (2015 YLR 500), Abbas Ali Shah Vs. Ghulam Ali (2004 SCMR 1342), Rahim Dad Vs. Hamayun Shah (2020 MLD 103), Hafiz Tassaduq Hussain Vs. Lal Khatoon (PLD 2011 SC 296), Chief Justice of Pakistan, Iftikhar Muhammad Chaudhry Vs. President of Pakistan (PLD 2010 SC 61), Raja Hamayun Vs. Sarfraz Khan Noor Muhammad (2007 SCMR 307), Muhammad Rasheed Khan Vs. Mst. Mehr-un-Nisa (2009 SCMR 740), Wali Muhammad Vs. Muhammad Ibrahim (PLD 1989 Lahore 440), Haji Muhammad Sarwar Khan Vs. Abdul Khaliq (2013 CLC 1850), Sikandar Hayat Vs. Sughran Bibi (2020 SCMR 214), and Ch. Iftikhar Ahmad Vs. The State (2018 SCMR 1385).

20. We have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant appeal have been set out in sufficient detail in paragraphs 2 to 16 above and need not be recapitulated.

21. Admittedly, on 12.05.2008, PTML and Dynamic entered into the First Agreement. Under the terms of the said agreement, Dynamic was to provide certain services to PTML for which the latter had to pay consideration mentioned in the said agreement. The quantum of the consideration was subsequently enhanced through the Second Agreement dated 11.08.2008. Under the terms of the Second Agreement, it was also Dynamic's obligation to obtain an NOC from EPA. Although the execution of the Second Agreement had not been proved in accordance with the law but its copy was produced before the learned trial Court as Mark-A and its execution was not denied by PTML. It was on the basis of the First and Second Agreements that Dynamic claimed Rs.75,377,250/- from PTML.

22. The position taken by Dynamic in its plaint was that its demand for the said payment was refuted by PTML on the ground that the Second Agreement had been signed by an employee of PTML who did not have the authority to execute an agreement on behalf of PTML. Dynamic had also pleaded that officers of PTML had, on 05.04.2009, obtained signatures of Muhammad Rizwan (who is one of Dynamic's partners) on blank papers on which the Third Agreement was printed. This, according to Dynamic, was done by coercing and exerting undue influence on Dynamic. PTML's stance was that the Third Agreement as well as the Modification Deed and the Undertaking were executed by Dynamic with free will and consent, and that thereafter an amount of Rs.9,539,000/- had been received by Dynamic in full and final satisfaction of its claims against PTML.

23. During the trial Muhammad Rizwan, who is one of Dynamic's partners, appeared as PW-2 and deposed that although PTML had paid Rs.9,539,000/- but Rs.6,511,6000/- was still outstanding as service charges for obtaining NOCs from EPA. The said amount of Rs.6,511,6000/- was calculated on the basis of Rs.45,000/- per site as provided in the Second Agreement. PTML asserted that the Second

Agreement was executed by employees of PTML who did not have the authority to do so. However, the Third Agreement was executed by the person having due authority from PTML. Since Dynamic had asserted that the Third Agreement was a product of coercion and undue influence, hence the learned trial Court framed issues No.2 and 3-A referred to in paragraphs 12 and 13 herein above. The onus to prove the said issues was placed on Dynamic.

24. The learned trial Court, while deciding issues No.2 and 3-A, declared that the Third Agreement was a forged and fabricated document and a product of coercion. It was also held that the Third Agreement had not been proved inasmuch as it had not been signed by the marginal witnesses and therefore could not be held to be a legal document. The learned trial Court also observed that even if it is assumed that the Third Agreement was a genuine document, the same could not be given retrospective effect in view of Clause 3 thereof. The learned trial Court observed that DW-1, while appearing on behalf of PTML, could not come up with an explanation for the need to execute the Third Agreement in the presence of the First Agreement.

25. Section 15 of the Contract Act defines coercion as *inter alia* the unlawful detaining or threat to detain any property to the prejudice of any person with an intention of causing any person to enter into an agreement and Section 16 defines undue influence. Coercion is a question of fact depending upon the circumstances of each case. Whether a document was executed willingly or under coercion is a question of fact. Suspicion or mere probability is not sufficient to support a plea of coercion. As to financial duress or coercion, nothing of this kind is established in the case at hand.

26. The entire edifice of Dynamic's suit is that the Third Agreement was executed through coercion and exertion of undue influence by PTML. In the plaint, particulars regarding coercion and undue influence have not been furnished. It is well settled that in cases of fraud, undue influence and coercion, the parties' pleadings must set forth full particulars and the case can only be decided on such particulars. Mere allegation of fraud, misrepresentation and coercion not supported by any material would not invariably warrant inquiry or investigation in each case. Reference in this regard may be made to the case of Messrs

Dadabhay Cement Industries Ltd. Vs. National Development Finance Corporation, Karachi (PLD 2002 SC 500). General allegations as to the fraud, undue influence or coercion are insufficient no matter how strong the language in which they are couched. Additionally, the general law is that the beneficiary has to prove the execution of any document, and in case an executant admits execution but claims that the execution was obtained through coercion, then the burden is on him to prove the factum of coercion.

27. In our view, the learned trial Court, while holding that the Third Agreement was void on account of having been executed as a result of coercion, did not give due regard to the fact that the onus of proving coercion had been placed on Dynamic while framing the issues. Since Dynamic had sought a declaration to the effect that the Third Agreement was the consequence of coercion, it was obligatory upon it to have proved the same. The learned trial Court, in its judgment, has not addressed this glaring deficiency in Dynamic's case. The learned trial Court has decided the suit on the basis of the weaknesses in PTML's evidence rather than the strength of Dynamic's case.

28. As mentioned above Dynamic, in its pleadings, had not stated with particularity the mode and manner of coercion and undue influence allegedly exerted by PTML's employees for obtaining Muhammad Rizwan's signatures on blank papers. During the recording of evidence, Dynamic's witness, Muhammad Rizwan (PW-2), produced the Third Agreement as Exh.P-4 and deposed that his signatures were obtained by PTML on blank papers on the pretext that such papers were receipts for payments. After this, he deposed that PTML's employees had pressurized and threatened him. In the suit, Dynamic had not pleaded that Muhammad Rizwan's signatures had been obtained on blank papers on the pretext that they were receipts for payments made to Dynamic. It does not appeal to reason as to why PTML would coerce Dynamic's partner to sign blank papers which were to be used as receipts. This has to be seen in conjunction with the fact that besides the Third Agreement, PTML had also produced in evidence an Undertaking (Exh.D-4) and the Modification Deed (Exh.D-5) which were documents executed in furtherance of the Third Agreement. The Undertaking and the Modification Deed are documents scribed on Dynamic's letterhead. Not

just that, Muhammad Rizwan (PW-2) admitted that he did not submit any complaint to the police regarding the alleged undue pressure exerted on him by PTML. In his evidence, he does not give any explanation as to how PTML got possession of papers with Dynamic's letterhead on which the Undertaking and the Modification Deed were printed. True, the print on the paper overlaps the letterhead, but to prove that this was a fake document expert evidence was necessary. PW-2, in his testimony, had admitted that he had encashed the cheque for Rs. 9,539,000/- issued by PTML in accordance with the Undertaking. PW-2 also admitted the signature of Dynamic's Assistant Manager, Finance which was affixed on the Third Agreement in acknowledgment of its receipt.

29. The alleged coercion is said to have occurred on 05.04.2009 when the Third Agreement, the Undertaking (Exh.D-4) and the Modification Deed (Exh.D-5) were simultaneously executed. The suit seeking a declaration simpliciter with respect to the Modification Deed (Exh.D-5) was filed on 02.06.2009, i.e. two months after the alleged coercion. A party complaining of having executed an agreement as a consequence of coercion or undue influence exerted by the beneficiary of such agreement is expected to lose no time in seeking its cancellation. Although the suit for declaration and recovery was filed by Dynamic within the limitation period prescribed by law, no plausible explanation has been presented by Dynamic for the two-month delay in filing the suit. This delay is of significant importance as Dynamic was seeking a declaration, which is an equitable remedy. If a party claims that he entered into an agreement as a result of coercion and undue influence, then he should immediately file a suit for the cancellation of the agreement. Reference in this regard may be made to the law laid down in the judgment reported as Abdullah Vs. Amjad Ali Shah (2003 SCMR 894).

30. PTML's witness, Syed Faraz Ali Shah (DW-1), during his examination-in-chief produced the Third Agreement as (Exh.D-2), but Dynamic did not raise any objection to the production of the said document. Additionally, no suggestion was put to DW-1 to the effect that the said document was executed through coercion or exertion of undue influence on Dynamic's officer.

31. The Third Agreement was not executed on a non-judicial stamp paper. Much emphasis was laid by Dynamic as to the fact that it had not

purchased any non-judicial stamp paper for the execution of the Third Agreement. Even if it is assumed that on 06.04.2009, a stamp paper had been obtained by Muhammad Imran (who is an employee of PTML) for the execution of the Third Agreement, this would also be of no assistance to Dynamic for proving that the Third Agreement was executed as a result of coercion and undue influence. The evidence on the record clearly shows that Dynamic was unable to discharge its initial burden of proving that coercion or undue influence had been exerted by PTML in order to execute the Third Agreement.

32. DW-1, in his evidence, had deposed *inter alia* that the payment and final settlement of Dynamic's claim had been made in accordance with the revised rates as set out in the Third Agreement and that after such payment, nothing remained payable to Dynamic. He had also deposed that Dynamic had not been subjected to any coercion. Dynamic did not cross-examine DW-1 on such testimony. It ought to be borne in mind that Muhammad Ramzan (PW-2) had admitted his signatures on the Third Agreement as well as the Undertaking and the Modification Deed. Albeit he had qualified his statement by deposing that his signatures were obtained on the blank papers whereon the Third Agreement was printed. The visual inspection of Muhammad Rizwan's signatures on the Third Agreement (Exh.D-2), the Undertaking (Exh.D-4) and the Modification Deed (Exh.D-5) show that they were affixed exactly where they were meant to be on the said documents. Since he signs diagonally, that is why it cuts through the place where his name and designation was printed. All this makes Dynamic's version that Muhammad Rizwan's signatures had been obtained on blank papers difficult to believe. Since Dynamic had not been able to prove that signatures on blank papers were obtained as a result of coercion, the learned trial Court could not have simply disregarded the Third Agreement. The finding of the learned trial Court that the Third Agreement had no retrospective effect is also erroneous as it is in stark contrast with Clause 3 of the said Agreement, which reads thus:-

"3. That this Agreement signed as of the date stated hereinabove shall nevertheless deemed retrospectively effective from the date of the Agreement and the Modification deed until termination by either party;"

33. The term “Agreement” in the said clause has reference to the First Agreement as clarified in the preamble to the Third Agreement. In addition to the Third Agreement, PTML had also produced the Undertaking (Exh.D-4) and the Modification Deed (Exh.D-5) both having been scribed on Dynamic’s letterhead. Through the said Undertaking (Exh.D-4), Dynamic had accepted that the full and final amount payable by PTML came to Rs.9,539,000/- This is exactly the amount which PW-2 admitted to have received. The Undertaking (Exh.D-4) is in the nature of the settlement. We are of the view that there was a code and satisfaction reflected in the said Undertaking (Exh.D-4) and Dynamic’s subsequent allegation of coercion was an afterthought and only a ploy to get over the settlement of the dispute.

34. It is pertinent to mention that Dynamic, in its suit, did not seek the cancellation or any other declaration with respect to the Third Agreement or the Undertaking (Exh.D-4). Dynamic just sought a declaration as to the Modification Deed (Exh.D-5) being illegal and void. Learned counsel for Dynamic did not explain the paradox created by Dynamic’s assertion that signatures on blank papers on which the Third Agreement and the Undertaking (Exh.D-4) were scribed had been obtained through coercion yet the cancellation of the said documents was not sought.

35. As regards the Modification Deed (Exh.D-5), Dynamic had sought a simple declaration that the said deed be declared null and void being a result of coercion, etc. No consequential relief of cancellation of the said deed was sought. Under the *proviso* to Section 42 of the Specific Relief Act, 1877, no declaration can be issued in favour of a plaintiff who could claim consequential relief alongside the claim for declaration but does not do so. In the case of Nasir Ali Vs. Muhammad Asghar (2022 SCMR 1054), the Hon’ble Supreme Court held such a suit for declaration simpliciter to be not maintainable where consequential relief for cancellation of impugned mutation could have been sought. In the said report, the Hon’ble Supreme Court held that “*under the provisions of section 42 of the Specific Relief Act a person entitled to any legal character or to any right to property can institute a suit for declaratory relief in respect of his title to such legal character or right to property. The expression, legal character, has been understood to be synonymous*

with the expression status. A suit for mere declaration is not permissible except in the circumstances mentioned in section 42 of the Specific Relief Act. The proviso attached to this Section clarifies that no Court shall make any declaration where the plaintiff, being able to seek further relief than mere declaration of title, omits to do so. Whereas under section 39 of the Specific Relief Act, any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, could cause him serious injury, may sue to have it adjudged void or voidable and the Court may, in its discretion, so adjudge it to be delivered up and cancelled."

36. In the case at hand, since Dynamic was unable to prove coercion, undue pressure or absence of free will in signing the Third Agreement, the Undertaking (Exh.D-4) and the Modification deed (Exh.D-5), its prayer for the declaration sought with respect to the Modification Deed and recovery of Rs.75,377,250/- could not have been allowed. Consequently, the instant appeal is allowed; the impugned judgment and decree dated 21.06.2016 is set-aside; and the suit instituted by Dynamic is dismissed.

(ARBAB MUHAMMAD TAHIR)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 16/04/2024.

(JUDGE)

(JUDGE)