

Form No: HCJD/C-121.
JUDGEMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Enforcement Petition No. 01 of 2021

Saul Israel Radunski

Vs

Shah Zaman Khan

Appellant BY: Mirza Haris Baig, Advocate.

RESPONDENT BY: Sheikh Muhammad Shoaib, Advocate.

DATE OF HEARING: 28.03.2022.

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BABAR SATTAR, J..- This is application under section 6 of the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011 (**"Act of 2011"**) for seeking enforcement of a foreign Arbitral Award dated 15.07.2013.

2. While learned counsels for the applicant and the respondent address detailed arguments on the merits of the application, preliminary objection was raised by the learned counsel for the respondent that the application was not maintainable being barred by time.

3. The dispute between the applicant and the respondent relates to consideration paid under share purchase agreement dated 14.03.2009 pursuant to which the respondent acquired shares in respect of three companies from the applicant. According to the applicant, the respondent failed to pay part of the consideration due to which a dispute arose and the applicant sought adjudication of the dispute under the arbitration clause in

the share purchase agreement. Mrs. Marjorie Grace Mwenda acted as an arbitrator under the Arbitration Act No. 19 of 2000 of Zambia and issued an Arbitral Award dated 15.07.2013 directing the respondent to pay the applicant a principal sum of USD 128,000.00 in installments together with interest on the outstanding principal sum at 10% per annum from the date of final award till such time the payment was made in full. The Arbitral Award was registered by the High Court for Zambia on 07.08.2013 and on 23.04.2014 High Court for Zambia issued arrest warrants for the respondent being an absconding judgment debtor. The application for enforcement of Arbitral Award dated 15.07.2013 was filed on 23.12.2020.

4. Learned counsel for the applicant was invited by this Court to address his arguments on the preliminary objection that the application has been filed beyond the period of limitation prescribed under Article 120 of the Limitation Act, 1908 (**"Limitation Act"**) and that the application was also not supported by an application filed under section 5 of the Limitation Act seeking condonation of delay. The learned counsel for the applicant subsequently sought to file an application on 14.03.2022 under section 5 of the Limitation Act seeking condonation of delay (in filing of the application under section 6 of the Act) which was never fixed as it was not duly executed and did not satisfy other filing requirements under the High Court Rules and was consequently placed under objection. Learned counsel for the applicant relied on the content of such application placed under objection and stated that the respondent had absconded from Zambia and the applicant was

unaware that he was in Pakistan or Zambia and that he filed the application in Pakistan once he became aware that the respondent was in Pakistan. The contention of the learned counsel for the applicant seems to be contrary to the record appended with the application under section 6 of the Act. The applicant as part of his application placed on record the registration of the Award by the High Court for Zambia on 07.08.2013 and a copy of arrest warrant issued by the said High Court dated 23.04.2014. The said documents have been attested by Mr. Faisal Anjum, Consular Attache, Embassy of Pakistan Harare on 22.11.2018, it is therefore evident that the documents, including the court record which was to be presented before the court along with application under section 6 of the Act was attested by Embassy of Pakistan on 22.11.2018 for purposes of being presented before the courts in Pakistan in order to seek enforcement of the Arbitral Award dated 15.07.2013 and if the said application had been filed at such time it would have been within six years period of limitation prescribed under Article 120 of the Limitation Act. However, the said application was not filed for a further period of two years and was filed finally in the end of 2020 at which time it was barred by time by a wide margin. Further it was not supported by an application for condonation of delay under section 5 of the Limitation Act.

5. The question of limitation for purposes of foreign arbitral award has been considered by the High Courts in three judgments. In **Man Fung Textiles Ltd. Vs. Sadiq Traders Ltd. (PLD 1982 Karachi 619)** relying on **Messrs France Corsi Vs.**

Gorakhram Gokalchand (AIR 1960 Bom. 91), the learned Sindh High Court held that Article 178 of the Limitation Act prescribed a limitation period of 90 days for purposes of filing an arbitration award in court under the Arbitration Act of 1940, was not attracted in relation to foreign arbitral award. The learned Sindh High Court in **Petrocon (Pvt.) Ltd. Vs. Hyderabad Development Authority, Hyderabad (1990 MLD 1675)** reiterated that the limitation prescribed under Article 178 was not applicable in relation to foreign arbitral award. The question of limitation came once again before the learned Sindh High Court in **Cogetex S.A. Vs. Mayfair Spinning Mills Limited (2004 CLD 1023 Karachi)** in which the learned Court while relying on view of Justice Nasir Aslam Zahid (as his Lordship then was) in **Frederick E. Rose (Commodities) Limited v. Munsoor Ali Tanning Co. (NLR 1981 U.C 175 Karachi)** held that, "*an application under section 5 of 1937 Act for enforcement of a foreign award is to be registered as a suit and since no period has been fixed for filing such suits under the First Schedule to the Limitation Act, hence the suit shall be governed under Article 120 of the Limitation Act which provides a period of six (6) years for filing such suits.*"

6. The provisions of the Act of 2011 provide that for purposes of recognition and enforcement of foreign arbitral award the party seeking enforcement is to file an application before the High Court, which has been defined as a court of competent jurisdiction for such purposes. This Court is in agreement with the dicta of the learned Sindh High Court that the limitation period prescribed under Article 178 of the Limitation Act would

not be attracted as the party is not seeking to file an award under the Arbitration Act, 1940, and as no other limitation period has been prescribed for purposes of filing an application for recognition and enforcement of a foreign arbitral award under the First Schedule to the Limitation Act, the residuary provision of Article 120 of the First Schedule to the Limitation Act shall be applicable and such application, in order to be within time, would have to be filed within a period of six years from the time of issuance of arbitral award that is sought to be enforced.

7. It is settled law that provisions of Limitation Act are mandatory and are to be applied even in the absence of a party setting up the period of limitation (See for example Habibullah Khan Vs. Muhammad Ishaq (PLD 1966 SC 505), Feroze Bibi Vs. Settlement Commissioner (Land) and another (1988 SCMR 1228), Inam Naqshband Vs. Haji Shaikh Ijaz Ahmad (PLD 1995 SC 394) and Haji Abdul Karim and others Vs. Messrs Florida Builders (Pvt) Ltd. (PLD 2012 SC 247)).

8. It is also settled law that in view of the provisions of section 3 read together with section 5 of the Limitation Act any application filed beyond period of limitation must be supported by an application seeking condonation of delay and the applicant is under an obligation to satisfy the court that there is a sufficient cause for not filing such application within the prescribed limitation period. For such purposes the applicant is required to provide sufficient cause for delay in relation to each and every day beyond the period of limitation. In the instant case the application seeks recognition and enforcement of

Arbitral Award dated 15.07.2003, for which purpose the application was filed on 23.12.2020 without being accompanied by an application of condonation of delay nor was any explanation furnished regarding filing of the application for recognition and enforcement of the award after almost one and a half year of expiry of the limitation period under Article 120 of the Limitation Act.

9. In view of above, this Court is of the opinion that the instant application is barred by limitation and is not maintainable. In view of the above, recording and addressing arguments of the learned counsels for the parties on merit of the application serves no useful purpose and consequently such arguments have been omitted. This application is accordingly **dismissed.**

**(BABAR SATTAR)
JUDGE**

Announced in the open Court on _____/2022.

JUDGE

Saeed.