

JUDGMENT

ALI AKHTER HUSSAIN SHAH---Petitioner

Versus

MODEL PROJECT (PVT.) LIMITED through Chief Executive Officer and 6 others---Respondents

Writ Petition No. 3078 of 2020

FIAZ AHMAD ANJUM JANDRAN, J.---Through the instant writ petition (the petition), petitioner impugns order dated 10.10.2020 passed by the learned Additional District Judge, Islamabad-East, whereby application under section 32 of the Arbitration Act, 1940 filed by the respondent No. 4 was allowed, consequently suit of the petitioner seeking decree for declaration and permanent injunction was dismissed.

2. It is imperative to mention operative para-6 of the impugned order which reads as under:-

'Section 32 bars a suit to challenge a decision upon the existence, effect or validity of an arbitration agreement or award and it further prohibits the setting aside or amendment of an arbitration agreement or an award otherwise than as provided in the Act, 1940. As the essence of sections 32 and 33 of the Arbitration Act, 1940 is to prevent any abuse of the said Act and to avoid delay in the enforcement of the arbitration and remedy by way of regular suit is barred. As the arbitration prevailing clause 20.3 in the JVA between the parties is in existence, therefore, no suit shall lie on any ground whatsoever for a decision upon the existing arbitration clause. Hence, application under section 32 of Arbitration Act, 1940 is accepted and suit is dismissed. No order as to costs.'

3. Heard, record examined.

4. As is manifest from the order *ibid*, the suit was dismissed being barred by law i.e. the Arbitration Act, 1940. The said culmination is covered under Clause (d) Rule 11 of Order VII of the Code of Civil Procedure (the Code) which reads as under:-

"Rejection of plaint. The plaint shall be rejected in the following cases:--

a) where it does not disclose a cause of action:

b) where the relief claimed is under valued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so.

c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so:

d) where the suit appears from the statement in the plaint to be barred by any law,"
Emphasis added.

5. The dismissal of the suit had been as it being barred by law, to be construed as rejection of plant in terms of Order VII, Rule 11(d) of the Code, which makes the impugned order appealable in terms of section 96 of the Code as the expression "decree" envisaged in section 2(2) of the Code includes rejection of the plaint. The order impugned, therefore, for all intents and purposes is appealable order in terms of section 96 of the Code.

6. One of the material requirements for availing remedy under Article 199 of the Constitution is when no other alternate, efficacious remedy is available. The petition has been filed when not only adequate and efficacious but a statutory remedy is available then how this course could be approved. At the same time, it is observed as apprised by both the learned counsel for contesting parties that the learned trial Court did not frame, prepare

the decree sheet. So no fault was of any party, rather it was an act of the court which prevented the petitioner to file an appeal. It is now settled that none should suffer due to any act, omission on the part of court. The diversion from the statutory course is not permissible under constitutional jurisdiction in terms of Article 199 of the Constitution.

7. As apprised, in the case in hand, the learned Court of first instance has not framed the decree and finding no alternate remedy instant writ petition had been preferred for which I have given due audience to the learned counsel for the parties.

8. For resolving the controversy guidance is taken from the judgment of this Court rendered in case of 'Akbar Khan v. Aksar Khan etc. (C. R. No.138 of 2013)' wherein identical issue with regard to non-drawing of the decree by the Trial Court had been dealt with.

9. Gist of kind observations made by the Court are that a decree by definition is an expression of conclusively determining the matter placed before the Trial Court for adjudication. An order or a judgment which disposed of a suit cannot be executed unless a decree has been drawn up.

10. As observed in earlier part of the order, dismissal of suit in the case in hand is a rejection of plaint and being final order, a decree sheet is to be prepared being inclusive of "decree" as per section 2(2) of the Code.

11. As the fault is not attributed to the parties rather on account of an act of the Court. On this point the gracious decision holds that no person can be allowed to suffer or his right be prejudiced on account of an act of the Court. The drawing up of a decree is the duty of the trial court and there is no provision under the C.P.C. which prescribed a time for drawing of a decree.

12. In view of above, by seeking wisdom from the ratio set in case of Akbar Khan's supra, it is held that:--

- i. Impugned dismissal order is an order of rejection of plaint being barred by law in terms of Order VII, Rule 11(d) of the Code;
- ii. Section 2(2) of the Code 'Decree' includes the rejection of plaint, therefore, drawing of decree is mandatory course; and that
- iii. The impugned order is an appealable order in terms of section 96 of the Code.

13. The result would be, the learned trial Court shall draw a decree in terms of order dated 10.10.2020. The petitioner on account of act of the Court cannot be allowed to suffer his right, therefore, the limitation to avail the statutory remedy of appeal against the impugned order shall run from the date of preparation of the decree for which the petitioner shall apply within a period of fortnight from this order.

14. Disposed of in above terms.

Uploaded by IT Department, IHC

Disclaimer: The content available on this document are just for Information. Users are advised not to depend on the information and use it for official purpose. Islamabad High Court, Islamabad is not responsible for any damages arising in contract from the use of the content of this site.