JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.1090/2018
Major Muhammad Nouman
Versus.
Usman Habib and another

Date of Hearing: 19.09.2018
Petitioner by: Ms. Shireen Imran, Advocate.
Respondent No.1 by: Mr. Izzat Khan, Advocate.

MIANGUL HASSAN AURANGZEB, J:- Through this judgment, I propose to decide writ petitions No.1090/2018 and 1091/2018, since they entail common questions of law and fact. The contesting parties to the said petitions are common.

2. Through writ petition No.1090/2018, the petitioner (Major Muhammad Nauman) impugns (i) Order dated 18.04.2017, whereby the Court of the learned Civil Judge, Islamabad, dismissed the petitioner's application for setting-aside the order dated 21.05.2016, whereby the petitioner was proceeded against *ex-parte*; and (ii) Order dated 12.02.2018, passed by the Court of the learned Additional District Judge, Islamabad, dismissing the petitioner's civil revision petition against the said order dated 18.04.2017, passed by the learned Civil Court.

3. Through writ petition No.1091/2018, the petitioner impugns order dated 12.02.2018, passed by the Court of the learned Additional District Judge, Islamabad, dismissing the petitioner's civil revision petition against the learned Civil Court's order and decree dated 11.05.2017, whereby the arbitration award dated 03.10.2016 was made a rule of Court.

4. The record shows that on 29.11.2014, the petitioner and respondent No.1 (Usman Habib) entered into a contract for the construction of the former's house on plot No.11, Street No.1, Sector E, D.H.A., Phase-I, Islamabad, for a total consideration of Rs.13,900,000/-. The construction was to be completed by 28.11.2015. After the house was partially constructed, disputes

and differences arose between the petitioner and respondent No.1. Clause 2.12 of the said contract, is reproduced herein below:-

> ***"2.12 All disputes, controversies, or other claims arising in connection with this agreement or the breach, termination or invalidity thereof and which will be settled by good faith negotiations and arbitration as nominated and agreed mutually by both the parties."***

5. On 28.11.2015, respondent No.1 filed an application under Section 20 of the Arbitration Act, 1940 ("the 1940 Act") praying for the disputes between the petitioner and respondent No.1 arising from and related to the said contract to be referred to arbitration. Furthermore, respondent No.1 had prayed for the appointment of an arbitrator. The petitioner contested the said application by filing a written reply on 12.04.2016.

6. On 21.05.2016, the petitioner was proceeded against *ex-parte.* On 31.05.2016, the learned Civil Court, allowed respondent No.1's application under Section 20 of the 1940 Act, and referred the disputes between the petitioner and respondent No.1 to arbitration. On 17.06.2016, Mr. Muhammad Wajid Hussain Mughal, was appointed by the learned Civil Court as the sole arbitrator. On 03.10.2016, the learned arbitrator rendered the award holding respondent No.1 entitled to recover an amount of Rs.4,502,000/- from the petitioner along with the costs of litigation and the arbitration proceedings. Perusal of the said arbitration award shows that respondent No.1 had appeared in the arbitration proceedings on 16.08.2016 but subsequently absented himself, causing the learned arbitrator to proceed *ex-parte* against him.

7. After the arbitration award was rendered, the petitioner, on 17.10.2016, filed an application for setting-aside the order dated 21.05.2016 whereby the petitioner had been proceeded against *ex-parte* by the learned Civil Court. Vide order dated 18.04.2017, the learned Civil Court, dismissed the said application primarily on the ground that it had been filed beyond the limitation period provided by law. Furthermore, it was held that the petitioner had failed to file objections to the arbitration award within a period of

30 days from the date of the filing of the award. The said order dated 18.04.2017 was assailed by the petitioner in revision petition No.20/2017 before the Court of the learned Additional District Judge, Islamabad. Vide order dated 12.02.2018, the said revision petition was dismissed. It was held by the learned revisional Court that since the order dated 18.04.2017 was an interim order, and since the arbitration award had already been made a rule of Court, the said order dated 18.04.2017 had *["lost its validity"*]. The petitioner has assailed the said order dated 12.02.2018 in writ petition No.1090/2018.

8. As mentioned above, vide order and decree dated 11.05.2017, the said arbitration award was made a rule of Court. The said order and decree were assailed by the petitioner in revision petition No.21/2017 before the Court of the learned Additional District Judge, Islamabad. Vide order dated 12.02.2018, the said revision petition was dismissed. The learned revisional Court held *inter-alia* that the petitioner should have assailed the order and decree dated 11.05.2017 in an appeal instead of a revision petition; that the limitation period for filing an appeal was 30 days, whereas the limitation period for filing a revision petition was 90 days; that the petitioner had filed the revision petition only to save himself from being non-suited by not filing an appeal within 30 days; and that the revision petition was beyond the pecuniary jurisdiction of the learned revisional Court. The said order dated 12.02.2018 has been assailed by the petitioner in writ petition No.1091/2018.

9. Ms. Shireen Imran, learned counsel for the petitioner, after narrating the events leading to the filing of the writ petitions, submitted that the reason why the petitioner was unable to tender appearance before the learned Trial Court on 21.05.2016 was because on the said date, he was performing his duties as a soldier in the Pakistan Army; that the petitioner's counsel could not appear before the learned Civil Court on the said date because of her preoccupation in other Courts; that the learned

Civil Court did not take into consideration the petitioner's pleadings in his reply to respondent No.1's application under Section 20 of the 1940 Act before referring the matter to arbitration; and that there is no limitation period provided by law for filing an application for the recall of an order whereby a defendant/respondent is proceeded against *ex-parte.*

10. Learned counsel for the petitioner further submitted that the learned Civil Court erred by making the award dated 03.10.2016 a rule of Court; that even though the petitioner did not file objections under Section 30 of the 1940 Act to the award, it was obligatory upon the learned Trial Court to have scrutinized the award in order to determine as to whether or not it suffered from any invalidity; that the learned Revisional Court erred by not appreciating that an order to make the award a rule of Court was not appealable under Section 39 of the 1940 Act; that the limitation period for filing such an appeal is ninety days and not thirty days as erroneously held by the learned Revisional Court; and that the learned Revisional Court erred by not appreciating that the order and decree dated 11.05.2017 was an unreasoned order and did not show any application of mind by the learned Civil Court to the contents of the award. Learned counsel for the petitioner prayed for the writ petitions to be allowed.

11. On the other hand Mr. Izzat Khan, learned counsel for respondent No.1, submitted that the concurrent orders passed by the learned Courts below do not suffer from any jurisdictional infirmity; that the petitioner and his counsel were most negligent in defending the proceedings before the learned Civil Court as well as the learned arbitrator; that in the said proceedings, the petitioner had, at first, tendered appearance and subsequently absented himself without any plausible explanation; that if the petitioner was busy in performing his duties as a soldier on 21.05.2016, there was no reason for his counsel not to have tendered appearance before the learned Civil Court on the said date; that the said order dated 21.05.2016 merged in the order

dated 31.05.2016, whereby the learned Civil Court, allowed respondent No.1's application under Section 20 of the 1940 Act and referred the matter to arbitration; that since the petitioner did not file an appeal against the said order dated 31.05.2016, he is estopped from belatedly challenging the order dated 21.05.2016, whereby he was proceeded against *ex-parte*; that on 07.10.2016, the learned Civil Court, gave an opportunity to the petitioner to file objections to the arbitration award by 25.10.2016; that the petitioner's negligence continued unabated, because he did not file objections to the award dated 03.10.2016; that in such circumstances, the learned Civil Court, was correct in making the said award a rule of Court; that instead of filing an appeal against the order and decree dated 11.05.2017, the petitioner preferred a revision petition and that too before a wrong forum; and that the learned Revisional Court was correct in dismissing the petitioner's revision petitions. Learned counsel for respondent No.1 prayed for the writ petitions to be dismissed.

12. I have heard the contentions of the learned counsel for the contesting parties, and have perused the record with their able assistance.

13. The facts leading to the filing of the instant petitions have been set out in sufficient detail in paragraphs 2 to 8 above, and need not be recapitulated.

14. It is not disputed that the petitioner had contested respondent No.1's application under Section 20 of the 1940 Act by filing a written reply. Thereafter, on 21.05.2016, the petitioner was proceeded against *ex-parte* by the learned Civil Court. This was before respondent No.1's application under Section 20 of the 1940 Act was allowed, vide order dated 31.05.2016. The petitioner did not file an appeal against the order whereby the said application was allowed and the matters-in-dispute between the parties were referred to arbitration. The award was rendered on 03.10.2016, whereas the petitioner had filed the application for the recall of the said order dated 21.05.2016 on 17.10.2016. In

other words, the application for the recall of the order whereby the petitioner was proceeded against *ex-parte* was filed not just after respondent No.1's application under Section 20 of the 1940 Act was allowed but also after the award was rendered by the learned arbitrator. No plausible explanation was put forth by the learned counsel for the petitioner for not filing an application for the recall of the said order dated 21.05.2016 before the matter was referred to arbitration or before rendering of the award. In these circumstances, I am of the view that the learned Civil Court was correct in dismissing the petitioner's application for the recall of the order whereby he was proceeded against *ex-parte*.

15. Although limitation period has been prescribed for setting-aside an *ex-parte* decree, no limitation period has been prescribed for setting-aside an order whereby a defendant/respondent is proceeded against *ex-parte*. The limitation period for filing such an application is three years under Article 181 of the Schedule to the Limitation Act, 1908. However, it is well settled that a defendant/respondent who is proceeded against *ex-parte* is not debarred from appearing and participating in the proceedings at a subsequent stage. Reference in this regard may be made to the judgments in the cases of Hashim Khan Vs. National Bank of Pakistan (1992 SCMR 707) and Police Department Vs. Javid Israr (1992 SCMR 1009). In the case at hand, after being proceeded against ex-parte, the petitioner made no effort to join or participate in the proceedings.

16. The petitioner could not expect the learned Civil Court to put at naught the reference to arbitration as well as the entire arbitration proceedings simply because the petitioner chose to file an application for the recall of the order, whereby he was proceeded against *ex-parte* with an inordinate delay. It was within the discretion of the learned trial Court whether or not to allow an application for the recall of the order, whereby a defendant/respondent was proceeded against *ex-parte*. The conduct of the applicant is to be taken into consideration and

would be most relevant while such discretion is being exercised. Given the delay with which the application for the recall of the order dated 21.05.2016 was filed by the petitioner, and given the fact that the petitioner did not come up with a good cause as to why he or his counsel could not tender appearance before the learned Civil Court on 21.05.2016, I do not find any arbitrariness or unreasonableness in the order dated 18.04.2017, passed by the learned Civil Court dismissing the petitioner's application for the recall of the order dated 21.05.2016. Consequently, writ petition No.1090/2018 is dismissed.

17. As regards writ petition No.1091/2018, I first propose to decide the question whether the order dated 11.05.2017, passed by the learned Civil Court, whereby the award dated 03.10.2016 was made a rule of Court was appealable under Section 39 of the 1940 Act, or revisable under Section 115 C.P.C. Section 39(1)(xi) of the 1940 Act provides a right of appeal against an order *"setting aside or refusing to set-aside an award"*. An award can be set-aside either on the application of a party under Section 30 of the 1940 Act, or by the Court on its own motion. Either way, an order setting-aside an arbitration award is appealable. The question of a refusal by a Court to set-aside an award would arise only if an application to set-aside an award is filed by a party aggrieved by the award. If no such application or objections to the award are filed, and the Court passes an order making the award a rule of Court, such an order is not appealable.

18. In the case at hand, it is an admitted position that after the said award was rendered, the petitioner did not file objections to the award dated 03.10.2016 under Section 30 of the 1940 Act despite having been afforded opportunities for doing so by the learned Civil Court. Therefore, the order dated 11.05.2017, whereby the said award was made a rule of Court cannot be termed as an order *"refusing to set-aside an award"*. This being so, it is held that the said order dated 11.05.2017 was not appealable under Section 39 of the 1940 Act. However, the

petitioner could have filed a revision petition against the said order.

19. It ought to be borne in mind that Section 17 of the 1940 Act bars an appeal against a decree passed following a judgment pronounced according to the award except on the ground that it is excess of, or not otherwise in accordance with the award. In the case at hand, the learned Civil Court has not just passed an order in terms of the award dated 03.10.2016 but also a decree. It was not even the petitioner's case before the Revisional Court that the order and decree dated 11.05.2017, passed by the learned Civil Court was in excess of the award or not in accordance with the award. Therefore, the order and decree dated 11.05.2017 was not appealable under Section 17 of the 1940 Act.

20. In view of the above, the Court of the learned Additional District Judge erred by holding that the order and decree dated 11.05.2017 was appealable. The said Court also erred by not appreciating that since no objections had been filed by the petitioner before the learned Civil Court for the setting-aside of the award, the question of *"refusing to set-aside an award"* did not arise. Consequently, I have no hesitation in holding that the revision petition filed by the petitioner against the order and decree dated 11.05.2017 was maintainable. In holding so, I derive guidance from the law laid down by the Hon'ble Supreme Court in the case of Tribal Friends Co. Vs. Province of Balochistan (2002 SCMR 1903). In the said case, objections to an arbitration award were filed beyond the limitation period provided by law. The Court rejected the objections and made the arbitration award a rule of Court by passing a judgment and decree in terms thereof. The party aggrieved by the judgment and decree filed a revision petition, which was allowed by the Hon'ble High Court of Sindh, and the award was set-aside. The Hon'ble Supreme Court allowed the appeal on merits against the judgment of the Hon'ble High Court but held that a revision petition against the judgment and decree in terms of the arbitration award was competent under

Section 115 of the Code of Civil Procedure, 1908. Paragraph 7 and the relevant portions of paragraphs 8, 9 and 10 of the said report, are reproduced herein below:-

> ***"7. The appellant's Advocate has contended that both appeal and revision were not maintainable. In support of this contention the learned counsel submitted that appeal could be filed under section 39 (1) (vi) against the order refusing to set aside the award. As there was no objection before the Court question of refusal to set aside did not arise and thus section 39(1)(vi) will not be attracted. The contention seems to be that the objection to the award filed by the respondent was barred by time, therefore, there was no objection before the Court and thus question to refuse to confirm the award did not arise. The contention is not tenable. Section 39 (1) (vi) contemplates appeal against an order where the Court refuses to set aside the award. Such an order can be passed where objection has been filed by the parties. The question is whether an objection which is barred by time can be equated with a situation where no objection has been filed at all. Any party challenging the award can file objections which may be rejected or accepted. If it is rejected on merits or on the ground that it is barred by time it will amount to dismissing the objection and thus there will be an order refusing to set aside the award. The learned counsel referred to Nilkantha S. Nigachatti v. Sommena Nigashettis & Son AIR 1962 SC 66, where it was observed that if any party fails to file objection the question of setting aside the award does not arise and no appeal is maintainable under section 39. This rule is not applicable to the present case where objection was filed though claimed to be barred by time. Distinction has to be made where no objection has been filed and where objection though filed is barred by time. In the latter situation the Court has to pass an order holding that objection to the award being barred by time is dismissed and consequently refuse to set aside the award. In such a case there is a composite order against which appeal under section 39(1)(vi) can be filed. Therefore, on this particular ground maintainability of the appeal cannot be challenged.***
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> ***8. Now, we will consider whether revision application can be filed against any order passed by the Court under the Arbitration Act. For the purpose of filing appeal section 17 and section 39 can be pressed in service. The question is if any order is not covered by section 17 and section 39, Arbitration Act section 115, C.P.C. can be pressed in service section 41, Arbitration Act makes Code of Civil Procedure applicable to the proceedings of arbitration before the Court subject to the provisions of Arbitration Act. Therefore, Code of Civil Procedure will be applicable to arbitration proceedings in Court except where such application is expressly excluded by the Act or Rules framed under section 44***

of the Arbitration Act. Section 23, subsection (2) provide that where matter is referred to Arbitration the Court shall not deal with such matter except as provided by the Arbitration Act. Likewise section 32 bars any suit on any ground whatsoever for decision upon the existence effect or validity of an arbitration agreement or award except as provided by the Act. Where any Act is made applicable to any case or procedure than all the procedures and remedies available under that Act can be invoked provided their applicability has not been excluded. The learned Single Judge while holding the revision application maintainable observed as follows:--

> *"That though in the event when decree is passed on the basis of award, according to section 17 of the Arbitration Act appeal is not maintainable yet on the pointation of apparent illegality, lack of jurisdiction of violation of law or established procedure, same can, however, be challenged by way of revision petition within the purview of section 115, C. P. C."*

The applicability of section 115 of C.P.C. has not been completely excluded. In cases where remedy has been provided by appeal within the framework of the Arbitration Act revision application will not lie but in cases where these provisions do not apply the revisional jurisdiction of the High Court under section 115, C.P.C. can be invoked. Where in cases no appeal is provided and the Court has exceeded jurisdiction, acted without jurisdiction, committed material irregularity in the conduct of proceedings, passed order in violation of principles of natural justice and the same cannot be assailed under the provisions of the Arbitration Act and the High Court may exercise its supervisory jurisdiction under section 115, C.P.C. on an application made by any party or suo moto. It should be borne in mind that the proceedings relating to arbitration are to be governed and regulated by the Arbitration Act. The applicability of C.P.C. is in terms of section 41 and subject to the provision of the Arbitration Act. The respondent had filed revision application against the order passing a decree in terms of the award. Section 17 bars an appeal against a decree passed in terms of the award. In such circumstances in revision application a decree cannot be challenged on grounds set out in sections 30 and 33 of the Arbitration Act. ...

9..... A revision application will be competent against order, judgment and decree on grounds specified in section 115, C.P.C., provided the same cannot be challenged in appeal. In a case where any award is sought to be challenged the revision will lie if only the case is not covered by sections 30/33 and 39 of the Arbitration Act.

10. After holding that the revision application was maintainable and court-fee was payable the learned Judge proceeded to consider the grounds on which the order of the learned Civil Judge has been held to be illegal. ..."

21. Since the petitioner had not filed objections to the award dated 03.10.2016, the question of refusal to set-aside the award did not arise. Further, since the Court of the learned Additional District Judge, in dismissing the petitioner's revision petition against the learned Civil Court's order dated 11.05.2017 had held that the said order was appealable, the order passed by the Court of the learned Additional District Judge was not in consonance with the law laid down by the Hon'ble Supreme Court in the case of Tribal Friends Co. Vs. Province of Balochistan *(supra)*. It is not disputed that the petitioner had filed a revision petition against the order and decree dated 11.05.2017 within the limitation period of 90 days provided by law. Therefore, the impugned revisional order, to the extent of holding that the petitioner's revision petition against the said order was not competent, amounts to a jurisdictional error and is therefore, not sustainable.

22. Ordinarily, when this Court, in exercise of its jurisdiction under Article 199 of the Constitution, sets aside an order of a Court or a Tribunal, it remands the matter for a decision afresh in accordance with the law. In the case at hand, even though the order passed by the Court of the learned Additional District Judge has been found not to be sustainable, this Court cannot remand the matter to the said Court, since the said Court does not have the jurisdiction in pecuniary terms to entertain the revision petition against the order and decree dated 11.05.2017. The Court of the learned Additional District Judge could entertain revision petitions up to a pecuniary limit of Rs.25,00,000/- only. Given the value of the subject-matter of the reference or the proceedings before the learned Civil Court, the revision petition against the order and decree dated 11.05.2017 should have been filed before this Court and not Court of the learned Additional District Judge.

23. Section 4 of the Islamabad High Court Act, 2010, provides that the Islamabad High Court shall have, in respect of the Islamabad Capital Territory, original, appellate, revisional and other jurisdiction, as under the Constitution or the laws in force

immediately before the commencement of the said Act, is exercisable in respect of the said territory by the Lahore High Court. Now it is not disputed that immediately before the commencement of the said Act, the High Court had appellate and revisional jurisdiction with respect to matters where the value of the suit in which the order or decree was passed exceeded Rs.2,500,000/-. I say this because Section 18(1) of the West Pakistan Civil Courts Ordinance, 1962, (as it stood when the Islamabad High Court Act, 2010, was enacted) provided that an appeal from a decree or order of a Civil Judge shall lie to the High Court if the value of the Original Suit in which the decree or order was made exceeds Rs.2,500,000/-, and to the District Judge in any other case. This had also been confirmed by the Registrar of this Court in its letter dated 03.12.2012 to the District and Sessions Judge, Islamabad.

24. By the Punjab Civil Courts (Amendment) Act, 2016, the said amount has been enhanced to Rs.5,000,000/-. The proposal to amend the West Pakistan Civil Courts Ordinance, 1962, so as to make the appellate and revisional jurisdiction of the District Court in Islamabad unlimited in pecuniary terms has been approved by the Federal Cabinet on 26.01.2016, but till date, the legislature has not so amended the said Ordinance.

25. As regards the valuation clause of respondent No.1's application under Section 20 of the 1940 Act, the same reads as follows:-

> ***"17. The appropriate Court fee stamps have been affixed on the application."***

26. As can be seen, no amount was mentioned by respondent No.1 in the valuation clause of the said application. The learned Civil Court did not require respondent No.1 to supply the omission by inserting the proposed valuation in the application under Section 20 of the 1940 Act. Be that as it may, for the purposes of determining which Court had the jurisdiction to entertain and decide an appeal or a revision petition against an order passed by a Civil Court, the value of the subject-matter of the reference

would be a determinative factor. In this regard, section 2(c) of the 1940 Act, provides as follows:-

> ***"Court means a civil Court having jurisdiction to decide the question forming the subject-matter of the reference, if the same had been the subject-matter of a suit."***

27. Only that Court would have jurisdiction to hear an application under the provisions of the 1940 Act, which could competently decide the suit if the subject-matter of the reference had been the subject-matter of the suit. The subject-matter of the reference in the instant case constituted respondent No.1's claim for payment, which exceeded Rs.25,00,000/-. Resultantly, the revision petition from an order of the learned Civil Court was competent before the High Court and not before the District Court.

28. In the instant case respondent No.1 had claimed an amount of Rs.62,78,500/- against the petitioner in paragraph 12 of the application under Section 20 of the 1940 Act, and the learned sole arbitrator had awarded an amount of Rs.45,02,000/- in respondent No.1's favour. Since both the said figures are in excess of the pecuniary limit with respect to which the District Court could entertain and decide a revision petition, the Court of the learned Additional District Judge correctly dismissed the petitioner's revision petition on the ground that the same was beyond its pecuniary jurisdiction. In holding so, I derive guidance from the following case law:-

(i) In the case of M. A. Jalil Vs. Group Capt. (Retd.) Salah-ud-Din Khan (1983 CLC 1685), the Hon'ble Mr. Justice Khalilur Rehman Khan (as he then was) of the Lahore High Court held that the Arbitration Act, 1940, provides a complete code in itself for matters concerning valuation for the purposes of jurisdiction; and that the value of the subject-matter of the reference will determine the jurisdiction of the Court. Furthermore, it was held as follows:-

> ***"Now the value of the suit in arbitration matter being the value of the subject-matter of the reference, the same will***

determine the forum of appeal. As such, it will be seen that the objection of the learned counsel for the respondent that the appeal filed by the petitioner before the District Judge was incompetent, has much force, as the value of the appeal exceeded the pecuniary jurisdiction of the learned District Judge."

(ii) In the case of <u>Province of Punjab, Housing and Physical Planning Department, Lahore (PLD 1984 Lahore 515)</u>, it has been held *inter alia* that under section 2(c) of the 1940 Act, a reference is to be considered as identical to a suit, and the amount or value of the subject matter of the reference furnishes the basis for fixation of the forum for hearing the application; that the amount claimed by the applicant under the reference to arbitration would be the deciding factor for ascertaining whether the revision lies before the District Court or the High Court; that the District Court could exercise revisional jurisdiction only in those cases wherein the value of the subject-matter did not exceed its appellate jurisdiction as regulated by Section 18 of the West Pakistan Civil Courts Ordinance, 1962; and that there being no other provision in the 1940 Act for determining the jurisdictional value for the purposes of the appeal, under section 18 *ibid*, such value shall apply for the ascertainment of the forum of the appeal as well as the forum competent to hear the revision.

29. Having held that the Court of the Additional District Judge did not have the jurisdiction in pecuniary terms to adjudicate upon the petitioner's civil revision petition against the order dated 11.05.2017, the vital question that warrants determination is whether this Court can close its eyes to the patent illegality in the said order passed by the learned Civil Court, whereby the award was made a rule of Court. A glance at the learned Civil Court's said order shows that the same is not in consonance with the law laid down by the Superior Courts. The operative part of the said order is reproduced herein below:-

"Arguments heard and record perused.

Keeping in view the contention of the applicant as well as after perusing the record the award filed by the arbitrator is made rule of the Court. Cost to follow the event. Decree sheet be drawn up accordingly. File be consigned to the record room after its due completion and compilation."

30. True, while deciding whether or not to pass a judgment and decree in terms of the award, it is not open to the Court to make sifting investigation of the proceedings before the arbitrator in order to find out the basis of the award. It is, however, incumbent upon the learned Civil Court to go through the award in order to see if it suffers from any invalidity or if there is an error apparent on the face of the award. It is well settled that simply because a party does not file objections to the award or does not file them within the limitation period provided in Article 158 of the Schedule to the Limitation Act, 1908, does not mean that the learned Civil Court should without further ado make the arbitration award a rule of Court and pass a judgment and decree in terms thereof. Only after it comes to the conclusion that there is no cause to remit the award or to set it aside can the learned Civil Court proceed to pass a judgment and decree in terms of the award.

31. In the case at hand, the learned Civil Court made the award a rule of Court simply because the petitioner had not filed objections to the award. The said order dated 11.05.2017, other than being in violation of Section 26-A of the 1940 Act on account of being bring bereft of reasons, does not show any application of judicious mind to the contents of the award so as to determine whether any provision of law was violated; or whether there was any reason to remit the award for reconsideration. This failure on the part of the learned Civil Court had rendered the said order unlawful and against the law laid down by the Superior Courts in the following cases:-

(i) In the case of Awan Industries Ltd. Vs. The Executive Engineer, Lined Channel Division (1992 SCMR 65), it has been held that Section 17 of the 1940 Act imposed a duty on Courts to see that there was no cause to remit the award or any of the matters referred to arbitration for reconsideration

or to set-aside the award; and that this could be done by the Court *suo moto* apart from the application which a party may make for either remission of the award or its reversal. Furthermore, it was held as follows:-

> ***"Where, therefore an award is found to be nullity because of the invalidity of the arbitration agreement or, for any other reason, or the award is prima facie illegal and not fit to be maintained, the Court has power under section 17 of the Act to set it aside without waiting for an objection to award being filed or without considering any application for setting it aside, if there be any, and irrespective of the question whether or not any objection to the award was filed or whether the objection, if filed, was not within time. In such cases section 30, clause (c) of the Act is also attracted."***

(ii) In case of <u>Pakistan Through General Manager, Pakistan Railway Vs. Messrs Q.M.R. Expert Consultants (PLD 1990 SC 800)</u>, it was held as follows:-

> ***"10. It was also urged by Mr. Fazal-i-Hussain that after the passing of the judgment by the High Court, the learned Civil Judge acted in haste inasmuch as he made the award rule of the Court within 10 days and then issued attachment order attaching the Head Office of the Railways at Lahore. As the above point is not in issue 'before us, we would not like to comment upon the same. <u>However, we may observe that under section 17 of the Act, it is the duty of the Court to examine, whether there was any reason for modifying of the award or for setting aside the award notwithstanding that an affected party may have failed to file the objections to the award on account of the expiry of the limitation period</u> or the parties to the arbitration proceedings may be in collusion and because of that, they may not file any objection to a collusive award. If any authority is needed, reference may be made to the case of Union of India v. Pratap Chandra Biswas AIR 1964 Assam and Nagaland 141, in which a Division Bench of the above High Court held that there is nothing in section 39 or any other provision of the Act to show that the Court can refuse to set aside an award only on an application made by a party but from a bare reading of section 17, it is clear that even the Court, can suo motu set aside an award. Reliance was placed on the case of Chhabba Lal v. Kallu Lal and others AIR (33) 1946 PC 72. We are inclined to hold that in a fit case, the Court may on its own under section 17 of the Act modify or set aside the award if the facts and dictates of justice so demand."***
>
> **(Emphasis added)**

(iii) In the case of Ameen General Enterprises Vs. Azad Jammu and Kashmir Government (PLD 2010 SC (AJ&K) 1), it has been held as follows:-

> *"It may also be mentioned here that even if the objections are not filed the Court under the provisions of the Arbitration Act is bound to determine the validity or otherwise of the award on facts and impartial conduct of the Arbitrator subject to the legal obligation to protect the award unless the same suffers from an apparent illegality or any other legal flaw floating upon the very surface of the award."*

(iv) In the case of National Logistic Cell (NLC) VS. Hakas (Pvt.) Ltd. (2010 YLR 1448), the Civil Court had made the award a rule of Court only because no objections to the award had been filed. The Division Bench of this Court set- aside the order and decree passed by the Civil Court. In paragraph 8 of the said report it was held as follows:-

> *"8. The learned Civil Judge before making the award rule of the Court, was to apply his mind whether there is no cause to remit the award or any of the matters referred to arbitration for consideration or whether the award is liable to be set aside. Without doing that exercise, the learned Civil Judge made the award rule of the Court on the only ground that no application for setting aside the award has been filed."*

(v) In the case of Rashida Begum Vs. Ch. Muhammad Anwar (PLD 2003 Lahore 522), it has been held as follows:-

> *"7. There is another important aspect of the matter, that even if it is assumed that no objections were filed by the appellant; yet the Court below while considering the question, if the award should be made rule of the Court or otherwise, was not supposed to remain dormant and to play the role of a post office, by affixing the judicial stamp on the award. The Court has ample suo moto power and in exercise thereof, is duty bound to see if the award which is to be made rule of the Court, by the Court does not violate any provision of law; the rules of justice and/or exchequer, even if the parties have consented that the award be made rule of the Court."*

32. If this Court were to convert the instant writ petition into a revision petition, the same would clearly be barred by time. However, it is well settled that where an order or judgment before a Court is a consequence of misreading of evidence or is contrary to the law laid down by the Superior Courts, this Court will not

hesitate in interfering with such an order in exercise of its *suo moto* revisional jurisdiction. As mentioned above, the order dated 11.05.2017 is contrary to the law laid down by the Superior Courts. The mere fact that a revision petition against the said order was not filed within the limitation period prescribed by law before the competent forum would not pose as an obstacle before this Court to set it aside in exercise of its *suo moto* revisional jurisdiction, if said conditions are satisfied. In holding so, I am fortified by the law laid down in the in the cases of Muhammad Swaleh Vs. M/s. United Grain & Fodder Agencies (PLD 1964 SC 97), Federal Board of Intermediate & Secondary Education Vs. Azam Ali Khan (2017 YLR 906), Mst. Bhagay Vs. Mst. Fatima Bibi (PLD 2004 Lahore 12), Town Municipal Administration Vs. Rifat Hussain (2003 CLC 1370), Oil and Gas Development Corporation Vs. Clough Engineering Limited (2003 YLR 353), Mst. Iqbal Bibi Vs. Allah Yar (2004 YLR 1279), and Kiran Arif Mian Vs. Kinza Khalid (PLD 2008 Islamabad 11). Recently, in the case of Hafeez Ahmad Vs. Civil Judge, Lahore (PLD 2012 SC 44), it has been held as follows:-

> ***"17. Now question arises whether suo moto jurisdiction under section 115 of the Code could be exercised by the High Court or the District Court in a case where a revision petition has been filed after the period of limitation prescribed therefor. The answer to this question depends on the discretion of the Court because exercise of revisional jurisdiction in any form is discretionary. Such Court may exercise suomoto jurisdiction if the conditions for its exercise are satisfied. It is never robbed of its suomoto jurisdiction simply because the petition invoking such jurisdiction is filed beyond the period prescribed therefor. Such petition, could be treated as an information even if it suffers from procedural lapses or loopholes. Revisional jurisdiction is pre-eminently corrective and supervisory, therefore, there is absolutely no harm if the Court seized of a revision petition, exercises its suomotu jurisdiction to correct the errors of the jurisdiction committed by a subordinate Court. This is what can be gathered from the language used in Section 115 of the Code and this is what was intended by the legislature, legislating it. If this jurisdiction is allowed to go into the spiral of technicalities and fetters of limitation, the purpose behind conferring it on the Court shall not only be defeated but the words providing therefor, would be reduced to dead letters. It is too known to be reiterated that the proper place of procedure is to provide stepping stones and not stumbling blocks in the way of***

administration of justice. Since the proceedings before a revisional Court is a proceeding between the Court and Court, for ensuring strict adherence to law and safe administration of justice, exercise of suomoto jurisdiction may not be conveniently avoided or overlooked altogether. The Court exercising such jurisdiction would fail in its duty if it finds an illegality or material irregularity in the judgment of a subordinate Court and yet dismisses it on technical grounds."

33. In view of the above, writ petition No.1091/2018 is converted into a revision petition and the same is allowed in exercise of *suo moto* revisional jurisdiction of this Court; the order and decree dated 11.05.2017, passed by the learned Civil Court, whereby the award dated 03.10.2016 was made a rule of Court, is set-aside; and the matter is remanded to the learned Civil Court to decide respondent No.1's application for making the award a rule of court afresh in accordance with the above-mentioned law laid down by the Superior Courts. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2018.

(JUDGE)

APPROVED FOR REPORTING

*Qamar Khan**