

JUDGEMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Civil Revision No.143 of 2015.

*M/s Trans Tech Pakistan through
Habil Ahmed Khan, authorized officer*

Vs.

*Alternative Energy Development Board (AEDB)
through its Chief Executive Officer & another.*

Petitioner's by: Mr. Bilal Akbar Tarrar, Advocate.

Respondents by: Barrister Sharjil Sheryar, Advocate

Date of hearing: 02.07.2015

Aamer Farooq, J.- Through the instant civil revision, the petitioner has assailed order dated 15.01.2015 whereby the appeal filed under Order XLIII Rule 1 Code of Civil Procedure, 1908 (CPC) against order dated 15.12.2014 by learned Civil Judge 1st Class (West), Islamabad was dismissed.

2. The facts, in brief, are that appellant filed a suit for declaration, temporary injunction and consequential relief against the respondent wherein a declaration was sought to the effect that the Alternative Energy Development Board (hereinafter called **the respondent**) is not entitled to terminate/cancel the letter of intent dated 20.03.2013. Alongwith the suit an application for interim relief under Order

XXXIX Rules 1 & 2 CPC was filed restraining the respondent from terminating letter of intent. The learned Trial Court vide order dated 04.12.2014 was pleased to grant ad-interim injunction, however, the application was dismissed vide order dated 15.12.2014. Appeal was filed against the referred order which was dismissed vide the impugned order.

3. The learned counsel for the petitioner, inter alia, submitted that the jurisdiction has been exercised by the Courts below with material irregularity inasmuch as erroneous considerations have prevailed with the Courts below in dismissing the application for interim relief filed by the petitioner. It was further submitted that there is no conflict between letter of intent and policy of the respondent. The learned counsel further contended that the letter of intent has been revoked/cancelled due to delay on part of the petitioner whereas there was no delay on part of the petitioner inasmuch as it made strenuous efforts for allocation of land which could not be allocated without any fault of the petitioner; the letter of intent could not have been cancelled/revoked inasmuch as it is a contract between the parties. The learned counsel also submitted that the case law relied upon by the Appellate Court is not attracted. Moreover, the Courts below have failed to appreciate that as per milestones listed in letter of intent, the first milestone comprised three components of which two depended on Public Sector Entities i.e. National Transmission & Distribution Company and the Environmental Protection

Agency, both of which have caused immense delay without any fault of the petitioner.

4. The learned counsel for respondents, inter alia, submitted that both the Courts below have concurrently held that the petitioner is not entitled to interim relief, therefore, this Court in exercise of power under section 115 CPC cannot interfere with the decisions unless the same are perverse or unreasonable, which in the present case do not suffer from such infirmity. The learned counsel in support of his contention placed reliance on cases titled "Mohammad Idrees & others vs. Mohammad Pervaiz & others" (**2010 SCMR 5**), "Abdul Rahim & another vs. Mrs. Jannatay Bibi & 13 others" (**2000 SCMR 346**) and "Ihsanullah & others vs. Khwaja Mohammad & others" (**2011 CLC 989**). It was further contended by the learned counsel that the petitioner has failed to establish the three elements required for grant of interim injunction under Order XXXIX Rules 1 & 2 CPC, therefore, it is not entitled to referred relief. In this behalf reliance was placed on cases titled "Gulzar Begum vs. Mehbood Hussain alias Mehmoob Khan" (**2012 YLR 809**) and "Shahbaz Sadiq & another vs. Rab Nawaz & another" (**2006 YLR 1443**). It was further contended that letter of intent is not a concluded contract and is merely intention of the parties to enter into one in future, therefore, no injunction can be granted to extend its life or give it an effect in perpetuity. In support of his contention learned counsel placed reliance on case titled "Province of West Pakistan through Secretary Public Works Department, Lahore vs. Gamman's

Pakistan Limited” (**PLD 1976 Karachi 458**), “Javed Hotel (Pvt). Limited vs. CDA through Chairman & another” (**PLD 1994 Lahore 315**), “Autotechnic (Pvt.) Limited vs. Syed Abuzar Bukhari” (**2014 YLR 1199**), “Dressing Rand S.A vs. Bindal Agro Chemical Limited and K.G.”(**AIR 2006 SC 871**) and “Baron International Airways vs. Haj Committee” (**AIR 1997 Dehli 247**). Moreover, the case law from American & English jurisdiction was also relied upon by the learned counsel for the respondents. In this behalf reliance was placed on case titled “Dunhill Securities Corporation vs. Microthermal Applications, Inc.”[**308 F.Supp.195 (SDNY)**] and “Irene Butler et al. v. John Hardy” (**576 A.2d 202 1990**). The learned counsel pointed out that injunction cannot be granted where contract has expired and in this behalf reliance was placed on case titled “Pakistan Associated Construction Ltd. vs. Asif H. Qazi” (**1986 SCMR 820**). Moreover, the main relief cannot be granted under the garb of interim relief as the same would amount to granting relief without trial of the suit. In this behalf reliance was placed on case titled “Islamic Republic of Pakistan vs. Mohammad Zaman Khan”(1997 SCMR 1508) and “Abdul Jabbar vs. Fazal Elahi Butt” (**2003 SCMR 1558**).

5. The respondents issued letter of intent to the petitioner for 15 MW Solar TV Power Generation Project. Under the referred letter certain milestones were to be achieved from date of issuance of letter of intent i.e. 20.03.2013. It was specifically provided that validity of letter of intent is not more than 18 months from the date of its issuance after which it

shall lapse immediately. Under clause 7 of the referred letter in case the petitioner failed to meet the milestones or perform any other obligation as provided in the policy and the letter of intent including the extension of the date of expiry of Bank Guarantee the respondents were entitled to terminate the letter of intent and encash the Bank Guarantee. The referred letter of intent was cancelled/revoked by the respondents vide letter dated 05.12.2014 due to the reason that the petitioner defaulted in submitting Project Feasibility Study and related reports within the time frame prescribed in the letter of intent and the Bank Guarantee submitted by the petitioner was encashed. In the suit filed by the petitioner the interim relief was declined by the learned Trial Court as well as Appellate Court on the ground that letter of intent does not constitute a valid agreement and the terms of letter of intent have not been complied with, therefore, no injunctive relief can be granted. It was further observed that there is a conflict between the letter of intent and policy. In so far as the letter of intent is concerned the case law relied upon by the learned counsel for respondent No.1 is instructive inasmuch as consensus of the decisions is that the letter of intent does not constitute a concluded agreement. In "Province of West Pakistan vs. Gamman's (Pakistan) Limited" (PLD 1976 Karachi 458) supra it was observed as follows:

"8. Before I examine the submission advanced, I would point out that I have not been able to come across the expression "Letter of intent" even in the commercial dictionaries, nor was learned counsel able to assist us on the meaning of this expression, although it has been used by the

appellant. Be that as it may, the learned arbitrator was referred to an American commentary on the subject, but he did not agree with that view and observed that a Letter of intent, "as its very name implies, includes (a) an intention to enter into a contract, (b) an authority to the contractor to start work before the formalities associated with the signing of the contract can be completed, and (c) the right of the contractor to be compensated for the work done."

Similarly, In case titled "Javed Hotel (Pvt.) Limited vs. CDA through Chairman" (PLD 1994 Lahore 315) the Hon'ble Lahore High Court observed that no particular words are required, it is the substance and expression which matters and not the form. Similar, view was taken by the Hon'ble Lahore High Court in case reported as 2014 YLR 1199 supra that letter of intent is not a concluded contract and is just an offer. In "Dresser Rand S.A. vs. Bindal Agro Chemical Ltd. and K.G." (AIR 2006 SC 871) it was observed that it is now well settled that a letter of intent merely indicates parties intention to enter into a contract with the other party in future. The letter of intent is not intended to bind either party ultimately to enter into in contract.

6. It was incumbent on the petitioner to prove three elements required for granting of interim relief under Order XXXIX CPC. In this behalf case of the petitioner is that it could not accomplish the milestones as provided in the letter of intent without any fault does not establish a prima facie case in its favour; the petitioner may ultimately prove through evidence the referred fact. However, from the documents appended it is not evident that either petitioner accomplished

the milestones or failed to do so due to lapse on part of public functionaries. In the jurisdiction under section 115 of Code of Civil Procure, 1908 this Court does not interfere with the discretion exercised by the Appellate Court unless the same is arbitrary or unreasonable. The Courts below exercised their discretion while dismissing application for interim relief by the petitioner and there is nothing on record to show that the same was done in an arbitrary and unreasonable manner resulting in legal or jurisdictional infirmity. In this behalf Hon'ble Peshawar High Court in case titled "Ihsanullah and others vs. Khwaja Mohammad and others"(2011 CLC 989) after discussing and relying upon the earlier case law of the Apex Court on the subject observed that the scope of section 115 CPC has been dilated upon by the August Supreme Court of Pakistan in case titled "Shumal Begum vs. Mst. Gulzar Begum & three others" (1994 SCMR 818) and recently reaffirmed in "Mohammad Idrees & others vs. Mohammad Pervaiz & others" (2010 SCMR 5) held that the High Court in exercise of its revisional jurisdiction under section 115 CPC is not to interfere in findings of Courts below unless such findings suffer from controversial defect, illegality or material irregularity and the Court has to satisfy itself with respect to the following three matters:

- a) That the order of subordinate Courts is within its jurisdiction.
- b) That the case is one in which the Court ought to exercise jurisdiction.

- c) In exercising jurisdiction the Court has not acted illegally i.e. in breach of some provision of law or with material irregularity while committing some error of procedure in the course of trial which effects the ultimate decision.

If the High Court is satisfied upon these three matters it has no power to interfere because it differs, however, profoundly from the conclusion of subordinate Courts upon question of fact or law.

7. In the present case the interim relief was rightly refused by the learned Trial Court as well as the Appellate Court inasmuch as under the letter of intent the petitioner had to accomplish milestones within a certain period which it failed to do so and the extension in time granted to do the needful also lapsed, therefore, on the said basis the respondent cancelled/revoked the same. There is no illegality or jurisdictional infirmity in the decisions of the Courts below calling for interference by this Court.

8. In view of above, the instant civil revision is without merit and is hereby dismissed.

(AAMER FAROOQ)
JUDGE

Announced in open Court on this 31st day of July, 2015.

JUDGE

Altaf Malik

Approved For Reporting