

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

F.A.O.No.38 of 2017  
Masood Ahmad Bhatti  
Versus.

Raja Imran Yaqoob and another

**Date of Hearing:** 04.07.2017  
**Appellant by:** Mr. Muhammad Wajid Hussain Mughal,  
Advocate.  
**Respondents by:** Ex-parte.

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**MIANGUL HASSAN AURANGZEB, J:-** Through the instant appeal under Section 39(vi) of the Arbitration Act, 1940 ("1940 Act"), the appellant, Masood Ahmad Bhatti, impugns the order dated 01.12.2016, passed by the Court of the learned Civil Judge, Islamabad (West), whereby the appellant's objections under Section 30 and 33 of the 1940 Act, against the undated and unsigned arbitration award rendered by the learned Arbitrator (Syed Zaheer Hussain Shah, Advocate High Court), were turned down, and the said arbitration award was made a rule of Court.

2. This appeal was first taken-up for hearing on 02.03.2017, whereon notices were directed to be issued to the respondents. According to the office report notices were served on respondent No.1 through his father. Despite the said service, no one tendered appearance on behalf of respondent No.1. Respondent No.2 could not be served on the address provided by the appellant. Vide order dated 18.04.2017, this Court directed re-issuance of notices to the respondents through publication in the "Daily Nawai Waqt". Despite the said publication in the Daily Nawai Waqt's issue of 28.04.2017, no one tendered appearance on behalf of the respondents. Since there was also an office report to the effect that respondent No.1 had been served through his father, this Court vide order dated 11.05.2017, decided to proceed ex-parte against the respondents. The matter was adjourned to 04.07.2017, for ex-parte arguments of the learned counsel for the appellant.

3. Learned counsel for the appellant submitted that the appellant and respondent No.1 agreed to start the business of construction and rent a car; that disputes and differences developed between the appellant and respondent No.1; that on 27.10.2015, the said parties entered into an agreement, whereby they agreed to resolve their disputes through arbitration, and appointed respondent No.2 as the sole arbitrator; that the sole arbitrator was to decide the disputes within a period of forty days, as expressly agreed between the parties; that after the parties referred the disputes and differences to the sole arbitrator, he delayed the matter without any plausible reason; that finally an award was announced in which the liabilities of the parties were not determined; that the appellant filed objections under Section 30 and 33 of the 1940 Act, against the award; and that vide order dated 01.12.2016, the learned Civil Court, dismissed the said objections.

4. Learned counsel for the appellant further submitted that the learned Arbitrator got personally involved in the dispute between the appellant and respondent No.1 by making an offer to purchase the properties which were the subject matter of the disputes between the said parties; that the learned Arbitrator did not conduct himself like an Arbitrator but like a property dealer by asking the appellant to pay some amount to respondent No.1, and by asking the respondent No.1 to sell his property on the cheap price; that the learned Arbitrator had misconducted the proceedings; that the learned Civil Court erred by not appreciating that the award was not enforceable; that the learned Civil Court also did not appreciate that the award was rendered beyond the period fixed by the parties in the arbitration agreement; and that the learned Arbitrator neither framed any issue nor recorded any evidence before rendering the award. Learned counsel prayed for the impugned order dated 01.12.2016, to be set aside.

5. I have heard the contentions of the learned counsel for the appellant and perused the record with his able assistance.

6. The record shows that after disputes and differences developed between the appellant and respondent No.1 arising from and related to the business transactions to which they were parties, they on 27.10.2015, entered into an arbitration agreement. The details of the business dealings between the appellant and respondent No.1 are detailed in the said arbitration agreement. The terms of reference for the Arbitrator as per the said agreement are as follows:-

*"ii. To resolve all the disputes and differences which are incidental and ancillary to the main business transaction ever executed between the two orally or in written form, to make provisions and chalk out the cost effective method to redress the grievance of the parties and in this respect the arbitrator shall record the evidence both the parties oral and documentary and in case of oral evidence the other party shall have the right of cross examination on the witness produced by either parties."*

7. In the arbitration agreement, it was also agreed that the award would be rendered within a period of forty days. Although, the award was rendered beyond the forty-day period agreed between the parties, there is nothing on the record to suggest that the appellant had not participated in the proceedings or had objected to the proceedings beyond the said period. Therefore, the appellant can be said to have acquiesced to the proceedings beyond the period agreed between the parties for the conclusion of the arbitration proceedings.

8. As regards the contention of the learned counsel for the appellant that the learned Arbitrator got personally involved in the disputes between the parties and had made an offer for the purchase of the properties which were the subject matter of the dispute, an indication to the effect is apparent in the last paragraph of the arbitration award, which is reproduced herein below:-

*"The undersigned is also engaged in liquidating the assets in question that's why the arbitration award with the mutual consent was delayed for some days as the undersigned wanted to pay some amount to Mr. Bhatti with the decision which could not be done due to some reasons, however every cloud has a silver lining, every effort is being made to fetch the price from the assets and pay off Mr. Bhatti his desired amount which does not include the bank installments etc as earlier stated that every past contractual relations has been dissolved to avoid further*

*complications. Before I should part with the award I would like to mention here that Mr. Imran has paid three installments at the rate of 84000/-, the same shall be adjusted in the amount paid to Mr. Bhatti to pay off his money.*

[Emphasis added]

9. Generally the arbitration awards are liberally constructed by the courts for the purpose of upholding the award given by the arbitrators unless there is some error apparent on the face of it.

10. Court had to give reasonable intendment in favour of the award leaning towards upholding rather than vitiating the same. Court would neither act as a court of appeal nor override the award through its own judgment by scrutinizing the award to discover errors for the purpose of setting aside the same. Possibility of a different view by appreciating the facts with a different angle was no ground for setting aside the award. Arbitrator, being the final judge on question of law and fact, his decision merited weightage unless misconduct against him stood proved.

11. The above referred last paragraph of the arbitration award substantiates the contention of the learned counsel for the appellant that the learned Arbitrator wanted to pay certain amount to one of the parties to the dispute. This by itself is sufficient to vitiate the award. By doing so, the learned Arbitrator also went beyond his terms of reference set out in the arbitration agreement. Arbitrators are expected not to get personally involved in the disputes between the parties. An Arbitrator is a judge of the facts as well as the law. He is expected to act judiciously. The fact that the learned Arbitrator in the case at hand wanted to pay some amount to one of the parties to the dispute with the decision seems to have escaped the notice of the learned Civil Court. It is well settled that even if no objections are filed against the arbitration award, the Court is nonetheless under an obligation to scrutinize the award, before passing a judgment and decree in terms of the award making the same a rule of Court.

12. In view of the above, the instant appeal is allowed, and the impugned order dated 01.12.2016, is set aside, and the matter is

remanded to the learned Civil Court to decide the appellant's objections under Sections 30 and 33 of the 1940 Act, after hearing the appellant and respondent No.1. There shall be no order as to costs.

**(MIANGUL HASSAN AURANGZEB)  
JUDGE**

**ANNOUNCED IN AN OPEN COURT ON \_\_\_\_\_/2017**

**(JUDGE)**

***\*Ahtesham\****

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