

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

I.C.A. No.51 of 2022
National University of Modern Languages
Versus
Civil Judge Islamabad-West and others

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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21.02.2022	M/s Muhammad Munir Paracha and Nauman Munir Paracha, Advocates for the appellant.
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SARDAR EJAZ ISHAQ KHAN, J: This intra court appeal is from the order dated 26.01.2022 by a learned Single Bench of this Court dismissing the appellant’s writ petition no. 3723 of 2020.

2 An arbitrator was appointed by the civil court by a *consent order* dated 11.03.2020 for arbitration of a dispute arising out of a construction contract between the appellant (NUML University) and respondent no.2 (Urooj Telecom). The appellant later moved the civil court under section 11 of the Arbitration Act, 1940, to remove the arbitrator and to discontinue the arbitration proceedings. The civil court dismissed that application vide order dated 26.11.2020. The appellant filed a writ petition assailing the aforesaid dismissal order. The writ petition met the same fate of dismissal, but this time with costs. The appellant is now in intra court appeal, and the question before us is whether it is maintainable.

3 An appeal does not lie against an order dismissing an application under section 11 of the Arbitration Act¹. Before the promulgation of the Code of Civil Procedure (Amendment) Act, 2020 (Act No.VII of 2020), a revision

¹ Section 39, Arbitration Act

used to lie instead. For not being an order passed in original civil jurisdiction, a decision in revision by a High Court was not open to an intra court appeal and was appealable before the Supreme Court only². After the Code of Civil Procedure (Amendment) Act, 2020, a party aggrieved by a non-appealable order in arbitration matters comes before this Court in its Constitutional jurisdiction. However, an intra court appeal against an order passed in the Constitutional jurisdiction is not available where³

...the application brought before the High Court arises out of any proceedings in which the *law applicable* provided for at least one appeal or one revision or *one review* to any Court, Tribunal or authority against the original order. (emphasis supplied)

4 Learned counsel for the appellant submitted that the *law applicable* to the civil court's order of dismissal impugned in the writ petition was the Arbitration Act, 1940, and, there being no appeal or other remedy available against the said order, an intra court appeal was competent. This submission on closer examination does not appear to be correct. The *law applicable* to the proceedings before the civil court was not just the Arbitration Act but, by virtue of section 41(a) of the said Act, the Code of Civil Procedure, 1908 (CPC) as well. The said section 41(a) makes the entire CPC applicable to proceedings before a civil court in arbitration matters, except only to the extent otherwise provided in the Arbitration Act. The Arbitration Act does not exclude the remedy of review under section 114 CPC. A review can be filed for error apparent or for any other sufficient reason⁴. So the remedy of review was available to the appellant against the civil court's order, but it elected to come in the Constitutional jurisdiction.

² Section 3(1), Law Reforms Ordinance, 1972

³ Proviso, section 3(2), *ibid.*

⁴ Order 47, CPC

5 The rationale of the proviso to section 3(2) of the Law Reforms Ordinance, 1972, lies in not affording an extra layer of appeal to a litigant where the High Court exercises its discretion, for any number of reasons, to entertain a writ petition instead of directing the petitioner to avail the alternative remedy. The law is settled that it is the availability, and not the availing, of a remedy of appeal, revision or review against the original order which matters for deciding whether an intra court appeal is maintainable.⁵

6 In parting, we note that the appellant is not being deprived of an appellate remedy that he had earlier. As noted above, he would not have been able to file an intra court appeal against a revisional order before the Code of Civil Procedure (Amendment) Act, 2020. He is not now meant to increase the number of appellate forums available as a result of the said Act of 2020.

7 This intra court appeal is **dismissed for being not maintainable.**

(CHIEF JUSTICE)

(SARDAR EJAZ ISHAQ KHAN)
JUDGE

Imran

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⁵ Federation of Pakistan vs. Ex. Naik Mumtaz Hussain, 2021 MLD 2095 [DB]