

**IN THE COURT OF KALEEM ULLAH,
ADDL: DISTRICT & SESSIONS JUDGE-X, MARDAN.**

Appeal No.14/13 of 2024

1- Chief Executive Officer	}	Water & Sanitation Services Company, Mardan.
2- Manager HR & Administration		
3- Manager Planning & Project		
4- Manager Technical Wing		
.....	(<i>Appellants</i>)

Versus

Arshid Ali (M/s Talha Arshad) s/o Mira Khan r/o Afzal Khan Colony,
Tehsil & District Mardan.....(**Respondent**)

Date of Institution: 26.03.2024.
Date of Transfer In: 25.06.2024.
Date of Decision: 15.07.2024.

JUDGMENT
15.07.2024

1- Appellants have preferred this appeal against the order dated 26.02.2024 vide which the learned Civil Judge-XIV, Mardan instead of passing judgment under section 15 of Arbitration Act, 1940 in terms of award has again remitted to the Arbitrators for Reconsideration.

FACTS

2- **Relevant facts** are that the appellants/defendants has challenged the order passed by the learned trial court in Civil Suit titled as “Arshad Ali (M/S Talha Arshad) Vs CEO WSSCM and Others” which has been filed on behalf of the respondent/plaintiff seeking recovery of Rs, 21,29,327/- against the appellants/defendants alleging that the respondent

/plaintiff executed a contract for demolition/ dismantling of overhead reservoir Tank at Daang Baba Hoti, District Mardan with the MS Water & Sanitation, Company Mardan (hereafter referred as WSSCM). The contract was executed between the parties after the respondent/plaintiff was declared a successful bidder through open process of bidding and the respondent /plaintiff provided his services and completed the task of demolition within stipulated time period but the appellants /defendants made partial payment for the service and remaining payment is outstanding against them, which they are reluctant to make good; hence, compelling the plaintiff /respondent to file the instant petition.

- 3- The appellant/defendant contested the suit and at the earliest stage of the proceedings submitted application under Section 34 of Arbitration Act, 1940 on the ground the contract, which is signed by the parties has laid down in Rule 67.3 that all disputes shall be settled under the provision of Arbitration Act, 1940 therefore either the proceedings of the instant suit be stayed or plaint be returned under Order-7 Rule-10 CPC. The learned trial court after hearing the learned counsel for the parties dismissed the application vide order dated 17.10.2022 mainly on the ground that the written contract dated 30.01.2020 does not stipulate for the provision of arbitration between the parties.

- 4- Feeling aggrieved the appellants/defendants has filed appeal with the prayer that the form of contract agreement was duly signed by the plaintiff/respondent which appeal was accepted by the court of learned AD&SJ-VI, Mardan in terms that the matter pertain to arbitration clause and the case was remanded to the learned trial court with the directions to frame TORs for the determination of the arbitrator with regard to cost incurred by the respondent/plaintiff in dismantling/demolishing of overhead Reservoir Water Tank and to submit their award to the court within 03 months. The learned trial court stay the proceedings of the case and referred the matter to the arbitrator for award / recommendation in this regard.
- 5- The award of the arbitrators was submitted before the learned trial court to which objection was raised by the respondent /plaintiff that the award is not compressive as it does not provide detail with regard to measurement and others necessary steps. The learned trial court by accepting the objection remitted the award/report to the arbitrator for reconsideration through its impugned order dated 26.02.2024. Feeling aggrieved the appellant/defendant file the instant appeal against the impugned order.
- 6- Arguments heard and record perused.

- 7- The learned counsel for the appellant contended that the learned trial court was not competent to remit the case for reconsideration to the arbitrators as the arbitrators have given their award which need to be made rule of the court and the case to be decided in light of award submitted by the arbitrator under the provision of the arbitration act and judgment be passed in line of the award. He requested for setting aside the impugned order dated 26.02.2024 and requested that the award of the arbitrators should be made rule of the court in accordance with law.
- 8- On the other hand, the respondent in person contended that the award of the arbitrators is not tenable in the eyes of law as it lacks the determination of points laid down by the learned trial court in the shape of TORs. He further contended that the award of the arbitrators is not duly signed by the all the arbitrators and referee. He also argued that no notice to the parties was given. He also contended that no detail with regard to measurement of the down ring beams etc were taken. He contended that the order of the learned trial court dated 26.02.2024 is will reason according to law and passed in the best interest of the justice. Hence, the instant appeal may kindly be dismissed with cost.

- 9- **Perusal** of the case file reveals that earlier the matter was once referred to the court of learned AD&SJ-VI, Mardan who decided the matter and directed the trial court to referred the matter to the arbitrator who would be expert of the field to proper valuate the cost incurred by the respondent/plaintiff in dismantling overhead Reservoir Water Tank wherein it was also held by the learned court of AD&SJ-VI, Mardan that in case of any reservation on the arbitration report by the plaintiff/respondent it will be open for him and to file objections and challenge the same before the learned trial court after the report has been submitted. Now, the learned trial court after receiving of the arbitration report has found that there are some lacunas in the arbitration report which under the prevailing circumstances need elaboration and explanation and needful to be done whereby the learned trial court has remitted the arbitration report to the arbitrator for reconsideration of the point mentioned in the impugned order of the learned trial court.
- 10- Now, the important question before the court is whether the learned trial court was competent under the law to resubmit / remit the arbitration report to the arbitrators for reconsideration and fulfilling the deficiencies that was found there in the report or not?. To resolve this question, it is

necessary to reproduce section 26A of the Arbitration Act, 1932:-

- 1- *“The arbitrators or umpire shall state in the award, the reason for the award in the sufficient details to enable the court to consider any question of law, arising out of the award”.*
- 2- *Where the award does not state reasons in sufficient details, the court shall remit the award to the arbitrators or umpire and fixed the time within which the arbitrators or umpire shall submit the award together with the reason in sufficient details.*

11- From the bear reading of the above section, it is crystal clear that under section 26-A (2) where the award has not given reason in sufficient detail the court is under mandatory duty to remit the report to the arbitrator or umpire for reconsideration and fixed the time within which the arbitrator or umpire has to submit the award together with the reason in sufficient detail. Moreso, section 16 of the ibid Act also provide for the similar provision which state as under:-

- 1- *The court may from time to time remit the award or any matter, referred to the arbitration to the arbitrators or umpire for reconsideration upon such terms as it thinks fit.*
 - a- *Where the award has left undetermined any of the matters, referred to arbitration or where it determines any matter, not referred to arbitration and such matter cannot be separated without affecting the determination of the matters referred or .*
 - b- *Where the award is so indefinite as to be incapable of execution*
 - c- *Where an objection to the legality of award is apparent upon the face of it.*

- 12- **Hence**, the bear reading of the above section of law make it crystal clear that the learned trial court is empowered to remit the arbitration report for reconsideration where the trial court is of the view that some of the ingredient mentioned above is/are missing in the report of arbitrator/referees. Undoubtedly the impugned report does not provide for any detail regarding the measurement, facts and figures of the overhead reservoir Tank, likewise the requirement of section 14 of the Arbitration Act has not been followed in its letter in spirit. Admittedly the judgment of the learned ADJ-VI Mardan dated 16.01.2023 also provide for that in case of any objection by the plaintiff/respondent over the report of the arbitrator/referee the same would be open for objection by the aggrieved party. The said judgment of the learned ADJ-VI Mardan has not been challenged by any of the party before the higher forum which has attain finality, hence, the learned trial court following the guide lines of the learned ADJ-VI, Mardan has not committed any error, while passing the impugned order.
- 13- **Hence**, in the light of the above discussion, the impugned order of the learned trial court dated 26.02.2024 is well reason and back by law; therefore, the impugned order is kept upheld whereas the instant appeal being devoid of merits is hereby dismissed.

- 14- Needless to mention herein my tentative judgment will not effect the merits of the case nor the same shall prejudice the court.
- 15- Cost shall follow the events.
- 16- Requisitioned record alongwith copy of this judgment be remitted back forthwith while file of this Court be consigned to the Record Room after its necessary indexing, completion and compilation.

ANNOUNCED

15.07.2024

Kaleem Ullah,
Addl: District & Sessions Judge-X,
Mardan

CERTIFICATE

Certified that this judgment consist of **08** pages, each has been read, checked, signed and corrected by me wherever it was necessary.

Kaleem Ullah,
Addl: District & Sessions Judge-X,
Mardan

**IN THE COURT OF KALEEM ULLAH,
ADDL: DISTRICT & SESSIONS JUDGE-X, MARDAN.**

Civil Appeal No.14/13 of 2024

CEO WSSCM ...Versus... Arshid Ali (M/s Talha Arshad)

Order—12

15.07.2024.

- 1- Contesting parties present. Arguments already heard and record perused.
- 2- Vide my detailed judgment of today, consisting of 08 pages, placed on file, the impugned order of the learned trial court dated 26.02.2024 is well reason and back by law; therefore, the impugned order is kept upheld whereas the instant appeal being devoid of merits is hereby dismissed.
- 3- Needless to mention herein my tentative judgment will not effect the merits of the case nor the same shall prejudice the court.
- 4- Cost shall follow the events.
- 5- Requisitioned record alongwith copy of this judgment be remitted back forthwith while file of this Court be consigned to the Record Room after its necessary indexing, completion and compilation.

ANNOUNCED

15.07.2024

Kaleem Ullah,
Addl: District & Sessions Judge-X,
Mardan

CEO WSSCMVs....Arshad Ali (Appeal No. 14/13 of 2024)