JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

F.A.O. No.56 of 2019
Director of Works / Chief Engineer (Navy)
Versus
M/s Omer Farooq Engineering Company

Dates of Hearing:	**23.01.2023 and 23.05.2023**
Appellant by:	**Malik Shaukat Nawaz Awan and Raja Muhammad Jawad Arslan, learned Assistant Attorney General**
Respondent by:	**Sardar Tariq Mehmood Bashir, Advocate.**

MIANGUL HASSAN AURANGZEB, J:- Through the instant appeal under Section 39 of the Arbitration Act, 1940 (**"the 1940 Act"**) the appellant, Director of Works / Chief Engineer (Navy), impugns the order dated 01.03.2019 passed by the Court of the learned Civil Judge, Islamabad, dismissing the appellant's objections filed under Section 30 of the said Act to the award dated 16.10.2018 and allowing the respondent's application under Section 14 of the said Act to make the award a Rule of Court.

2. The facts essential for the disposal of the instant appeal are that on 21.05.2010, the appellant awarded a contract to the respondent for construction works described as "Construction of 01 x POs / Leading Block (16 Quarters) at Sector E-8, Islamabad." The said contract was awarded as a result of a competitive bidding process and the respondent's bid for a lump sum amount of Rs.20,500,000/- was accepted by the appellant on 21.05.2010. After the award of the contract, the scope of the works was revised from 819 square feet to 1,148 square feet. This increase in the scope of work, according to the respondent, caused an increase in the contract price from Rs.20,500,000/- to Rs.28,420,000/-. The respondent admits that by June 2011, an amount of Rs.14,200,000/- had been paid to the respondent whereafter the payments were unilaterally stopped by the appellant. After an exchange of correspondence between contesting parties, the respondent sent legal notice dated 28.08.2012 to which the appellant sent a reply on 12.09.2012. On the very next day i.e. 13.09.2012, the appellant terminated the contract.

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3. Since the contract between the contesting parties contained an arbitration clause, the respondent filed an application under Section 20 of the 1940 Act praying for the dispute between the parties to be referred to arbitration. The said application was allowed vide order dated 30.10.2017. Mr. Adil Aziz Qazi, Advocate Supreme Court was appointed as the Sole Arbitrator. The arbitration proceedings culminated in the award dated 16.10.2018 according to which the respondent was entitled to receive Rs.31,95,950/- in addition to Rs.6,00,000/-. The Arbitrator also held that the respondent was entitled to receive the security amount of Rs.14,20,000/-. In this way, the total amount that the Arbitrator held the appellant to pay to the respondent was Rs.52,15,950/-.

4. On 10.12.2018, the appellant filed objections to the said award dated 16.10.2018 whereas the respondent filed an application for the said award to be made a Rule of Court. Vide order dated 01.03.2019, the learned Civil Court dismissed the appellant's objections and allowed the respondent's application for the award to be made a Rule of Court. The said order has been assailed by the appellant in the instant appeal.

5. Learned counsel for the appellant, after narrating the facts leading to the filing of the instant appeal, submitted that the learned Court below had ignored the law laid down by Superior Courts while passing the impugned order; that the impugned order has resulted in miscarriage of justice; that the learned Court below had not appreciated the provisions of law as well as case law on the subject; that the learned Civil Court erred by not appreciating that Section 26-A of the 1940 Act required the Arbitrator to pass a reasoned award; that the impugned order had been passed by the learned Civil Court in a hasty manner and without application of judicial mind; that the tentative assessment of the award shows non-compliance with the provisions of law by the Arbitrator; that the learned Civil Court had not examined the legality and validity of the award but had simply affixed a judicial stamp on the award; that the impugned order and the award are not sustainable since they have been passed in an arbitrary manner; and that there were several errors apparent on the face of the award. Learned counsel for the appellant prayed for the appeal to be allowed.

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6. On the other hand, learned counsel for the respondent submitted that the objections taken by the appellant to the arbitration award as well as the grounds taken in the appeal are all of a general nature and lack specificity; that due to the inaction on the part of the appellant to pay the respondent's dues, the latter had no option but to invoke the dispute resolution mechanism enshrined in the contract; that the bare perusal of the arbitration award shows that the learned Sole Arbitrator has dealt with each and every claim submitted by the respondent in a comprehensive manner and has also given an issue-wise finding; that the objections that the appellant had taken to the arbitration award, none of which satisfied the requirement(s) of Section 30 of the 1940 Act, are mentioned in paragraph 3 of the impugned order dated 01.03.2019. Learned counsel for the respondent prayed for the appeal to be dismissed.

7. We have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant appeal have been set out in sufficient detail in paragraph 2 to 4 above and need not be recapitulated.

8. We would tend to agree with the learned counsel for the respondent that the appellant's objections to the arbitration award filed under Section 30 of the 1940 Act before the learned Civil Court as well as the grounds of appeal filed before this Court are all of a generalized nature. To have a better understanding of the objections taken by the respondent to the arbitration award, we deem it appropriate to reproduce the same herein below:-

> *"1. That the present award dated 16.10.2018 is not maintainable in the eyes of law and facts.*
> *2. That the arbitrator has malafidely filed the present award in order to deprive the objector from his valuable rights.*
> *3. That the award is not maintainable and proceed able in its present form. Therefore, the award is liable to be rejected dismissed.*
> *4. That the award has been filed by the arbitrator with malafide intention, the arbitrator not visited the spot.*
> *5. That the award is false, baseless, frivolous and vexatious hence is liable to be dismissed.*
> *6. That the award is totally biased and against the fundamental rights of the objector / respondent. The arbitrator totally mentioned the previous decision of the arbitrator and not mentioned anything which is on merit.*
> *7. That award is totally against the facts and law."*

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9. The order dated 01.03.2019 passed by the learned Civil Court was a composite order dismissing the objections filed by the appellant to the award and allowing the respondent's application to make the award the Rule of Court. The learned Assistant Attorney-General has been given sufficient opportunities to satisfy this Court as to how any of the grounds enumerated in Section 30 of the 1940 Act for interference with the award dated 16.10.2018 had been satisfied in the case at hand, but he was unable to do so. Be that as it may, we have gone through the award dated 16.10.2018 and have not been able to detect any illegality or invalidity therein. In proceedings under Section 30 of the 1940 Act, it is not open to the Court to make a sifting investigation of proceedings before the Arbitrator to find out the basis of the award.

10. The generalised objections of the type extracted cannot be made the basis for setting aside an award. In the case of Federation of Pakistan Vs. Messrs Joint Venture Kocks K.G. / RIST (PLD 2011 SC 506), it was held that *"the objections to the award must be clear and unambiguous, stating with precision, clarity and certainty the grounds why it should be interfered [with]."* Additionally, in the case of National Fibres Ltd. Vs. Pakistan (PLD 2004 Lahore 722), it was held that *"where reasons recorded by the Arbitrator are impugned as perverse, the perversity in the reasoning has to be substantiated with reference to the material considered by the Arbitrator in the award."*

11. The objections to the award filed by the appellant before the learned Civil Court under Section 30 of the 1940 Act are cryptic and perfunctory. They are full of generalisations and do not deal with specific aspects of the award. The same is equally true of the grounds taken by the appellant in the memorandum of the appeal. In the grounds of appeal filed before us, no specific infirmity with the award has been pointed out except making generalised challenges.

12. After having gone through the award, we do not find the same to be vitiated by patent illegality appearing on the face of it. The learned Arbitrator has amply referred to the evidence while deciding each of the claims before him. All the claims and counter claims are decided on the basis of the documentary evidence placed and proved before him.

13. In view of the above, we have been given no reason to interfere with the order dated 01.03.2019 passed by the learned Civil Court,

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whereby the appellant's objections to the award dated 16.10.2018 were spurned and the said award was made a rule of Court. Consequently, the instant appeal is dismissed with no order as to costs.

(BABAR SATTAR)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 24.05.2023.

(JUDGE) **(JUDGE)**

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