

The
Arbitration Act
¹(Act X of 1940)

[11th March, 1940]

An Act to consolidate and amend the law relating to Arbitration

Whereas it is expedient to consolidate and amend the law relating to arbitration in ²[Bangladesh];

It is hereby enacted as follows :

Chapter I
Introductory

1. Short title, extent and commencement—(1) This Act may be called the Arbitration Act, 1940.

³[(2) It extends to the whole of Bangladesh]

(3) It shall come into force on the 1st day of July, 1940.

Case-Law

Scope and applicability—The Act is exhaustive of the law of arbitration. (1950) 2 *MLJ* 639.

Section 1—The Act cannot affect Co-operative Societies Act 1943 *Cal* 255;47 *CWN* 478.

Section 1—The Act has no retrospective effect. 32 *P* 604; 1954 *Pat* 27.

Section 1—A question of genuineness or otherwise of a will cannot be referred to arbitration. 1952 *East Pakistan* 67, 1930 *All* 840.

Section 1—Question as to restitution of conjugal rights cannot be referred to arbitration, but must be decided by Court. *1929 Lah. 394.*

Section 1—Object of the Act—The sole purpose of the Arbitration Act is to curtail litigation in Courts and to promote the settlement of the dispute amicably by avoiding all types of technicalities of procedural law but within the four corners of substantive law and to provide a domestic forum for speedy disposal of disputes. *PLD 1995 Kar 286 + NLR 1988 CLJ 17 + 1981 SCMR 129 = PLJ 1981 SC 291.*

Section 1—Object and scope—The whole object underlying the Arbitration Act is to enforce the Arbitration agreement whereby the parties have bound themselves to have their disputes, arising out of the transaction to which such an agreement is applicable adjudicated upon and decided by a domestic Tribunal. *PLD 1976 Kar 496 = PLJ 1976 Kar 273.*

Section 1—Quranic law, arbitration under—When arbitration is resorted to under the law of the Quran, it is neither an arbitration under an agreement nor under a statute and so provisions of Arbitration Act will not be attracted to such an arbitration. Thus Arbitration Act does not apply to arbitration in matrimonial disputes. *PLJ 1985 Quetta 25 = PLD 1985 Quetta 85 = NLR 1986 CLJ 369.*

2. Definitions—In this Act, unless there is anything repugnant in the subject or context,—

(a) "arbitration agreement" means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not;

(b) "award" means an arbitration award;

(c) "Court" means a Civil Court having jurisdiction to decide the questions forming the subject-matter of the reference if the same has been the subject-matter of a suit, but does not, except for the purpose of arbitration proceedings under section 21, include a Small Cause Court;

(d) "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased, and, where a party acts in a representative character, the person on whom the estate devolves on the death of the party so acting;

(e) "reference" means a reference to arbitration.

Case-Law

Section 2—Arbitration agreement—Originally oral subsequently confirmed in writing—If valid.

Where the arbitration agreement—Originally oral but was subsequently confirmed in writing on four occasions : It was held that there was written agreement between the parties for the submission of the matter to arbitration. *Habib Ind vs Virak Co 1 PLD 1957 (WP) Karachi 245.*

Section 2—Arbitration clause—appointing arbitrator by designation—Holder of office for the time being to be arbitrator.

Where the parties agreed to refer any dispute that might arise to the Director of Civil Supplies and it was contended by one party that meant the Director of Civil Supplies who was holding the office at the time when the contract was entered into.

Held : this cannot be the intention of the parties or that of law, that the arbitration clause which appointed an arbitrator by reference to designation and not by name should be taken to mean that a person for the time being holding that post was appointed as an arbitrator, and if that person became non-existent subsequently then the entire arbitration clause was rendered ineffective. *Muhammad Usaf vs NWFP. PLD 1955 Pesh 72.*

Authority of arbitrator to give an award stems from the parties' agreement to refer their differences to arbitrator—Agreement to be written, arbitrator's name may not be mentioned—Agreement which is otherwise valid need not be signed by parties.

On an analysis of section 2(a) of the Arbitration Act, we find that the requirements of law, giving authority to an arbitrator to give an award,

depends upon the authority conferred by the parties by an agreement to refer their differences to arbitration. The arbitration agreement is to be a written agreement to submit present or future differences to arbitration to an arbitrator who may or may not be named. A writing incorporating an agreement to submit their differences between the contracting parties to an arbitrator is the legal mandate. If a valid arbitration agreement is there, then there need not be a formal agreement executed by the parties, nor is it required of the parties to sign. The agreement must be in writing and accepted by the parties. No particular form is necessary, it may be inferred from a set or series of documents. The view we have expressed has been taken by the Indian Supreme Court in the cases of *Jugal Kishore vs Goolbari*, AIR 1955 (SC) 812; and *Union of India vs Rallia Ram*, AIR 1963 (SC) 1685.

In Halsbury's Laws of England, 3rd Edition, Vol. 2 page 4 it has been so observed in paragraph 6, that the agreement need not be signed by both the parties. It being sufficient that a party has accepted and acted upon, although he may not have signed it.

The foundation of an arbitration is the arbitration agreement. *Salamat Khan vs QG Ahad* 30 DLR (SC) 271

Section 2— Arbitration agreement

Section 2—Application by the parties to be enrolled as members of an association, the rules whereof provide for arbitration, constitute arbitration agreement. 1947 Bom. 268; 48 Bom. LR 686.

Section 2—Oral acceptance of contract ~~not~~ containing arbitration clause is sufficient. 1947 Bom 65; 1949 Bom 158.

Section 2— It is not necessary that all parties to the suit should concur in the application for an order of reference; it is sufficient if all parties interested in the subject matter of the reference have joined in the reference. 1951 Patna 445.

Section 2—Oral acceptance of the rules and bye-laws of an association by a party who is not a member of the association is not an arbitration agreement. 1951 All 860.

Section 2—It is not necessary that the arbitration agreement should be contained in one document. 1951 Pepsu 115.

Section 2—An arbitration clause in an agreement cannot operate where one party denies having entered into the contract or contends that the contract is void ab initio. *1950 SCR 792; 6 DLR (SC) 84, 1952 SCJ 156; 1952 SC 119; 7 DLR (SC) 225.*

Section 2—Arbitration clause in agreement need not use the word "arbitrator". *1947 Lah 215.*

Section 2—Acceptance by word of mouth or by conduct of a written agreement signed by one party is sufficient. *1949 East Pakistan 199; 4 DLR Simla 162.*

Section 2—Arbitration clause in agreement may or may not fall with the agreement itself. *1951 Cal 147.*

Section 2—An arbitration agreement neither specifying the number of arbitrators nor specifying the mode of appointment is valid and effective. *1953 Cal 488; 92 CLJ 7.*

Section 2—A signed statement by parties is an arbitration agreement. *1949 All 771.*

Section 2—Arbitration agreement in consideration of dropping criminal prosecution is void. *1935 Cal 415.*

Section 2—Award may be filed in any Court which has jurisdiction to decide the dispute. *1947 Bom 32.*

Section 2—Court includes appellate Court. *1954 Patna 106; 32 page 417.*

Section 2—Court does not include appellate Court. *1947 Cal 93.*

Section 2—Insolvency Court is not a civil Court. *1949 Nag 110.*

Section 2—Revenue Court is not a civil Court. *1949 All 360.*

Sections 2 & 4—Arbitration Award—Whether there can be an arbitration award when there is no written arbitration agreement between the parties for submission to the arbitrator—The parties in order to get an arbitration award must have arbitration agreement in writing to submit present or future differences to arbitration whether an arbitrator is named therein or not—All disputes between the parties relating to the private rights or obligations which the civil court may take cognizance under

section 9 of the Code of Civil Procedure may be referred to arbitration but there must be a written arbitration agreement to refer the dispute to arbitration. *Md Yousuf vs Alhaj GP Mollah & others* 1987 BLD 77.

Section 2(a)—Arbitration agreement—One party rendering contract notes of an association to a non-member of an association—Notes containing clause for compulsory arbitration—Signed by non-member—If constitutes arbitration agreement.

Where contract notes containing a by-law of the East India Cotton Association which provides for compulsory arbitration are sent by one party to the contract to the other and they are accepted by the other party either by signing the confirmation notes or by his conduct, it would be a sufficient arbitration agreement within the meaning of the definition in Section 2 of the Arbitration Act. It is not absolutely necessary that it should be a confirmation note signed by the party receiving the contract notes in favour of the other. It is sufficient if the Court, on the materials before it, is satisfied that there was acceptance by conduct the party so accepting the note would be bound by the agreement even when he is not a member of the Association, when the other is a member of that Association. *Levis W Fernandez vs. Jivatlel* ILR Bom 777; 229 IC 568; 48 Bom LR 671; AIR 1947 Bom 65.

Section 2(a)—Arbitration agreement—What is—Whether words arbitration, etc. must be used—Dispute referred to a person—If amounts to reference to arbitrator.

In order that a clause in an agreement may constitute an arbitration agreement within the meaning of Section 2 of Arbitration Act it is not necessary that the words "arbitration", "arbitrator" or "arbitration agreement" should appear in the clause, so long as the parties can be found to have agreed to allow the matter to be decided by a person of their own selection whose decision was to be final, conclusive and binding on them. If the matters in dispute between them are left to be decided by a person of their choice whose decision is to be final and conclusive, the person so chosen or appointed cannot but be regarded as an arbitrator despite the fact that he is an employee of one of the parties. 266 IC 444 AIR Lah, 215.

Section 2(a)—Arbitration agreement—Members of an association—Provision for compulsory arbitration in rules of association—Whether member bound by rules.

To constitute "arbitration agreement" within the meaning of Section 2 of the Arbitration Act, it is not necessary that there should be a formal agreement, or that the terms should all be contained in one document. All that is necessary is that the parties should agree in writing to submit present or future differences to arbitration. Where two members of an association, agree by the very terms of their applications signed by them, to be bound by the current rules and regulations of the association which include a rule that all disputes between them, present or future, would be submitted to arbitration, there is an agreement to submit present or future differences to arbitration, which constitutes an arbitration agreement falling within Section 2. *Bom LR 686 AIR 1947 Bom 268.*

Section 2(a)—Existing dispute—If essential for arbitration.

The very essence of arbitration agreement is that there should be some difference between the parties. *Friends Trading Co vs Muhammad Usman, PLD 1954 Sind 56.*

Section 2(a)—Oral agreement—If can be enforced.

Since the enactment of the Arbitration Act of 1940 oral arbitration agreements cannot be enforced. *SM Hanif (Dhaka) Ltd vs Central Bank of India Ltd PLD 1960 Dacca 225; 12 DLR 10.*

Section 2(a)—Presumption of agreement amongst members of an association—Articles of an association of traders may provide for arbitration in case of any dispute arising between members of the association and in that case there is a presumption that agreement of arbitration exists between the parties even if they do not formally enter into such agreement. *1987 CLC 83.*

Section 2(a)—Alteration of agreement—An arbitration agreement being complete code by itself, terms and conditions of the same cannot be unilaterally altered at the whim of any of the parties to it. *PLJ 1983 Lah 147 = 1983 Law Notes 8.*

Section 2(a)—Reference to foreign arbitrators—Where a Marine insurance policy laid down that all disputes must be referred to arbitration in England for settlement, the clause amounted to a submission to arbitration. It was to be noted that the parties submitting their disputes to a particular forum impliedly consent that the law which was to regulate the decision was the law of that forum. *AIR 1924 Bom 381.*

Section 2(a)—Illegal transaction—A dispute arising from and founded on an illegal transaction cannot be referred to arbitration. *AIR 1954 Nag 514 (DB) (obiter)*.

Section 2(a)—Unstamped agreement—An unstamped arbitration agreement cannot be acted upon and an arbitration on that agreement is invalid and of no effect. The agreement of the parties does not bestow validity on it. *PLD 1971 Lah 522*.

Section 2(a)—Award written on plain paper—The fact that award is not written on a stamp paper would hardly affect its validity when necessary stamps are provided subsequently. *NLR 1995 AC 72 = 1994 MLD 2348 (DB) + 1987 CLC 2509 = NLR 1989 UC 181 (DB)*.

Section 2(b)—Arbitration award—How it is expressed—There is no particular form for expression of an Arbitrator's decision (award). It is not a judgment and it need not contain the reasonings of the Arbitrator. It is enough if the award contains the decision of the Arbitrator. High Court Division did not err in law in construing the Memo written by the Arbitrator to his superior authority as an award. *Bangladesh & others vs KM Shafi Ltd. 43 DLR 217*.

Section 2(c)—Court—If includes appellate Court—Power of appellate Court to refer dispute to arbitration.

Court as defined in Section 2(c) of the Arbitration Act does not include an appellate Court, and there is nothing in that Act which enables an appellate Court to refer to arbitration the matter in dispute between the parties. *Abani Bhusan vs Hem Chandra ILR (1946) 2 Cal 492; 227 IC 168-50 CWN 838; 81 CLJ 289; AIR 1947 Cal. 93*.

Section 2(c)—Term 'Court' in section 2(c) includes appellate Court which can refer a matter to arbitration under section 21. *MM Ispahani Ltd vs Pakistan Trading Company 16 DLR 260*.

Chapter II

Arbitration without Intervention of a Court

3. Provision implied in arbitration agreement—

An arbitration agreement, unless a different intention is expressed therein, shall be deemed to include the provisions set out in the First Schedule insofar as they are applicable to the reference.

Sections 3 and 28 read with article 3 of Ist Schedule to the Act.

Enlargement of time (beyond 4 months) for giving the award by consent of both parties, permissible—Such enlargement of time may be provided for in the agreement—In the absence of such agreement consent may be inferred by conduct of parties.

Case-Law

Section 3—Reading section 3 article 3 in the First Schedule and section 28 of the Arbitration Act together it would appear that the parties are freed to enlarge the time for making the award. What is necessary is their mutual consent. If such consent is there a term enlarging the time for giving the award can be incorporated in the agreement. *Govt of Bangladesh vs Jalaluddin Ahmed*. 37 DLR (AD) 27

Section 3—Stay of proceeding—Applicability of sections 3 and 34—The former applies to arbitration which is subject to the rules of International Chamber of Commerce and the latter applies to local arbitration. *GM Pfaff AG vs Sartaj Engineering Co Ltd*. DLR (WP) 31.

Section 3—Agreement to refer to arbitration—Time limit fixed for appointment of umpire—Where time limit given in Schedule 1 para 3 will apply.

Section 3—Of the Arbitration Act itself makes it very clear that if a different intention is expressed in the agreement, the provisions set out in the 1st Schedule of the Act will not be applicable.

The provisions set forth in the 1st Schedule of the Act are subject to the intention expressed by the parties; in other words, the parties can come to a different agreement regarding what is provided in the 1st Schedule. It is open to the parties to give a larger time for the appointment of the Umpire that is provided in paragraph 2 of the 1st Schedule. *Sind Cotton Exporters vs AB Sadiq Brothers PLD 1955 Sind. 258*

Section 3—Number of arbitrators—Agreement silent on the point—Schedule 1 will apply.

Ordinarily the parties have a right to fix the number of arbitrators and the manner in which they will be appointed but where the agreement is silent on that point, the case will be governed by section 3 of the Arbitration Act, and the reference shall be presumed to have been intended to be made according to the provision of schedule 1 of the Arbitration Act. According to the SI of this schedule, unless otherwise provided, the reference shall be to a sole Arbitrator. *Ghufran Ahmad in the matter of PLD 1259 (WP) Karachi 43.*

Section 3—Time for making award.

The section provides that unless a different intention is expressed in the arbitration agreement, it shall be deemed to include the provisions set out in the First Schedule which enacts that the arbitrators shall make their award within four months after entering on the reference or after having been called upon to act by notice in writing from any party to the arbitration agreement or within such extended time as the Court may allow. *Md Ismail Serang vs M Ali Hossain 6 DLR 641.*

Section 3—Where the arbitration agreement did not provide for the time within which the arbitrators should make their award beyond four months from the date of entering on the reference, the award was without jurisdiction and, as such, unsustainable in law. *Md Ismail Serang vs M Ali Hossain 6 DLR 641.*

Section 3—Implied provisions in arbitration agreement.

Section 3—In order to exclude the operation of the First Schedule there should be express agreement. *1945 Lah 34.*

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Section 3—In the absence of any express stipulation in the arbitration agreement the appointment by the arbitrators of an umpire beyond the time mentioned in the First Schedule is invalid. *85 CLJ 232*.

Section 3—Scope—There is no law requiring that an arbitration agreement should be drawn in a formal manner. *PLD 1970 Kar 279 (DB)*. The intention of the parties must be sole guide for determining the mode of working out the submission and reaching a final decision. *AIR 1934 Bom 476*.

Section 3—Condition No. 3 of the First Schedule to the Act of 28(2)—Award made beyond the statutory period of four months after entering on the reference—Bar of limitation not raised by the parties—Principle of applicability of waiver—Bar can not be waived by consent of the parties—Whether provision can be inserted in the Arbitration Agreement empowering the arbitrators to enlarge the time for making the award with the consent of the parties to be valid in terms of section 28(2) of the Act—Appeal allowed as there was no such express provision in the Arbitration Agreement. (*Government of Bangladesh vs Jalal Uddin Ahmed BCR 1984 (AD) 449*).

Section 3—Item 3—First Schedule—Time limit for arbitration—The conclusion of arbitration proceedings depends upon facts and circumstances of each case. The law has not prescribed a minimum time limit for this. *Rising Sun Traders vs Chittagong Port Authority 43 DLR 1*.

Sections 3 & 28—Enlargement of time (beyond 4 months) for giving the award by consent of both parties permissible—Such enlargement of time may be provided for in the agreement—In the absence of such agreement consent may be inferred by conduct of parties. *Government of Bangladesh vs Jalaluddin Ahmed 37 DLR (AD) 27*.

4. Agreement that arbitrators be appointed by third party—The parties to an arbitration agreement may agree that any reference thereunder shall be to an arbitrator or arbitrators to be appointed by a person designated in the agreement either by name or as the holder for the time being of any office or appointment.

Case-Law

Section 4—For the time being—Where a person was holding a certain office at the time when he was appointed arbitrator, the mere fact that subsequently he ceased to hold that office would not disqualify him from holding the office of arbitrator and the award given by him cannot be set aside on that ground. *PLD 1977 Lah 1013*.

5. Authority of appointed arbitrator or umpire irrevocable except by leave of Court—The authority of an appointed arbitrator or umpire shall not be revocable except with the leave of the Court, unless a contrary intention is expressed in the arbitration agreement.

Case-Law

Section 5—Objection against new appointment.

Section 5—Appointment of arbitrator was cancelled without leave of the Court and a new appointment was made—No objection was raised before the new arbitrator—Objection cannot be entertained in appeal. *Md Sagir Bhatti vs Federation of Pakistan 10 DLR (SC) 169*.

Section 5—Revocation of authority of arbitrators—discretion of the Court, when should be granted.

The parties entered into a contract for sale and purchase of jute at a certain price fixed. In the form of the contract, there was an arbitration clause for arbitration of any dispute that might arise between the parties in relation to the contract.

After the contract, the Government announced devaluation of the currency as a result of which the price of jute shot up. The petitioner (seller) thereupon refused to supply jute at the price fixed and contended that due to devaluation of currency the contract had become null and void and relied on one of the Arbitration Clauses, which ran as follows :

"Notwithstanding anything herein before contained, should this contract in whole or in part become impossible of fulfilment through the interruption or the result of interruption of the normal course of business in Pakistan or any part of Pakistan by or in consequence of

war, civil war or social unrest or by or in consequence of the action of any Pakistan Government or any Government claiming to be such for any part of Pakistan or other authority, then it shall be null and void without the payment of any damages or penalties by either party to the other upon the declaration by the Committee of the Pakistan Jute Association that such impossibility has, in fact, come about."

It was contended on behalf of the petitioner that when the arbitration in this case involves a difficult question of law, namely, whether the devaluation of the Pakistan currency has frustrated the contract between the parties that by itself is a ground for revocation of the authority of the arbitrators who are not expected to be competent to decide the complicated question of law.

Held : Having regard to the provision in the paramount clause referred to above providing for all these contingencies, it cannot be said that the parties did not contemplate the changes that have taken place on account of the devaluation of the Pakistani currency. *Pakistan Trading Co vs MM Ispahani Ltd II DLR 405*.

Permission for revocation of the authority of the arbitrators, in the circumstances of the case, should not be allowed. *Pakistan Trading Co vs MM Ispahani Ltd II DLR 405*.

In granting leave under section 5 of the Arbitration Act for withdrawal of the authority of the arbitrators, the Court has to exercise its discretion and it has been held in a series of cases that there are two limits within which discretion is to be exercised : (1) the Court should not release the parties from their bargain that follows from the sanctity the Court attaches to contracts, and the other (2) that the Court should be satisfied that substantial miscarriage of justice will take place in the event of its refusal to grant the leave. *Pakistan Trading Co vs MM Ispahani Ltd II DLR 405*.

Section 5—It was contended that one of the arbitrators was biased against the petitioner and there was reasonable apprehension that he would not get a fair trial before the arbitration. *Pakistan Trading Co vs MM Ispahani Ltd II DLR 405*.

Held : When the petitioner submitted to the arbitration with his eyes wide open, and knowing full well that the particular arbitrator is a member of the arbitration, it is not now open to him to say that he has got a reasonable apprehension that he will not get proper and fair trial before the arbitrators.

Section 5—Revocation of arbitration not to be allowed when attempt is a malafide one.

When the application under section 5 of the Arbitration Act was not a bonafide one but it was an attempt to hold up the arbitration proceeding, it is exceedingly improper to exercise discretion and grant leave to revoke the submission.

Section 5—Claim disputed as barred by limitation—If authority of arbitrator can be revoked—Principle discussed.

Where it was contended that as soon as a dispute referred to arbitration is disputed as time barred, it ceases to be a subsisting dispute, and is not a proper subject for arbitration.

Held : the operation of the law of limitation changes with the cases to which it applies. Therefore, the correct angle of view from which the situation should be seen when a claim that is submitted for decision by arbitration is disputed as barred by time, is to see whether the dispute is real or a mere pretence. If real, then it can be proper subject of arbitration and leave, under section 5 of the Arbitration Act, 1940, to revoke the authority of an appointed arbitrator cannot be granted. Similarly, no relief can be granted under section 33 of the Arbitration Act, 1940, when the dispute is genuine, because neither the existence nor validity of the arbitration agreement and award, nor their effect can be questionable merely on the ground that a claim is disputed as barred by time. It is only where the dispute is a mere pretence and it appears that none really exists that the question of the effect of arbitration agreement under section 33 would arise. If there be no real difference or dispute the provisions of an arbitration clause will be inapplicable because they apply to disputes and differences. The Court will not leave a mere pretence of a dispute to an arbitrator for decision. But where the claim of the respondent is clearly barred by time and therefore, no real dispute exists between the parties the provisions of the arbitration clause are not attracted as it is necessary under them that a dispute should exist. The arbitrators have thus no jurisdiction to enter on arbitration. Leave was accordingly granted to revoke their authority. *Muhammad Sharif Atta Muhammed vs Mithabhai Nathoo* PLD (WP) Karachi 10.

Authority of arbitrator or umpire is irrevocable.

Section 5—A person who has been appointed an arbitrator as a representative of an association does not cease to be an arbitrator when he ceases to be a representative. 1951 All 359.

Section 5—In the absence of a contrary provision in the arbitration agreement the umpire is to adjudicate on the whole case even if arbitrators disagree on one point. *56 CWN 436*.

Section 5—A further reference by Court that one of the points has been settled by the parties does not amount to revocation. *1951 Mad 678*.

Section 5—Before granting leave to revoke, Court should consider at what stage the revocation has been prayed. *86 CLJ 140*.

Section 5—No leave should be granted if the question of frustration of contract between the parties depends on facts. *6 DLR Cal 108*.

Section 5—If there is reasonable ground for apprehension that the arbitrator would be biased, leave to revoke the authority of the arbitrator should be granted. *89 CLJ 332; 1952 Cal, 294*.

Section 5—Principles governing stay of proceedings under section 34 should be applied to application under section 5. *1952 Cal 294*.

Section 5—If the appointed arbitrator is the Bengal Chamber of Commerce the authority may be delegated by it to a smaller body. *1952 Cal 294*.

Section 5—Court should not lightly revoke the arbitrator's authority but may do so if it is satisfied that a substantial miscarriage of justice will take place if leave is not granted. *1952 Cal 294*.

Section 5—Leave to revoke may be granted if a compromise has been arrived at between the parties. *1946 Cal 427*.

Section 5—Order granting leave to revoke the authority is not appealable. *1944 Nag 152*.

Section 5—Application for leave—There is no particular method or form for making an application for revocation and the revocation can be implied from the circumstances of each case. *AIR 1963 Assam 195 (DB)*. The procedure for revocation is by motion in open Court and not by application in Chamber. *1 Ind Cas 14 (Bom)*.

Section 5—Neglect or delay in arbitration proceedings—If an arbitrator has acted negligently and caused delay, then the remedy is to apply to the Court for his removal under section 11(1) of the Act, or for leave under section 5 of the Act, to revoke his authority. *PLD 1967 Kar 175 + 17 Cal 200*.

Section 5—Relation between opposite party and arbitrator. The arbitrator's collusion with the other party. 29 *All 13*; or his relationship with one of the parties which is unknown to the other is sufficient ground for revoking arbitration. *AIR 1933 Sind 68*.

6. Arbitration agreement not to be discharged by death of party thereto—(1) An arbitration agreement shall not be discharged by the death of any party thereto, either as respects the deceased or any other party, but shall in such event be enforceable by or against the legal representative of the deceased.

(2) The authority of an arbitrator shall not be revoked by the death of any party by whom he was appointed.

(3) Nothing in this section shall affect the operation of any law by virtue of which any right of action is extinguished by the death of a person.

Case-Law

Section 6—Reference by representative of firm—A reference to arbitration signed by the representatives of a firm not terminate is by the death of such representative. *AIR 1933 Sind 115*.

7. Provision in case of insolvency—(1) Where it is provided by a term in a contract to which an insolvent is a party that any differences arising thereout or in connection therewith shall be referred to arbitration, the said term shall, if the receiver adopts the contract, be enforceable by or against him so far as it relates to any such differences.

(2) Where a person who has been adjudged an insolvent had, before the commencement of the insolvency proceedings, become a party to an

arbitration agreement, and any matter to which the agreement applies is required to be determined in connection with, or for the purposes of, the insolvency proceedings, then, if the case is one to which subsection (1) does not apply, any other party to the agreement or the receiver may apply to the Court having jurisdiction in the insolvency proceedings for an order directing that the matter in question shall be referred to arbitration in accordance with the agreement, and the Court may, if it is of opinion that, having regard to all the circumstances of the case, the matter ought to be determined by arbitration, make an order accordingly.

(3) In this section the expression "receiver" includes an Official Assignee.

8. Power of Court to appoint arbitrator or umpire—(1)

In any of the following cases—

(a) Where an arbitration agreement provides that the reference shall be to one or more arbitrators to be appointed by consent of the parties, and all the parties do not, after differences have arisen, concur in the appointment or appointments; or

(b) If any appointed arbitrator or umpire neglects or refuses to act, or is incapable of acting, or dies, and the arbitration agreement does not show that it was intended that the vacancy should not be supplied, and the parties or the arbitrators, as the case may be, do not supply the vacancy; or

(c) Where the parties or the arbitrators are required to appoint an umpire and do not appoint him;

any party may serve the other parties or the arbitrators, as the case may be, with a written notice to

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concur in the appointment or appointments or in supplying the vacancy.

(2) If the appointment is not made within fifteen clear days after the service of the said notice, the Court may, on the application of the party who gave the notice and after giving the other parties an opportunity of being heard, appoint an arbitrator or arbitrators or umpire, as the case may be, who shall have like power to act in the reference and to make an award as if he or they had been appointed by consent of all parties.

Case-Law

Section 8—Agreement providing for appointment of sole arbitrator—Name of the arbitrator not agreed upon—Blank space left in agreement—If Court can appoint arbitrator.

Where the parties were to appoint a sole arbitrator and in the agreement to refer the disputes to arbitration the fact was recorded but the parties did not agree on the name of the arbitrator and left a blank space for it to be filled in later on.

Held : That the intention of the parties at the time was that the sole arbitrator was to be appointed with their consent but they did not actually agree to the name of the arbitrator at the time and therefore, the agreement will clearly be covered by clause (2). Reading clause (a) of section 8(1) with section 8(2) we find that the agreement in question is a full, concluded and completed agreement.

Held : Further, that the discretion under section 8 is to be exercised judicially and if all the requirements of section 8 are fulfilled it will be wrong to refuse to exercise that discretion. *Hoosen Brothers Ltd vs Pakistan Textile Mills Ltd PLD 1954 Sind 1.*

Section 8—Application maintainable under section 8, if can be treated under section 20.

The application could be treated as an application under section 20. But it was held that it could also be perfectly maintainable under section 8. *Hoosen Brothers Ltd vs Pakistan Textile Mills Ltd PLD 1954 Sind 1.*

Section 8—Arbitrators not appointing Umpire—Violation of Schedule 1 para 2—If can be cured under section 8.

A breach of the provisions of paragraph 2 of Schedule 1 committed by an omission to appoint a non-observance of an implied condition of the arbitration agreement and this non-observance could be remedied by the aggrieved party invoking section 8 of the Act. The failure to invoke the aid of section 8 of the Act amounts to a waiver of the defect of the non-appointment of an umpire. *Haji Sattar Haji Muhammad vs Abdul Karim Haji Issa PLD 1958 (WP) Karachi 378; PLR 1958 (2) WP 1011.*

Section 8—Read with Schedule 1. Failure to appoint umpire—Proceedings not invalidated. (1956) *PLR (Lah) 256.*

Section 8—The whole section deals with cases where the appointment of arbitrators is to be by consent of all the parties.

In a case in which arbitrators were appointed not by consent of parties but parties appointed one arbitrator each, arbitration could not be superseded by pressing into service section 25. (1955) *PLR (Lah) 98.*

Section 8—Non-appointment or delay in appointing an umpire of the arbitration council—

Appointment of a Chairman of the arbitration council is different from appointing an umpire of the arbitration council but non-appointment of an umpire within the stipulated time as required under section 8 of the Arbitration Act, does not ipso facto vitiate the arbitration proceeding. *Raja Mia Sowdagar vs Muhammad Essaek Sowdagar 23 DLR 104.*

Section 8—Substitution of arbitrator by parties. Where an arbitrator is nominated by one party to arbitration his substitute can be nominated by such party alone. Opposite party has nothing to do with substitute nomination and consent of opposite party is not necessary for substitute appointment. It is to be noted in this context that a mere recital in agreement of reference that arbitrators were to be joint arbitrators, would not change factum of their being really nominees of parties. This reality cannot be ignored for purpose of making substitute appointment. Real intention of parties should be seen and given effect to for exercising power under section 8. *NIR 1989 UC 240 (DB).*

Section 8—The power of appointing an arbitrator under section 8 has been vested exclusively in the Court and not in any of the parties. *AIR 1954 Punj 190.*

Section 8—Discretion of Court—The words of clause (2) of section 8 are "the Court may appoint", The expression does not mean that the Court must appoint an arbitrator. The use of the word "may" implies that discretion is given to the Court. The discretion has to be exercised properly, and not arbitrarily. *AIR 1961 Pat 228 + AIR 1955 Punj 172 (DB)*.

Section 8—Alteration of agreement—Section 8 of the Act does not confer authority on the Court to substitute the original agreement of the parties by an entirely new agreement of its own choice and to allow a party to substitute the arbitrator agreed upon with another arbitrator of his choice. *PLD 1976 Kar 496 = PLJ 1976 Kar 273*.

Section 8—Umpire may determine entire dispute—It cannot be said that jurisdiction of umpire should be confined to dispute as existing on date of filing application under section 8(2) and that it would not relate to entire dispute of suit. *NLR 1991 UC 210*.

Section 8—Appeal—No appeal lies against an order passed under section 8 of the Arbitration Act. *PLD 1970 Lah 398 (DB) + AIR 1965 All 269 (DB)*.

Section 8—Objection against appointment of Arbitrator who he has already entered on the reference following unacceptable conduct displayed by the objector appears to be a technical objection not entertainable at a belated stage. *Coal Controller, Government of Bangladesh vs Ventura Industries Ltd. 44 DLR (AD) 183.*

Section 8—If the agreement provides that the dispute shall be referred to arbitration, the reference should be made to a single Arbitrator. *British Airways PLC vs Bangladesh Air Services Pvt Ltd 47 DLR 544.*

Sections 8, 10 and 30—The cumulative effect of sections 8 and 10 of the Act is that where a reference is made to more than one of the arbitrators and one of the arbitrators neglects to act, the arbitrator or arbitrators shall apply to the Court for appointment of an arbitrator to supply the vacancy and an arbitrator appointed by the Court shall have power to act. To be binding and enforceable the award must be signed by all the arbitrators and hence the surviving arbitrator made the arbitral award illegally. *Trading Corporation of Bangladesh TCB vs Mannesman Handel AG and others 5 BLC (AD) 17.*

Section 8(1)(b)—Filling vacancy of umpire—Limitation.

Obiter, section 8(1)(b) seems to indicate that the arbitrator can fill in a vacancy in the office of an umpire if he neglects or refused to act but no limitation of time is mentioned in this provision. *Abdul Majid vs Bahawal Bux* PLD 1950 Lahore 228; PLR 1950 Lahore 323.

Section 8(1)(b)—Vacancy of arbitrator—If can be filled by Court—Presumption.

Under section 8, sub-section (1) clause (b) of the Act of 1940, it shall be presumed that it was intended that the vacancy shall be supplied, and the burden to show otherwise shall rest on the persons objecting to it. *Yar Muhammad vs Ghulam Sarwar* PLD 1952 Lahore 563; PLR 1950 Lahore 285.

Section 8(2)—Appointment of an arbitrator—Filing of an application before expiry of the notice period—Effect.

Arbitration clause provides for appointment of an arbitrator by the Chief Engineer—Such a clause cannot take away Court's jurisdiction in appointing an arbitrator when the arbitrator formerly appointed by the Chief Engineer refused to act and when either party to the agreement failed to appoint a new arbitrator. *Chief Engineer, Pakistan PWD, Karachi vs Samir & Co* 22 DLR 1.

Power of Court to appoint arbitrator or umpire.

Section 8(2)—An arbitrator failing to signify his acceptance within one month cannot act as an arbitrator. (1947) 2 MLJ 520.

Section 8(2)—Court cannot appoint an umpire in the absence of a notice under section 8(1)(c). 52 CWN 54.

Section 8(2)—Arbitration agreement neither specifying the number of arbitrators nor the mode of appointment is not invalid. 1953 Cal. 488; 92 CLJ 7.

Section 8(2)—A new umpire may be appointed if the appointed umpire dies before making an award. 56 CWN 436.

Section 8(2)—Failure by arbitrators to appoint an umpire is an irregularity which may be waived. 1954 ALJ 332.

Section 8(2)—In view of the clauses of agreement between the contending parties and having regard to the decisions, the Subordinate

Judge, Arbitration Court, Dhaka was not within its jurisdiction in appointing an arbitrator. *British Airways PLC vs Bangladesh Air Services Pvt. Ltd* 48 DLR 249.

Sections 8, 30 & 33—Arbitration—Conclusiveness of award—The work order given to the tenderer became an instrument necessary for understanding the contract with him. Though not a part of the contract itself it is a contemporaneous document accepted by both sides throwing light on the interpretation of schedule of work. *Mohammad Eunos and Brothers (Pvt) Ltd. vs University of Chittagong* 44 DLR (AD) 296.

9. Power to party to appoint new arbitrator, or, in certain cases, a sole arbitrator—Where an arbitration agreement provides that a reference shall be to two arbitrators, one to be appointed by each party, then, unless a different intention is expressed in the agreement,—

(a) if either of the appointed arbitrators neglects or refuses to act, or is incapable of acting, or dies, the party who appointed him may appoint a new arbitrator in his place;

(b) if one party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for fifteen clear days after the service by the other party of a notice in writing to make the appointment, such other party having appointed his arbitrator before giving the notice, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent :

Provided that the Court may set aside any appointment as sole arbitrator made under clause (b) and either, on sufficient cause being shown, allow

further time to the defaulting party to appoint an arbitrator or pass such other order as it thinks fit.

Explanation—The fact that an arbitrator or umpire, after a request by either party to enter on and proceed with the reference, does not within one month comply with the request may constitute a neglect or refusal to act within the meaning of section 8 and this section.

Case-Law

Sections 9 & 8—Difference between sections 8 and 9—Arbitrators appointed—Failure of one to act—section 8 will apply—Effect of not doing so—Lapse of reference—Dispute to be decided by Court.

Where the arbitration agreement was made in 1942 and one of the appointed arbitrators refused to act as far back as 1943 and no attempt was made to supply the vacancy till 1948.

Held : The procedure to be followed in a case where the appointed arbitrator refuses to act or is incapable of acting or dies, is laid down in section 8 itself.

The procedure which has been followed by the defendant is the procedure laid down by section 9, Arbitration Act, which has no application to an arbitration agreement which provides for a reference to appointed arbitrators as distinguished from arbitrators to be appointed. Therefore, their Lordships refused to permit the defendants at that late stage to rectify their error of procedure. *Hari Ram Khiaram, firm vs Gobindram Ratta Chanda firm* PLD 1949 Sind 30; PLD 1948 Sind 93.

Section 9—Applicability—If applies when there are more than 3 arbitrators.

Where the arbitration agreement provided for the appointment of two arbitrators who were to appoint a Surpanch, and it was held by a single judge of the High Court that the matter fell under the provisions of section 9, and therefore, when one party did not appoint an arbitrator, the Sole arbitrator appointed by the other party could give an award. The Supreme Court held; section 9 refers to two arbitrators and in the present case it would seem that there must be three, or at any rate two arbitrators and an umpire. The view of the learned Single Judge that the matter fell

repugnant to the provisions of that section or any other provision of the Arbitration Act is not one which in the circumstances of the present case, can be supported. The award given by the sole arbitrator was set aside. *Abdul Hamid vs HM Qureshi PLD 1957 (SC) (Pakistan) 145; PLR 1957 (2) WP 28.*

Section 9—Power of Court—Bonafide dispute about appointment of arbitrator—Arbitrator not appointed by one party—Whether can be allowed to appoint one during pendency of suit.

The lease of the lessee of a mining company was cancelled by the Central Government. The lessee appointed an arbitrator under Rule 8 of Pakistan Mining Concession Rules, 1949, and called upon the Government to appoint their arbitrator. They did not do so and contended that the matter was to be decided by the Central Government and was not to be referred to arbitration. The arbitrator appointed by the lessee acted as sole arbitrator and gave an ex-parte award. Central Govt. challenged the award and realising that the matter was to be referred to arbitration under Rule 80 applied to be allowed to do so.

Held : The difference between the parties as to whether the dispute should have been referred to the Central Government or to the two arbitrators appointed by the parties was bonafide and the matter was not free from doubt. Therefore, the request of the defendants that they should be allowed to appoint their own arbitrator is not without justification. *M Esmailji & Sons vs Federation of Pakistan PLD 1959 (WP) Karachi 87.*

Section 9—Surpanch—Appointed by two arbitrators—If an umpire.

When the arbitration agreement provided for the appointment of two arbitrators, and a Surpanch to be appointed either by the parties or their arbitrators, and it was contended that the Surpanch was an umpire.

Held : It is very doubtful indeed whether a Surpanch, as the term is understood in this country, can be thought to occupy a position equivalent to that of an umpire, in the law relating to arbitration. For an umpire, in arbitration law, is a person appointed to take over the reference from arbitrators who are unable to agree among themselves or who have exceeded the time allowed by law for making their award. Under the Arbitration Act, 1940, the umpire acts not with the arbitrators, but in lieu of the arbitrators. On the other hand, a Surpanch, as the expression indicates, is a Punch, or member of the board, like the other members but

is invested with the duty of sitting with the board as its Chairman. *Abdul Hamid vs HM Qureshi PLD 1957 (SC) (Pakistan) 145; PLR 1957 (2) WP 28; 9 DLR (SC) 131.*

Section 9—Three arbitrators or two arbitrators who have to appoint a third—If section 9(b) applicable.

Where a reference is to three arbitrators or to two arbitrators who are to appoint a third arbitrator (who by virtue of section 10 must be an umpire to act when necessary in lieu of the arbitrators), the provisions of section 9(b) are not applicable. *Abdul Hamid vs HM Qureshi PLD 1957 (SC) (Pakistan) 145; PLR 1957 (2) WP 28; 9 DLR (SC) 131.*

Section 9—Substitution of arbitrator—Case of substitution of arbitrator is not covered by either section 8 or by section 9. *NLR 1989 UC 240 (DB).*

Section 9—How notice is given—Notice to a party by the arbitrator is given either by personal service or by despatch of a letter by registered post and a telegraphic notice is not one of the specified methods for giving such notice. *PLD 1954 Lah 620 = PLR 1954 Lah 666.*

Section 9—Partiality of sole arbitrator—There is no authority for the proposition that an arbitrator merely by acting as an advocate before his entering on reference will amount to misconduct or that his impartiality can be doubted. However, arbitrator having acted as counsel for party appointing him, in the same matter was advised to refrain from acting any more as counsel to remove impression of partisanship. *1886 CLC 359.*

Sections 9(b) & 19(2)—Provisions of section 9(b) are not applicable where an agreement to refer a dispute to arbitration was to the effect that "each of the two parties shall appoint an arbitrator, and, with the consent of both the parties or with the consent of the two arbitrators, a Surpanch shall be appointed who shall bring about a mutual settlement" as, in terms, this agreement does not fall within the purview of section 9(b) but falls within that of section 10(2)(d). *9 DLR (SC) 131.*

Section 9(1)(b)—Appointment of arbitrator—Failure to appoint by one party—The other party appointing sole arbitrator—If can appoint without giving notice to other party—Principle.

Under section 9(1)(b) it is necessary for a party, before exercising a right to appoint his arbitrator as sole arbitrator or to appoint an arbitrator

on behalf of the other side for failure to appoint an arbitrator, to give a formal notice calling upon the other side to appoint his arbitrator.

Failure to give a notice will be an illegality and will, therefore, be fatal to the arbitration. *S M Fazail and Co vs Overseas Cotton PLD 1959 (WP) Karachi 739.*

Section 9(1)(b)—Notice to appoint arbitrator—Shorter than contemplated in arbitration agreement—If valid—Effects of section 9.

When, according to the condition of arbitration, the notice for appointment of an arbitrator should have been of 15 clear days, but a notice of only 48 hours was given.

Held : That was a bad notice because it called upon the appellants to name their arbitrator within 48 hours which is definitely against the terms of the arbitration agreement.

Held further : The arbitration proceedings are of technical nature, they are entered into between the parties with a view to oust the jurisdiction of the ordinary Courts, the language of the statute according to which the arbitrators are appointed or the language of the conditions in pursuance of which arbitrators are appointed, must be carefully observed and any departure from that which is expressly provided in the relevant arbitration clause will be treated as non-compliance of its terms and will be fatal to the arbitration proceedings. Section 9, Arbitration Act, provides a statutory period of seven days' time for the appointment of an arbitrator and respondent had the statutory right of appointing an arbitrator within seven days, after having been served with a notice to do so. *SM Fazail and Co vs Overseas Cotton PLD 1959 (WP) Karachi 739.*

Power of party to appoint new or sole arbitrator.

Section 9(1)(b)—A party may appoint a sole arbitrator when the other party fails to appoint an arbitrator for fifteen days after notice in writing *53 CWN 180.*

Section 9(1)(b)—Before an arbitrator appointed by a party can act as a sole arbitrator there should be a formal appointment. *1948 EP 11; 2 DLR 956.*

Section 9(1)(b)—Appointment of an arbitrator by a party is not complete until it has been notified to the other side *53 CWN 180.*

10. Provisions as to appointment of three or more arbitrators—(1) When an arbitration agreement provides that a reference shall be to three arbitrators, one to be appointed by each party and the third by the two appointed arbitrators, the agreement shall have effect as if it provided for the appointment of an umpire, and not for the appointment of a third arbitrator, by the two arbitrators appointed by the parties.

(2) Where an arbitration agreement provides that a reference shall be to three arbitrators to be appointed otherwise than as mentioned in sub-section (1), the award of the majority shall, unless the arbitration agreement otherwise provides, prevail.

(3) Where an arbitration agreement provides for the appointment of more arbitrators than three, the award of the majority, or if the arbitrators are equally divided in their opinions, the award of the umpire shall, unless the arbitration agreement otherwise provides, prevail.

Case-Law

Section 10—Surpanch—Position of—Not an umpire—only Chairman of arbitrators.

When the parties to the dispute appointed four arbitrators and one Surpanch.

It was held that all the five were members of the arbitral tribunal and there was no umpire. *PLD 1960 (SC) (Pakistan) 98 App; AIR 1922 Cal 181; AIR 1932 All 154; PLD 1957 (SC) 45; (1938) 1 All LR 135.*

Section 10—Decision by majority of arbitrators—In the absence of an agreement that only unanimous decision of the arbitrators is binding, it is the majority decision if otherwise valid, that is binding. *1983 CLC 1685 = 1983 Law Notes 983 = NLR 1983 CLJ 541 = KLR 1983 CD 139 = PLJ 1983 Lah 622 + AIR 1952 Vindh Pra 76.*

Section 10—In the absence of any concurrence in the appointment of single Arbitrator and after the expiry of specified time the party who gave

notice to the other party having not moved the Court for appointment of an Arbitrator the appointment so made is not in accordance with section 8 of the Arbitration Act, 1940 and section 10 of the English Law of Arbitration, 1950 as there is no valid proceeding for arbitration and when the earlier proceeding was not in accordance with law the subsequent appointment of arbitrator cannot be construed as legal. *British Airways PLC vs Bangladesh Air Services Pvt Ltd* 1 BLC 25.

Section 10—If the agreement provides that the dispute shall be referred to arbitration, the reference should be made to a single Arbitrator. *British Airways PLC vs Bangladesh Air Services Pvt Ltd* 47 DLR 544.

Sections 10, 8 and 30—The cumulative effect of sections 8 and 10 of the Act is that where a reference is made to more than one of the arbitrators and one of the arbitrators neglects to act, the arbitrator or arbitrators shall apply to the Court for appointment of an arbitrator to supply the vacancy and an arbitrator appointed by the Court shall have power to act. To be binding and enforceable the award must be signed by all the arbitrators and hence the surviving arbitrator made the arbitral award illegally. *Trading Corporation of Bangladesh TCB vs Mannesman Handel AG and others* 5 BLC (AD) 17.

Section 10(d)—In view of the clause of the agreement between the contending parties and having regard to the decisions, the Subordinate Judge, Arbitration Court, Dhaka was not within its jurisdiction in appointing an arbitrator. *British Airways PLC vs Bangladesh Air Services Pvt Ltd* 48 DLR 249.

11. Power of Court to remove arbitrators or umpire in certain circumstances—(1) The Court may, on the application of any party to a reference, remove an arbitrator or umpire who fails to use all reasonable dispatch in entering on and proceeding with the reference and making an award.

(2) The Court may remove an arbitrator or umpire who has misconducted himself or the proceedings.

(3) Where an arbitrator or umpire is removed under this section, he shall not be entitled to receive any remuneration in respect of his services.

(4) For the purposes of this section the expression "proceeding with the reference" includes, in a case where reference to the umpire becomes necessary, giving notice of that fact to the parties and to the umpire.

Case-Law

Section 11—Power of Court to remove arbitrator or umpire.

Section 11—Arbitrator excluding shorthand writer and clerk of a party is guilty of misconduct. *1953 Cal 474*.

Section 11—Power of Court to remove arbitrator or umpire—The High Court does not have general supervisory power over the conduct of arbitrations more extensive than those that are conferred by the Arbitration Act. *1982 PSC 1135 (HC)*.

Section 11—Award beyond time—Award is required to be filed within specified time or extended time. If award is not filed and time is not extended further, agreement for arbitration is frustrated. *PLJ 1988 Quetta 51*.

Section 11—"Ex parte" proceedings—Where a party had not been able to appear due to disturbed conditions in the country and he had not shown any intention of deliberate non-appearance. Ex parte proceedings against him by the arbitrator would amount to misconduct on his part. *PLD 1977 Kar 973 = PLJ 1977 Kar 501*.

Section 11—Parties refer their dispute to arbitration to get an amicable settlement which is encouraged even though Arbitrators do not follow strict and delicate procedural technicalities. If any party has lack of confidence in the Arbitrator he may seek his removal in accordance with law. *Rising Sun Traders vs Chittagong Port Authority 43 DLR 1*.

Section 11—There is no requirement of law that a person serving under the respondent Port Authority cannot function as Arbitrator or that the Arbitrator being their employee for some time in the past could not function as such. If the Port Authority had no confidence in him they could seek his removal. *Rising Sun Traders vs Chittagong Port Authority 43 DLR 1*.

12. Power of Court where arbitrator is removed or his authority revoked—(1) Where the Court removes an umpire who has not entered on the reference or one or more arbitrators (not being all the arbitrators), the Court may, on the application of any party to the arbitration agreement, appoint persons to fill the vacancies.

(2) Where the authority of an arbitrator or arbitrators or an umpire is revoked by leave of the Court, or where the Court removes an umpire who has entered on the reference or a sole arbitrator or all the arbitrators, the Court may, on the application of any party to the arbitration agreement, either—

(a) appoint a person to act as sole arbitrator in the place of the person or persons displaced, or

(b) order that the arbitration agreement shall cease to have effect with respect to the difference referred.

(3) A person appointed under this section as an arbitrator or umpire shall have the like power to act in the reference and to make an award as if he had been appointed in accordance with the arbitration agreement.

Case-Law

Section 12—Appointment of new arbitrators—The power to appoint arbitrators vested in the parties comes to an end as soon as the arbitrators are appointed by them. Thereafter, the Court may appoint arbitrator. *1980 CLC 541*.

Section 12—Award filed in Court-effect—Once award was made and filed in Court, proceedings for removal of arbitrator and for substitution thereof, if pending in Court, must lie dormant. Such proceedings could be revived and taken up again if and when, award was set aside. *1990 MLD 261 = NLR 1991 CLJ 555*.

Section 12—The appointment of Mr Moksudur Rahman as Arbitrator suffers from no infirmity and that there is no law disqualifying a practicing Advocate for appointment as an Arbitrator. *Bangladesh Water Development Board vs Zakir Construction & Co* 3 BLC (AD) 64

Section 12—The scheme of section 12, particularly of sub-section (2) thereof, clothes the court with the authority of appointing an arbitrator in its discretion after the parties fail to nominate a common arbitrator. *Bangladesh Water Development Board vs Zakir Construction and Co* and another 48 DLR 261.

13. Powers of arbitrator—The arbitrators or umpire shall, unless a different intention is expressed in the agreement, have power to—

(a) administer oath to the parties and witnesses appearing;

(b) state a special case for the opinion of the Court on any question of law involved, or state the award, wholly or in part, in the form of a special case of such question for the opinion of the Court;

(c) make the award conditional or in the alternative;

(d) correct in an award any clerical mistake or error arising from any accidental slip or omission;

(e) administer to any party to the arbitration such interrogatories as may, in the opinion of the arbitrators or umpire, be necessary.

Case-Law

Section 13—Power of arbitrator.

Section 13—Arbitrator cannot decide whether the parties at all entered into a valid agreement for arbitration. 1953 Cal 618.

Section 13—Power to state a special case is discretionary. 27 CWN 494.

Section 13—Omission or error not coming within the section cannot be corrected. *14 CLJ 188*.

Section 13—Conciliation and arbitration—There is no difference between arbitration and conciliation. All arbitrations involve conciliation. *PLD 1967 Dacca 50 = 18 DLR 92 (DB)*.

Section 13—Administration of oath—An arbitrator can administer oath to the witnesses or the parties, and a party can agree before him to be bound by the oath of the opposite party or witnesses. *4 All 283 + AIR 1916 Mad 583*.

Section 13—Opinion of Court—The opinion of the Court is not binding on the arbitrators nor can it operate as *res judicata*. *PLD 1964 Kar 614 (DB) + AIR 1925 Sind 83*.

Section 13—Expert evidence—Arbitrators are entitled to consult any person after notice to the parties and in case arbitrators wish to rely upon the opinion of an expert on a matter in dispute they are bound to provide an opportunity to the parties to refute the view expressed by the expert. *1987 CLC 2509 = NLR 1989 UC 181 (DB)*.

Section 13—Ex parte decision in arbitration proceeding—Powers of the Arbitrator—The respondent Port Authority did not appear before the Arbitrator at all nor did they express their intention to appear on receiving notice from the Arbitrator. In such circumstances the Arbitrator is not bound to give them notice about ex parte hearing and passing of ex parte award in the arbitration proceeding before him. *Rising Sun Traders Ltd vs Chittagong Port Authority. 43 DLR 1*.

14. Award to be signed and filed—(1) When the arbitrators or umpire have made their award, they shall sign it and shall give notice in writing to the parties of the making and signing thereof and of the amount of fees and charges payable in respect of the arbitration and award.

(2) The arbitrators or umpire shall, at the request of any party to the arbitration agreement or any person claiming under such party or if so directed by the Court

and upon payment of the fees and charges due in respect of the arbitration and award and of the costs and charges of filing the award, cause the award or a signed copy of it, together with any depositions and documents which may have been taken and proved before them, to be filed in Court, and the Court shall thereupon give notice to the parties of the filing of the award.

(3) Where the arbitrators or umpire state a special case under clause (b) of section 13, the Court, after giving notice to the parties and hearing them, shall pronounce its opinion thereon and such opinion shall be added to, and shall form part of, the award.

Case-Law

Section 14—Arbitration in pending suit—If notice of making and signing it must be given.

Where an award has been made consequent upon arbitration in a pending suit, it is wholly unnecessary for the arbitrator to give notice to the parties of its making and signing. *Mahboob Alam vs Mumtaz Ahmed* PLD 1956 (WP) Lahore 276—PLR 1956 Lahore (WP) 555.

Section 14—Award—When may be filed in Court—Right of the party to arbitration or the Court to get it filed—Limitation—No notice of making an award—Article 181 of Limitation Act would apply.

A critical reading of section 14 of the Arbitration Act makes it perfectly clear that after an award is given any party to the arbitration agreement or any person claiming under such party may request the arbitrator or the umpire to cause the award or a signed copy thereof together with any deposition or document which may have been taken and proved, to be filed in Court. The "Court" means the civil Court having jurisdiction to decide the question forming the subject matter of the reference. Such Court can also direct the arbitrators or the umpire to cause the award or a signed copy thereof to be filed in Court. No limitation has been provided by the Limitation Act for any party to the Arbitration Agreement to request the arbitrator or the umpire to cause the

award to be filed in Court nor is there any limitation prescribed in the Limitation Act for the arbitrators or umpires to cause the award to be filed in Court upon such request. If a party to the arbitration agreement does not make a request to the arbitrator or umpire for filing the award in Court, it can directly come to the Court and request it to order the arbitrator or the umpire to file the award or a signed copy thereof in Court. Such an application will be governed by Article 178 of the Limitation Act, if notice of the award has been given to the applicant as provided by sub-section (1) of section 14. But if no notice is given then the only provision applicable is Article 181 of the Limitation Act, which provided a period of three years from the date when the right to apply accrues. The right to apply accrues to a party immediately when an award is made and he receives the knowledge thereof. *Muhammad Shafi vs Muhammad Sabir*; PLD 1960 Lah 591.

Section 14—Notice given by one arbitrator —Not by all—If valid—Failure to give notice—Effect on validity of award.

By no stretch of imagination can it be said that the omission to give the notice can invalidate the award. It is not the intention of the law that notice in order to be valid should be given by all the arbitrators. If a notice is given by one arbitrator only, it shall be deemed to have been given by all, unless the contrary is proved, and it will thus be a perfect good notice. *Labab Gul vs Badshah Gul* PLD 1952 Pesh 23.

Section 14—Whether Court can enquire into proceedings before the arbitrator.

The proceedings before the arbitrator may be of some help to the Court in understanding the award, but the Court cannot look into them in order to find out an error apparent on the face of the award. *Messrs Overseas Cotton Company vs Messrs SM Suail and Company* PLR 1957 (2) WP 572.

Section 14—Foreign awards—Act applies to all awards irrespective of place where it has been made or delivered. Courts in Pakistan have jurisdiction to entertain applications under sections 14, 17 in respect of arbitration proceedings conducted in a foreign country and awards delivered in a foreign country. Jurisdiction of Pakistani Courts to entertain applications under sections 14, 17 qua foreign awards is not excluded by virtue of Private International Law (Conflict of Laws), although suits of arbitration chosen by parties was foreign country. *NLR 1995 CLJ 279 = PLD 1994 Lah 525 = PLJ 1994 Lah 446 = 1994 Law*

Notes 786 (But see PLD 1959 Kar 423 + AIR 1958 Punjab 258 (DB) + AIR 1960 Cal.47 (DB).

Section 14—Award made on plain paper—An award is not invalid having been written on plain paper instead of stamp paper. Court can impound award and can get stamp duty paid. *PLJ 1988 Kar 135 (DB).*

Section 14—More than one award—Where there are disputes under the same contract and separate submissions are made, the arbitrators may make two separate awards in relation to them and need not combine them into one. *AIR 1953 Cal 621.*

Section 14—Notice not given—An award does not become invalid because notice of its making has not been given. *1995 MLD 187 + 9 DLR 233 + AIR 1951 Nag 198 (DB) + AIR 1957 All 265.*

Section 14—Notice by one of the arbitrators—It is not the intention of the law that notice, in order to be valid, should be given by all the arbitrators. If a notice is given by one arbitrator only, it shall be deemed to have been given by all, unless the contrary is proved, and it will thus be a perfectly good notice. *PLD 1952 Pesh 23.*

Section 14—Award on insufficiently stamped paper—Fact that award was not written on a stamp paper would hardly affect its validity when necessary stamps were provided subsequently. *NLR 1995 AC 72 = 1994 MLD 2348.*

Section 14—Effect of not giving notice—The fact that no notice of the filing of an award was given does not vitiate the award. *9 DLR 233 = PLR 1957 Dacca 879 (DB)*

Section 14—The validity of an award can be challenged even before it is filed. *PLD 1962 Kar 386 = PLR 1962 (2) WP 995.*

Section 14—Suit to enforce award—A suit to enforce an award necessarily raises a question as regards the existence, effect or validity of the award within the meaning of section 32, and as such where a suit falls under section 14 read with section 31 of the Arbitration Act, the jurisdiction of the Small Cause Court is barred under section 40, read with section 2(c) of the Arbitration Act. *AIR 1960 MP 64 (DB) + AIR 1946 Mad 346 + AIR 1960 Pat 48 (Diss AIR 1944 Nag 24.*

Section 14—Period of limitation of 90 days fixed for filing the award in Court will apply only when a notice in writing regarding making of

award and signing thereof is given to the parties. *Bajla Rice Mills vs Bangladesh* 41 DLR 504.

Section 14—Arbitration proceeding, nature of—A proceeding under section 14(2) of the Arbitration Act, 1940 is not a suit. Section 10 of CPC is not applicable to proceeding under section 14(2) of the Arbitration Act. *Adamjee Sons Ltd vs Jiban Bima Corporation* 45 DLR 89.

Section 14—In the absence of any evidence or materials or even any allegation arbitrators are guilty of legal misconduct if they come to any finding to enforce specific performance of a contract. *Bangladesh Telegraph and Telephone Board vs Lithi Enterprise* 46 DLR 122.

Section 14(1) & (2)—Notice of making and signing of award—What is—When time begins to run Section 178 Limitation Act.

The words "the date of service of the notice of making of the award" have a technical meaning attached to them and can only mean the notice provided by section 14 of the Arbitration Act i.e. a notice in writing to the parties of the making and signing of the award. The mere fact that the parties had the knowledge of the fact that the award had been made or the fact they had signed the award would not start the time running under Article 178 of the Limitation Act. *Mohammad Shafi vs Muhammad Sabir* PLD 1960 Lah 591.

Provisions of section—If mandatory—No compliance—If make an award valid—when object of section fulfilled—No need of formal notice.

Where it was contended that the provisions of section 14 were mandatory and their non-fulfilment made the award void :

Held : They may be mandatory and may form a strong basis for repelling any objections on the ground of limitation, but they cannot render an award void. Their effect would be that the Court would direct compliance with them but when the object of the provisions has been served and the parties have knowledge of the contents of the award as well as of its filing there is no need of any formal notice (though its absence may be pleaded in reply to an objection on the ground of limitation). *Mahboob Alam vs Muntaz Ahmed* PLD 1960 Lahore 601.

Section 14(1)—Scope—Notice of filing of award—What is—Notice on advocate—If sufficient.

Under section 14 of the Arbitration Act it is the statutory right of a party to be personally served with notice of the filing of the award and service except personal service is not a proper service, knowledge of the filing of the award acquired otherwise than in the way prescribed by section 14 cannot be deemed to be proper service of a notice of the award. Service of notice on the advocate cannot be regarded as valid service under section 14. *ILR (1946) Karachi 459 AIR 1947 Sind 145.*

Sections 14(1), 34 & 39—On an application of the respondent under section 34 of the Arbitration Act, proceedings of the suit were stayed and the dispute was referred to arbitration in terms of the partnership deed, Both the parties participated in right earnest in the arbitration matter and the Arbitrators gave an award on 4th September, 1977 and notified the matter under section 14(1) of the Arbitration Act.

Defendant-respondent received the notice himself on 8th October, 1977. The Arbitrator filed the award in Court on 19th November, 1977 whereupon a suit. Other Suit was started in the 1st Court of Subordinate Judge. Notice of the filing of the award was served upon the respondent on 24-12-77 but he filed a written objection on 25-4-78. The trial Court rejected the objection holding that it was barred by limitation in that it was not filed within 30 days from the date of filing of the award i.e. 19-11-77, Respondent preferred an appeal under section 39 of the Arbitration Act which was heard by the Additional District Judge. It was contended in that appeal that no notice of the suit was served upon him by the process server and that he came to know of the suit on 14-4-78 for the first time and the reckoning from this date he filed the objection within 30 days.

The learned Additional District Judge accepted this contention and reversed the trial Court's findings that when the defendants lawyer appeared on 8-3-77 before the Court and prayed for time, then the defendant knew of the matter even he had not been served with the notice by the process server on 24-12-77 and held that notice upon an Advocate could not be construed as notice upon the party. On these findings the Learned Additional District Judge set aside the Trial Court's judgment and ordered retrial with a direction to examine the process server as a witness. The appellant challenged this order in revision contending, *inter alia*, that in view of the amended provision of rule 19 of Order 5 CPC examination of the process server is not necessary. But this contention was rejected by the High Court.

Held: Though the notice upon the Lawyer of a party is not a substitute of notice upon the party, yet such a notice upon the Lawyer is ample proof of the fact that the defendant, as in this case, got knowledge of the matter. *Khurshid Anwar vs Jamil Akhtar BCR 1985 AD 227.*

Section 14(2)—Application for filing of award—No notice of making of award—If covered by section 14(2)

Where a notice is given or not an application by a party to the Court to direct the arbitrator or the umpire to file award will be covered by sub-section (2) of section 14. *Muhammad Shafi vs Muhammad Sabir PLR 1960 Lahore 591.*

Section 14(2)—Application for filing award—When Court can suo motu declare proceeding and award collusive.

Where an application is made under section 14 of the Arbitration Act for filing an award in Court, the Court cannot in the absence of a plea on issue suo motu hold that the reference and award as well as the proceedings before the Court were all collusive. The Court cannot raise such a plea which is one of fact, suo motu. It may be that the award and the proceedings are collusive; but if they are they will have to be found to be so by a Court in subsequent proceedings on a plea raised by third parties and on evidence which may be led in that litigation. *Mst Sobha Devi vs L Faqir Chand 1946 Lah. (Rul). 418—225 IC 166—AIR 1947 Lah.*

Section 14(2)—Award—Umpire not filing documents and depositions with award —A mere irregularity—If effects merits of award.

The umpire was required under the Sind Chief Court Rules as also under sub-section (2) of section 14 of the Arbitration Act to file the award "together with any depositions and documents which may have been taken and proved" before him. The umpire failed to comply with this provision. but it was held that this is a mere irregularity and does not affect the merits of the case. *Overseas Cotton Co vs SM Fazail and Co, PLD 1958 (WP) Karachi 27.*

Section 14(2)—Award—Documents and depositions not filed with award—If award invalid—Breach of direction under section 14 (2)—Nature of.

The direction given to the arbitrator under section 14(2) is only of a directory nature. The breach of this direction cannot make the Award

inoperative. In case the intention of the Legislature would have been otherwise, they would have clearly stated so. This direction is only for the convenience of the parties and is not in the nature of a public duty, the failure of which is considered to be fatal. Therefore, the breach of this direction is only an irregularity. *SM Fazail and Co vs Overseas Cotton Co PLD 1959 (WP) Karachi 320 PLR 1959 (2) WP 1098.*

Section 14(2)—Filing of award—Section 14(2) not only remedy—Section 38 may also be pressed into service.

Although the Arbitration Act is a consolidating Act, section 14 of the said enactment is not the only provision of law under which the award can be filed and made rule of the Court. Section 38 of the Arbitration Act is one of the methods by which the award can be obtained from the arbitrator. It will be idle to think that there is no remedy provided on an award in such a matter. The provisions of section 17 of the Arbitration Act will be applicable to such cases and the party in whose favour the award has been given is entitled to invoke the aid of the Court under the said provisions. *Keays Byrne vs Obaidullah Khan PLD 1959 (WP) Lahore 146 PLD 1959 (2) WP 781.*

Section 14(2)—Notice, who should give—Absence of notice does not invalidate the award.

On a reference to the provisions of sub-sections (1) and (2) of section 14, it will appear that the object is to ensure knowledge of the award actually signed by the arbitrators and also of the suit that may be filed in respect of the award. In the first case, it is the arbitrators who have to give notice, in the second case, it is the Court that has to give notice. The object of these notices is to enable the parties concerned to take necessary steps after the award is made and signed and also when a suit is filed on the basis of the award for a decree, and if the parties come to know that an award has been made they may request the arbitrators to file the award according to section 14 or even they can move the Court for the said direction.

As soon as arbitrators have made a complete award the award is regarded as made and published. The absence of notice as required by sub-section (1) of section 14, by itself, does not invalidate an award. The provisions of sub-sections (1) and (2) of section 14, relate to the procedure regarding an award and regarding a suit filed in respect of an award, and if the party who is entitled to notice cannot prove any prejudice on account of absence of notice by the arbitrators or by the

Court, he cannot claim any relief and, on account of absence of notice alone, the award cannot be held to be invalid. *Jaker Hossain vs Md Ismail Sukhani 1 DLR 233.*

Section 14(2)—Object of—Application for setting aside award—No objection taken on ground of limitation—If each notice of making or filing the award makes it unenforceable.

Where there was no application for filing the award at all and there was no objection on the ground of limitation to the application for setting aside of the award, it was held that objection as to the absence of notice of the making of the award or of filing of the award can be taken by a party who has filed an application for setting aside of the award and the application has been entertained without any objection as to limitation. It is not contended that the appellant did not know of the contents of the award for he had filed objections after going through the award.

Further held—The object of the provision relating to notice of the making of the award is only to inform the parties that the award has been made so that they may file an application for the filing of the award. Such an application has to be filed within ninety days of the service of notice of the making of the award under Article 178 of the Limitation Act. Similarly, the object of giving notice of the filing of the award is to enable the parties to file an application for the setting aside of the award. Such an application has under Article 158 to be filed within thirty days of the service of the notice of the award. Had there been involved any question of limitation as to an application for filing of the award, or as to an application for setting aside of the award, reliance on the provisions to give notice would have been justified. *Mahboob Alam vs Mumtaz Ahmad PLD 1960 Lah 601.*

Section 14(2)—Unregistered Firm—If can enter into agreement of arbitration—Effect of section 69(3) Partnership Act.

Even if a firm is unregistered it can enter into agreement for Arbitration, section 69 (3) of the Partnership Act notwithstanding and an award made in such a reference would be valid and can be enforced at the instance of the firm. *Muhammad vs MN Syndicate PLD 1956 Sind. 71.*

Section 14(2)—Award to be signed and filed.

Section 14(2)—No time is fixed within which the arbitrators should give notice of the making and filing of the award. *1943 Bom, 221.*

Section 14(2)—Failure to give notice that the award has been made or that the award has been filed vitiates the decree. *1943 Mad 718.*

Section 14(2)—Notice by the arbitrators may be given by their attorneys. *1943 Bom 221.*

Section 14(2)—Parties must be personally served with the notice of the filing of the award. *1947 Sind 145.*

Section 14(2)—Objection as to non-service of notice of filing the award cannot be raised for the first time in revision. *1950 Assam 191.*

Section 14(2)—Notice may be given orally or in writing. *1948 EP 11.*

Section 14(2)—Notice by some of the arbitrators does not vitiate the proceedings *1953 Cal 646.*

Section 14(2)—Notice of filing the award need not be given to the parties who have appeared in Court. *1953 Cal 646.*

Section 14(2)—Personal service of notice on the parties is not essential *55 CWN 349.*

Section 14(2)—Failure to give notice to one of the heirs of a deceased party to the arbitration agreement renders the award invalid. *1949 FC 195; 1949 FCR 396; 4 DLR (FC) 117.*

Section 14(2)—If the arbitrators join in the deliberation and agree in a certain decision though some of them accidentally, inadvertently or deliberately fails to sign the award, the award is valid. *1945 Patna 140, 1948 Mad 512, 1953, Calcutta 646, 1951 Mad 997.*

Section 14(2)—Formal decisions arrived at in the absence of some of the arbitrators is an irregularity which may be waived. *1943 Bombay 221.*

Section 14(2)—Application by a party to file the award should be made within ninety days of the day when the applicant comes to know of the award. *1952 EP 350.*

Section 14(2)—Arbitrators may file the award *1945 Nag 117.*

Section 14(2)—Arbitrators may decline to file the award if their remuneration is not paid. *1945 Nag 117.*

Section 14(2)—Arbitrators may file the award and seek recovery of their remuneration through Court. *1945 Nag 117.*

Section 14(2)—Any one of the arbitrators on behalf of himself and all others may file the award *1949 Nag 349*.

Section 14(2)—When there is a minute of the evidence and proceedings, notes of evidence need not be filed. *85 CLJ 176*.

Section 14(2)—There may be more than one award. *1953 Cal 621*.

Section 14(2)—Any party authorised by the arbitrators or umpire may file the award. *1953 (SC) 313; (1953) SCJ 436*, but filing by a party not authorised is not proper filing. *1954 Nag 236*.

Section 14(2)—Non-filing of account books which were not received in evidence do not vitiate the proceedings. *1953 Calcutta 646*.

Section 14(2)—Court cannot *suo motu* dismiss an application for filing the award by the arbitrators as collusive. *1947 Lah 24*.

Section 14(2)—Court cannot direct the arbitrators to file the award if there is no arbitration agreement in writing. *1948 Patna 430*.

Section 14(2)—A party cannot cause the award to be filed unless the costs and charges of the arbitrators are paid. *1949 Cal 189*.

Section 14(2)—Decree passed within one month of the filing of the award is without jurisdiction. *1949 Mad 256*.

Section 14(2)—Court has power to reject an application to file the award on the ground of want of a real dispute. *1944 Sind 80*.

Section 14(2)—Filing of the Award in Court—Two alternative pre-conditions—Duty of arbitrator or umpire to cause the award to be filed in Court on fulfilment of either of the two pre-conditions. *Bajla Rice Mills vs Bangladesh 41 DLR 504*.

Sections 14(2), 18(1) and 41(4)—The court was wrong in entertaining the application under section 14(2) of the Arbitration Act and passing the order of status quo under section 18 (1) and section 41(4) of the Arbitration Act as he was not invested with the pecuniary jurisdiction to entertain the present proceeding involving Taka 9 crore which is far in excess of his pecuniary jurisdiction. *Abdur Razzak Dobash vs Abdul Karim Dobash and others 3 BLC 83*

Sections 14(2) and 31(1)(4)—The provision contained in section 31(4) of the Act will have an overriding effect in relation to the filing of the award if the conditions therein prescribed are satisfied. If those

conditions are satisfied the court other than the one envisaged in section 14(2) or section 31(1) will be the court in which award will have to be filed which is the effect of the non-obstante clause of section 31(4) conferring not only the exclusive jurisdiction on the court to which an application is made in any reference but simultaneously ousts the jurisdiction of any other Court which may as well have jurisdiction in this behalf. *Abdur Razzak Dobash vs Abdul Karim Dobash and others* 3 BLC 83.

15. Power of Court to modify award—The Court may by order modify or correct an award—

(a) where it appears that a part of the award is upon a matter not referred to arbitration and such part can be separated from the other part and does not affect the decision on the matter referred; or

(b) Where the award is imperfect in form, or contains an obvious error which can be amended without affecting such decision; or

(c) where the award contains a clerical mistake, or an error arising from an accidental slip or omission.

Case-Law

Section 15—Power of Court to modify award.

Section 15—Court cannot record findings on questions which the arbitrator has not decided. 1943 *Sind* 131.

Section 15—Court cannot modify award because it takes a different view 45 B 512; 1924 *All* 800.

Section 15—Where the question of costs is not referred to arbitration, Court may strike out any direction as to cost in the award. 9 B 82.

Section 15—Where a part of the award is beyond the scope of arbitration and when that part can be separated from the rest, Court can modify the award. 1954 *Patna* 336.

Section 15—Application for modification—The validity of an award may be challenged under section 15 but the section does not provide for the making of an application. The authority for making an application is derived ultimately from the general provisions contained in section 33. *AIR 1956 Cal 321 (FB)*.

Section 15—Limitation for objection to award—Where the objection is filed against the award by one of the parties to an arbitration reference under section 15, the objection cannot be held to have been barred under Article 158, Limitation Act. *AIR 1957 Pat 447 (DB)*.

Section 15—High Court, powers of—High Court has same powers as original Court to modify award, to correct errors obvious on the face of award and sums found wrongly awarded to respondent amount to such errors. *1983 CLC 2006 (DB)*.

16. Power to remit award—(1) The Court may from time to time remit the award or any matter referred to 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; or

(c) where an objection to the legality of the award is apparent upon the face of it.

(2) where an award is remitted under sub-section (1) the Court shall fix the time within which the arbitrator or umpire shall submit his decision to the Court:

Provided that any time so fixed may be extended by subsequent order of the Court.

(3) An award remitted under sub-section (1) shall become void on the failure of the arbitrator or umpire to reconsider it and submit his decision within the time fixed.

Case-Law

Section 16—Award not definite—If may be remitted back to arbitrators for clarification.

When the award was not definite and clear on certain points.

Held: A well settled rule of construction was that the award should be construed liberally and in accordance with common sense, and it should be so read that it can be given effect to and not so that it would nullify the efforts of the arbitrators appointed by the parties themselves. *Abdul Rouf vs Muhammad Saeed Akhtar PLD 1958 (WP) Karachi 145.*

Section 16—Statement in the award that the dispute is under a contract between the parties of a certain date does not so incorporate the contract with the award as to entitle the Court to refer to its terms, and by so doing to find that there is no error of law. *MP Ali Mia & Sons vs Green & White Ltd 15 DLR 708.*

Section 16—The Act of calling for the statement of the case or other papers from the parties is a ministerial act and if that has been performed by the Registrar in violation of the rules, that was at best an irregularity and not an illegality affecting the award. *MP Ali Mia & Sons vs Green & White Ltd 15 DLR 708.*

Section 16—Court's jurisdiction to remit arbitration proceeding on the ground of non-service of notice.

It was contended that the Court had no jurisdiction to remit the arbitration proceeding back to the Tribunal of Arbitration under section 16 on the ground of non-service of notice.

Held : The award purports to determine the issues and since such purported determination of issues was made behind the back of the parties, they cannot be treated as legal determination of issues. An adjudication made behind the back of the parties is not adjudication at all

in the eye of law. In these circumstances it is permissible to remit the award made to Tribunal of Arbitration. *Naseem Bhai & Co vs M/s Pakistan Dealers Ltd* 17 DLR 201.

Section 16—Award remitted under section 16, such remittance comes under section 39 (1) cl (vi).

The Subordinate Judge referred an award to the arbitrators for reconsideration. Against the order of the Subordinate Judge an appeal was filed in the High Court and it was objected that the appeal before the High Court was not competent.

Held: When an award is remitted under section 16 of Arbitration Act, the order of the Court includes an order under clause (vi) of section 39(1) as the same amounts to and takes effect, after setting aside the award. Hence, the High Court is competent to dispose of the appeal. *Government of East Pakistan vs A Rab & Sons* 18 DLR 315.

Section 16—Court's discretion whether to supersede the reference or not after setting aside the award.

Section 16 leaves it to the discretion of the Court when it decides to set aside an award whether it will supersede the reference or not. It may not decide to supersede the reference at all and in that case in spite of setting aside the award the reference will continue. *AZ Co Karachi vs Maula Baksh* 17 DLR (SC) 404.

Section 16—Foreign arbitrations—The provision does not apply to foreign arbitrations. *AIR 1960 Cal 47 (DB)*.

Section 16—The Court has a discretion to remit or not to remit an award. *PLD 1956 Lah 494 + AIR 1931 Lah 215 + 1905 Pun Re No.41, page 148 (DB)*.

Section 16—Partial remittal—The Court can remit the award in part only and treat the award as to the other part as final. *AIR 1963 Pat 71 (DB)*.

Section 16—It is open to the parties to waive remittal. *21 Ind App 47 (PC) + AIR 1928 Pat 7 + 11 Ind Cas 481 (DB)*.

Section 16—Award incapable of execution—The words "incapable of execution", really mean "unenforceable". An award cannot be held to be invalid, if it is incapable of immediate execution by means of execution proceedings to enforce the decree. *PLD 1963 Dacca 269 = PLR 1962 Dacca 993 (DB) + AIR 1938 Lah. 177*.

Section 16—Arithmetical error—An arithmetical error in the award made by an arbitrator in arriving at the sums due by one party to another is not an illegality apparent on the face of the award. *AIR 1929 Lah 86*.

Section 16—Incapable of execution" means unenforceable.

The award cannot be held to be invalid, if it is incapable of immediate execution by means of execution proceedings to enforce the decrees.

There is no force in the contention that, unless an award is capable of being enforced immediately by way of execution proceedings it will be held to be an invalid award. *Khan Bahadur Khalilur Rahman vs Bijoy Ranjan Kanungo 14 DLR 84*.

Section 16—Power to remit award.

Section 16—An award can be remitted if it is based on an erroneous proposition of law appearing on the face of the award or some document incorporated therein. *1945 Cal 19; 1951 Cal 529*.

Section 16—An erroneous decision on a question of fact is no ground for remitting the award. *1945 Cal 19*.

Section 16—An award cannot be remitted for want of registration. *1945 Cal 19*.

Section 16—Award not deciding all the disputes should be remitted. *54 CWN 796*.

Section 16—An award dividing immovable properties and leaving some movables joint may be remitted for division of movables. *1953 Cal 646*.

Section 16—An award cannot be remitted for a mere error of law or fact, *91 CLJ 145*.

Section 16—Court cannot remit on grounds other than set out in section 16 (*1950*) *2 MLJ 642*.

Section 16(1)(b)—Award impeached on the ground of being vague and unenforceable—Impeachment when cannot be entertained—That is sufficiently certain which can be made certain.

The point that arises for determination is whether the number of bales opened for inspection and the expenses incurred in connection with unloading, reloading, etc. could be determined otherwise than by reference to the award itself.

The defendant Company in the present case knew how many bales were opened for inspection and at no stage of these proceedings has the correctness of the assertions of the plaintiff in this regard been challenged. Similarly, the costs of unloading, etc. were not in dispute. If the figures were challenged by the defendant, there is no reason why the Court could not have ascertained them with reference to materials other than the awards. The question as to how many bales were actually opened, is a question relating to what happened before the arbitrators and if there were any dispute with regard to it, the arbitrators could be called as witnesses to ascertain the same.

The mere fact that the amount was not actually ascertained or calculated by the arbitrators does not appear to be a sufficient justification for holding the award to be uncertain for the principle will apply that is sufficiently certain, which can be made certain. *Al-haj Md Keramat Ali & Co vs Amin Jute Mills Ltd* 13 DLR 310.

Section 16(1)(c)—"Where an objection to the legality of the award is apparent upon the face of it."

The words in clause (c) of sub-section (1) to the effect that "where an objection to the legality of the award is apparent upon the face of it" means the award can be remitted only where the question of law necessarily arises on the face of the award or upon some paper accompanying and forming part of the award and that question *ex-facie* has been decided wrongly, otherwise not. It cannot be remitted on an erroneous conclusion on a question of fact. The above provision of law is an exception to the well-founded principle that an arbitrator is the sole and final judge of all the questions, both of law and fact. *Government of East Pakistan vs M/s A Rab and Sons* 18 DLR 315.

Sections 16 & 19—Award, set aside by Court—Arbitrator could not give second award—Court has, however, power to ask arbitrator to give award afresh. (1953) PLR (Lah) 989.

Sections 16 & 19—Award set aside—Second award by arbitrator—If valid.

The reason of the rule that an arbitrator became *functus officio* on making an award was that an agreement of reference only envisages one decision by the arbitrator and that for a second decision there must be an agreement between the parties. The legislature interfered with the agreement to this extent that it assumed in it the grant of power to a Court

to remit the award for consideration. Two kinds of provisions were inserted in the Arbitration Act, one, empowering the Court to set aside the award, and the other to remit it, so that if it did not exercise the discretion to remit, the arbitrator received no authority to give a new award, his authority on the agreement having been exhausted. Therefore, a second award made by the arbitrator on the same reference is void. *Nawab Din vs Abdur Rashid PLD 1954 Lahore 58; PLR 1953 Lahore 989.*

17. Judgment in terms of award—Where the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration or to set aside the award, the Court shall, after the time for making an application to set aside the award has expired, or such application having been made, after refusing it, proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except on the ground that it is in excess of, or not otherwise in accordance with, the award.

Case-Law

Section 17—Section is not attracted where the Court failed to consider objections filed.

Though the section 17 provides that a Court can pass an award after refusing any objection to the award but in a case where the Court has failed to consider such objection the provision of section 17 will not be attracted. *Tasiruddin Brother vs Faijullah Gunjee and Co. 17 DLR 737.*

Section 17—Applicability—Award—If must be filed by application under section 14(2).

When it was alleged that the applicant had not applied for filing of the award under section 14 and had brought the award mysteriously on the record.

Held : Section 17 definitely deals with cases where the award has come before the Court in one way or the other and if once an award has

come before the Court, the Court has got the jurisdiction to pass a decree thereon. *Keays Byrne vs Obaidullah Khan PLD 1959 (WP) Lahore 146 PLD 1959 (2) WP 781.*

Section 17—Award filed by one party—Limitation for making application under section 17.

An award could be filed at anytime by one of the parties, and a decree could be passed on it under section 17 of the Arbitration Act. No period of limitation was provided for such applications. *Keays Byrne vs Obaidullah Khan PLD 1959 (WP) Lahore 146—PLD 1959 (2) WP 781.*

Section 17—Notice of award not served—Application to set aside rejected—If Court can deliver judgment in accordance with the award.

In accordance with section 17 in order to deliver judgment on an award either the limitation for filing an application to set aside the award should have expired or such an application should have been made and rejected. If it is rejected the Court has to proceed to deliver judgment in accordance with the award. This section does not say that as long as notice for filing of the award has not been served, the Court is not to deliver judgment. *Mahboob Alam vs Muntaz Alam PLD 1960 Lahore 601 (DB).*

Section 17—No application under section 14—Party filing a copy of award in Court and applying under section 17 for making it a rule of Court—If application competent.

Where the arbitrator had supplied the parties to a dispute with copies of his award and one of the parties filed a copy of the award in Court and prayed that it be made rule of Court :

Held : Since the award has been filed by the petitioner, with the application he could only ask the Court to proceed from the stage after it would have been filed before the Court, that is to say, for the purpose of making an inquiry that might have resulted in ordering a modification or in remitting the award under section 16 or setting it aside or refusing to set it aside under section 17, Arbitration Act. In other words, a notice as required in section 14 to the Arbitrators to cause the award or a signed copy of it, etc. to be filed in Court was unnecessary. *Keays Byrne vs Obaidullah Khan PLD 1959 (WP) Lahore 146—PLR 1959 (2) WP 781.*

Section 17—Section is not attracted where the Court failed to consider objections filed.

Though section 17 provides that a Court can pass an award after refusing any objection to the award but in a case where the Court has failed to consider such objection the provision of section 17 will not be attracted. *Tasiruddin Brother vs M/s Faijullah Gunjee and Co* 17 DLR 732.

Section 17—Judgment in terms of award.

Section 17—Decree passed within one month of the service of the notice of the filing of the award is without jurisdiction. *1949 Mad 256, 1951 Mad 658, 55 CWN 349.*

Section 17—An error of law by arbitrator cannot vitiate the award. *1951 Patna 445.*

Section 17—Court cannot review the arbitrator's findings if he has acted within his authority and according to the principles of justice. *1951 Patna 445.*

Section 17—Court should set aside the decree if the provisions of section 17 have not been complied with. *55 CWN 349.*

Section 17—Arbitrator failing to disclose to parties facts likely or calculated to bias his mind or influence his judgment is guilty of misconduct and his award should be set aside. *1952 Bom 227.*

Section 17—Arbitrator making secret inquiries and basing his decision thereon without giving parties an opportunity to explain the materials thus obtained is guilty of misconduct and the award is liable to be set aside. *1952 All 546.*

Section 17—Arbitrator examining each party in the absence of the other is guilty of misconduct which is sufficient to vitiate the award. *(1952) SCJ 630.*

Section 17—Even if the award is a nullity a party must get it set aside. *56 Bom LR 89.*

Section 17—Where a person came to know about a decree passed against him under this section but he did not challenge it within time, he will be bound by the decree. *1993 CLC 589.*

Section 17—Award is 'res judicata'—When an award becomes final, it puts an end to all the controversies between the parties and the points which were taken, either in attack or in defence cannot be reargued. A

judgment under section 17 of the Arbitration Act amounts to a judgment by consent and is intended to put a stop to litigation just as much as a decision of the Court after the matter has been fought to the end. *AIR 1964 MP 101 (DB) + 21 Bom 465 + AIR 1946 Sind 117 (DB)*.

Section 17—'Ultra vires' award—Where an award is ultra vires, the mere fact that parties have signed it does not amount to consent or waiver by the parties so as to operate as an estoppel. *AIR 1927 Oudh 448*.

Section 17—Award stifling criminal, prosecution—An award which directs the withdrawal of criminal case or its non-prosecution by one of the parties is opposed to public policy and is invalid. *1991 SCMR 1928*.

Section 17—Partially invalid award—If a part of the award is valid and a part of it is invalid and they are separable from each other then the invalid portion can be set aside and the other portion is operative as valid. *AIR 1963 MP 242 (DB) + AIR 1963 Guj 28*.

Section 17—Limitation for passing decree—Whether the parties apply for time or not, it is a duty cast upon the Court to allow thirty days' time to elapse between the filing of the award and the passing of a decree on the basis of the award. *AIR 1951 Mad 658 + AIR 1952 Cal 10 + AIR 1949 Mad 256 + AIR 1949 Mad 276* (Aggrieved party's remedy lies in revision and not in appeal against decree).

Section 17—Appeal—An appeal lies from a decree based on an award where it is in excess of the award or is not in accordance with the award. *17 Ind Cas 684 = 1913 Pun re No.52 (DB)*.

Section 17—Points to be raised in appeal. Appellant is not entitled to address the Court on points raised before the lower Court. His appeal will lie only insofar as the decree and the award differ. *8 Cal L Jour 457*.

Section 17—Award beyond scope of suit. If any portion of an award deals with matter outside the scope of the suit, the Court should not embody such portion of the award in its decree. *AIR 1920 Mad 615 + AIR 1951 Madh B 111*.

Section 17—Supreme Court—Raising an objection before Supreme Court without raising it earlier and without getting determination thereof disentitled appellant to get an adjudication from the Supreme Court. *1989 SCMR 1407 = 1989 PSC 334*.

Section 17—A decree is to follow upon the pronouncement of the judgment according to the award. No appeal lies from such decree except on the ground that it is an excess of or not otherwise in accordance with the award. Objection filed out of time was rejected on the ground of limitation under Article 158 of the Limitation Act. Trial Court's decreeing the Suit in accordance with the arbitration award is justified and appeal before the High Court Division was not competent. (*Abdus Salam vs Osman Gani*] BCR 1984 (AD) 346.

Section 17—If it is found that the appeal is not maintainable under section 17 of the Arbitration Act the same may be converted into a revisional application. *Bangladesh Water Development Board and others vs Progati Prakaushali and another* 49 DLR 335.

Sections 17, 33 & 39(1)(vi)—Arbitration award—Question of setting aside an award—The appellants did not file any application to set aside the award or to challenge the existence and validity of the award. It is absurd to say that by making the award a Rule of the Court, the Court has refused to set aside the award. The act of refusal must be in pursuance of a positive move by the party affected either under section 17 or section 33. An ex parte order, as in the present case, making an award the Rule of the Court is not amenable to under section 39 of the Arbitration Act. *Bangladesh vs KM Shafi Ltd* 43 (AD) DLR 217.

Sections 17 & 39—Definite finding about setting aside an award—If Court must record.

The policy of the Arbitration Act is that after an award is filed in Court and after complying with the provisions of law contained in different sections of the Arbitration Act, the Court should pass a distinct order, either to set aside the award, or refusing to set aside the award. That such a distinct order should be passed by the Court is clear from the wordings of section 17 read with section 39 of the Act, because until and unless such an order exists on the record no appeal lies from the order of the trial Court. By enacting section 39, the legislature clearly gave a right to the aggrieved party to go up in appeal against a certain order, which the Court could not take away from him by omitting to pass such an order. *Hussain Shah vs Ghulam Hussain Khan* PLD 1953 Pesh 59.

Sections 17 & 39—An 'order' dismissing an application for restoration of an ex-parte decree passed under section 17 is not

appealable—But the applicant can maintain an application under section 151 CP Code.

The proceedings in the present case originate from a special statute, namely, under section 14 of the Arbitration Act. A decree was passed in terms of section 17 thereof which says that after a judgment is pronounced in terms of section 17 a decree shall follow. An appeal lies against such a decree on limited grounds. An "order" dismissing an application for restoration of an ex-parte decree passed under section 17 is not a "decree" but an "order". Section 39 of the Arbitration Act mentions 6 kinds of "orders" under the said Act against which appeal shall lie. It specifically says that appeal shall lie from the other "order". An "order" dismissing an application for restoration of an ex-parte decree passed under section 17 is not among them. Therefore, no appeal lies under the Arbitration Act against an "order" dismissing an application for restoration of an ex-parte decree passed under section 17.

Since no appeal lies against an order of dismissal of an application under Order 9, rule 13 CPC under the Arbitration Act the petitioner has no specific and alternative remedy against the dismissal. His application under section 151 CPC, therefore, was clearly maintainable. *Haji Karim vs Insaf Meah* 33 DLR 435.

18. Power of Court to pass interim orders—(1) Notwithstanding anything contained in section 17, at any time after the filing of the award, whether notice of the filing has been served or not, upon being satisfied by affidavit or otherwise that a party has taken or is about to take steps to defeat, delay or obstruct the execution of the award is just and necessary, the Court may pass such interim orders as it deems necessary.

(2) Any person against whom such interim orders have been passed may show cause against such orders, and the Court, after hearing the parties, may pass such further orders as it deems necessary and just.

Case-Law

Section 18(1)—The plaintiff obtained a signed photostat copy attested by the Arbitrator himself and filed the same in court which does not fulfill the requirement of filing the original copy of the award as the Arbitrator has retained the original copy of the award with himself. *Adbur Razzak Dobash vs Abdul Karim Dobash and others* 3 BLC 83.

19. Power to supersede arbitration where award becomes void or is set aside—Where an award has become void under sub-section 3 of section 16 or has been set aside, the Court may by order supersede the reference and shall thereupon order that the arbitration agreement shall cease to have effect with respect to the difference referred.

Case-Law

Section 19—Court setting aside award—Reference not superseded—If parties can seek reference to arbitration again Section 20(4)—Possible pleas against it.

That the Court should be required to make an order under section 19 either superseding or not superseding the reference, is unnecessary, and indeed misconceived, for the order setting aside the award already made by the learned Sub-judge must be deemed to include an order declining to supersede the reference, and consequently, it would seem to follow that the arbitration agreement filed in the Court still remains in full force, according to its tenor, and consequently, as has been indicated above, it would seem to be open to either party to the agreement to make an application before the Court seeking a reference of the difference in question to an arbitrator in accordance with the agreement. Such an application would lie under sub-section (4) of section 20 and the Court would be required to take action thereon, subject to such pleas as may be raised by the opposite party, one of which may conceivably be that the terms of the arbitration agreement are of such a nature that single reference to arbitration and an award thereon exhausts the power given by the agreement notwithstanding that the award may have been set aside by the Court later on in accordance with law. *Sardar Abdul Hamid Khan vs Chairman, Lahore Improvement Trust* PLD 1949 Lahore 278; PLR 1949 (WP) 789.

Section 19—Power of Court to supersede reference—Refusal amounts to declining to exercise powers—Effect on arbitration agreement.

Court has power under section 19, when it has set aside an award made upon reference under sub-section (4) of section 20, to supersede the reference and thus avoid the arbitration agreement. It would also seem to follow that where a Court, while making an order under section 19, does not expressly supersede the reference and direct that the arbitration agreements shall cease to have effect, it must be deemed to have declined to exercise the power, and consequently the arbitration agreement, notwithstanding that it has been filed in Court, still remains in full force according to its tenor, not only with respect to the difference which was referred to arbitration, but also with reference to all disputes between the parties which properly fall within the agreement. *Sardar Abdul Hamid Khan vs Chairman, Lahore Improvement Trust* PLD 1949 Lahore 278; PLR 1949 (WP) 789.

Section 19—Power to supersede arbitration.

Section 19—Where the Court sets aside an award but does not expressly supersede the reference the arbitration agreement remains in full force. *1950 Lah 32*.

Section 19—Supersession of reference where no suit is pending—The Court must apply its mind and determine the validity of the award before pronouncing judgment on it. *PLJ 1973 Lah 124*.

Section 19—Application for supersession—An application for supersession of reference to arbitration should be made before the award is made. Where it is made after the award has been made though it has not yet been filed, it is not maintainable. *AIR 1962 SC 671*.

Chapter III

Arbitration with Intervention of a Court where there is no suit Pending

20. Application to file in Court arbitration agreement—(1) Where any persons have entered into an arbitration agreement before the institution of any suit with respect to the subject-matter of the agreement or any part of it, and where a difference has arisen to which the agreement applies, they or any of them, instead of proceeding under Chapter II, may apply to a Court having jurisdiction in the matter to which the agreement relates, that the agreement be filed in Court.

⁴[(2) The application shall be in writing and shall be numbered and registered as a miscellaneous case between one or more of the parties interested or claiming to be interested as applicant or applicants and the remainder as opposite party or opposite parties, if the application has been presented by all the parties or if otherwise between the applicant and other parties.

2.1 A miscellaneous case registered under subsection (2) shall unless the Court considers it necessary to take any other evidence ordinarily be disposed of on affidavit.]

(3) On such application being made, the Court shall direct notice thereof to be given to all parties to the agreement other than the applicants, requiring them to show cause within the time specified in the notice why the agreement should not be filed.

(4) Where no sufficient cause is shown, the Court shall order the agreement to be filed, and shall make an order of reference to the arbitrator appointed by the parties, whether in the agreement or otherwise, or, where the parties cannot agree upon an arbitrator, to an arbitrator appointed by the Court.

(5) Thereafter the arbitration shall proceed in accordance with, and shall be governed by, the other provisions of this Act so far as they can be made applicable.

Case-Law

Section 20—Court is to refer the dispute between the contracting parties to the arbitrator appointed by the parties—When parties cannot agree upon an arbitrator, the Court should appoint one.

It is to be seen whether the Court is empowered under section 20 of the Arbitration Act to replace an arbitrator about whose appointment the parties to the arbitration agreement has already agreed. Function of the Court under this section is that when, after hearing the parties the Court is satisfied that the dispute covered by the arbitration agreement should be referred to the arbitrator, then the Court shall refer the dispute to the arbitrator, then the Court shall refer the dispute to the arbitrator "appointed by the parties", whether in the agreement or otherwise, and where the parties cannot agree upon an arbitrator, to an arbitrator arbitrated by it. Thereafter, the arbitration shall proceed in accordance with law. *Government of Bangladesh vs Mashriqui Textiles 35 DLR (AD)123.*

Section 20—Legal proceeding started by a party to an arbitration agreement. The other party to the agreement without filing written statement may apply to the Court for stay of the proceeding.

Court in such a case may stay further proceeding on the ground that both the parties having agreed on the appointment of the Arbitrator for settlement of their dispute, and ordered that this dispute be referred to the arbitrator in terms of their agreement.

Section 34 provides that where any party to an arbitration agreement commences any legal proceedings against any other party to the

agreement in respect of a matter covered by the arbitration agreement, any party to such proceedings may before filing a written statement apply to the Court to stay the proceedings and the Court may after hearing the other parties to the agreement stay further proceedings of the suit so that the dispute can be referred to the arbitrator in terms of the arbitration agreement. *Government of Bangladesh vs Mashriqui Textiles 35 DLR (AD)123.*

Section 20—Court's order before which a suit in regard to an arbitration agreement is pending—That the arbitration agreement be filed in Court for directing that the dispute be referred to an arbitrator.

Section 20, on the other hand, comes in aid of the party who intends to submit the dispute to an arbitrator in terms of the agreement, but who has failed to do so because of unwillingness or lack of response of the other party to the agreement, to refer the dispute to the arbitrator. *Government of Bangladesh vs Mashriqui Textiles 35 DLR (AD)123.*

Applicability—More than one arbitrator—If section 20 applies.

Section 20—is applicable even when more than one arbitrator is to be appointed. *Muhammad Abdul Latif vs Nisar Ahmad PLD 1959 Lah 465.*

Section 20—Application under—Not a suit—Limitation for plaints not applicable—Limitation for applications applicable.

An application made under section 20 of the Arbitration Act, 1940, is not a suit and therefore no period of time, as is computable under section 3 of the Limitation Act for presentation of plaints, can be applicable to it.

Article 181 of the Limitation Act prescribes three years as the period of limitation for all applications for which no period of limitation is provided in the First Schedule of that Act or section 48 CPC. The Article is generally applied to application made under CPC only, not because its operation is expressly so limited but because *ejusdem generis* rule is applied to it. Even with this limitation it should apply to an application made under section 20 of the Arbitration Act, 1940, because it is numbered and registered as a suit and CPC applies to it immediately after it is made. *Muhammad Abdul Latif Faruqi vs Nisar Ahmed PLD 1959 (WP) Karachi 465.*

Section 20—Application under section 8—If can be treated as under section 20.

Application under section 8 could be treated as an application under section 20 though it is perfectly maintainable under section 8. *Hoosen Brothers Ltd vs Pakistan Textile Mills Ltd PLD 1954 Sind 1.*

Section 20—Application under the section—Not a suit—Valid though filed by an unregistered firm.

The appellant's application under section 20 of the Arbitration Act for filing the agreement in Court does not fall within the ambit of section 69 of the Partnership Act, and it does not suffer from incompetence because it is filed by a firm which was not registered under Partnership Act at the time of the institution of the application. *Messrs United Cotton Factory Hyderabad vs Ahmed Khan PLD 1960 (WP) Karachi 774—1960 KLR (1) 533.*

Section 20—Cases under section 20—If section 19 applicable reference filed under section 20—If parties can refer dispute under agreement—Proper course for parties

The variant provision in section 25 serves to include that section 19 is applicable to a case falling under section 20. Where there is no pending suit but the agreement to refer has been filed in Court, and the Court is invested with power thereafter to make orders of reference on the basis of such agreement. The consequence of the agreement having been filed under section 20 is, that the parties cannot thereafter make a reference to the arbitration on the basis of such agreement under Chapter II of the Act. On the other hand, there is nothing to suggest that in a proper case he may not apply to the Court after the agreement has been filed, for an order of reference to arbitration. *Sardar Abdul Halim Khan vs Chairman, Lahore Improvement Trust PLD 1949 Lahore 278—PLR 1949 Lahore 789.*

Section 20—Repudiation of contract—Party not repudiating, if can take advantage of Arbitration clause.

The arbitration clause, in spite of the repudiation of the contract by one of the parties, is available to the party who has not repudiated the contract and the arbitration clause can be enforced. *Pan Islamic Steamship Co Ltd vs General Importers and Exporters Ltd PLD 1959 (WP) Karachi 750, Rel AIR 1947 Sind 57; AIR 1948 Cal 257 and PLD 1954 Sind 1.*

Section 20—Award following application under section 20—Opposite parties, pending hearing of objections, not entitled to maintain

separate suit for declaration that the award was illegal and not binding on them. *Amin & Co vs Province of East Pakistan* 18 DLR 629.

Section 20—Arbitration without the intervention of the Court, initiated by the plaintiff was later on abandoned. Next after the expiring of 3 years he made an application under section 20 of the Act for arbitration with the intervention of the Court—Plaintiff's first attempt not being pursued and by the time when he made his application under section 20 after the expiry of 3 years, his claim under the contract was barred and as such, plaintiff was not entitled to any relief. *Government of East Pakistan vs Sarwar Ali Biswas*; 20 DLR Dacca 727.

Section 20—More than one arbitrator—Section 20 is applicable even when more than one arbitrator is to be appointed. *PLD 1959 Kar 465*.

Section 20—Agreement obtained by fraud, etc—The question of validity of an agreement on the ground that consent of a party to arbitration agreement had been procured through fraud, coercion or misrepresentation, has to be decided by the arbitrator appointed by parties and not the Court. *1993 MLD 243 = NLR 1994 Civ 150*.

Section 20—Time-barred claim—Where a party objects to filing of an agreement for arbitration in Court on the ground that the claim had become barred by time, the Court should order that the agreement be filed as the question of bar of limitation is to be considered by the arbitrators and not by the Court. *1982 CLC 1090*.

Section 20—Territorial jurisdiction—It must be shown that the subject-matter of the agreement or any part of it lies within the Court's jurisdiction and the provisions of section 31(1) must be complied with. *NLR 1985 AC 111 = 1985 CLC 2799 (DB) + AIR 1958 All 692 (DB)*.

Section 20—Objection to arbitration agreement on the ground of the minority of a party should be raised when application under section 20 is made and not after the filing of the award in Court. *AIR 1955 Punj 235 = ILR 1955 Punj 1302 (DB)*.

Section 20—An application for reference must be made in writing otherwise the Court cannot pass orders on it. *AIR 1963 All 242 (DB)*.

Section 20—Limitation for filing application—An application under section 20 has to be filed within the time prescribed under Article 181 of the Limitation Act. *PLD 1972 SC 123 + 1980 CLC 87 + PLD 1959 Kar*

465 + *PLD 1968 AJ & K 21 (FB)* + *AIR 1965 All 269(DB)* + *AIR 1962 HP 24*.

Section 20—Amendment of application—A Civil Judge has power to order the amendment of a petition made under section 20. *AIR 1958 All 692 (DB)*.

Section 20—Appeal—Where an application for filing an agreement is rejected the order is appealable. *AIR 1961 All 558 (DB)*.

Section 20—Time-barred claim—The fact that the claim is time-barred is a "sufficient cause" within the meaning of sub-section (4) of Section 20 of the Arbitration Act which is wide in meaning and import and includes grounds of justice, equity and good conscience. *PLD 1965 Azad J & K 9 (DB)*.

Section 20—Nomination of arbitrator—An order directing a party to nominate an arbitrator cannot be passed before the agreement is actually filed under the earlier part of the section. *AIR 1926 Lah 505*.

Section 20—Arbitration on insurance claim—It is only where there is a dispute between the parties with regard to the amount of any loss or damage claimed by the plaintiff that the same could be referred to arbitration. Since the insurance company repudiated the plaintiff's claim wholly the dispute raised was not covered by condition No. 18 of the insurance policy. *Sadharan Bima Corporation vs Dhaka Dyeing and Manufacturing Company Ltd 43 DLR 286*.

Section 20—Forfeiture of insurance claim—The arbitration agreement contained in the insurance policy in question provided that if a claim be made and rejected and an action be not commenced within 3 months after such rejection all benefits under the policy shall be forfeited. The Insurance Company having informed the plaintiff that their claims under the policy were not payable and, as such, rejected the same as per condition No. 13 of the policy and the plaintiff having not commenced any action within 3 months, have forfeited all their rights under the policy. *Sadharan Bima Corporation vs Dhaka Dyeing & Manufacturing Co Ltd 43 DLR 286*.

Section 20—Jurisdiction of Arbitrator—Where the parties submit to the Arbitration without intervention of the court and making prayer for passing the award such parties cannot be allowed to take objection to the validity of the award on the ground of want of jurisdiction of the

Arbitrator on the plea that the reference was not in court. *Adamjee Sons Ltd vs Jiban Bima Corporation* 45 DLR 89.

Section 20(4)—Sufficient cause—Interpretation of meaning and import and includes grounds of justice, equity and good conscience. *Muhammad Abdul Latif Faruqi vs Nisar Ahmad* PLD 1959 (WP) Karachi 465.

Power of Court—Absence of sufficient cause—Court may order filing of arbitration agreement—Disagreement of parties on appointment of arbitrator—Court may appoint arbitrator.

The plain meaning of sub-section (4) of section 20 is that in the absence of a sufficient cause "the Court shall order the agreement to be filed and shall call upon the arbitrator mentioned in the agreement of the parties or otherwise agreed to by them, to decide the dispute, and if the parties cannot agree, then the Court shall have a right to appoint another arbitrator. The authority of the Court has thus been considerably widened. Previously the Court was not entitled to fill up the place of an arbitrator who had refused to act, but now if the arbitrator named in the agreement declined to act, the Court could ask the parties to agree to another person as arbitrator, and if the parties still could not come to an agreement the Court could intervene. In other words, the omission or failure on the part of the arbitrator first appointed by the parties would not make the agreement wholly ineffectual, but the agreement could still be kept alive by the parties by agreement and failing that, by the Court itself. After that had been done, sub-section (5) comes in and the arbitrator shall proceed in accordance with the other provision of the Act. *Yar Muhammad vs Ghulam Sarwar* PLD 1952 Lahore 563—PLR 1950 Lahore 285.

Sections 20(4), 30—Revocation of submission to arbitration—"Sufficient cause"—What is—If goes beyond grounds mentioned in section 30.

It is not open to a party to an agreement of reference to revoke the submission to arbitration except for sufficient cause. But on the other hand if sufficient cause is shown there is no doubt that such revocation can be allowed. The words "sufficient cause" mentioned in the sub-section 4 of section 20 of the Act are not restricted to grounds such as are mentioned in section 30 of the Act or to grounds of fraud, undue influence or coercion; they cover all the grounds of justice, equity and good

conscience on which a Court thinks an agreement should not be ordered to be filed. *Friends Trading Co vs Usman PLD 1954 Sind 56*.

Sections 20 & 34—Applicability—Matter to be submitted to arbitration under statutory provisions—Pending suit—If Court can refer.

An electricity company instituted a suit against a Municipal Committee claiming among other items the cost of the service lines furnished by it for the purpose of street lighting. On the company raising the plea that by virtue of Cl. 6(3) of the Schedule to the Electricity Act the cost of the service lines was a matter which could only be determined by the Electric Inspector, the Court directed that the dispute so far as it related to the cost of the service lines should be referred to the Line Inspector. It was contended on behalf of the Committee that since the matter had arisen in the course of a pending suit, the Court had no authority to act as it had done, as the sole provision in the Arbitration Act covering a case of this kind was that contained in section 34 under which all that the Court could do was to stay the proceedings to enable the parties to make the reference.

Overruling that contention; it was held (i) that section 34 of the Arbitration Act applied only in a case where the Court itself had jurisdiction to decide the matter, but allowed it to go to an arbitrator on account of an existing arbitration agreement, and in view of the other circumstances of the case. This section obviously had no application where the Court had no jurisdiction to deal with the matter before it by reason of statutory provision that such matter should be submitted to the arbitration of a specified person and should be decided by him.

(ii) That the case fell clearly under section 20 of the Arbitration Act, all the necessary conditions for its application being present. The parties had not, qua-Cl. 6(3) of the Schedule to the Electricity Act, entered into any arbitration agreement, but by virtue of section 46, the provision in Cl. 6(3) was to be deemed to be an arbitration agreement and to be applied as such. This provision existed prior to the institution of the suit, and a dispute had clearly arisen between the parties to which it applied. The application by one party that the Court should apply this provision was, in the circumstances, equivalent to an application under sub-section (1). Sub-sections (2) and (3) contained procedural provisions, which might be deemed to be satisfied in a case where such an arbitration agreement was invoked by either party to a pending suit, for the application need not in the case be numbered and registered as a suit, nor was it necessary that

separate notice of it should be given to the parties who were already before the Court. Sub-section (4) which was the operative part of the Section also applied in the enactment. viz. Cl. 6(3). The only ground upon which doubt might be entertained regarding the applicability of section 20 of the Arbitration Act to a case like the present was that section was preceded by a cross-heading which ran as follows : "Arbitration with intervention of a Court where there is no suit pending". But these words were not to be construed as words of limitation upon the operation of the section. The provisions of the section are of exclusive application to a case like the present, and in those circumstances it was unnecessary to refer to the cross-heading for the purpose either of understanding the section or applying it.

(iii) That the provision in section 36(3) of the Electricity Act providing for an appeal for the decision of the Electric Inspector to the Provincial Government could not cause any difficulty in the way of the Court assimilating the final decision upon the reference in its decreeing the suit, which included other reliefs besides the relief in relation to the cost of the service lines. *AIR 1947 Lah. 309.*

—Application to file in Court arbitration agreement.

—If the arbitration agreement is not filed in Court, the applicant may adduce secondary evidence, *1945 Lah 264.*

—Court may make a reference under section 20 in a pending suit, *1947 Lah 309.*

—If the arbitrator named in the agreement declines to act the Court should ask the parties to agree to another person and failing that the Court should appoint one. *1950 Lah 145.*

—If the arbitration agreement neither specifies the number of arbitrators nor the mode of appointment, Court should appoint one arbitrator agreed to by the parties or nominated by it. *1953 Cal 488. 92 CLI 7.*

Chapter IV

Arbitration In Suits

21. Parties to suit may apply for order of reference—Where in any suit all the parties interested agree that any matter in difference between them in the suit shall be referred to arbitration, they may at any time before judgment is pronounced apply in writing to the Court for an order of reference.

Case-Law

Section 21—Arbitrator giving decision on matter not in difference between the parties and failing to decide matter referred—Award invalid (1956) PLR (Lah) 1795.

Section 21—The term "Court" in section 2(c) includes appellate Court which can refer a matter to arbitration under section 21. *MM Ispahani Ltd vs Pakistan Trading Company* 17 DLR 260.

Section 21—Parties interested—Meaning of Parties to the suit—If must only be parties to arbitration.

Section 21—Of the Arbitration Act does not lay down that all the parties to a suit must refer the matter to arbitration; it only provides that any matter in difference shall be referred to arbitration by all the parties interested in a suit. The question whether a party is interested in the suit is one of fact and of substance and not of form. It is not an invariable rule that every necessary party is necessarily an interested party in all matters of difference between those actively litigating. There may be cases where a person may be a necessary party and yet not an interested party in regard to any matter in difference between them. A man may be ex-parte and yet interested within the meaning of the section. *Madan Lal vs Nabi Baksh* 226 IC 241—1946 Lah, (Rul) 444 48 PLR 377—AIR 1947 Lah 177.

Section 21—Restitution of conjugal rights—Dispute, if can be referred to arbitration.

Restitution of conjugal rights could not be the subject-matter of arbitration. *Allah Bux Gabole vs Razia Begum* PLD 1960 Karachi 455.

Section 21—Parties to a suit may apply for reference.

Section 21—Oral agreements by one party who did not sign the application for reference does not invalidate the reference. *1946 All 1*.

Section 21—Signature of party is not necessary where the pleader is authorised to refer. *1945 Lah 34*.

Section 21—A pleader authorised to refer may do so. *1944 Lah 280*.

Section 21—Reference may be made after preliminary decree but before a final decree is passed. *1953 Mad 492; (1952) 2 MLJ 524*.

Section 21—A dispute arising in execution proceeding may be referred to arbitration and the award may be recorded either as an adjustment of decree or as a compromise *1948 All 443; 1948 ALJ 556*.

Section 21—An award deciding disputes forming subject-matter of a pending suit without an order of reference cannot be given effect to. *1949 Calcutta 350*.

Section 21—Every party to the suit may not necessarily be an interested party in all matters of difference *1947 Lah 177*.

Section 21—Consent of all parties interested is the foundation of Court's jurisdiction to refer. *1949 All 679*.

Section 21—Court has no jurisdiction to refer any question of title to immovable property in a foreign country or to effect a division thereof. *1953 Mad 492*.

If the agreement to refer is illegal, the award is a nullity *1953 Cal 415*.

Section 21—A consolidated award in respect of separate suits having separate agreements and reference is irregular *1949 Cal 350*.

Section 21—It is necessary that all parties interested in the subject-matter of the reference and not all parties to a suit should join in the submission *1945 Orissa 234*.

Section 21—Subsequent consent—Subsequent consent by one of the parties who did not join in the reference at the time the reference was made does not make the arbitration proceedings valid. *AIR 1925 Mad 621*.

Section 21—An application for reference must be in writing. *1993 MLD 1474 + PLD 1962 Lah 95 = AIR 1962 Lah 33*.

Section 21—Dissolution of marriage—The question of dissolution of marriage of any person is not amenable to the jurisdiction of the arbitrators. *1990 CLC 293 (DB) + PLD 1965 Kar 326*.

Section 21—Agent or partner, reference by—An authorised agent can make a reference on behalf of his principal. *1883 Pun Re No 179 p 530 + 1882 Pun Re No.48, p.140 + 12 Cal.173*.

Section 21—Manager of Joint Hindu family, reference by—The manager of a joint Hindu family can refer family disputes to arbitration. *AIR 1927 Lah 362 + 11 Ind Cas 481 (DB) (Cal) + AIR 1919 Mad 878*.

Section 21—Revocation of reference—A pleader has no authority to revoke the appointment of an arbitrator appointed by the party, without the latter's knowledge or instructions. *AIR 1922 Nag 39 = 18 ANGLR 140*

Section 21—Matters in difference—A matter in difference is a matter in dispute which implies an assertion of a right by one party and the repudiation thereof by another. *AIR 1931 Bom 164*.

Section 21—Matter outside suit—Matters outside the suit cannot be referred to arbitration under this section. *1973 SCMR 289 + AIR 1921 Mad 709 + ILR (1947) 1 Cal 572 + AIR 1925 PC 293 + AIR 1937 Sind 174*.

Section 21—Withdrawal of suit after reference—The Court has no jurisdiction to allow a withdrawal of the suit after reference. *9 All 168 + AIR 1938 All 56 = ILR 1938 All 146*.

22. Appointment of arbitrator—The arbitrator shall be appointed in such manner as may be agreed upon between the parties.

Case-Law

Section 22—Consent of arbitrators necessary—The Court should first ascertain whether the arbitrators nominated are willing to act as arbitrators. Till that is done no reference should be made to them. 1864 *Suth WR (Gap) 338*

23. Order of reference—(1) The Court shall, by order, refer to the arbitrator the matter in difference which he is required to determine, and shall in the order specify such time as it thinks reasonable for the making of the award.

(2) Where matter is referred to arbitration, the Court shall not, save in the manner and to the extent provided in this Act, deal with such matter in the suit.

Case-Law

Section 23—Partition suit—Application by parties for return of documents to be produced before arbitrators appointed by them—Order of Court returning documents—If order of reference to arbitration.

In order to vest jurisdiction in the arbitrators to deal with a pending suit, it is necessary that the Court should make an order under section 23(1) referring the suit to them and should specify in the order such time as it thinks reasonable for the making of the award. It is only when the matter is referred to arbitration by the Court in that manner that under section 23(2) the Court ceases to have jurisdiction to deal with the suit or such matters therein as are referred to arbitration.

After a preliminary decree was passed in a partition suit and a Commissioner was appointed for taking accounts and partitioning the property, the parties made an application stating that they had executed a muchilika in favour of panchayatdars for staying the suit and praying that the documents filed by the parties into Court might be returned to them for being placed before the panchayatdars. The Court made an order directing delivery of the documents to the plaintiff's pleader for production before the panchayatdars :

Held : that the order passed by the Court was not an order of reference to arbitration within the meaning of section 23, and the Court

could call back the documents and deal with the suit itself. *MA Narayana Swami vs MK Manika AIR (Vol. 33) 1946 Mad (86) 1945 MWN 706; (1945) 2 MLJ 482—58 LW 610.*

Section 23—Partition suit—Application by parties to refer one point—Whole suit referred by Court—If reference proper.

The parties agreed to refer only one point to the arbitrator but the Court referred the whole suit to arbitrator.

Held : when the parties are agreed with regard to what matter in difference between them is, the Court should refer to the arbitrator the matter in difference which he is required to determine. *Fatch Muhammad Khan vs Bhag Bhari PLD 1956 (WP Lahore 596; PLR 1956 Lahore 1795.*

Section 23—Making of award—An award is made when the arbitrators have drawn up, executed and signed it. It is the making of the award that should be within the time fixed. The filing thereof into Court after the time fixed will not vitiate the award. *1907 Pun Re No.89 p 433 + AIR 1935 Cal 359 + AIR 1915 Cal 101 + AIR 1916 Pat 21 + AIR 1918 Oudh 14.*

Section 23—An award made beyond the time specified is liable to be set aside under section 30. *PLD 1953 Sind 18.*

Section 23(1)—Agreement to refer only one point—Court referring entire suit to arbitration—Order of reference inaccurate. *(1956) PLR (Lah) 1795.*

Section 23(1)—Order of reference.

Section 23(1)—there must be an express order of reference. *1946 Mad 86.*

Section 23(1)—only matters in difference existing at the time of the agreement can be referred to arbitration. *ILR (1947) 1 Cal 572.*

Section 23(1)—an appellate Court has no power to make the reference. *1947 All 304; 1947 ALJ 445.*

24. Reference to arbitration by some of the parties—Where some only of the parties to a suit apply to have the matters in difference between them referred

to arbitration in accordance with, and in the manner provided by, section 21, the Court may, if it thinks fit, so refer such matters to arbitration (provided that the same can be separated from the rest of the subject-matter of the suit) in the manner provided in that section, but the suit shall continue so far as it relates to the parties who have not joined in the said application and to matters not contained in the said reference as if no such application had been made, and an award made in pursuance of such a reference shall be binding only on the parties who have joined in the application.

Case-Law

Section 24—Reference by some of the parties.

Section 24—no reference can be made if the interest of the party not joining in the reference is inseparable *1949 All 679*.

25. Provisions applicable to arbitrations under this Chapter—The provisions of the other Chapters shall, so far as they can be made applicable, apply to arbitrations under this Chapter :

Provided that the Court may, in any of the circumstances mentioned in sections 8, 10, 11 and 12 instead of filling up the vacancies or making the appointments, make an order superseding the arbitration and proceed with the suit, and where the Court makes an order superseding the arbitration under section 19, it shall proceed with the suit.

Case-Law

Section 25—No pending suit—Reference filed in Court—If parties can make a reference on that agreement—If section 19 applies to case under section 20.

The variant provision in section 25 serves to indicate that section 19 is applicable to a case falling under section 20, where there is no pending suit, but the agreement to refer has been filed in Court, and the Court is invested with power thereafter to make orders of reference on the basis of such agreement. The consequence of the agreement having been filed under section 20 is that the parties cannot thereafter make reference to arbitration on the basis of such agreement under Chapter 11 of the Act. On the other hand, there is nothing to suggest that in a proper case they may not apply to the Court after the agreement has been filed, for an order of reference to arbitrator. *Sardar Abdul Halim Khan vs Chairman, Lahore Improvement Trust PLD 1949 Lahore 278—PLR 1949 Lahore 789.*

Chapter V

General

26. Application of Chapter—Save as otherwise provided in this Act, the provisions of this Chapter shall apply to all arbitrations.

27. Power of arbitrators to make an interim award—(1) Unless a different intention appears in the arbitration agreement, the arbitrators or umpire may, if they think fit, make an interim award.

(2) All references in this Act to an award shall include references to an interim award made under sub-section (1).

Case-Law

Section 27—Power to issue injunction—An Arbitrator has no power to make an order of injunction or stay. Neither the Ordinance nor the rules framed thereunder authorise the arbitrator to make an order of injunction or stay at any stage of the proceeding. His only function is to make an

award and nothing more. *Md Giasuddin vs Bangladesh and others* 1997 BLD 538.

28. Power to Court only to enlarge time for making award—(1) The Court may, if it thinks fit, whether the time for making the award has expired or not and whether the award has been made or not, enlarge from time to time the time for making the award.

(2) Any provision in an arbitration agreement whereby the arbitrators or umpire may, except with the consent of all the parties to the agreement, enlarge the time for making the award, shall be void and of no effect.

Case-Law

Section 28—Time during which the arbitration proceedings are stayed by Court's order to be excluded.

A party is entitled to get the time during which the arbitrations were restrained under the Court's order functioning as arbitrators.

Section 28 authorises the Court to extend the time whether an award has been passed or not and in the former case extension of time by the Court tantamount to acceptance of the award after condonation of delay and in the latter case extension of time when an award has not been made authorises to make an award within the extended time. *MM Ispahani Ltd vs Pakistan Trading Company* 16 DLR 260.

Section 28—Acting on personal knowledge.

It is one thing for the arbitrator to have personal knowledge of affairs and it is another thing to base a finding on that knowledge instead of on the evidence. To act on any extraneous matter that comes to the knowledge of the arbitrator and base his finding on any such personal knowledge vitiates the award. 4 PLR (Dacca) 567.

Section 28—Court's power to enlarge time for making the award.

Section 28—Court can extend time even after the time fixed for making the award has expired. *1949 All 399; 1952 All 856; 1954 Orissa 29.*

Section 28—A clause in the arbitration agreement empowering the arbitrator to extend time for making the award by endorsement on the back of the agreement cannot be given effect to. *54 CWN 796.*

Section 28—Court's power to enlarge time—Under section 28 the Court can enlarge time for making an award either before or even after the time for the making of the award has expired. *PLJ 1995 Kar 309 + 1993 MLD 1303 + PLJ 1986 Kar 221 + NLR 1983 CLJ 362 (DB) + 1973 Dhaka LR 286 + (1968) 20 DLR (SC) 22 + PLD 1966 Dacca 54 + AIR 1957 Pat 633 (DB) + AIR 1952 All 856 (DB).*

Section 28—Extension of time after award is set aside—Where the award is set aside but a subsequent extension of time is ordered, the award would become operative again and would be made the rule of the Court. *20 DLR (SC) 22.*

Section 28—Date from which order of extension takes effect—An order passed by the Court for extending time must refer back to the date of the application. *AIR 1940 Mad 926.*

29. Interest on awards—Where and insofar as an award is for the payment of money the Court may in the decree order interest, from the date of the decree at such rate as the Court deems reasonable, to be paid on the principal sum as adjudged by the award and confirmed by the decree.

Case-Law

Section 29—Calculation of profits—Accounts not properly maintained calculation of profit not possible—Award of 6 per cent interest per annum in lieu of profits—If justified.

The arbitrator found that it was the appellant who was responsible for the maintenance of accounts. He found further that the appellant had not been keeping regular accounts and that accounts which he actually

produced were not true. The respondent was entitled to half of the profits which may have been made. The arbitrator found that profits had been made, but he was unable to determine their amount and therefore, he awarded interest at 5 per cent per annum in lieu of such profits. This is just a method of calculation of the profits on a reasonable basis and no exception can be taken to it. If the matter was before the Civil Court and the Civil Court found that there was no proper material before it on which to calculate the amount of the profits made by the respondent, the Civil Court too would have adopted some such method as has been adopted by the arbitrator. *Mahboob Alam vs Mumtaz Alam* PLD 1960 Lahore 601 (DB).

Section 29—Payment of future interest—Award specifying interest to be paid if payment is not made in time by the party held liable—If valid.

In the absence of any specific reference to an arbitrator on a question as to what interest is to be paid subsequent to the passing of the decree, the arbitrator does not possess any authority to award post-decree interest. His jurisdiction is limited by the terms of his reference. If the reference to him only as to the liability of a person he can only determine that liability and nothing more. *Mahboob Alam vs Mumtaz Ahmed* PLD 1960 Lahore 601.

Section 29—Interest in lieu of damages—Where in a suit for breach of contract the arbitrator has granted damages for the breach, he cannot grant interest by way of further damages. *PLD 1967 Kar 598*.

Section 29—Pendente lite interest cannot be allowed by the arbitrator for period prior to date of award. *PLD 1987 SC 393 = 1987 PSC 1151*.

Section 29—Damages, interest on—Arbitrators or umpire, in absence of any specific reference on question of interest on damages or any rule authorising them to award interest on damages from a date prior to award could only award interest from the date of award. *1985 CLC 1398*.

Section 29—Interest for the future, that is, from the date of the award till realisation of the money through section 29 of the Arbitration Act, did not give the Arbitrator this power, he may allow interest on his award till realisation on the same analogy to court's power. This will be in accord with justice and fairness. *BADC vs Kibria & Associates Ltd* 46 DLR (AD) 97.

Sections 29 & 30—Arbitrator's power to award interest—Even where the reference to arbitration to settle a dispute is not in court and section 34 CPC is not applicable and the Interest Act, 1839 is not on the statute book, the Arbitrator is not deprived of his power to award interest in that he derives such power impliedly from the very submission to him to arbitrate the dispute when the agreement does not exclude his power to award interest in explicit language. *Kibria and Associates Ltd vs Bangladesh Agricultural Development Corporation* 45 DLR 712.

30. Grounds for setting aside award—An award shall not be set aside except on one or more of the following grounds, namely :—

(a) that an arbitrator or umpire has misconducted himself or the proceedings;

(b) that an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under section 35;

(c) that an award has been improperly procured or is otherwise invalid.

Case-Law

Section 30—Application to set aside Award—Award not filed—If competent.

An application to set aside an award cannot be made in the absence of an award being filed in Court; but directly the award is filed, irrespective of whether or not notice has been received of its filing, such application is competent. *Bengal Silk Mills vs Aisha* 231 IC 187; AIR 1947 Cal 106 (DB).

Section 30—Application under section 30—if can be treated as under section 33.

The Court has to be guided by the contents of the application for the correct application of law and not by reference to the heading of the application under section 30 may be treated as an application under section 33 also. *Faridsons Ltd vs SM Fazail and Co* PLD 1954 Sind 247.

Section 30—Arbitration agreement—Chief Engineer Railway appointed arbitrator—Later promoted to General Manager—No objection taken to arbitration by him till making of award—If objection can be taken afterwards.

'A,' Chief Engineer, was appointed arbitrator according to the arbitration clause but he was later on appointed General Manager of the Railway. He however continued arbitration proceedings and no objection was taken to his doing so, till the award was made and filed in Court, but in Court it was alleged that 'A' could not be appointed arbitrator because as General Manager he was one of the interested parties.

Held : It is not alleged that 'A' had any personal interest in the case apart from his status as a servant of the company and there is no reason to suppose that his promotion to the post of General Manager effected any change in his outlook, the General Manager, in spite of his higher position being as much a servant of the Railway Administration as the Chief Engineer.

There is also another aspect of the case to be considered. The respondent was fully aware of the wording of clause 11 of the agreement, and up to the time of the submission of the award he raised no objection either to the original appointment of 'A' or his continuing as arbitrator after becoming General Manager.

Since the respondent raised no objection to the appointment and the continuance of 'A' as arbitrator, he is stopped by his conduct from challenging 'A's jurisdiction to act as such. *Federation of Pakistan vs Ghulam Mohiuddin PLD 1960 Lah 677.*

Award after expiry of 4 months—If invalid.

An award given by the arbitrator after the statutory period of 4 months is invalid. *Allah Baksh Gabole vs Razia Begum, PLD 1960 Karachi 458.*

Section 30—Failure to give notice of filing of award—If the award invalid.

It was contended that the failure to give proper notice would make the award invalid under the expression 'otherwise invalid' in section 30.

Held : By no stretch of imagination can it be said that the omission to give the notice can invalidate the award, and that the case is not

covered by the term "otherwise invalid". *Labab Gul vs Badshah Gul PLD 1952 Pesh 23*.

Section 30—Mining leases prior to 1949—Dispute referred under rule 80 of Pakistan Mining Concession Rules 1949—If arbitrators have jurisdiction—Effect.

When the mining lease was granted in 1945 but a dispute under it was referred to arbitration under Rule 80 of Pakistan Mining Concession Rules, 1949.

Held : The Pakistan Mining Concession Rules did not apply to the leases granted before 1949 and therefore the arbitrators had no jurisdiction to enter into reference. The award given by them was set aside by the Court. *Esmailjee and Sons vs Federation of Pakistan, PLD 1959 Kar 66*.

Section 30—Absence of arbitrator during some sitting—Does not amount to misconduct.

If an arbitrator is absent from one or two sittings of the Arbitration Board with the consent of the other arbitrators and nothing of a disputed character is done in those sittings and where the decision of the arbitrators is that of all the arbitrators, we do not think the arbitrator absenting himself or the remaining arbitrators continuing the work can be said to be guilty of misconduct. *Abdul Ghani vs Inayat Karim 12 DLR (SC) 33*.

Section 30—Arbitrators not appointing umpire if a breach of law—Schedule 1 para 2—Whether essential provision of law—Remedy.

The breach of a voluntarily agreed condition and the breach of a provision of paragraph 2 of Schedule 1 are both breaches of contract and violations of law. When they are committed by the arbitrators they should ordinarily fall within the purview of clause (a) of section 30 of the Arbitration Act and should, if at all, form the misconduct of Arbitration proceedings by them.

A breach of the provisions of paragraph 2 of Schedule 1, committed by an omission to appoint an umpire on terms of the paragraph was merely the non-observance of an implied conditions of the arbitration and that this non-observance could be remedied by the aggrieved party by invoking section 8 of the Act. It amounts to a waiver of the defect of the non-appointment of an umpire. *Haji Sattar Muhammad vs Abdul Karim Haji Issa PLD 1958 Karachi 378; PLR 1958 (2) WP 1011*.

Section 30—Arbitrator or umpire—Creditor of one party—If disqualified—Non disclosure of fact—If misconduct.

The fact that the umpire or arbitrator is a creditor of one of the parties is no ground to hold that he is disqualified to decide arbitration disputes. Non-disclosure of this fact cannot also be said to be a judicial misconduct. There must be some evidence to show that he was predisposed to his debtor. *SM Fazail and Co vs Overseas Cotton Co PLD 1959 Karachi 320; PLR 1959 WP 1098.*

Section 30—Failure to reduce evidence into writing—Not misconduct—Does not vitiate award.

When it was contended that the award had been vitiated because the arbitrator had not reduced evidence into writing.

Held : This objection is without legal foundation. There is nothing in the Arbitration Act which compels an arbitrator to record on paper the statements of the witnesses or admissions of the parties. There is no bar in the Act against relying on oral evidence. The failure of the arbitrator to reduce the evidence into writing is not an omission fatal to the award and does not constitute misconduct on the arbitrator's part. *State vs Amir Abdullah PLD 1960 Peshawar 9.*

Section 30—Ex-parte proceeding—When justified—Party not informed of case against it—If misconduct—Effect.

In order to justify an arbitration proceeding ex-parte a very strong case must be made out of wilful delay of the party at fault and if a reasonable cause is shown, it is the duty of the Court to set aside such an award. Although an arbitrator is allowed considerable latitude in the procedure to be followed by him at the hearing, it is his paramount duty to afford the parties a reasonable opportunity to know the case against them for defending it before him. He cannot condemn a party without letting him know the case against him. If he makes an award without complying with such elementary principles of natural justice, he does so at the risk and peril of his award being set aside on grounds of misconduct. *Allah Bux Gabole vs Razia Begum PLD 1960 Karachi 455-1960 KLR (1) 205.*

Section 30—Matter decided by special oath on Holy Quran—Technical misconduct—Effect.

Where the arbitrator asked the parties to take an oath on Quran Sharif and on the refusal of the defendant to do so decided the matter in favour

of the plaintiff. It was held that the defendant had refused to take the oath and that the arbitrator was not justified in disbelieving his case on the ground that he had refused to take the special oath. There is by no means any reason to suppose that the claim had been disposed of after due enquiry on the merits. The award was set aside and the lower Court was directed to proceed with the trial of the suit. *Ahmad vs Alam* PLD 1959 Karachi 753; PLR 1957 (2) WP 874.

Section 30—Application to set aside award refused—Effect—If Court can proceed to pronounce judgment in accordance with award.

When an application is filed to set aside an arbitrator's award and is dismissed in default, the Court would appear to have no alternative but to pronounce judgment in accordance with the terms of the award. The decree following cannot be considered ex-parte and order to set aside such a decree is, therefore, not appealable. *Ghulam Sarwar vs Abdul Shakoore* PLD 1949 Bal 10.

Section 30—Award set aside—If matter can be referred back to the same arbitrator.

Where the award is set aside under section 30, it cannot in law, be referred back to the same sole arbitrator. *Allah Bux vs Razi Begum* PLD 1960 Karachi 455.

Award on matters not referred—void—Unseparable from award on other points—Effect.

An award which determines a matter which was not referred to arbitration is invalid—I would say void if invalid in the section does not mean void—with regard to the matter which it had no business to determine. If the invalid part of the award cannot be separated from the rest, the result has to be that the whole award has to be ignored. *Fateh Muhammad Khan vs Bagh Bahari* PLD 1956 Lahore 596.

Section 30—Dispute referred to arbitration—Parties entering into contract about the same goods—If old agreement wiped out—Effect on arbitration proceedings.

The parties referred a dispute regarding sale and purchase of goods to arbitration, subsequently they came to a fresh agreement about the sale and purchase of the goods :

Held : A new contract was brought about between the parties, and the arbitrators acted without jurisdiction in entertaining any claim with regard to the previous contract as the same did not exist. *Ismail Bros Ltd vs SM Fazail and Co* PLD 1958 Karachi 158.

Section 30—Error in award—If Court can look into the proceedings before the arbitrator, to find out.

The proceedings before the arbitrator may be of some help to the Court in understanding the award, but the Court cannot look into it in order to find out the error apparent on the face of the award. *Overseas Cotton Co vs SM Fazail and Co PLD 1958 Karachi 27 (DB); AIR 1953 Calcutta 621 and AIR 1923 PC 660.*

Section 30—Error in award—If Court can consider evidence led before the arbitrator—Shifting investigation by Court—Improper.

On consideration of the case law on the subject it is very clear that the Court hearing the application for setting aside an award cannot constitute itself into a Court of appeal over the decision of an arbitrator and cannot make a shifting investigation of the entire proceedings before the arbitrator unless it is first shown that the award is bad on the face of it. It is not open to this Court to consider the evidence led by the parties before the arbitrator not set out and discussed in the award. *Suleman Haji Muhammad and Co vs State Bank of Pakistan PLD 1960 Karachi 78—1960 & KLR (1) 84.*

Section 30—Error of law—vitiates award—When.

Mere error of law does not vitiate the award. To set aside the award, the error in law must appear on the face of it and not on the face of the record. *Suleman Haji Muhammad and Co vs State Bank of Pakistan PLD 1960 Karachi 78—1960 & KLR (1) 84.*

Section 30—Ex-parte award—Proper procedure for arbitration not followed—Effect.

The arbitrator should have communicated with the defendant's counsel and conveyed the plaintiff's claim against her and adjourned the case to some other date. This would have enabled her to make up her mind finally either to participate or not to participate in the arbitration proceedings which were likely to deprive her of valuable property and rights. If he had followed this procedure and on default of the defendant taken ex-parte proceedings the award would be perfectly valid. But since he failed to do so the award is defective and cannot be upheld. Accordingly I set aside the award on the ground that the arbitrator committed legal misconduct. *Allah Bux Gabole vs Razia Begum PLD 1960 Karachi 1960 KLR (1) 205.*

Section 30—Setting aside an award—Misconduct which renders the award void and illegal—Award, where void and without jurisdiction. Court to take judicial notice of it, even though no objection was filed within time provided by Article 158. *Hasmat Ali vs Asmat Ali Jamadder* 6 DLR 478.

Section 30—Misconduct—Arbitrator—Misconduct—Precipitately filing award amounts to misconduct. (1954) PLR (Lah) 666

Section 30—The Court can set aside an award on the ground of misconduct if the award is on its face erroneous in matter of law. This rule applies to cases where the arbitrator, in stating the reasons for his judgment, is shown to have based the award on some legal proposition which can be said to be erroneous. *Sarada Printing & Publishing Ltd vs Bharat Samiti Ltd* 4 DLR 337.

Section 30—It does not apply where a question of law has been referred to the arbitrator for his decision and the arbitrator in deciding the question, so referred, has committed some error of law. *Sarada Printing & Publishing Ltd vs Bharat Samiti Ltd* 4 DLR 337.

Award when can be set aside—"error patent on the face of award".

As award can be set aside on the ground of error of law as being judicial misconduct if the error appears on the face of the award and not otherwise. Although a ground not *ejusdem generis* can be taken to assail validity of an award that too must be such as is patent. *MP Ali Miah & Sons vs Green and White Ltd* 15 DLR 708.

Section 30—If an award is otherwise valid, a Court of law cannot interfere and review it. The Court will not set aside an award on the ground that the arbitrator has exceeded his authority, when the party complaining has made no protest at the hearing before the arbitrator. PLD 1973 Kar 413 = 1973 Law Notes 376 (DB).

Section 30—The Court can *suo motu* even without any objection by a party set aside the award. PLJ 1986 Kar 221 = 1985 CLC 721 + 6 DLR 478.

Section 30—Non-existence of dispute—The non-existence of a dispute, between the parties may be a ground for setting aside an award. If that ground is relied upon it must be pleaded in the petition to set aside the award. AIR 1955 Cal 65.

Section 30—Foreign award—An award under the English Arbitration Act of 1889 duly made in accordance with the English law, cannot be set aside by a Pakistan Court on any ground of misconduct or irregularity on the part of the arbitrator. *AIR 1926 Cal 938 = 53 Cal 65.*

Section 30—Revision—Although an award can be set aside on grounds enumerated in section 30, but when award is the product of an illegal action after stay of proceedings by Court, it can be set aside without adhering to provisions of section 30 of the Act, being void and illegal. *PLJ 1994 Quetta 14 = PLD 1993 Quetta 99 = NLR 1993 Civ 708.*

Section 30—Award obtained by fraud or misrepresentation—Person challenging validity of judgment, decree or order on plea of fraud, misrepresentation and want of jurisdiction could challenge the same by application to the Court which had passed the final judgment, decree or order. *PLD 1991 SC 197 = 1990 PSC 1252 + NLR 1991 CLJ 606.*

Section 30—It is not competent to apply to set aside an award till the award has been filed in Court. *AIR 1964 Mad 1 (DB) + AIR 1963 AP 8 (DB) + AIR 1944 Cal 304 + AIR 1942 Bom 101 + AIR 1954 Nag 236 + AIR 1947 Cal. 106.*

Section 30—Time cannot be extended by application of section 5, Limitation Act. *PLJ 1987 Quetta 1 = PLD 1986 Quetta 321 + NLR 1978 Civ 594 = PLD 1979 Kar 45.*

Section 30—Forum for raising objection on ground of limitation—Question of law and fact including point of limitation has to be decided by arbitrators. Determination of question of limitation depends upon assessment of evidence. *1984 CLC 155 (DB)*

Section 30—Opportunity to explain must be given—Failure to allow petitioner opportunity to lead evidence to explain factor providing exemption to delay by itself being material defect constituted serious irregularity and patent illegality, the impugned decree is nullified on such score alone. *PLJ 1987 Quetta 1 = PLD 1986 Quetta 321.*

Section 30—Improperly procured award—An improperly procured award may be set aside. *1991 MLD 422 = NLR 1991 Civ 244 (DB).*

Section 30—Construction of contract—An arbitrator is duty bound to enquire into the terms of contract between the parties and to strictly follow the same. Misconstruction of terms of contract would vitiate the award. *1988 CLC 430 + 1987 CLC 1791.*

Section 30—Misconduct—An award may be set aside where arbitrator misconducts the proceedings. *1991 MLD 422 = NLR 1991 Civ 244 (DB)*.

Section 30—Legal misconduct of the arbitrator is a patent error of law which vitiates the award. *1988 CLC 1583 = PLJ 1988 Quetta 92 = NLR 1990 CLJ 88 (DB)*

Section 30—Award after compromise—A compromise between the parties is not a ground on which a reference to arbitration through Court may be superseded or an award set aside. *AIR 1946 Cal 427 = ILR 1946(1) Cal 398 (DB)*.

Section 30—Award in partnership dispute—When a partnership deed provides for reference of disputes concerning partnership to arbitration, the arbitrator on such reference may award dissolution of partnership. *ILR (1946) 1 Cal 203 (DB)*.

Section 30—Non-consideration of evidence—An award cannot be challenged on the ground that a piece of evidence was not considered by arbitrator. Presumption is that arbitrator considered all evidence irrespective of the fact whether contents of award indicate so or not. *NLR 1991 UC 466 + NLR 1983 AC 383 (DB)*.

Section 30—Minor—Where the father of the minor filed an objection under section 30 only on his own behalf although he represented the minor also, the decree passed on the award was not an ex parte decree within the meaning of Order 9, rule 10 against the minor. *AIR 1956 Pat 28 (DB)*.

Section 30—Non-examination of witnesses—The refusal of an arbitrator to examine witnesses produced by either party is misconduct. *12 Cal L Rep 564 + 1889 Pun Re No.58 P 187 + 39 Pun LR 582 + AIR 1936 Rang 191*.

Section 30—Private inquiry by arbitrator—Where parties do not authorise an arbitrator to form his own conclusions in any manner he liked he has to follow the ordinary principles of natural justice. Where he makes inquiries privately and does not explain the materials thus obtained. *AIR 1952 All 546*.

Section 30—An arbitrator must not receive information from one side which is not disclosed to the other the information may have been given orally or in the shape of documents. *AIR 1953 Nag 309 = ILR 1953 Nag 446 (DB)*.

Section 30—Legal advice—Advice from a counsel can certainly be taken on matters on which the arbitrators find themselves at a loss in view of the complexities of the law. *AIR 1955 Nag 125 = ILR 1955 Nag 321*.

Section 30—Appointment of umpire—Where an umpire is to be appointed and the arbitrators do not appoint an umpire within the period prescribed by Sch I, Para 2, they are guilty of legal misconduct and the award would be vitiated. *AIR 1953 Ajmer 40*.

Section 30—Corruption, fraud etc. of arbitrator—An arbitrator is the sole judge of questions of law and fact provided he has applied his mind to the matters in dispute and has applied principles of natural justice in arriving at his conclusion. *PLD 1954 BJ 56 + AIR 1955 Hyd 213 = ILR 1954 Hyd 677 (DB)*.

Section 30—Wrong view of law—A wrong view of the law cannot make an award invalid. *AIR 1956 All 51*.

Section 30—Interest on damages—An arbitrator or an umpire is not competent to award interest on the amount of damages. *PLD 1981 Kar 28 + PLD 1980 Kar 207 + PLD 1965 SC 505 + PLD 1961 Kar 365*.

Section 30—Error in construction of contract—Where the arbitrator bases his award on an erroneous construction of the contract, the award may be set aside as the error in construction is an error apparent on the face of the award. *1991 CLC 66 (DB) + PLD 1987 SC 393 = 1987 PSC 1151 + PLJ 1978 Kar 222 = PLD 1978 Kar 585 (DB) + PLD 1979 Kar 744*.

Section 30—Effect of error of law—A mere error of law does not vitiate the award—To set aside the award, the error in law must appear on the face of it and not on the face of the record. *PLD 1960 Kar 78 + AIR 1949 Mad 559 (DB)*.

Section 30—Powers of Court—The arbitrator is a Judge of both questions of fact and law and so a party cannot be allowed to show that his decision is wrong on merits of the case. The Court is not supposed to sit in judgment on the award of the Arbitrator. *1993 MLD 129 + PLD 1993 Kar 683 + PLD 1993 Kar 429 + 1990 MLD 947 (SC Ind) + PLJ 1987 Kar 403 (DB) + 1980 CLC 1740 + 20 DLR 469 (DB) + 1979 CLC 318*.

Section 30—Arbitration is a settlement of a dispute by the decision, not a regular Court of Law, Civil, Criminal or revenue, but of the

Arbitrator—The award of the Arbitrator can only be set aside by the court on the limited grounds set forth in section 30 of the Arbitration Act, 1940—An Arbitrator does not adjudicate and he does not sit as a Tribunal. He is not bound by the technicalities of the Evidence Act. *Begum Khadija Akhtar Banu vs AKM Amanullah BCR 1985 (AD) 8.*

Section 30—Arbitration—Construction of the point of dispute—Decision of the arbitrator upon such a point cannot be set aside by the court on the ground that the point was capable of being interpreted differently—Arbitrator was the sole Judge for construction of the relevant clause—There was nothing to show that the construction made by him was in any way biased or perverse. *KM Shafi Ltd vs Government of Bangladesh 1982 BLD 111.*

Section 30—Arbitration—Dispute regarding admissibility of supplementary tender items—When it appears from the award that the arbitrator found in favour of the contractor as to costs relating to such items, it was his duty to decide the dispute finally—His failure in this regard rendered the award defective requiring the intervention of the court for exercising its discretion to remit the award to the arbitrator for reconsideration of the award in accordance with law. *KM Shafi Ltd vs Government of Bangladesh 1982 BLD 111.*

Section 30—Award—Limit to Court's interference—The Court is not to go beyond the award in order to examine the evidence. It is competent to set aside the award where it finds error of law on the face of the award or it appears to be bad merely on perusal. If the court is allowed to examine evidence it would be opening flood-gate of litigation which is against the spirit of Arbitration Act. *Adamjee Sons Ltd vs Jiban Bima Corporation 45 DLR 89.*

Section 30—In proceedings arising out of arbitration, a court cannot be regarded as a court of appeal from the decision of the Arbitrator. Courts are in favour of non-interference with his findings unless they are perverse or he has misconducted himself or the proceedings. *Rising Sun Traders Ltd vs Chittagong Port Authority 43 DLR 1.*

Section 30—In proceedings arising out of arbitration a court cannot be regarded as a court of appeal from the decision of the arbitrator. *Bangladesh Telegraph and Telephone Board vs Lithi Enterprise Ltd. 46 DLR 122.*

Section 30—When an award is unanimously passed by the Arbitrator, the Court of Law shall not interfere with it except in a very rare case where the Arbitrators have misconducted themselves on any legal point or in their personal dealings. *Titas Prokaushali Limited vs Roads and Highways* 46 DLR 665.

Section 30—Misconduct on the part of the arbitrators may be a ground for setting aside their award. But such misconduct, when not agitated in the trial Court, could not be raised afresh before the superior Courts. *Bangladesh Telegraph and Telephone Board vs Lithi Enterprises Ltd* 50 DLR (AD) 63.

Sections 30, 8 and 10—The cumulative effect of sections 8 and 10 of the Act is that where a reference is made to more than one of the arbitrators and one of the arbitrators neglects to act, the arbitrator or arbitrators shall apply to the Court for appointment of an arbitrator to supply the vacancy and an arbitrator appointed by the Court shall have power to act. To be binding and enforceable the award must be signed by all the arbitrators and hence the surviving arbitrator made the arbitral award illegally. *Trading Corporation of Bangladesh TCB vs Mannesman Handel AG and others* 5 BLC (AD) 17.

Sections 30 & 33—*Pendente lite* interest —An arbitrator may allow *pendente lite* interest on the analogy of court's power to grant interest if the disputes were agitated before it.

The Arbitrator may allow interest *pendente lite* for a period beyond four months if the prolongation of the proceeding is caused by circumstances beyond his control. Again, to avoid any controversy, the period for *pendente lite* interest will start from the date on which the Arbitrator enters upon the arbitration proceedings and end on the day the award is made. *BADC vs Kibria & Associates Ltd.* 46 DLR (AD) 97.

Sections 30, 25—Agreement between parties to accept award whatever it may be—Misconduct by arbitrator—If award may be challenged.

"When the parties had agreed that whatever the award the arbitrators may give shall be acceptable to us in every way without objection", it was contended that the award could not be challenged even on the ground of misconduct by the arbitrator :

Held : The clause seems to have been more or less of a formal nature implying the readiness of the parties to abide by the decision of the

arbitrators. It is doubtful if it was intended to shut out all objections on whatever ground they may be based, and that the discretion of the Court to set aside the award on any valid ground could not be controlled by an agreement between the parties. *Abdul Majid vs Bhawal Bax PLD 1950 Lahore 228—PLR 1950 Lahore 323.*

Sections 30, 25—Setting aside an award.

Sections 30, 25—Until the award is filed, no application to set aside the award lies. *1944 Cal 304, 1942 Bom 101; 1947 Cal 106.*

Sections 30, 25—An award made in the absence of one of the heirs of a deceased party to the reference is invalid. *1949 FC 195; 1949 FCR 396; 4 DLR (FC) 117.*

Sections 30, 25—Arbitrator is the sold judge of quality or quantity of evidence without interference by Court. *85 CLJ 176.*

Sections 30, 25—Legal misconduct means honest though erroneous breach of duty causing a miscarriage of justice. *53 CWN 828.*

Court can set aside the award if the arbitrator has acted in a manner in which no person vested with judicial authority could possibly act. *53 CWN 820.*

Sections 30, 25—Power of the Court to set aside an award on any valid ground cannot be controlled by an agreement between the parties. *1950 Lah 174.*

Sections 30, 25—Arbitrator concealing his personal interest either in the parties or in the subject matter of arbitration is a sufficient ground for setting aside the award. *85 CLJ 176.*

Sections 30, 25—Refusal of the arbitrators to grant an adjournment to enable the parties to apply in Court for the statement of a special case is no misconduct. *85 CLJ 176.*

Sections 30, 25—An arbitrator acting without jurisdiction or assuming powers which he does not possess is guilty of misconduct. *1948 Bom 292.*

Sections 30, 25—Misconduct includes any mishandling of the arbitration proceedings or any neglect of duty which is likely to lead to substantial miscarriage of justice. *52 CWN 826.*

Sections 30, 25—A gross mistake may be evidence of misconduct. *54 CWN 826*.

Sections 30, 25—Asking evidence behind the backs of the parties without notice to them is misconduct. *1951 Pat 321; 28P 969; (1952) SCJ 630; 1953 SC 21; 1954 Nag 241*.

Sections 30, 25—Assessment of damages based on black market prices is misconduct. *1951 Cal 78; 55 CWN 147; 1954 Cal 1*.

Sections 30, 25—Arbitrator arriving at a decision influenced by secret enquiry and by opinion of third person is guilty of misconduct unless the arbitrator is selected because of his personal knowledge or authorised to decide without evidence. *1951 Pepsu 115*.

Sections 30, 25—Refusal to record evidence is misconduct. *1951 All 711*.

Sections 30, 25—An award may be challenged on the ground that the subject-matter of the reference was not capable of being referred. *1950 Assam 114*.

Sections 30, 25—An award based on a mistake of law on the face of the award is liable to be set aside on the ground of misconduct. *1951 Patan 201; 1952 Nag 314*.

Sections 30, 25—Participation by an umpire in arbitration proceedings is no ground for setting aside an award. *1952 Nag 314*.

Sections 30, 25—Assessment of damages on a wrong basis renders the award liable to be set aside. *1952 Cal 440*.

Sections 30, 25—If the existence of the contract is challenged by one party the award is a nullity. *1954 Cal 1*.

Sections 30, 25—If the consideration for reference is illegal the award is a nullity. *1953 Cal 415*.

Sections 30, 25—Award is invalid if it is not obtained in conformity with the machinery of the Act. *1953 Act 1953 Cal 690; 92 CLJ 181*.

Sections 30, 25—Award is invalid if valuation of properties is made by a surveyor and not by the arbitrators. *1953 Cal 646; 91 CLJ 267*.

Sections 30, 25—Award may be set aside if all the arbitrators were not present at all the meetings. *1932 Mad 157*.

Sections 30, 25—Arbitrators are guilty of misconduct if they do not decide all matters referred to them. *14 CLJ 188*.

Sections 30, 32 & 33—Section 30 seems to be exhaustive of the grounds on which an award may be set aside. The combined effect of sections 30 and 33 is that a party to an arbitration agreement or award may question the validity to the award in the manner provided for in section 33 by filing an application. *Chief Engineer Roads and Highways Department vs Concord Engineers and Construction Ltd 48 DLR 243*.

Sections 30 & 33—Arbitrator's power to award interest—Interest as to pre-reference period—In the absence of any law or agreement providing for payment of interest by an Arbitrator it will not be proper to vest in him power to award interest for the pre-reference. *BADC vs Kibria & Associates Ltd 46 DLR (AD) 97*.

Section 30(c)—Award made after 4 months of reference—If invalid. Where the award was made after more than four months of the reference and it was declared invalid by lower Court.

Held : The award was clearly made more than four months after time had started to run for the purposes of this paragraph and as the provision is expressed in mandatory terms its contravention involves avoidance of the award. Consequently, it cannot be said that in making an order setting aside the award the learned Sub-Judge acted in excess of his jurisdiction, or irregularly in the exercise of jurisdiction vested in him. *Sardar Abdul Halim Khan vs Chairman, Lahore Improvement Trust, PLD 1949 Lahore 278—PLR 1949 Lahore 789*.

31. Jurisdiction—(1) Subject to the provisions of this Act, an award may be filed in any Court having jurisdiction in the matter to which the reference relates.

(2) Notwithstanding anything contained in any other law for the time being in force and save as otherwise provided in this Act, all questions regarding the validity, effect or existence of an award or an arbitration agreement between the parties to the agreement or persons claiming under them shall be

decided by the Court in which the award under the agreement has been, or may be, filed and by no other Court.

(3) All applications regarding the conduct of arbitration proceedings or otherwise arising out of such proceedings shall be made to the Court where the award has been, or may be, filed and by no other Court.

(4) Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, where in any reference any application under this Act has been made in a Court competent to entertain it, that Court alone shall have jurisdiction over the arbitration proceedings and all subsequent applications arising out of that reference and the arbitration proceedings shall be made in that Court and in no other Court.

Case-Law

Section 31—Jurisdiction.

Section 31—Separate suit to enforce an award is barred. *1945 Mad 371.*

Section 31—An award has to be filed in the Court that has jurisdiction over the subject-matter of the award.

Section 31—Court which makes the reference and to which an award is submitted is alone authorised to hear objections on the award and to pass a decree. *1947 All 304.*

Section 31—Objection regarding evidence—The mere fact that no evidence was led on the date fixed for hearing or that additional evidence of misrepresentation was discovered would not entitle the plaintiff to have the matter retried. *AIR 1930 Sind 195.*

Sections 31, 32 & 33—Arbitration award—It cannot be challenged by way of a suit—Once an award is made and it is filed in Court for

making it the rule of the Court, no suit can be filed for the purpose of avoiding the award. Remedy to the party desiring to challenge the validity of an arbitration agreement or the award itself is as provided in section 33. *Shafiqur Rahman vs Nazmul Hossain Khan* 44 DLR 428.

Sections 31 and 33—Word "existence"—Connotation of the word.

It is difficult for the purpose of interpretation to import or insert the word 'legal' or 'factual' before the word 'existence'. As the language connotes "existence" might mean either way, legal or factual. *Amin & Co vs Province of East Pakistan*, 18 DLR 629.

32. Bar to suit contesting arbitration agreement or award—Notwithstanding any law for the time being in force, no suit shall lie on any ground whatsoever for a decision upon the existence, effect or validity of an arbitration agreement or award, nor shall any arbitration agreement or award be set aside, amended, modified or in any way affected otherwise than as provided in this Act.

Case-Law

Section 32—Award—Dispute about subject matter of award—If suit lies to avoid award.

Once an award has been made, the disputes between the parties relating to the subject matter of reference are merged in the award and no suit can lie which can have the effect of avoiding the award except under the provisions of the Arbitration Act of 1940. *Afaq Ahmad Ansari vs Zamir Hussain Ansari* PLD 1955 Sind 282.

Section 32—Dispute referred to arbitration—If remedy lies by suit.

It is now well settled that once the dispute between the parties relating to any matter has been referred to arbitration, the only remedy open to the party is under the Arbitration Act and not through any suit. *Afaq Muhammad Ansari vs Zamir Hussain Ansari* PLD 1955 Sind 282.

Section 32—Award—The word "award" in this section means an award which may be or can be filed under section 14 of the Act. *AIR 1964 Mad 1 (FB)*.

Section 32—If the award is otherwise valid, the Courts of law cannot interfere and review it on merits and say whether it is good, bad or indifferent. *PLJ 1978 SC 343 + PLD 1960 Kar 78.*

Section 32—Objection to execution—A civil suit for challenging validity of an award on the ground that it cannot be executed unless it is made rule of Court is not maintainable. Validity of an award can only be challenged in accordance with provisions of Arbitration Act. *NLR 1987 Civ 172.*

Section 32—Declaratory decree on award—Where a decree passed on an award is declaratory in nature and as such cannot be executed, a suit to enforce it is not barred by this section. *AIR 1962 Punj 387.*

Section 32—A minor cannot challenge the validity of the award on the ground that his guardian was grossly negligent in the proceedings. *AI 1961 AP 159 (DB).*

Section 32—Interpretation of Statute—Meaning of word "effect" occurring in section 32—Whether the phrase "decision upon the existence or effect of an award" is wide enough to cover suits which are aimed at implementing the award—There is bar to suit contesting arbitration award. *BIWTA vs United Trading Corporation 41 DLR 513.*

Section 32—Bar of suits.

Section 32—No suit lies to challenge the existence of an arbitration agreement. *1945 Bom 494, 53 CWN 410; 1935 Mad 544.*

Section 32—An arbitration agreement cannot be set aside otherwise than as provided in the Act. *1945 Bom 494.*

Section 32—an award may be enforced by a suit. *1944 Nag 24; 51 CWN 563.*

Section 32—an award cannot be enforced by a suit. *1946 Mad 346; (1946) 1 MLJ 185; 1950 Patan 48; 1951 EP 121, 1953 Bom LR 408.*

Section 32—Section 32 does not bar a defence putting forward an award which has been performed by him. *1948 Mad 436.*

Section 32—a suit by a person who never entered into an agreement is not hit by section 32. *52 CWN 389; 52 CWN 397.*

Section 32—It does not bar a suit brought to contest or establish the existence or validity of a contract which includes an arbitration clause. *1949 East Pakistan 165; 1951 Cal 147.*

Section 32—a suit will be barred if the effect of decreeing the suit will be to set aside an award. *1954 Patna 27.*

Sections 32 & 33—A person denying being a party to an arbitration—Right of suit, if barred by section 32.

The opening words "any party to an arbitration agreement" in section 33 clearly indicate that the relief provided therein is for those who are admittedly parties to the arbitration agreement. If a man on his own showing is not a party to the arbitration agreement which he characterises to be false and fraudulent, he cannot come under that section to challenge the factual existence of the arbitration agreement.

The word 'existence' in section 32 of the Act means legal existence and not factual existence. The right of suit to have the arbitration agreement if cancelled by a party who denied the factual existence, of such agreement is not barred by section 32 of the Act. *4 PLR (Dacca) 599.*

Sections 32 & 33—Once an award has been made and it is filed in Court for making the same Rule of the Court, no suit can be filed for avoiding the award. The only remedy is to apply to the self-same Court.

Since section 32 of the Arbitration Act bars such a suit challenging the validity of an award, we find that the suit was barred by the provision of section 32 of the Arbitration Act. The learned Subordinate Judge should have rejected the plaint on the finding that it was barred by the provision of section 32 of the Arbitration Act. Instead he rejected the plaint as being barred under Article 158 of the Limitation Act which is not tenable. *Shafiqur Rahman vs Mvi. Nazmul Hossain Khan 46 DLR 165.*

Sections 32 & 33—A suit to challenge the existence of an arbitration agreement or an award is not maintainable by reason of section 33 which provides that such a challenge must be made by means of an application and not by means of a suit. *Badsha Miah & Others vs Abdul Kader and Others (Civil) 52 DLR (AD) 79.*

33. Arbitration agreement or award to be contested by application—Any party to an arbitration agreement or any person claiming under him desiring to challenge the existence or validity of an arbitration agreement or

an award or to have the effect of either determined shall apply to the Court and the Court shall decide the question on affidavits;

Provided that where the Court deems it just and expedient, it may set down the application for hearing on other evidence also, and it may pass such orders for discovery and particulars as it may do in a suit;

⁵Provided that no application challenging the existence or validity of an award or for having its effect determined shall be entertained by the Court unless the applicant has deposited in the Court the amount which he is required to pay under the award or has furnished security to the satisfaction of the Court for the payment of such sum or for the fulfilment of any other obligation by him under the award.

Case-Law

Section 33—Dispute concerning minor—Referred to arbitration without leave of Court—Award—If can be set aside without separate suit.

In view of the express words of Or XXXII, rule 7 CPC there can be no room for doubt that an agreement of reference in absence of the leave of the Court is void and of no effect. Therefore, an award which is based on that reference must fall through, and there is no need of separate suit to get it set aside. *Zarel Bibi vs Shamsud Din Khan PLD 1956 Karachi 150.*

Section 33—Scope of arbitration—question of law and fact.

The question whether an arbitrator is competent to go into a particular question of law or fact or both is to be determined by the terms of the reference. *Sarada Printing & Publishing Ltd vs Bharat Samity Ltd 4 DLR 337.*

Section 33—Term of reference determining the scope.

In the present case, the defendant borrowed money from the plaintiff on an overdraft account and on mortgage. In 1941, the parties entered into

an agreement providing a mode of repayment. In 1943, the said agreement was modified, inter alia, by inclusion of an arbitration clause providing for reference to a named arbitrator. In 1946, the plaintiff brought two suits, one for realisation of the dues on the over draft account and another for enforcement of the mortgage. The defendant filed an application for stay of the suits under section 34 of the Arbitration Act. During the pendency of the said application, the parties by a joint petition to the Court sought for reference of their differences to another person named therein. Accordingly the Court directed the reference as prayed for. The arbitrator gave an award in favour of the plaintiff holding, inter alia, that the agreement of 1941., as modified in 1943, was void for want of consideration. Upon the filing of the award, the defendant sought to set it aside on the grounds, inter alia, that the arbitrator went beyond the scope of the reference in going into the question whether the said agreement was void and that there was error of law apparent on the face of the award, as the arbitrator held that the said agreement was void for want of consideration.

Held : The reference was independent of the agreement of 1941 as modified in 1943. The terms of the reference were contained in the joint petition which determined the scope thereof and included the question whether the said agreement was valid and binding and as such, the arbitrator did not act beyond the scope of the reference.

That the question of the validity of the said agreement being within the scope of the reference, the award is not liable to be set aside on the ground of error of law apparent on the face of the award.

Section 33 of the Arbitration Act, it has been held, does not apply to the case under report as the arbitration was not under the arbitration clause in the agreement of 1943. *Sarada Printing & Publishing Ltd vs Bharat Samity Ltd (1952) 4 DLR 337.*

Section 33—Scope of the section.

Section 33 only permits any party to an arbitration agreement or any person claiming under him to challenge the existence or validity of an arbitration agreement or an award. It does not permit to challenge existence of a contract. *Badri Narayan Agarwalla vs Pakistan Jute Balers Ltd 17 DLR 354.*

Section 33—Entering upon reference to arbitration—Meaning of.

Section 33—Entering upon reference means when the parties are invited to submit their statements. *Badri Narayan Agarwalla vs Pakistan Jute Balers Ltd* 17 DLR 354.

Section 33—Application under section 30, if may be treated as under section 33.

Application under section 30 may be treated as an application under section 33 also. *Farida Sons Ltd vs SM Fazail and Co* PLD 1934 Sind. 247.

Section 33—Application to determine validity of arbitration agreement by Court—If can be made.

An application lies to have the validity or the existence of the arbitration agreement declared by Court. *Federation of Pakistan vs Abdul Majid* PLD 1956 Sind 96.

Section 33—Amendment—Application for setting aside award—Amendment giving additional facts in support—Relief not changed—If can be allowed.

An amendment of an application under section 33 Arbitration Act, for declaration that the award was invalid which does not alter the nature of application and does not displace it or convert it into an application of an inconsistent nature can be allowed. Accordingly, when the relief claimed in the application under section 33 is a declaration that the award was invalid for certain reasons and amendment merely giving additional facts on which the same relief is claimed, e.g., that the signature of the applicant on the agreement to refer the dispute to arbitration was obtained by fraud, can be allowed when it is made at an early stage. *Lildhar vs Firm Radhakisham Ramsahaya* (46) 33 AIR 1946, Nag 5 ILR (1945) Nag 634—1945 NLJ 536.

Section 33—Arbitration Act—Valuation of purpose for jurisdiction—Whether section 9 of Suits Valuation Act and rules made under it apply.

Rule 10 framed under section 9 of Suits Valuation Act is not applicable to an application under section 33 of the Arbitration Act.

It applies only to suits. The valuation for the purpose of jurisdiction of the present application must be determined in accordance with the

provision of the Arbitration Act and not by a direct reference to the Suits Valuation Act. As already pointed out, under that Act the valuation must be determined on the assumption that the present application is a suit for a declaration—and not for cancellation of a decree or document. *Lahore Ferozepur Transport Co-operative Society Ltd vs Muhammad Saddiq* PLD 1958 Lahore 44—PLR 1958 WP (2) 167.

Section 33—Contract challenged and denied—Reference to arbitration illegal—Arbitrator has no jurisdiction to proceed.

It would always be open to the plaintiff to challenge the award under section 30 of the Arbitration Act on the ground that the contract having been challenged and denied by the defendant the reference to the Arbitrator was illegal and the arbitrator had no jurisdiction to proceed with the matter. *Federation of Pakistan vs Abdul Majid* PLD 1956 Sind 96.

Section 33—Disputes under section 33—Should be decided by affidavits—Evidence—When should be taken.

Under section 33 of the Arbitration Act, the general rule should be to decide disputes covered by that section by affidavits and evidence should be allowed only when it is considered to be just and expedient. *S Abdul Wahab vs Noor Muhammad Adamjee & Co* PLD 1959 Karachi 79.

Section 33—Joining applications under section 30 and section 33—If proper—Application under section 33 may be made even after award is set aside.

When the defendants, along with objection under section 30, also prayed that the agreement to refer to arbitration may be revoked under section 33:

Held : This application ought not to have been joined with the objections and should have been made separately. Since the award has been set aside, the defendant, if she is so advised, is at liberty to file a fresh application in this behalf. *Allah Bux Gabole vs Razia Begum* PLD 1960 Karachi 455—1960 KLR (1) 205.

Section 33—"Any party to an arbitration agreement."

The term "any party to an arbitration agreement" means any person who is alleged by the other party to be a party to the arbitration agreement and, therefore, a person denying the existence of any arbitration

agreement between him and the other party (who alleges him to be a party to the arbitration agreement), can also bring a suit under section 33 of the Arbitration Act for a declaration that he is not a party to the arbitration agreement. *Hafiz Jute Mills Ltd vs Tribunal of Arbitration, Narayanganj Chamber of Commerce and Industry*, 22 DLR 1.

Section 33—A suit which proceeds on the assumption of the existence and validity of an arbitration agreement and an award made thereunder is not barred under sections 32 and 33 of the Arbitration Act inasmuch as the provisions in these two sections bar suits challenging an arbitration agreement and award. *SK Shamsul Huda vs EPWAPDA* 24 DLR 122.

Section 33—Award can only be challenged after it has been filed in Court.

An application of objection under section 33 against an award cannot be entertained unless the award has been filed in Court. *Satish Chandra Biswas vs Khirode Chandra Biswas* 20 DLR 1169.

Section 33—Procedure for challenging arbitration agreement or award.

Section 33—Existence, validity or effect of an award can be challenged by an application and no separate suit lies. *1945 Mad 371*.

Section 33—To set aside an award or to challenge an arbitration agreement an application should be made to Court and the case is to be decided upon affidavits or other evidence. *1941 Cal 527; 45 CWN 881, 1946 Nag 5*.

Section 33—Dismissal of an application under section 33 does not oblige the Court to pronounce a judgment on the award. *1944 All 188*.

Section 33—No application lies to secure an order that the arbitration agreement should not be filed. *1943 Lah 295*.

Section 33—An application is maintainable to declare that there is a valid and subsisting arbitration agreement between the parties. *1949 Bom 158; 51 Bom LR 79*.

Section 33—No application lies to declare that an arbitration agreement exists and is binding on the parties. *1950 Cal 267*.

Section 33—To challenge the existence or validity of an arbitration clause in a contract or to determine the effect of an arbitration agreement or award, a suit does not lie; it must be done by an application. *1950 Cal 267, 1952 Cal 447.*

Section 33—An application to declare that the award is invalid and illegal is maintainable after an application for setting aside an award is barred. *ILR (1949) 1 Cal 245.*

Section 33—An application under section 33 should be made after an award has been filed or at least along with or after an application under section 14 (2) of the Act is filed. *ILR (1950) All 50.*

Section 33—An application to have the validity of award determined before the award is filed should be thrown out. *1950 Pakistan 376.*

Section 33—It is an unusual step to allow the petition to be amended at the hearing of a special appeal against its dismissal. *(1952) SCJ 156; (1952) SCR 501; 1952 SC 119.*

Section 33—in a proper case evidence may be taken. *1949 Patna 393.*

Section 33—Test to determine whether a particular dispute is covered by the arbitration clause in an agreement. *52 CWN 288; 1950 SCR; 792; 6 DLR (SC) 84; 1952 SC 119; 1952 SCJ 156; 7 DLR (SC) 225.*

Section 33—Limitation for an application is governed by Article 181 Limitation Act;. *ILR (1951) 1 Cal 438.*

Section 33—Award put forth in defence—Section 33 has no application to a case where a defence is raised challenging the existence or the validity of an arbitration agreement. *ILR 1951 Cal 438 (DB) + 52 Cal WN 389 + 52 Cal WN 397.*

Section 33—An application under section 30 is not maintainable on the ground that there was no valid reference or no reference at all and consequently the arbitrators had no jurisdiction to make the award. The proper application to make in such a case would be an application under section 33. The award in such a case cannot be said to be "otherwise invalid" or "improperly procured" *AIR 1954 Cal 164.*

Section 33—Who may apply—Section 33 does not envisage that both parties should be parties to the arbitration agreement. The condition

precedent is that the person invoking section 33 should be a party to the agreement. *1958-1 Andh WR 382*.

Section 33—The validity of an award may be challenged even when it has not been filed. *PLD 1962 Kar 386 = PLR 1962 (2) WP 995*.

Section 33—Jurisdiction of arbitrators—An award can be challenged for want of jurisdiction under section 33. *AIR 1951 Cal 78 (DB) + AIR 1957 Cal 692 + AIR 1923 Cal 787*.

Section 33—Reference out of Court—The non-existence or invalidity of a reference can be a ground for an application for setting aside an award even in the case of an award in an arbitration without the intervention of the Court. *AIR 1956 Cal 321 (FB)*.

Section 33—Agreement to refer to foreign Tribunal—Courts in Pakistan have jurisdiction in the matter notwithstanding the fact that there was any clause in the agreement giving jurisdiction to a foreign Tribunal. *1991 CLC 1087*.

Section 33—For mere non including of the properties in the security, the same cannot be brushed aside or rejected. *Mr Sikder vs Bangladesh Water Development Board 49 DLR 113*

Section 33—Failure to make deposit as required by the proviso renders the application under this section non-existent in the eye of law. *Bangladesh Water Development Board and others vs Progati Prakaushali and another 49 DLR 335*.

Section 33—Where after the filing of an award in court one of the parties to the arbitration, being misled by the order of the court files objections instead of an application to set aside the award, the mistake made by the party is nothing more than an irregularity which is not such as to entitle the court to overlook his objections and to pass a decree in terms of the award. *Bangladesh Water Development Board and others vs Progati Prakaushali and another 49 DLR 335*.

Sections 33 & 30—Arbitrator's power to award interest—Interest as to pre-reference period—In the absence of any law or agreement providing for payment of interest by an Arbitrator it will not be proper to vest in him power to award interest for the pre-reference. *Bangladesh Agricultural Development Corporation vs Kibria and Associates Ltd 46 DLR (AD) 97*.

Sections 33 & 30—*Pendente lite* interest—An arbitrator may allow *pendente lite* interest on the analogy of court's power to grant interest if the disputes were agitated before it. *Bangladesh Agricultural Development Corporation vs Kibria and Associates Ltd* 46 DLR (AD) 97.

34. Power to stay legal proceedings where there is an arbitration agreement—Where any party to an arbitration agreement or any person claiming under him commences any legal proceedings against any other party to the agreement or any person claiming under him in respect of any matter agreed to be referred, any party to such legal proceedings may, at any time before filing a written statement or taking any other steps in the proceedings, apply to the judicial authority before which the proceedings are pending to stay the proceedings; and if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the arbitration agreement and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, such authority may make an order staying the proceedings.

Case-Law

Section 34—In the agreement it being provided that the Secretary of the Ministry of Commerce would appoint an arbitrator, the Court has to refer the dispute to the arbitrator appointed by the Secretary.

In this case, both the parties agreed as per the Arbitration Clause that the Secretary of the Ministry would nominate the arbitrator. If the Court is satisfied that the arbitration agreement should be filed then the Court will refer the dispute to the arbitrator to be nominated by the Secretary of the Ministry. Question of change of the arbitrator is not relevant when the parties agreed upon his appointment in the Agreement. *Govt of Bangladesh vs Mashriqui Textiles* 35 DLR (AD) 123

Condition for stay of a suit—In order that a suit may be stayed under section 34 of the Arbitration Act the first point to be considered is whether the plaintiff is a party to a contract or a person claiming under party to a contract.

Expression 'any person claiming under a party' means the heirs, legal representatives or assigns.

Section 34 of the Act is attracted only when an agreement to refer to arbitration exists and he who wants to avail of the section must say that it exists. *Abu Bakar Siddique vs MV Aghia Thalassini* 30 DLR 94 .

Section 34—Court's discretion under section 34 to be exercised judicially keeping in view interest of justice, balance of convenience and inconvenience.

Discretion vested in the Court under section 34 of the Act has to be judicially exercised in due regard to the facts and circumstances of the case. One governing consideration is how best the interest of justice will be promoted in a case without denying either party of its legal rights. The question of balance of convenience or inconvenience is also one of the governing considerations in the exercise of discretion under section 34 of the Act. *Abu Bakr Siddique vs MV Aghia Thalassini*. 30 DLR 94.

Section 34—Arbitration clause in the charter party—No evidentiary value as to this clause so far as the bill of lading is concerned.

The arbitration clause in the charter party was not incorporated into the bill of lading by the general words of incorporation and consequently the arbitration clause was not applicable to the contract evidenced by the bill of lading. *Abu Bakr Siddique vs MV Aghia Thalassini* 30 DLR 94.

Section 34—A foreign award is not enforceable in *Bangladesh*. 27 DLR 583 (SC) *Haji Azam*, followed. *Abu Bakr Siddique vs MV Aghia Thalassini* 30 DLR 94.

Stay of the legal proceedings—Taking steps in an interlocutory matter does not constitute a step in the proceeding within the meaning of section 34—During stay of suit, prayer for interim relief or opposing any such petition also does not constitute step in the proceeding. *Pioneer Rope Manufacturing Co vs PICIC* 21 DLR 554.

Section 34—Stay of proceeding when to be disallowed.

Defendant companies sought stay of proceeding under section 34 of

the Arbitration Act on the ground that the dispute is covered by an arbitration agreement between the parties.

Prayer disallowed on the ground that the defendant companies through their agent had earlier taken steps in the suits conferring thereby jurisdiction on the Court for adjudication of the dispute. *Seafarers Inc vs Province of East Pakistan* 20 DLR (SC) 225.

Ingredients of Section 34—Under section 34 of the Arbitration Act, the Court or the judicial authority has been given a discretion to make an order staying the proceedings, if the following conditions are satisfied (a) the proceedings in the Court has been commenced, (b) the proceedings have been commenced by the party to the agreement or person claiming under him against another party to the agreement or a person claiming under him, (c) the proceedings are in respect of a dispute so agreed to be referred; (d) application to stay is made by a party to the proceedings; (e) the application is made by that party before he has filed a written statement or taken any steps in the proceedings; (f) the party applying for stay was and is ready and willing to do all things necessary for the proper conduct of the arbitration.

It is, therefore, quite clear that the legal proceedings which are sought to be stayed must relate to a dispute which the parties have agreed to refer to arbitration.

In a suit where claim is made which is outside the arbitration clause under the agreement the Court is bound to refuse stay and this principle has been well-settled. *Chittagong Port Authority vs Crete Construction Company Ltd.* 31 DLR (AD) 138.

Power under the section is a discretionary power.

Power of the Court under section 34 of the Arbitration Act is a discretionary power and when the two Courts below have concurrently exercised the discretion in a particular way, namely, in refusing to stay the proceeding, this Court will be slow to disturb the exercise of discretion, unless it comes to the conclusion that the discretion was exercised arbitrarily or capriciously.

When a substantial part of the claim is outside the reach of the arbitration clause, discretion lies in refusing to stay. *Chittagong Port Authority vs Crete Construction Company Ltd* 31 DLR (AD) 138.

It is a discretion of the Court as to whether the jurisdiction under section 34 of the Arbitration Act is to be exercised. *MV Aghia Thalassini vs Abu Bakr Siddique* 32 DLR (AD) 107.

Section 34—Circumstances which would show that the defendants did not take a step in the proceeding, even though he entered appearance. Legal proceedings can, therefore, be stayed at the defendants' instance under the section.

In the present case (on behalf of the plaintiff) there was a prayer for injunction. The defendants appeared but they did not know what was the suit about and it cannot be said that they evinced an intention to fight it out for on the date they appeared they prayed for time for filing written-statement to the injunction; they did not even have a copy of the petition for injunction, nor of the plaint. In the absence of these copies it cannot be said that they acquiesced in the filing of the suit.

As the defendants never indicated that they wanted to defend the action, it cannot therefore be held that the action taken by them, would constitute a step in the proceeding. *Md Esak vs Raja Mia* 20 DLR 1120.

Section 34—Application for stay of proceeding to be filed before submission to Court's jurisdiction.

Defendant who wants to take advantage of an arbitration clause, must without any delay and before submitting to the jurisdiction of the Court inform the Court in unequivocal terms that he is going to insist upon the implementation of the arbitration clause—Any step taken by him in proceedings will disentitle him to the protection as contemplated by section 3 of the Arbitration Act of 1940.

"Step in the proceedings" means something in the nature of an application to the Court and not mere talk between solicitor or solicitors' clerk, not the writing of letters, but the taking of some step, such as taking out of a summons or something of that kind, which is, in the technical sense, a step in the proceeding.

No separate application for stay of proceedings filed—Written statement indicating refusal to submit to Court's jurisdiction—sufficient to discharge the duty of making an application. *GM Ploff AG vs Sertaj Engineering Co Ltd* 22 DLR (WP) 331.

Section 34—Stay of suit on the basis of arbitration clause and the dispute involving the same question is to be decided both by the Court

and the arbitrator—Stay of proceedings should be refused. *State Bank of Pakistan vs Messrs. Naqson*, 22 DLR (WP) 285.

Section 34—Agreement not indicating time requisite for making award—Arbitrators making award within four months from date of reference—Award, in circumstances, within time and upheld. *M Muhammad Said vs Chy Muhammad Tufail & Co. and others*, 21 PLD Karachi 523.

Section 34—Appeal—If Courts of appeal would interfere in the discretion of lower Court.

Where the Subordinate Judge had given a finding that the defendants were at the commencement of the proceeding and are still ready and willing to do all things necessary to the proper conduct of the arbitration but there was no ground for the finding.

Held : We would be very reluctant to interfere unless we are convinced that there were adequate grounds for saying that this discretion had not been exercised judicially.

The appeal was allowed because no good reason had been suggested why the matter should not be referred to arbitration in terms of the agreement between the parties. *Queensland Insurance Co Ltd vs Abdul Rahman* PLD 1957 Dacca 171; 8 DLR 688.

Section 34—New objection—If can be taken in appeal.

An appeal from an order of the lower Court disallowing objections taken to the validity of an award must ordinarily be confined to such objection as are taken in that Court and to no other. An objection as to the invalidity of reference should not be allowed to be advanced for the first time in the appeal. *Madan Lal vs Nabi Buksh* 226 IC 241; 48 PLR 377; AIR 1947 Lah 177.

Section 34—Application for stay—Not bonafide—If stay can be granted.

The parties to the suit resided in Karachi. One party applied for stay of proceedings in the suit so that the dispute may be referred to arbitration in New York, but the party applying could not show any advantage of doing so :

Held : In such a matter we ought to consider how the dispute between the parties can be most readily resolved. The application being a mere

device to postpone the decision of the case, the appeal was dismissed. *MM Yeaseen vs Irving R Boody and Co PLD 1957 Karachi 756; PLR 1957 (2) WP 346.*

Section 34—Arbitration agreement—Dispute to be referred to Superintending Engineer of one circle—Name of circle changed—If can be referred to SE of new circle.

Where a dispute was to be referred under arbitration agreement to SE of B circle but when the dispute arose it had been brought under U circle, and it was contended that because the dispute was to be submitted to SE of a circle which did not exist, the agreement had become infructuous.

Held : The parties did not name any particular person as the arbitrator. They intended to refer their dispute to the Superintending Engineer of the Circle, and, therefore, they must clearly be taken to have intended that any person who may be holding that office for the time being would act as the arbitrator. Nor can the parties be reasonably said to have attached any importance to the name or formation of the circle. These considerations could not have been of any significance to them. All that they could have intended was that the disputes should be referred to the officer who may happen to be the Superintending Engineer of the Circle to which the canal in question may happen to be attached at the time of the disputes. *Nawab Din vs Punjab Province PLD 1957 Lahore 597.*

Section 34—Arbitration Agreement—Word arbitrator not mentioned—If agreement bad.

Where the clause in agreement runs as follows :—"Any dispute under this contract will be referred to the Secretary, Civil Supplies Department, whose decision will be final and binding on the parties." it is clear that the Secretary, Civil Supplies would act as an arbitrator and not merely as an expert.

Held : The clause in question in the present case was not bad as an arbitration clause for mere want of express mention that the Secretary Civil Supplies would act as an arbitrator. *Province of the Punjab vs Messrs Irfan and Co PLD 1956 Lahore 442; PLR 1956 Lahore 1486.*

Section 34—Dispute—What is—If must be specified—in application under Section 34—Form in which specified.

There seems to be a general impression that a dispute cannot possibly be specified in the application because the defendant is debarred from filing a statement if he puts in an application for stay and a statement as to what is the dispute, it will amount to the filing of a written statement. This is a misapprehension. When a person applies under section 34, he has to satisfy the Court firstly, that there is an agreement to refer and secondly, that the suit relates to any matter agreed to be referred, that is there in a dispute between the parties which is covered by the agreement. Unless that is shown the suit cannot be stayed. If a suit is filed on the basis of an agreement which contains an arbitration clause, the mere fact that the defendant is not prepared to which he is liable under the agreement does not mean that there is a dispute between the parties. It is not necessary to quote authorities to show that a dispute does not mean simply a refusal to pay money for which a person is liable. A dispute is constituted by a proposition of fact or law being alleged by one party and denied by the other. The defendant must state, though not in detail the matter which the other party alleges and which he denies or he alleges and the other party denies and the decision of which would affect the rights of the parties. When the defendant thus states the dispute, the Court will determine whether it falls under the arbitration agreement or not. *Novelty Cinema Lyallpur vs Firdaus Films. PLD 1958 Lahore 208; PLR 1958 (2) WP 233.*

Section 34—Arbitration clause—How should be interpreted—Matters to be considered when deciding a case under this section—Suit as pleaded is independent of the contract—Court cannot stay proceedings.

What the Court has to determine in proceedings of this nature is (1) what is the dispute. (2) whether the dispute is covered by the terms of the arbitration clause in the contract. It is true that each case has to be decided on the terms of the arbitration clause and there are cases where the terms of an arbitration clause are so very comprehensive that even frustration of a contract is covered by an arbitration clause. But in interpreting the terms of arbitration clause in a contract, the Court has to put a reasonable construction on the terms and it cannot be said that because the words 'in relation to' or 'in connection with, or 'arising out of' occur in it, therefore each and every matter which is in any way connected with the contract should be taken as the subject matter of arbitration clause.

The Court must consider the suit as it is pleaded and framed. If it comes to a conclusion that such a suit as pleaded is a suit on the contract or arising out of the contract then the suit should be stayed. But, on the other hand, if the suit as pleaded is independent of the contract then the Court has no power to stay the suit though it is satisfied that the suit has been so framed to serve as a means of avoiding the consequences of alleging the true nature of the claim. *Indo-Pakistan Corporation Ltd vs KC Sethia, Ltd* 8 DLR 55.

Section 34—Stay of suits—Grounds for.

The same principle which is applicable to a case under section 34 of the Arbitration Act in the exercise of discretion of the Court, is applicable to a case of an application under section 5 of the Arbitration Act for withdrawal of the authority of the arbitrations. Further it should be remembered that in granting leave under section 5 of the Arbitration Act the Court exercises its discretion and it has been held in a series of cases that there are two limits within which the discretion is to be exercised: (1) the Court should not lightly release the parties from their bargain that follows from the sanctity the Court attaches to contract and the other, (2) that the Court should be satisfied that substantial miscarriage of justice will take place in the event of its refusal to grant the leave. *Pakistan Trading Co vs MM Ispahani Ltd* PLD 1960 Dacca 11 DLR 405.

Section 34—Stay of proceedings—suit brought by one party—When other party may apply for stay to submit dispute to arbitration.

It is only when a suit or a proceeding has been commenced against a party that he can make up his mind as to whether he would apply for stay or not. He is not bound to remind the other party who has commenced the suit or proceeding, before such commencement, of his duty not to start the suit under the agreement between them. A notice of suit imposes no obligation on the party served with notice to say that the dispute shall be decided by their own tribunal and not by a Court of law. He can apply for stay at any time before filing a written statement or taking any other step in the proceedings, but not thereafter. 226 IC 444; AIR 1947 Lah 215 (DB).

Section 34—Jurisdiction of Court—If ousted by arbitration agreement—Duty of Court.

The jurisdiction of the Court is not ousted because the plaintiff in the suit was a party to an agreement to refer the matter in dispute to

arbitration. But when the parties have preferred a private tribunal for the decision of their dispute, the Court should refer the parties to the tribunal which they have chosen unless there be a good reason for not doing so. *Muhammad Ibrahim and Sons vs Karachi Municipal Corporation PLD 1960 (WP) Karachi 916.*

Section 34—Satisfaction of Court—Matters about which Court must be satisfied.

When a person applies under section 34, he has to satisfy the Court firstly, that there is an agreement to refer and secondly, that the suit relates to any matter agreed to be referred, that is, there is a dispute between the parties which is covered by the agreement. Unless that is shown the suit cannot be stayed. *Novelty Cinema Lyallpur vs Firdaus Films PLD 1958 Lahore 208; PLR 1958 (2) WP 233.*

Section 34—Successive arbitrations—An arbitration agreement can give rise to successive arbitration in respect of different disputes. *1989 SCMR 225*

Section 34—Dispute as to existence of validity of arbitration agreement—Application under section 34 for stay of suit would not be competent in a case where existence of agreement itself requires adjudication in suit. *NLR 1990 UC 96 = NLR 1989 UC 721.*

Section 34—English decision on the subject—Section 4 of the English Arbitration Act of 1889 corresponds with section 34 of the Arbitration Act, 1940, and, therefore, cases under the English law can be usefully considered in interpreting section 34 of the Act. *AIR 1960 Raj 67 (DB).*

Section 34—Application should be made at earliest opportunity—An objection to suit must be taken at the earliest opportunity before filing written statement or taking any affirmative step in proceedings. *1992 MLD 60 + PLD 1986 Kar 1 = PLJ 1986 Kar 234 = NLR 1986 AC 130 (DB).*

Section 34—Delay in objection to application—Respondent's plea in respect of misrepresentation and coercion having been raised for the first time in appeal would be of no avail. *1992 CLC 1062 (DB).*

Section 34—Discretion of Court—Arbitration in first instance has to be resorted to in a case to which section 34 unmistakably applies. It would be only for Court to by-pass arbitration in case it fails. *NLR 1989 AC 449.*

Section 34—Stay of suit cannot be refused on merely technical grounds. unless the same spells out a bar clearly and unequivocally. *1990 CLC 47*.

Section 34—When stay not ordered—Stay or suit may not be granted where there was sufficient reason to hold that matter in dispute need not be referred to arbitration. *NLR 1993 Civ 154*.

Section 34—A contract giving jurisdiction to a foreign tribunal does not rob the Courts of Pakistan of their jurisdiction to try suit based on the contract. The suit in the Courts of the country are stayed only on grounds of justice and fair play. *AIR 1962 Cal 602 + AIR 1963 SC 1044*.

Section 34—Matters agreed to be referred—An order of stay will be passed only when the subject-matter of suit is the same as that agreed to be submitted to arbitration. *PLD 1994 Lah 122 + 1990 CLC 47; 1986 CLC 2800 + PLD 1958 Lah 208 + AIR 1935 Sind 228 = 37 Cri L Jour 175 + AIR 1921 Cal 255 + ILR (1951) 2 Cal 140 (DB)*.

Section 34—Arbitration agreement may be an agreement unconnected with the main contract. *AIR 1963 Cal 140*.

Section 34—Repudiation of liability under contract. A stay order cannot be refused because the defendant repudiates liability under the contract. *AIR 1943 Pat 53 = 21 Pat 544*.

Section 34—Effect of invalid reference. *AIR 1958 Andh Pra 334 = ILR 1958 Andh Pra 243 (DB)*.

Section 34—Suit filed prior to reference—Where a suit has been filed prior to a reference to arbitration and an award is made without getting the suit stayed, the award is of no effect. But it is not invalid. *AIR 1921 Cal 770 = 47 Cal 752 + AIR 1926 Sind 86*.

Section 34—Suit filed subsequent to reference. *AIR 1918 Mad 719 = 41 Mad 115*.

Section 34—Restriction in order of stay—An order for stay under section 34 ought not to be restricted by a time limit. *AIR 1918 Sind 41 = 12 Sind LR 41*. But a stay order for a limited period of time is not without jurisdiction even though it is erroneous. *ILR (1954) 1 Cal 418*.

Section 34—Fraud, misrepresentation, etc. of arbitrator. *PLD 1984 Kar 488*.

Section 34—Repudiation of arbitration agreement. *AIR 1919 Cal 1042 + AIR 1955 Punj. 113 (DB) + AIR 1940 Bom 93; AIR 1953 Cal 477 (DB)*.

Section 34—Part of claim outside agreement. *1979 DLR (SC) 138*.

Section 34—Balance of convenience. *AIR 1963 SC 1044*.

Section 34—Death of arbitrator. *AIR 1931 Mad. 28 = 54 Mad 469. 27 Pat 930 (DB)*.

Section 34—Dispute not covered by agreement. *AIR 1960 Bom 292 + AIR 1935 Sind 62*.

Section 34—No named arbitrator available. *AIR 1948 Cal 230 = ILR (1948) 1 Cal 161*.

Section 34—Application for adjournment. *1994 MLD 2227 = NLR 1994 Civ 587 (DB) + NLR 1989 AC 449 + PLD 1984 Lah 122*.

Section 34—Objection to suit. *AIR 1965 Pat 238 (DB)*.

Section 34—Application to set aside 'ex parte' order. *AIR 1952 Punj 109*.

Section 34—Application for stay—Satisfaction of Court that the matter was agreed to be referred to arbitration—if necessary.

When a person applies under section 34, he has to satisfy the Court firstly, that there is an agreement to refer and secondly, that the suit relates to any matter agreed to be referred, that is, there is a dispute between the parties which is covered by the agreement. Unless that is shown the suit cannot be stayed. *Novelty Cinema Lyallpur vs Firdaus Films PLD 1958 Lahore 208; PLR 1958 (2) WP 233*.

Section 34—Suit for dissolution of partnership—Defendant charged with fraud—Clause in partnership providing for "disputes arising out of or in connection with the deed"—If stay can be granted by Court.

A suit was filed for dissolution of a partnership, accounts, distribution of the partnership assets and the appointment of a receiver, and for an injunction restraining the defendant from carrying on the partnership business or from using partnership assets until the affairs of the firm had been completely wound up. The plaintiff charged the defendant with breach of duty expressly imposed by the partnership agreement and breach of his duty generally as a partner, and with abuse of his position

as a partner, who in terms of the partnership deed had the control and management of the partnership business, for the purpose of defrauding the plaintiff and depriving him of his share of partnership profits.

The partnership deed which was for a definite term contained a clause providing for reference to arbitration any dispute between the parties "arising out of or in connection with the deed or the construction thereof". On an application by the defendant for stay of the suit under section 34 of the Arbitration Act.

Held : (i) that the disputes between the parties whether they relate to breaches of the terms of the partnership deed or to the defendant's manoeuvres to deprive the plaintiff of his share of the partnership assets or to other matters, were disputes which arose "out of or in connection with the deed", and that, therefore, there was jurisdiction in the Court to make an order staying the proceedings which had been instituted;

(ii) that under the arbitration clause in question the arbitrators had power to decide whether or not the partnership should be dissolved and to award dissolution, notwithstanding the fact that the partnership agreed upon was for a definite term of years;

(iii) that the prayer in the plaint for a receiver and for an injunction, whether it was intended to be for protection of property pending suit or for permanent relief, was not a matter which required the Court to exercise its discretion against a stay.

(iv) That a charge of fraud to be a ground for refusing stay must be a specific charge clearly made and supported by particulars and that a mere general allegation was not enough. Though a Court should grant a stay when a charge of fraud was distinctly made, and the party charged claimed that the investigation be held by a Court and not by arbitrators, the position was different if it was the party charged who was applying for stay. As the party charged in the suit desired, that the disputes which had arisen, including those which carried such general charges of misconduct as had been made, should be decided by the domestic forum which the parties had chosen, and as the disputes themselves had no special characteristic which made it desirable that they should be tried by a Court, there was no reason for refusing a stay. *ILR 1946 1 Cal 203.*

Section 34—Arbitration agreement signed with corporation—suit instituted against corporation and some officers—If ground for by passing the agreement.

When a contractor signs an agreement with the Corporation for the execution of certain work he should be deemed to be fully aware of the fact that in case of any dispute between him and any officer of the Corporation regarding the work, the matter will go for the arbitration of the Municipal Commissioner. The Contractor, therefore, cannot get out of the arbitration clause merely by impleading some of the officers of the Corporation as defendants in the suit which the contractor may choose to institute in respect of this contract. *Muhammad Ibrahim and Sons vs Karachi Municipal Corporation. PLD 1960 (WP) Karachi 916.*

Section 34—Person attacking agreement to refer to arbitration—If can take alternative plea that if there is an agreement suit should be stayed.

Persons who want to attack the existence or validity of the very agreement which contains an arbitration clause are deprived of an alternative defence that even if there is an agreement the suit should be stayed for a reference to arbitration. One reason for this result is that the question as to whether an agreement had first to be decided by the Court and once the Court begins proceedings section 34 does not apply. *Novelty Cinema Lyallpur vs Firdaus Films PLD 1958 Lahore 208; PLR 1958 (2) WP 233.*

Section 34—Agreement to refer dispute to a particular arbitrator—arbitrator having already decided matter against party in his official capacity—Stay of suit not granted.

Where there was an agreement to refer driage of justice might result, if the dispute is referred to such tribunal then it would be absolutely wrong to bind a party to its contract and compel it to get the decision from a biased tribunal. Muhammad isputes to the Director of Civil Supplies and the Director for the time being had already decided the matter against the plaintiff:

Held : The contract appointing an arbitrator is a contract uberrimafides and it is the most fundamental principle of justice that if the tribunal appointed by the parties has lost confidence of any one of the parties, or it has acted in a manner which creates a strong suspicion that substantial miscar *Usaf vs NWFP PLD 1955 Peshawer 72.*

Section 34—Application for stay of proceeding when can be refused—Defendant misleading the plaintiff to institute suit—If ground for refusal to stay—Punishment for such defendant.

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Section 34—Application for stay of proceeding when can be refused—Defendant misleading the plaintiff to institute suit—If ground for refusal to stay—Punishment for such defendant.

If there is a submission for a reference to arbitration, and a party chooses to bring a suit, the other party can then decide whether or not he will remain before the Court, which he indicates by taking some step in the action, or whether he will avail himself of the contractual rights to have the dispute referred to arbitrations. If he had misled the plaintiff in some way into bringing the suit, it might be a good ground for punishing him in costs and if the misleading had been definite enough to amount to a particular statement that he would not apply to have the matter referred to arbitration and would submit to the jurisdiction of the Court, it might be good ground for punishing him in costs and it might even amount to an estoppel, so as to prevent him from making an application thereafter. *Queensland Insurance Co Ltd vs Abdur Rahman* PLD 1957 Dacca 171; 8 DLR 688.

Section 34—Arbitrator close relation of one party—If suit can be stayed.

Where the arbitrator is a close relation of one of the parties, there is good ground for apprehending that the arbitrator will not act fairly in the matter and the stay of suit will not be allowed. *E Haroon Jaffar and Sons Ltd vs E Dossa and Sons PLD 1956 Sind 4.*

Section 34—Stay of suit—Party accused of fraud—If can ask for—Party not wanting independent or just inquiry—If stay can be allowed.

A Court will generally not grant a stay of suit when the party resisting the stay charges the party wanting the stay with fraud, and that it will not stay the suit at the instance of the party charged with fraud, because he is entitled to be cleared of it in open Court. The authorities have long since recognised that submission clauses would easily be defeated if the party resisting the stay could make allegations of fraud against the party moving for stay. But here we have more than allegations; we have a *prima facie* case of fraud made out, and evidence that the party charged with it does not desire an independent or just inquiry into it. *E Haroon Jaffar and Sons Ltd vs E Dossa and Sons PLD 1956 Sind 4.*

Section 34—Stay of suit—Arbitration not likely to give honest or just award—If stay can be allowed.

The arbitrator must be a person who will act fairly as an honest man, and if there is any reasonable prospect that he will be biased or be likely not to decide fairly, then the party resisting the stay is entitled to have the disputes tried by a Court of law. *E Haroon Jaffar and Sons Ltd vs E Dossa and Sons PLD 1956 Sind 4.*

Section 34—Registrar passing order that defendant should file written statement within 15 days—If amounts to step in proceeding—Effect.

When the Registrar (OS) in Sind passed an order that written statement should be filed within 15 days. The appellant instead of filing the written statement applied to the Court to stay the suit under section 34 of the Act.

Held : That the Registrar had passed that order as a matter of course against the party alleging that steps in proceeding have been taken and that it should have been held that he had not taken a step in the proceeding. *MM Yaseen vs Irving R Boody & Co PLD 1957 Karachi 756; PLR 1957 (2) WP 346 (DB).*

Section 34—Step in proceeding—What is

In order to constitute a step in the proceedings the act in question must be (a) an application made to the Court either on summons or something in the nature of an application to the Court e.g. attending on summons for direction and (b) such an act as would indicate that the party is acquiring the dispute decided by the Court. *New Bengal Shipping Co vs Eric Lancaster Stump* PLD 1952 Dacca 22; PLR 1951 Dacca 1.

Section 34—The criterion to decide whether an act constituted a step in the proceedings was (a) whether an application was made to the Court either on summons or orally, and (b) whether the act was such as should indicate that the party was acquiescing in the method adopted by the other side of having the dispute decided by the Court. *Province of the Punjab vs Messrs Irfan and Co* PLD 1956 Lahore 442; PLR 1956 WP 1486.

Section 34—Step in proceeding—Government pleader seeking adjournment for instructions—If amounts to step in proceedings.

Where the Government pleader had not received any instructions in a case. He appeared and asked for adjournment for receiving instructions;

Held : The act of the Government pleader did not constitute a step in the proceedings within the meaning of section 34 of the Arbitration Act. *Province of the Punjab vs Messrs Irfan and Co* PLD 1956 Lahore 442; PLR 1956 WP 1486.

Section 34—Arbitration agreement—Right to ask for stay of proceedings in suit when considered waived.

A party to a suit can apply for stay of the proceedings on the basis of the existence of an alleged arbitration agreement only before filing the written statement or taking any other steps in the proceedings. In other words, no party can, notwithstanding an arbitration agreement, ask for stay of proceedings after a certain stage. This provision is obviously founded upon the doctrine of waiver. The plaintiff filed a suit and defendant put in appearance on two occasions and asked for adjournment to file a written statement. Thereafter he filed a written statement, but no application was made for stay of proceedings. Even during appeal no such request was made :

Held : That a cause of action arose to the plaintiff; the Court has jurisdiction over the suit; the suit cannot be stayed in order to allow the parties to go to arbitration in accordance with the conditions in the

contract and the Court must, therefore, proceed with the adjudication of the suit between the parties. *Nawab Din vs Punjab Province PLD 1957 Lahore 597.*

Section 34—Expression "before filing a written statement or taking any other steps in the proceedings."

Application for time to file written statement amounts to taking "steps in proceedings". Applicant deemed to have submitted to jurisdiction of civil Court and waived his right to arbitration. *Muhammad Idris and others vs Tobarak Hossain 17 DLR 209.*

Section 34—"Steps in the proceeding"—When an applicant has acquiesced in the proceedings of a suit he cannot claim the benefit of the section.

The primary duty of a Court is to look into the facts of the case fairly and squarely and then to decide whether the conduct of the applicant is such as would amount to a participation in the suit itself or an indication of acquiescence in its proceedings. If so, an application under section 34 would be barred for the simple reason that a party is not allowed to ask for staying the proceedings where he has clearly and willingly participated in them in a manner which can be construed as acquiescence therein. If he intends to enforce an arbitration clause, he must do it at the earliest possible moment. If his conduct is such as would indicate that he has acquiesced in the suit, he is shut out from claiming the benefit of section 34 of the Act. *Badsha Mia vs Nurul Huq 18 DLR 237.*

Section 34—True test for determining whether an act is "step in the proceedings."

The suit was for dissolution of a partnership and for accounts. On the 10th April, 1965, an application was made by the plaintiff for appointment of a receiver in respect of the assets of the firm. On that date the learned Judge issued notice on the defendants to show cause why the prayer of the plaintiff should not be allowed. On the 19th of April, 1965, defendants asked for time to show cause and the Court fixed the 26th of April, 1965. Defendants, on the said date, filed a petition for staying the proceedings before the Court under section 34 of the Arbitration Act and simultaneously with the said application filed an objection against the application for appointment of a receiver.

Held : It cannot be said that the opposite parties by merely taking time to file a written objection and by filing such objection, are deemed to have acquiesced in the proceedings when, at the earliest possible and practicable moment, they have, with the aforesaid written objection filed a separate application for staying the proceedings in the suit under section 34 of the Arbitration Act.

The fact that they also filed a written objection to the application for appointment of a receiver is not very material when they did ask for staying the proceedings at the earliest possible moment. They had to object to such appointment in order to take recourse to arbitration.

The true test for determining whether an act is a step in the proceedings is not so much the question as to whether there has been an application in the suit although, of course, that would be satisfactory test in many cases but the test is whether the act displays an unequivocal intention to proceed with the suit and to give up the right to have the matter disposed of by arbitration. *Badsha Mia vs Nurul Huq* 18 DLR 237.

Section 34—Stay of legal proceedings pending arbitration.

Where a contract contains an arbitration clause, a suit is liable to be stayed under section 34. But if a suit as pleaded is a suit independent of the contract, the Court has no power to stay.

In determining whether a suit should be stayed under section 34 of the Act the Court has to determine (1) what the dispute is, (2) whether the dispute is covered by the terms of the arbitration clause in the contract. 8 DLR 55.

Section 34—Arbitration clause—Not bad for mere want of express mention of word "arbitrator" (1956) PLR (Lah) 1486.

Section 34—Reference of dispute to "Secretary, Government of Punjab, Civil Supplies Department"—Reference vague—Arbitration clause vitiated. B(1956) PLR (Lah) 1486.

Section 34—Suit, stay of—Circumstances when application for stay of suit should be granted or refused—Laches on the party of the defendant should not be penalised by refusing arbitration, but the plaintiff should be compensated for by costs. *Queensland Insurance Co Ltd vs Abdur Rahman* 8 DLR 688.

Section 34—Unwillingness to refer the matter to arbitration on the part of the defendant should not be readily inferred unless indications are positive to show that the defendant's conduct virtually amounts to repudiation of the arbitration agreement. *Queensland Insurance Co Ltd vs Abdur Rahman* 8 DLR 688.

Section 34—Under section 34 the Court has a discretion to reject an application for stay of legal proceedings commenced in violation of an arbitration agreement. The superior Court will interfere with the discretion of the lower Courts only when this discretion has not been judicially exercised. *Queensland Insurance Co Ltd vs Abdur Rahman* 8 DLR 688.

Section 34—The defendant at first merely applied for time to file a written statement and at the second hearing he applied for stay of the proceedings under section 34.

Held : An application for time to file a written statement in the circumstances of the case amounted to a step in the proceedings within the meaning of section 4 of the Arbitration Act and the suit should not be stayed. *1 PLR (Dacca) 1*.

Section 34—Stay of suit on the plea that there is agreement to refer the dispute to arbitration—When the defendants have not taken any step to obtain arbitration and the application for stay was merely a device to delay the decision in the suit, the application for stay was rightly rejected. *Government of Bangladesh vs South Insurance & another* 1985 BLD 282.

Section 34—It is by now well settled that in spite of an arbitration clause in the contract made between the parties a party may file a suit against the other party and in that case section 34 of the Arbitration Act provides that the other party may apply to the Court to stay further proceedings of the suit, but the defendant who wants to take advantage of the arbitration clause must file such an application before submitting to the jurisdiction of the Court by filing his written statement. *Government of the People's Republic of Bangladesh represented by the Secretary, Ministry of Railway, Roads and Highways, Bangladesh Secretariat, and others vs Ekramul Haque* 2 BLC 411.

Section 34—Stay of legal proceedings pending arbitration.

Section 34—Court should stay legal proceeding if it is satisfied that an arbitration clause is binding between the parties. *1945 All 146; 1945 ALJ 77*.

Section 34—A defendant who had claimed a right to cancel the contract before the suit was filed may rely upon the arbitration clause in the contract and obtain a stay. *1943 Bom 199; 45 Bom LR 387.*

Section 34—Mere inaction prior to filing of suit shall not take away the right to take action under section 34. *1943 Cal 484; 47 CWN 570.*

Section 34—If the action of the defendant in connection with the suit implies that he would defend the suit and would not insist on arbitration he would be precluded from taking the benefit of section 34. *1943 Cal 484; 47 CWN 570, 1950 Bom 127, 1949 Mad 582.*

Section 34—Taking time to file written statement amounts to taking steps in the proceeding. *1943 Bom 228; 45 Bom LR 402; 1948 Cal 59; 1949 All 611; 1953 All 149.*

Section 34—Mere delay in making the application for stay will not deprive the party of the benefit of section 34. *1948 Bom 55.*

Section 34—It is open to the Court to call upon the defendant to put in written statement before deciding an application for stay. *1951 Simla 173.*

Section 34—The Court may refuse to stay in a case where circumstances exist which are calculated to bias the minds of the arbitrators. *ILR (1948) 2 Cal 171; 1949 All 304.*

Section 34—Before stay is granted the Court should decide the objection as to existence and validity of the arbitration agreement. *1950 Mad 64; 1953 Cal 450.*

Section 34—When there is a likelihood of conflicting decisions being given by the Court and the arbitrators, the Court will refuse stay. *1948 Bom 55.*

Section 34—Court should decide the validity of the agreement unless by clear words the question has been referred to the arbitrators. *52 CWN 858.*

Section 34—A small cause Court may pass a stay order. *1949 Cal 684.*

Section 34—Named arbitrator not available is no ground for refusing stay. *1948 Cal 230.*

Section 34—Court cannot refuse stay on the ground that one of the parties asks for an interim relief e.g., injunction or receiver, *1949 All 70*; *1949 ALJ 559*.

Section 34—Court should stay unless a *prima facie* case of fraud is made out. *1949 All 70*; *1952 Pat 352*; *1952 Cal 340*.

Section 34—Arbitration proceedings should go on even if it involves difficult questions of law. *56 CWN 763*.

Section 34—Court may refuse a stay where a difficult question of law is involved. *1948 Bom 55*; *1952 EP 368*.

Section 34—Stay may be granted where one of the co-plffs. is not interested in the subject-matter of reference. *1947 Lah 215*.

Section 34—Before granting stay the Court must be satisfied as to the existence of the arbitration agreement and that the applicant for stay was since the commencement of proceedings ready and willing to do all things necessary to the proper conduct of the arbitration. *1951 Simla 173*.

Section 34—Court should grant stay where the claim in the suit comes within the submission to arbitration. (*1953*) *SCJ 217*; *1953 SC 182*.

Section 34—The question of validity of the contract being involved the suit should not be stayed. *1953 Cal 450*.

Section 34—When character and reputation of a party is at stake, stay should not be granted. *1954 Cal 281*; *93 CLJ 44*.

Section 34—Power to stay is discretionary. *58 CWN 807*.

Section 34—Where part of the claim is outside the arbitration clause. *1954 Nag 289*.

Section 34—Appellate Court cannot interfere with the discretion of the trial Court unless the latter has acted arbitrarily or capriciously. *ILR (1948) 2 Cal 297*; *1950 Cal 568*; *1948 Lah 64*, *1949 All 70*.

Section 34—The fact is that the defendant appellants are pardanashin Ladies and they had no knowledge of arbitration clause of the partnership Deed and, as such, they can not be deprived of their right invoking the arbitration clause of the contract which would enable them to settle the dispute by way of arbitration as provided under section 34 of the

Arbitration Act. *Najibun Nessa Chowdhury vs Md Quayyum Khan Chowdhury*] BCR 1984 (AD) 130.

Section 34—Suit for realisation of balance amount of Taka 51,89,660.30 on account of works done by the plaintiff (respondent) according to the rates prevailing in 1981, 1982, 1983 and 1984 and not according to the rate quoted by him—Plea that the suit may not be proceeded till settlement of dispute by arbitration as provided for in the agreements was made by the defendants (appellants) who entered appearance and filed written objection stating that there was no scope for arbitration as the defendants refused to entertain any claim of the plaintiff—Preemption created by submitting an application for time to file written statement that the defendants abandoned the right to have the matter disposed of by arbitration and acquiesced in the methods adopted by the plaintiff to have the matter adjudicated by the Civil Court not rebutted

The application filed on 25-11-1984 on behalf of the defendants praying for time to file written statement was a step submitting to the jurisdiction of the Civil Court waiving the right under the arbitration clause. *Chairman, PDB and Others vs Fariduddin Chowdhury* BCR 1987 HCD 43

Section 34—Objection against maintainability of the suit must be raised at the very preliminary stage of the proceeding even before taking any step for filing written statement. This having not been done, the trial Court's decree is set aside with a direction to write out a judgment on consideration of materials on record. *Nur Nabi Chowdhury vs Bangladesh Krishi Bank* 46 DLR 509.

Section 34—As an affidavit-in-opposition having been filed in this case and an application has also been filed for the production of cash register, even if there is any provision for arbitration in the contract/lease agreement, the application for staying the proceeding pending in the Court is not maintainable under section 34 of the Arbitration Act, 1940. *MA Gaffar and another vs Sunjari Garments (Pvt) Ltd (Original)* 5 BLC 480.

Sections 34 & 20—Statutory arbitrator—Disputes to be submitted to a particular person—Power of Court to submit to another. *See under section 20 AIR 1947 Lahore 309.*

Sections 34 & 35—Matter referred to arbitration—If jurisdiction of civil Court ousted.

The mere fact that the matter was referred to arbitration does not oust the jurisdiction of this Court to proceed with the suit. Even if the arbitration agreement had been subsisting the defendants could only apply under section 34 of the Arbitration Act for the stay of the proceedings in the suit. No such application was made. In fact, if the matter had been pressed by the defendants it would have been open to the plaintiffs to act under section 35 of the Arbitration Act and have all further proceeding in the pending reference rendered invalid as section 34 had not been resorted to by the defendant. *Messrs Mian Mohd Bux vs Universal Corporation and others* 1960 KLR (1) 481.

Sections 34 & 39—Since the Subordinate Judge did not dispose of application for referring the dispute to an arbitration, rather kept the same pending for disposal, there is no scope for any appeal against it. *Israil Hossain vs Himalaya Ice & Cold Storage Limited* 46 DLR 44.

35. Effect of legal proceedings on arbitration—(1) No reference nor award shall be rendered invalid by reason only of the commencement of legal proceedings upon the subject-matter of the reference, but when legal proceedings upon the whole of the subject-matter of the reference have been commenced between all the parties to the reference and a notice thereof has been given to the arbitrators or umpire, all further proceedings in a pending reference shall, unless a stay of proceedings is granted under section 34, be invalid.

(2) In this section the expression "parties to the reference" includes any persons claiming under any of the parties and litigating under the same title.

Case-Law

Section 35—Notice of suit pending in Court—Who may give—effect of such notice on arbitration proceedings.

Where it was contended that a notice of a suit pending in a Court on the subject matter of the arbitration must be given by the Court and a notice by one of the parties was ineffective :

Held : Section 35 of the Arbitration Act states only this much, that if the Arbitrators have notice of the fact that a suit between the parties in respect of the matter pending before them is also pending before a Court of law, then they must stop their hands unless the proceedings in the Court are stayed under section 34 of the Arbitration Act. This provision of law nowhere states that such a notice should be issued by the Court concerned. *Ghafram Ahmad in the matter of PLD 1959 Karachi 43.*

Section 35—Arbitrator's jurisdiction when not affected.

The view put forward was that as there was a proceeding pending in a civil Court challenging the validity of the contract on the basis of which the dispute was referred to the Arbitrators, the Arbitrators had no jurisdiction to proceed with the proceeding in order to pass an award.

Held : Merely because there was some proceeding in the civil Court at the instance of one of the parties that did not *ipso facto* take away the jurisdiction of the arbitrators who had admittedly the initial jurisdiction to decide the matters.

That jurisdiction could not have been taken away merely because a separate proceeding was pending in the civil Court or merely because an unknown happening, namely, the suit being decreed would have taken away the jurisdiction vested in the arbitrators, or made the award to be passed a nullity.

When there is a dispute about the existence of a contract, the arbitrators become *functus officio* and any award passed by the arbitrators in the face of such a dispute will be a nullity but the principle will not apply when there is no dispute about the existence of a contract but a dispute is one under the contract. *MM Ispahani Ltd vs Pakistan Trading Company 16 DLR 260.*

Section 35—Effect of legal proceedings on arbitration.

Section 35—Further proceedings before an arbitrator after notice of suit has been given to him shall be invalid if the legal proceedings include the whole of the subject-matter of the reference, unless a stay of proceedings has been granted. *1945 Bom 497.*

Section 35—an award made before notice of suit was served on all the arbitrators is not invalid. *1945 Bom 497.*

Section 35—Bar of jurisdiction. *PLJ 1973 Kar 286.*

Section 35—Knowledge of party. *PLD 1973 Kar 409.*

Section 35—In order to hold an arbitration proceeding invalid notice of the legal proceeding must be given to the Arbitrator. *Adamjee Sons Ltd vs Jiban Bima Corporation 45 DLR 89.*

36. Power of Court, to order that a provision making an award a condition precedent to an action shall not apply to a particular difference—Where it is provided (whether in the arbitration agreement or otherwise) that an award under an arbitration agreement shall be a condition precedent to the bringing of an action with respect to any matter to which the agreement applies, the Court, if it orders (whether under this Act or any other law) that the agreement shall cease to have effect as regards any particular difference, may further order that the said provision shall also cease to have effect as regards that difference.

37. Limitations—(1) All the provisions of the Limitation Act, 1908, (IX of 1908) shall apply to arbitrations as they apply to proceedings in Court.

(2) Notwithstanding any term in an arbitration agreement to the effect that no cause of action shall accrue in respect of any matter required by the agreement to be referred until an award is made under the agreement, a cause of action shall, for the purpose of limitation, be deemed to have accrued in respect of any such matter at the time when it would have accrued but for that term in the agreement.

(3) For the purposes of this section and of the Limitation Act, 1908, (IX of 1908) an arbitration shall be

deemed to be commenced when one party to the arbitration agreement serves on the other parties thereto a notice requiring the appointment of an arbitrator, or where the arbitration agreement provides that the reference shall be to a person named or designated in the agreement, requiring that the difference be submitted to the person so named or designated.

(4) Where the terms of an agreement to refer future differences to arbitration provide that any claims to which the agreement applies shall be barred unless notice to appoint an arbitrator is given or an arbitrator is appointed or some other step to commence arbitration proceedings is taken within a time fixed by the agreement, and a difference arises to which the agreement applies, the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may on such terms, if any, as the justice of the case may require, extend the time for such period as it thinks proper.

(5) Where the Court orders that an award be set aside or orders, after the commencement of an arbitration, that the arbitration agreement shall cease to have effect with respect to the difference referred, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Limitation Act, (IX of 1908), for the commencement of the proceedings (including arbitration) with respect to the difference referred.

*Case-Law***Section 37**—Limitation.

Section 37—Article 178 of the Limitation Act does not apply to an application by the arbitrator for filing the award. *1943 Sind 33*.

Section 37—For bringing in the legal representatives of a deceased party the period between the commencement of arbitration and superseding the order of reference should be excluded under cl. 5. *1947 Sind 113*.

Section 37—When time begins to run. *PLD 1973 Lah 134*. *1986 CLC 2555 = 1986 CLC 644*.

Section 37—Holiday on last day. *AIR 1943 Bom 197 = ILR 1943 Bom 280*.

Section 37—Reference after period stipulated—A reference made after the expiry of the period stipulated in the agreement of arbitration was bad in law. *PLD 1973 Lah 131*.

Section 37—Objection on ground of limitation. *1987 CLC 50 (DB)*.

Section 37—Second reference—A second reference to arbitration cannot be treated as a continuation of the first reference. *PLD 1965 Kan 510 (DB)*.

Section 37(3)—Arbitration commences when one party gives notice to another for appointment of arbitrator. *Government of East Pakistan vs Sarwar Ali Biswas, (1968) 20 DLR 727*.

Section 37(4)—Where an arbitration agreement provides that a claim shall be barred unless it is referred to arbitration within certain time the Court is empowered to interfere if it is of the opinion that in the circumstances of the case undue hardship would otherwise be caused to a party. *Sadharan Bima Corporation vs Dhaka Dyeing and Manufacturing Company Ltd 43 DLR 286*.

Section 37(5)—Applicability—Application to implied legal representatives—Limitation—Effect of reference to arbitrator.

Section 37(5)—of the Arbitration Act applies not only to suit but also to applications. In computing the period of limitation for bringing the legal representative under Or 22, r. 4; CPC, therefore, the period between the commencement of the arbitration and the date of the order of the

Court superseding the order of reference should be excluded under section 37(5) of the Arbitration Act. *ILR (1946) Karachi 326; AIR 1947 Sind 113.*

Section 37(5)—The period of exclusion that may be available under sub-section (5) of section 37 is required to be calculated from the date of commencement of the arbitration. *Government of East Pakistan vs Sarwar Ali Biswas 20 DLR 727.*

38. Disputes as to arbitrator's remuneration or costs—(1) If in any case an arbitrator or umpire refuses to deliver his award except on payment of the fees demanded by him, the Court may, on an application in this behalf, order that the arbitrator or umpire shall deliver the award to the applicant on payment into Court by the applicant of the fees demanded, and shall, after such inquiry, if any, as it thinks fit further order that out of the money so paid into Court there shall be paid to the arbitrator or umpire by way of fees such sum as the Court may consider reasonable and that the balance of the money, if any, shall be refunded to the applicant.

(2) An application under sub-section (1) may be made by any party to the reference unless the fees demanded have been fixed by written agreement between him and the arbitrator or umpire, and the arbitrator or umpire shall be entitled to appear and be heard on any such application.

(3) The Court may make such orders as it thinks fit respecting the costs of an arbitration where any question arises respecting such costs and the award contains no sufficient provision concerning them.

*Case-Law***Section 38**—(read with sections 14 and 17)

Filing of award—If can be secured under section 34—Applicability of section 14—Section 17 applicable.

Although the Arbitration Act is a consolidating Act, section 14 of the said enactment is not the only provision of law under which the Award can be filed and made rule of the Court. Section 38 of the Arbitration Act is one of the methods and instances by which the award can be obtained from the arbitrator. It will be idle to think that there is no remedy provided on an award in such manner. In my opinion, the provisions of section 17 of the Arbitration Act will be applicable to such cases and the party in whose favour the award has been given is entitled to invoke the aid of the Court under the said provisions. *Keays Byrne vs Obaidullah Khan PLD 1959 Lahore 146.*

Section 38—Scope—Does not affect question of limitation.

Section 38 only comes into the picture when there is a dispute with regard to the fees payable to the arbitrator. The Court has been given a power to decide as to what fees should be paid to arbitrator, otherwise, so far as the question of limitation is concerned, I do not find any relevancy of section 38 at all. *Muhammad Shafi vs Muhammad Sabir PLD 1960 Lahore 591 (DB).*

Section 38—Arbitrator's remuneration and costs.

Section 38—Unless the arbitrator's fees have been fixed by written agreement the arbitrator may fix his own remuneration and include it in the award: if the amount is so unreasonable and excessive that the Court holds him guilty of misconduct, the Court may set aside the award. *1945 Sind 71.*

Section 38—Costs determined by arbitrators—It was for the arbitrator to judge what should be the reasonable amount of cost of arbitration and he having granted that sum it is for the Court to strike it out or reduce it. *PLD 1961 (WP) Kar 365.*

Section 38—Arbitration matter—Arbitrator is the sole judge—Court will not interfere even though it may take a different view of the interpretation of the particular terms of contract—decision of the Arbitrator cannot be set aside unless it could be shown that he has decided on inadmissible evidence or on principles of construction which the law does not countenance. *KM Shafi Limited vs Government of Bangladesh & others 1983 BLD (AD) 109.*

Chapter VI

Appeals

39. Appealable orders—(1) An appeal shall lie from the following orders passed under this Act (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order :

An order—

- (i) superseding an arbitration;
- (ii) on an award stated in the form of a special case;
- (iii) modifying or correcting an award;
- (iv) filing or refusing to file an arbitration agreement;
- (v) staying or refusing to stay legal proceedings where there is an arbitration agreement;
- (vi) setting aside or refusing to set aside an award:

Provided that the provisions of this section shall not apply to any order passed by a Small Cause Court.

(2) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to ⁴[the Supreme Court].

Case-Law

Section 39—Foreign award—Application for filing—If section 39 applicable—Effect of Arbitration (Protocol and Convention) Act.

There is nothing in the Arbitration (Protocol and Convention) Act which prohibits the application of section 39 of the Arbitration Act X of 1940 and we think that it applies, in particular the provision that an appeal lies against an order setting aside or refusing to set aside an award. *Barlas Bros vs Yongtse (London) Ltd PLD 1958 Karachi 24*.

Section 39—Arbitrator's award being made lawfully—Not to be interfered with except through Court.

Differences having arisen over the payment of the plaintiff's bill for work done for the defendant a Government Department, the matter was referred to arbitration as per terms of the contract between the parties to the Project Director of the same Department and the latter in due course gave an award which was accepted by the plaintiff. The Chief Engineer (Head of the Department) not being satisfied with the Project Director's award set it aside.

Held : The Chief Engineer, though an officer holding a superior rank to the Project Director, had no jurisdiction to set aside or question the award which was legally delivered by the Project Director. This could only be done by a Court of law under the provisions of the Arbitration Act. *SK Shamsul Huda vs EPWAPDA 24 DLR 122*.

Section 39—Order refusing temporary injunction. An order refusing temporary injunction sought under section 20 is not appealable as it does not fall under any of the clauses of section 39. *NLR 1980 AC 542*.

Section 39—Superseding arbitration—An order of the trial Judge superseding arbitration on the ground that there was no valid reference to arbitration is not an order superseding the arbitration made under the Arbitration Act as it does not come under section 19, 25 or 30 of the Act and, therefore, no appeal lies from that order. *AIR 1943 Pesh 8*.

Section 39—Award after appeal is filed. *AIR 1951 Pepsu 46 = 2 Pepsu LR 464*.

Section 39—Order to set aside award—Where the award was set aside under section 30(c) of the Arbitration Act on the ground that it was otherwise invalid, an appeal is the proper remedy under section 39(1)(vi) of the Arbitration Act. *PLD 1994 Lah 40 + PLD 1988 SC 39 = NLR 1988 SCJ 312 = PLJ 1988 SC 33*.

Section 39—Refusal to set aside award. An order refusing to set aside an award is appealable. *PLD 1994 Lah 40 + PLD 1988 SC 39 = NLR 1988 SCJ 312 = PLJ 1988 SC 33.*

Section 39—Refusal to reconstruct award—A refusal to reconstruct a lost award and to pass a decree in terms thereof amounts to setting aside an award filed in Court against which an appeal lies. *ILR 1957 Andh Pra 739.*

Section 39—Refusal to make award rule of Court—Where an award was not made rule of the Court on a wholly untenable ground that arbitration agreement was not stamped. Appeal against the order was accepted and case was remanded to Trial Court for decision afresh in accordance with law. *PLD 1994 Lah 40.*

Section 39—Foreign award—There is nothing in the Arbitration (Protocol and Convention) Act which prohibits the application of section 39 of the Arbitration Act and it applies, in particular, to the provisions of the latter Act so that an appeal lies against an order setting aside or refusing to set aside a foreign award. *PLD 1958 Kar 24.*

Section 39—Forum of appeal. *AIR 1953 Punj 49 (DB).*

Section 39—Pecuniary jurisdiction—Proper forum of appeal. *1986 CLC 2384 = NLR 1986 Civ 474.*

Section 39—Powers of appellate Court. *PLD 1975 BJ 29 = PLJ 1975 BJ 373.*

Section 39—Condonation of delay—A revision petition to High Court against judgment of District Judge passed on an incompetent appeal, may be treated as an appeal. *NLR 1992 AC NIL 1983 CLJ 541+516 = 1992 CLC 712.*

Section 39—No second appeal lies where an appellate Court affirms a decree of the trial Court passed in terms of the award after overruling objection as to the validity of the reference and the award. *AIR 1952 Pat 461 + AIR 1955 Pat 277 (DB).*

Section 39—Inter-Court appeal—An Inter-Court appeal is not really an appeal in the strict sense. *PLD 1961 Lah 255 (DB) + PLD 1964 Kar 614 (DB) + PLD 1960 Lah 601 (DB).*

Section 39—Appellate Court not exercising jurisdiction vested in it. *1991 SCMR 1971.*

Section 39—Appeal, if may be treated as revision. *NLR 1980 AC 542 + 1969 DLC 49 = 21 DLR 360.*

Section 39—Revision, if may be treated as appeal. *1994 MLD 543 = NLR 1994 CLJ 184.*

Section 39—It is well settled that in an appeal under section 39 of the Arbitration Act the decision of the arbitrator cannot be reviewed and the appellate Court cannot construct an award for the arbitrator. The appellate Court is only to see whether the award can be challenged on the ground of excess of jurisdiction or incompetence or misconduct on the part of the arbitrator. *Bangladesh vs National Construction and Consult Ltd and others 1997 BLD (AD) 308.*

Section 39—Appealable orders.

Section 39—No appeal lies against leave granted to revoke authority of arbitrator. *1944 Nag 152.*

Section 39—An order refusing to set aside an award on the ground that the application was out of time is appealable. *1947 Sind 145, 1950 Assam 191, 55 CWN 248.*

Section 39—An order overruling objections to the filing of the award is appealable. *1950 Cal 53.*

Section 39—A Letters Patent appeal is hit by cl. 2. *1952 Bom. 229; 54 Bom LR 94.*

Section 39—A Letters Patent appeal is not hit by cl. 2. *1949 East Pakistan 165, 1948 Lah 64.*

Section 39—No second appeals from an order passed in appeal under section 39. *1945 Mad 184, 1950 Assam 114, 1948 Pat 207; 1951 Simla 183.*

Section 39—Revisional jurisdiction of High Court has been affected by section 39. *1945 All 146; 1948 Lah 50.*

Section 39—objection to validity of award not taken in lower Appellate Court cannot be raised in revision. *1941 Lah 280.*

Section 39—It is not permissible in law to grant interest on the decretal amount of the award in appeal when no such interest was awarded by the arbitrators and no such claim was made by the respondent before the court which made the award rule of the court. *Bangladesh Oil, Gas and Mineral Corporation (Petro-Bangla) vs Nuruzzaman Khan and others (Civil) 51 DLR (AD) 52*

Section 39(1) Clause (vi)—Award remitted under section 16—Such remittance comes under section 39(21) clause (vi).

The Subordinate Judge referred an award to the Arbitrators for reconsideration. Against the order of the Subordinate Judge an appeal was filed in the High Court and it was objected that the appeal before the High Court was not competent.

When an award is remitted under section 16 of the Arbitration Act the order of the Court includes an order under clause (vi) of section 39(1) as the same amounts to and takes effect, after setting aside the award. Hence, the High Court is competent to dispose of the appeal. *Government of East Pakistan vs A Rab & Sons 18 DLR 315.*

Section 39(1)(6)—Application for filing objection—Rejection for being out of time—If appealable.

An order refusing to set aside an award on the ground that application for filing objection to the validity of the award was out of time is an appealable order within the meaning of section 39 Arbitration Act. *ILR (1946) Karachi 459; AIR 1947 145.*

Section 39(2)—Letters Patent appeal—If contemplated by section 39.

It could not be the intention of section 39(2), Arbitration Act when it referred to the order passed in appeal to include an appeal under the Letters Patent. An appeal under the Letters Patent, if it is to be termed as appeal, is an appeal of a special kind. If we refer to a definition of appeal in any law dictionary, we will find that it is a determination by a superior Tribunal as to the correctness of the decision of an inferior Tribunal. In a Letter Patents Appeal, however, there is no superior or inferior Tribunal. When the single Judge decides the case it is decided by the High Court and when the Letters Patent Bench decides the case it is still decided by the High Court. Perhaps it will be correct to say that there is a full and final decision by the High Court on an appeal only after a Letters Patent Appeal has been heard and decided by the Letters Patent Bench. Till the Letters Patent Bench gives its decision it may be said that the matter has not as yet been finally adjudicated upon by the High Court. When section 39(2) refers to appeals, it refers only to appeals of an ordinary kind. *Mahboob Alam vs Mumtaz Ahmed PLD 1960 (WP) Lahore 601.*

Sections 39, 17—Court not passing order or setting aside or refusing to set aside award—If final decree on award appealable.

The policy of the Arbitration Act is that after an award is filed in Court, and after complying with the provisions of law contained in different sections of the Arbitration Act, the Court should pass a distinct order, either to set aside the award or refusing to do so. That such a distinct order should be passed by a Court is clear from the wordings of section 39 of the Act, because until and unless such an order exists on the record no appeal lies i.e. from the order of the trial Court. By enacting section 39 the legislature clearly gave a right to the aggrieved party to go up in appeal against a certain order, which the Court could not take away from him by omitting to pass such an order. *Hussain Shah vs Gulan Hussain Khan PLD 1953 Pesh. 59 (DB)*.

Sections 39 & 34—Since the Subordinate Judge did not dispose of application for referring the dispute to an arbitration, rather kept the same pending for disposal, there is no scope for any appeal against it. *Israil Hossain vs Himalaya Ice & Cold Storage Limited 46 DLR 44*.

Chapter VII

Miscellaneous

40. Small Cause Court not to have jurisdiction over arbitrations save arbitrations in suits before it—A Small Cause Court shall have no jurisdiction over any arbitration proceedings or over any application arising there out save on application made under section 21.

Case-Law

Section 40—Jurisdiction to Small Cause Court.

Section 40—a Small Cause Court has jurisdiction to entertain a suit to enforce an award, *1944 Nag 24; ILR (1944) Nag 340*.

41. Procedure and powers of Court—Subject to the provisions of this Act and of rules made thereunder—

(a) the provisions of the Code of Civil Procedure, (V of 1908) shall apply to all proceedings before the Court, and to all appeals, under this Act, and

(b) the Court shall have, for the purpose of, and in relation to, arbitration proceedings, the same power of making orders in respect of any of the matters set out in the Second Schedule as it has for the purpose of, and in relation to, any proceedings before the Court:

Provided that nothing in clause (b) shall be taken to prejudice any power which may be vested in an arbitrator or umpire for making orders with respect to any of such matters.

Case-Law

Section 41—Procedure and powers of Court.

Section 41—Parties may compromise the dispute after award. 1945 *Pesh. 41*.

Section 41—Court may grant auxiliary relief, e.g., by appointment of receiver or by granting an injunction before stay is granted. 52 *CWN 45*.

Section 41—Reference to arbitration in appeal. *PLD 1975 BJ 29 = PLJ 1975 BJ 373*.

Section 41—An order passed on appeal under the Arbitration Act is subject to revision by the High Court under section 115, Civil Procedure Code, in view of the provisions of sections 39 and 41 of that Act. *AIR 1951 Pesh 115 + AIR 1949 Lah 50 (DB) + AIR 1945 All 146 (DB)*.

Section 41—Appointment of Receiver. *AIR 1963 Cal 642(DB)*.

Section 41—Matters not falling within arbitration agreement. 1988 *CLC 418*.

Section 41(b)—The consistent view of the higher Courts of this subcontinent is that for getting an order of injunction under section 41 (b) of the Arbitration Act, 1940 there must be a proceeding but when there is no proceeding in the eye of law the learned Subordinate Judge cannot grant an injunction invoking the jurisdiction under this section for which the order is bad in law and it cannot be sustained. *British Airways PLC vs Bangladesh Air Services Pvt Ltd 1 BLC 25.*

Section 41(b) and item 4 2nd Sch—An Arbitrator exercises a quasi-judicial function. He is both a judge of law and of fact and hence, a pure question of law whether the executive authority acted beyond power could be a matter of arbitration reference.

The law in this regard is also well settled that when parties to building construction or supply of goods and the like designate a person to be authorised to finally determine question relating to the execution or non-execution as per terms of the contract and stipulated that the decision of the person shall be final and binding on both the parties, it would be binding except in cases of fraud, gross mistake on his part, as would imply an act of bad faith or failure to exercise an honest judgment on grounds of collusion with the other party or an act of misconduct. *AIR 1975 (Madhya Pradesh) 152. Coal Controller vs Ventura Industries Ltd 46 DLR 5.*

Section 41(b)—When there is no proceeding pending or no proceeding is there before the court it cannot grant an injunction invoking the jurisdiction under section 41(b) of the Arbitration Act. *British Airways PLC vs Bangladesh Air Services Pvt Ltd 47 DLR 544.*

42. Service of notice by party or arbitrator—Any notice required by this Act to be served otherwise than through the Court by a party to an arbitration agreement or by an arbitrator or umpire shall be served in the manner provided in the arbitration agreement, or if there is no such provision, either—

(a) by delivering it to the person on whom it is to be served, or

(b) by sending it by post in a letter addressed to that person at his usual or last known place of abode

or business in ⁷[Bangladesh] and registered under Chapter VI of the Post Office Act, 1898 (VI of 1898).

Case-Law

Section 42—Notice—How should be given.

The method of service of notice to a party prescribed by section 42 of Arbitration Act is either personal service or despatch of a letter by a registered post and a telegraphic notice is not one of the specified methods. *Messrs Ahmad Bux Abdul Rashid vs Muhammad Aslam* PLD 1954 Lahore 620; PLR 1954 Lahore 666.

Section 42—Notice—How served—No notice served to party appearing before arbitrator—If party can challenge award as *ex parte*.

The Arbitration Act does not prescribe any procedure as to how proceedings before the arbitrators should be conducted. All that it requires is that nothing should be done *ex parte*, and that the parties should have notice in the sense that they know when the matter is to be taken up by the arbitrators. It is open to the arbitrators to convey to the parties concerned even orally the date fixed by them. Under the Arbitration Act, the arbitrators cannot proceed *ex parte* in the absence of parties who are affected by the award. *Abdul Rouf vs Muhammad Saeed* PLD 1958 (WP) Karachi 145.

Section 42—The method of service of a notice by the arbitrator to a party, prescribed by section 42, is either personal service or despatch of a letter by registered post and a telegraphic notice is not one of the specified methods.

Notice not in accordance with the provisions of section 42 of the Act could not be described as a valid notice.

It is the duty of the arbitrator to investigate whether a party had a valid excuse for not appearing before him or not. (1956) PLR (Lah) 666.

Section 42—Service through attorney—If a notice under section 8 sent by one party to the other party is delivered through the attorney of the latter, the service of the notice is in accordance with section 42. AIR 1954 Cal-462.

43. Power of Court to issue processes for appearance before arbitrator—(1) The Court shall issue the same processes to the parties and witnesses whom the arbitrator or umpire desires to examine as the Court may issue in suits tried before it.

(2) Persons failing to attend in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitrator or umpire during the investigation of the reference, shall be subject to the like disadvantages, penalties and punishments by order of the Court on the representation of the arbitrator or umpire as they would incur for the like offences in suits tried before the Court.

(3) In this section the expression "processes" includes summonses and commissions for the examination of witnesses and summonses to produce documents.

44. Power to High Court to make rules—The High Court may make rules consistent with this Act as to—

(a) the filing of awards and all proceedings consequent thereon or incidental thereto;

(b) the filing and hearing of special cases and all proceedings consequent thereon or incidental thereto;

(c) the staying of any suit or proceeding in contravention of an arbitration agreement;

(d) the forms to be used for the purposes of this Act;

(e) generally all proceedings in Court under this Act.

45. Government to be bound—The provisions of this Act shall be binding on the ⁸[Government].

46. Application of Act to statutory arbitrations—The provisions of this Act, except sub-section (1) of section 6 and sections 7, 12 ⁹[36] and 37, shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as this Act is inconsistent with that other enactment or with any rules made thereunder.

Case-Law

Section 46—Limitation—Section 46 expressly excludes section 37 in its application to statutory arbitrations. *AIR 1954 Cal 41*.

47. Act to apply to all arbitration—Subject to the provisions of section 46, and save insofar as is otherwise provided by any law for the time being in force, the provisions of this Act shall apply to all arbitrations and to all proceedings thereunder:

Provided that an arbitration award otherwise obtained may with the consent of all the parties interested be taken into consideration as a compromise or adjustment of a suit by any Court before which the suit is pending.

Case-Law

Section 47—Proviso—Dispute compromised by Arbitration when the suit relating thereto was pending in Court—award on such arbitration can be taken into consideration by the Court if consented to by the parties.

Under the proviso to section 47 of the Arbitration Act an arbitration award obtained otherwise than in proceedings taken in accordance with the Act cannot without something more be regarded as a compromise or adjustment of the suit. That something more is the consent of the parties interested in the award.

Where the parties to a pending suit proceeded to arbitration without any reference by the Court the arbitration is not under the provisions of the Arbitration Act and an award obtained in such an arbitration cannot be enforced under those provisions. Proviso to section 47 applies to such awards, i.e. awards obtained otherwise than under the provisions of the Act and empowers the Court to take the same into consideration subject to the requirement of consent of the parties to their being taken into consideration. *Asmatunnessa Bibi vs Arju & another* 18 DLR 322.

Section 47—Application of the Act to all arbitrations.

An award on a reference by parties in a pending suit cannot be enforced and is invalid. 1953 Cal 690; 92 CLJ 181.

Section 47—An award in pursuance of a reference to arbitration by the parties to a pending suit but without an order of Court may be filed with the consent of all parties and taken into consideration by the Court as a compromise or adjustment of the suit. 1950 Orissa 169, 1952 Pat 252; 30 P 985, 1953 Cal 690, 1953 Mad 781; (1953) MLJ 795.

Section 47—Consent of parties expressed and given in Court is necessary to treat the award as an adjustment of suit. 1952 Pat 66, 1953 Mad 781.

Section 47—Execution Court—An executing Court while executing decree has no jurisdiction to refer the dispute raised during execution proceedings to arbitrator. 1994 CLC 1530 = NLR 1995 CLJ 625.

48. Saving for pending references—The provisions of this Act shall not apply to any reference pending at the commencement of this Act, to which the law in force immediately before the commencement of this Act shall, notwithstanding any repeal effected by this Act, continue to apply.

Case-Law

Section 48—Pending reference.

The Act does not apply to any reference pending at the commencement of the Act. *1944 Bom 12.*

49. [*Repeals and Amendments*] *Rep by the Repealing and Amending Act, 1945 (VI of 1945), section 2 and First Schedule.*

The First Schedule

(See section 3)

Implied Conditions of Arbitration Agreements

1. Unless otherwise expressly provided, the reference shall be to a sole arbitrator.

2. If the reference is to an even number of arbitrators, the arbitrators shall appoint an umpire not later than one month from the latest date of their respective appointments.

3. The arbitrators shall make their award within four months after entering on the reference or after having been called upon to act by notice in writing from any party to the arbitration agreement or within such extended time as the Court may allow.

4. If the arbitrators have allowed their time to expire without making an award or have delivered to any party to the arbitration agreement or to the umpire a notice in writing stating that they cannot agree, the umpire shall forthwith enter on the reference in lieu of the arbitrators.

5. The umpire shall make his award within two months of entering on the reference or within such extended time as the Court may allow.

6. The parties to the reference and all persons claiming under them shall subject to the provisions of

any law for the time being in force, submit to be examined by the arbitrators or umpire on oath or affirmation in relation to the matters in difference and shall, subject as aforesaid, produce before the arbitrators or umpire all books, deeds, papers, accounts, writings and documents within their possession or power respectively, which may be required or called for, and do all other things which, during the proceedings on the reference, the arbitrators or umpire may require.

7. The award shall be final and binding on the parties and persons claiming under them respectively.

8. The costs of the reference and award shall be at the discretion of the arbitrators or umpire who may direct to whom, and by whom, and in what manner, such costs or any part thereof shall be paid. and may tax or settle the amount of costs to be so paid or any part thereof and may award costs to be paid as between legal practitioner and client.

Agreement between the parties contrary to Schedule 1 para 2.—If parties still subject to provisions of Schedule 1 para 2.

The provisions set forth in the 1st Schedule of the Act are subject to the intention expressed by the parties; in other words, the parties can come to a different agreement regarding what is provided in the 1st schedule. It is open to the parties to give a larger time for the appointment of the umpire than is provided in para 2 of the 1st schedule. *Sind Cotton Exporters vs AB Sadiq Brothers PLD 1955 Sind 269.*

—Even number of arbitrators—Unanimous award—Umpire not appointed—Validity of award.

When four arbitrators were appointed and they gave a unanimous award.

Held : Where the even number of arbitrators have differed from each other there is the necessity for the appointment of an umpire, and the omission to do that might very well have some adverse effect but when there is no disagreement between the arbitrators, it can hardly be said that on account of their failure to appoint an umpire, for which there was absolutely no necessity, the award was in any way adversely affected. I am consequently of the opinion that the award cannot be set aside for the mere reason that the arbitrators failed to appoint an umpire. *Labab Gul vs Badshah Gul PLD 1952 Peshawar 23.*

—Time limit to appoint umpire—if can be modified by agreement—Karachi Cotton Association, Bye-Laws.

Bye-Law 39(1)(f) of the Karachi Cotton Association Limited modifies the time limit provided under section 2 of the schedule 1 of the Arbitration Act. *1940. Overseas Cotton Co vs SM Fazail and Co PLD 1954 Sind 241.*

Schedule 1, para 2—Provision n para 2 is mandatory so that if the arbitrators fail to appoint an umpire the award is invalid. *1951 All 474 1953 Ajmer 49.*

—Omission to appoint an arbitrator does not vitiate the award if no prejudice is caused. *1954 Nag 241.*

Article 3 of the First Schedule to the Act.

Time for award—4 months.

The appellant would seem to have no ground to stand upon, since it appears that the award was made beyond the period mentioned therein.

—When the arbitration proceeding continued beyond 4 months with the parties raising no objection—conclusion is the party concerned has waived its right. *Govt of Bangladesh vs Jalaluddin Ahmed 37 DLR (AD) 27.*

Schedule 1, para 3—Time-limit for making the award.

—Provision in pare 3 is mandatory and its contravention involves avoidance of the award. *1950 Lah 32.*

—Arbitrator enters on the reference when he begins work or proceeds ex parte under a peremptory order of Court. *1950 Lah 174; 47 CWN 478; 55 CWN 147.*

—Four months from notice in writing. *1954 ALJ 332.*

Schedule 1, para 5—Time-limit for making the award by umpire.

—An umpire enters on the reference when the parties are before him or under a pre-emptory order he is compelled to conclude the hearing ex parte. *1950 Lah 174.*

The Second Schedule

(See section 41)

Power of Court

1. The preservation, interim custody or sale of any goods which are the subject-matter of the reference.

2. Securing the amount in difference in the reference.

3. The detention, preservation or inspection of any property or thing which is the subject of the reference or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon or into any land or building in the possession of any party to the reference. or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence.

4. Interim injunction or the appointment of a receiver.

5. The appointment of a guardian for a minor person of unsound mind for the purposes of arbitration proceedings.

*The Third Schedule, The Fourth Schedule—
[Enactments Repealed. Enactments Amended.]*

*Rep. by the Repealing and Amending Act, 1945
(VI of 1945) section 2 and First Schedule.*

These are all the amendments to the Arbitration Act and in place of putting them at the bottom of different pages where they occur in the book, they are all put here together.

Amendments

1. For Statement of Objects and Reasons, see. Gazette of India, 1939, Pt. vs p 142; for the Report of Select Committee see 1940, Pt vs p 35.

This Act has been applied to—

Baluchistan, see Notification No. 168-N., dated the 17th October, 1940, Gazette of India 1940, Pt I, p 1478;

the partially excluded areas of the Mymensingh District, subject to certain modifications, by Bengal Government Notification No. 240-J dated the 22nd January, 1941;

Phulera in the Excluded Area of Upper Tanawal to the extent the Act is applicable in the NWFP, subject to certain modifications—see NWFP (Upper Tanawal) (Excluded Area) Laws Regulation, 1950; and also extended to the Excluded Area of Upper Tanawal other than Phulera by the aforesaid Regulation, and declared to be in force in that area with effect from the 1st June, 1951, see NWFP Gazette Ext., dated the 1st June, 1951.

It has been extended to the Leased Areas of Baluchistan by the Leased Areas (Laws) order, 1950 (GGO 3 of 1950).

2. Subs. by the Central Laws (Statute Reform) Ordinance, 1960 (21 of 1960), section 3 and 2nd Sch. (with effect from the 14th October, for "the Provinces and the Capital of the Federation" which had been subs. by AO 1949, for "British India".

3. Subs. by Ordinance 21 of 1960, section 3 and 2nd Sch. (with effect from the 14th October, 1955), for the original sub-section (2), as amended by AO 1949.

4. Sub-section 2 of section 20 has been substituted by Ordinance No. 49 of 1978 published in the extra ordinary Dhaka Gazette dated 5-12-1978. The earlier sub-section is as follows :

(2) The application shall be in writing and shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs and the remainder as defendant or defendants, if the application has been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants.

5. At the end of first proviso of section 33, the full stop has been substituted by colon and there after a new proviso has been added by Ordinance No. 49 of 1978 published in extra ordinary Dhaka Gazette dated 5/12/780.

6. Substituted by AO 1961, Article 2 and schedule for "His Majesty in Council" (with effect from the 23rd March, 1956).

7. In section 42, substituted by the central laws (Statute Reform Ordinance, 1960 (21 of 1960). Section and 2nd Schedule (with effect from the 14th October; 1955), for "the provinces and the Capital of the federation which has been substituted by AO, 1949 for British India. Further the word Pakistan was substituted by the word Bangladesh vide Article 5 of Bangladesh (Adaption of existing Bangladesh laws) order (PO 48 of 1972) which requires that the word "Bangladesh shall replace the words East Pakistan or Pakistan through out.

8. In section 45 the word Crown has been substituted by the word 'government vide AO, 1961, Article 2 with effect from 23-03-56.

9. In section 46, the number 36, after the number 12 has been inserted by the Repealing and Amending Act, 1942 (25 of 1942), section 3 and 2nd schedule.

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