

IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN AT
REGISTRY BRANCH SKARDU

Before:- Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.
Mr. Justice Raja Jalal-ud-Din, Judge.

CIVIL APPEAL NO. 02/2015

IN

Civil Petition for Leave to Appeal No. 02/2014.

All residents of Fultux, Tehsil Gultari District Skardu through representatives.

1. Mohammad Qasim s/o Musa.
2. Muhammad Ishaq s/o Jaffar residents of Muhallah Fultux, Tehsil Gultari presently residing at Moza Olding Tehsil & District Skardu.

Petitioners/Appellants/Defendants

VERSUS

1. Muhammad Ali s/o Abuzar.
2. Muhammad Ali s/o Ali, residents of Muhallah Shakh Thang Moza Koshmara Tehsil & District Skardu.

Respondents/Plaintiffs

CIVIL PETITION FOR LEAVE TO APPEAL UNDER ARTICLE 60 OF GILGIT-BALTISTAN EMPOWERMENT & SELF GOVERNANCE ORDER 2009 READ WITH ORDER XIII OF GILGIT-BALTISTAN SUPREME APPELLATE COURT RULES 2008 AGAINST THE JUDGMENT/ORDER DATED 08/04/2014, PASSED BY THE LEARNED SINGLE BENCH OF CHIEF COURT GILGIT-BALTISTAN REGISTRY AT SKARDU, WHEREBY THE LEARNED CHIEF COURT HAS UPHELD THE JUDGMENT/ORDER OF TRIAL COURT/CIVIL JUDGE SKARDU DATED 31/03/2012 VIDE WHICH THE LEARNED TRIAL COURT HAS REJECTED THE PETITION FILED UNDER ORDER 7 RULE 11 CPC OF THE PETITIONERS/APPELLANTS/DEFENDANTS.

FOR SETTING ASIDE THE SAME TO MEET ENDS OF JUSTICE.

Present:- Mr. Shauqat Ali, Senior Advocate alongwith Mr. Ali Khan, Advocate on record on behalf of the Petitioners.

Mr. Akhon Muhammad Ali, Advocate for the respondents.

Date of Hearing:- 01-10-2015.

JUDGMENT

RAJA JALAL-UD-DIN, J..... The plaintiffs/respondents filed a civil suit for recovery of Rupees Four Lac Fifty Three Thousand and Three Hundred Seventy Seven only (Rs. 4,53,377/-) payable to them on the basis of an agreement between the parties through arbitrators dated 10/3/2008, in the Trial Court.

The petitioners/defendants filed an application under Order 7 Rule 11 C.P.C with the plea that Section 32 of the Arbitration Act bars the enforcing of an arbitration agreement through a civil suit. The miscellaneous application was turned down by the Trial Court.

The Chief Court Gilgit-Baltistan also concurred with the findings of the Trial Court and dismissed the revision petition preferred. The Trial Court was ordered to proceed with the trial.

The petitioners basically pleads that the Civil Suit preferred is based on an agreement reached between the parties through an arbitration, hence it being an award cannot be challenged through a Civil Suit, hence liable to be rejected, reliance is placed on 1988 SCMR, 1146.

On the other hand counsel for the plaintiffs is of the view that the suit itself is not based on the award of any court but it is an agreement reached between the parties through arbitrators and in the strict sense it cannot be termed as defined under section 32 of the Arbitration Act 1940.

We have heard the parties and conclude as under,

An award in the strict sense under Arbitration Act has to go through legal formalities such as, the reference of a subject matter through arbitration on consent of the parties. The award passed has to go through the objections filed by the parties and eventually can be made rule of the court.

In the instant case it is a matter which has been settled outside the court with the consent of the parties.

In the present case the arbitrators appointed by the consent of both the parties and documents signed cannot be enforced by termed

as an award which bars a civil suit as defined in section 32 of Arbitration Act. It is simply a piece of evidence in a civil suit.

We therefore are of the considered view that the Civil Suit is not barred under the Arbitration Act and the miscellaneous application of the respondents under Order 7 Rule 11 C.P.C has rightly been dismissed by the Chief Court Gilgit-Baltistan.

The petition being meritless is dismissed and the Trial Court to proceed where it has left off.

Announced:- 01-10-2015.

Chief Judge

Judge