

Present: Syed Mansoor Ali Shah, Ayesha A. Malik and Aqeel Ahmed Abbasi, JJ

Messrs MUGHALS PAKISTAN (PVT.) LIMITED---Appellant

versus

EMPLOYEES OLD AGE BENEFITS INSTITUTION through Director Law, Lahore and others---

Respondents

Civil Appeals Nos. 256 and 257 of 2024 and C.M.As. Nos. 3039 and 3042 of 2024, decided on 6th November, 2024.

(On appeal against the judgment dated 06.01.2024 passed by the Lahore High Court, Lahore in R.F.As. Nos. 43092 and 37623 of 2022).

(a) Alternate Dispute Resolution Act (XX of 2017)---

---S. 2(i)---Punjab Alternate Dispute Resolution Act (XVII of 2019), S. 2(b)---Balochistan Alternate Dispute Resolution Act (XXXI of 2022), S. 2(i)---Khyber Pakhtunkhwa Alternate Dispute Resolution Act (XLVIII of 2020), S. 2(a)---Civil Procedure Code (V of 1908) [as amended by the Code of Civil Procedure (Sindh Amendment) Act, 2018], S. 89-A(1)---Alternative Dispute Resolution ("ADR")---Mediation---Mediation is not merely an alternative to litigation but a complementary and necessary component of the justice system---Significance of mediation stated.

Mediation is evolving as a powerful mechanism for conflict resolution, bridging divides with creativity and fostering harmonious solutions. It is a testament to the potential of dialogue over confrontation. Mediation (and other mechanisms of Alternative Dispute Resolution (ADR)) can be philosophically framed as essential tools to ensure access to justice in a country where millions of cases are pending. This approach aligns with a broader understanding of justice as being not only about achieving outcomes but also about the process itself being fair, efficient, and accessible. Traditional court system is adversarial and often resource-intensive, leading to delays and alienation of marginalized groups. Mediation embodies a collaborative model of justice that prioritizes dialogue and empowerment, ensuring parties are active participants in resolving their disputes. The sheer volume of pending cases often renders justice delayed, and as the saying goes, "Justice delayed is justice denied." Mediation offers a timely and context-sensitive resolution that addresses the substance of disputes without being bogged down by procedural complexities. Philosophically, mediation reflects the relational nature of human beings. It prioritizes restoring relationships, preserving dignity, and finding mutually beneficial solutions over the zero-sum outcomes of litigation. Mediation accommodates the cultural, social, and economic diversity of disputing parties. It aligns with justice as capability enhancing, allowing parties to exercise their agency and reach solutions that reflect their lived realities. Mediation bridges modern legal systems with indigenous practices, thereby strengthening communal harmony while maintaining legal validity.

Mediation must be increasingly seen as a right of the parties within the litigation process. Access to justice includes the right to have disputes resolved in a timely and efficient manner. Mediation, as a faster and cost-effective alternative, satisfies this fundamental aspect of justice. Mediation respects the autonomy of the parties by giving them control over the process and outcome, unlike litigation, where outcomes are imposed by judges. Litigants have the right to avoid the adversarial consequences of litigation, such as financial strain, emotional distress, and reputational harm. Mediation provides a non-confrontational environment that mitigates these risks. Procedural justice emphasizes the fairness of the process, and mediation upholds this by ensuring participation, neutrality, and respect - core elements of a fair process. In contexts where economic inequalities limit access to legal representation, mediation ensures that the justice system remains accessible to the underprivileged. Many societies have strong traditions of community-led dispute resolution. Mediation builds on these traditions, ensuring justice remains culturally relevant. Mediation is at the heart of access to justice. Courts must embrace it as an essential tool for efficient and humane dispute resolution. In conclusion, mediation is not merely an alternative to litigation but a complementary and necessary component of the justice system.

Chief Justice Sundaresh Menon's speech titled "International Mediation and the Role of Courts" at the Supreme Court of Indonesia, November 2023 ref.

The reasons which make mediation a compelling choice for an appropriate avenue to resolve disputes efficiently and effectively, inter alia, include: (i) Cost-effectiveness; mediation incurs lower legal fees and expenses due to shorter and less formal processes; (ii) Time efficiency; resolutions can often be reached much faster through mediation than through court proceedings, which can take years to conclude, (iii) Flexibility; the procedures in mediation are flexible, allowing parties to tailor the specific processes to their specific needs, including choosing their mediator and deciding the rules for the proceedings, (iv) Confidentiality; unlike trials in courts which are generally public, mediation processes are private. This confidentiality can be crucial for preserving personal relationships, protecting trade secrets or avoiding negative publicity, (v) Preservation of relationships; mediation encourages cooperation and communication, which can help maintain or even improve relationships between parties, a key consideration in business context or family disputes, (vi) Control over the outcome; parties have more control over the resolution as they are directly involved in negotiating the settlement, (vii) Expertise; parties can choose an expert in the field relevant to their dispute to act as the mediator, which can lead to more informed decisions and (viii) Reduced hostility; mediation tends to be less adversarial than court litigation, which can reduce tensions and hostility between parties.

The courts should not only encourage mediating more and litigating less but also exhibit a promediation bias which connotes a pre-disposition within the legal system for resolution of disputes through mediation rather than through litigation or other forms of dispute resolution. Such bias does not favor one party over another but rather prioritizes mediation as the preferred method of dispute resolution. It is grounded in the belief that settlements are generally more efficient and satisfactory for all parties involved compared to outcomes determined by a court. Mediation offers the best chance of a solution where both parties leave with dignity and satisfaction, as opposed to the all-or-nothing results of litigation.

Taisei Corporation v. A.M. Construction 2024 SCMR 640; Commissioner Inland Revenue v. RYK Mills 2023 SCMR 1856; National Highway Authority v. Sambu Construction 2023 SCMR 1103; Orient Power Company v. Sui Northern Gas 2021 SCMR 1728; Federation of Pakistan v. Attock Petroleum 2007 SCMR 1095; Waqas Yaqub v. Adeel Yaqub 2024 CLD 990; Faisal Zafar v. Siraj-ud-Din, 2024 CLD 1; Fiaz Hussain Minhas v. SECP, C.O. No. 75025/2022 (unreported); Netherlands Financierings v. Morgah Valley 2024 CLD 685; Strategic Plans v. Punjab Revenue Authority PLD 2024 Lah. 545; Sohail Nisar v. Nadeem Nisar 2024 LHC 1435; Messrs Alstom Power v. Pakistan Water PLD 2007 Lah. 581; Shehzad Arshad v. Pervez Arshad 2024 CLD 1121; Focus Entertainment v. Television Media 2021 CLD 885; Asif S. Sajan v. Rehan Associates PLD 2012 Sindh 388; Messrs U.I.G v. Muhammad Imran Qureshi 2011 CLC 758; Miss Memoona Zainab Kazmi v. Additional District Judge 2023 CLC 207; Imperial Electric Company v. Zhongzong Telecom Pakistan 2019 CLD 609; Cowl v. Plymouth City Council [2001] EWCA Civ 1935 (per Lord Woolf LCJ) and Province of Punjab v. Haroon Construction Company 2024 SCMR 947 ref.

Encouraging mediation aligns with the broader goals of justice systems worldwide: to resolve disputes in a manner that is fair, efficient, and conducive to the longterm well-being of all parties involved.

From a global perspective, the value of mediation as a method of amicably resolving disputes has been recognized in various international legal instruments including the United Nations Convention on International Settlement Agreements Resulting from Mediation, known as, the "Singapore Convention on Mediation", ("Singapore Convention"). The Convention provides a uniform and efficient framework for the recognition and enforcement of mediated settlement agreements that resolve international, commercial disputes - akin to the framework that the 1958 New York Convention provides for arbitral awards. To date, the Convention has 57

signatories, while only 12 states have ratified the same. To promote efficiency and align with the principle that 'in the future, it is likely that the traditional trial will be the exception rather than the rule' it is recommended that Pakistan becomes a signatory to the Convention. This will not only reduce the alarming backlog statistics through enhancing faster access to justice but will also serve as a turning point towards a comprehensive and profound transformation of the legal and judicial system.

(b) Arbitration Act (X of 1940)---

---Ss. 17 & 20---Construction project---Disputes over extension of time and the encashment of Mobilization Advance Guarantees---Alternative Dispute Resolution ("ADR")---Mediation---In the present case the arbitral award passed by a two-member arbitral tribunal was made the Rule of Court by the Civil Court---Appeal was filed against the said judgment by the respondents before the High Court, which was allowed and the unanimous arbitral award was rendered a nullity---Respondents after initially expressing their unease with out of court settlement or "ADR" finally agreed to resolve their dispute through mediation in both the appeals---Respondents, however, reserved their right to expand the scope of their dispute before the mediator, provided both the parties mutually agreed to such a change---Supreme Court disposed of present appeals as being sent out for mediation, and observed that in case mediation or any other mode of ADR was unsuccessful, the parties may approach the Supreme Court and apply for the refixation of present appeals---Appeals were, therefore consigned to the record.

Ahmer Bilal Soofi, Advocate Supreme Court, Syed Ali Imran, Advocate Supreme Court and Sh. Mehmood Ahmed, Advocate-on-Record for Appellants.

Salman Mansoor, Advocate Supreme Court, Mian Shafqat Jan, Advocate Supreme Court, Barrister Khurram Raza, Advocate Supreme Court, Syed Rifaqat Hussain Shah, Advocate-on-Record, Sukhan Ilyas Malik, Dy. Dir. Law (EOBI) and Imran Shanwari, CEO PRIMACO for Respondents.

Assisted by Umer A. Ranjha, Judicial Law Clerk.

Date of hearing: 6th November, 2024.

ORDER

SYED MANSOOR ALI SHAH, J.---The brief facts giving rise to the instant appeals are that Messrs Mughals Pakistan (Pvt.) Limited ("appellant"), a private limited construction company was engaged by Employees Old Age Benefits Institution and its wholly owned subsidiary, Messrs Pakistan Real Estate Investment and Management Company (Pvt.) Ltd., (collectively referred to as the "respondents") for a construction project. Following the initiation of the project, disputes arose between the appellant and the respondents regarding the extension of time and the encashment of Mobilization Advance Guarantees. Subsequently, the appellant filed petitions under Section 20 of the Arbitration Act, 1940 ("Act") along with an application under Section 41 read along with Second Schedule to the Act, seeking injunctive relief as well as invoking the remedy of arbitration before the learned Civil Court, Lahore. Thereafter, a two-member arbitral tribunal was constituted which, after hearing both the parties unanimously passed the arbitral award which was made the Rule of Court by the learned Civil Court vide its judgment and decree dated 18.05.2022, as provided under Sections 14 and 17 of the Act. An appeal was filed against the said judgment by the respondents before the Lahore High Court, Lahore which was allowed vide judgment dated 06.01.2024 and the unanimous arbitral award was rendered a nullity. Hence, the instant appeal.

2. During the last hearing¹, it was deemed appropriate by the Court to suggest mediation of the dispute between the parties given the nature of the dispute. The parties were given appropriate time to seek instructions and explore the possibility of an out of court settlement. Today, the respondents after initially expressing their unease with out of court settlement or alternative dispute resolution ("ADR") finally agreed to resolve their dispute through mediation in both the appeals. The respondents, however, reserved their right to expand the scope of their dispute before the mediator, provided both the parties mutually agree to such a change.

3. "The courts of this country should not be the places where resolution of disputes begins. They should be the places where the disputes end after alternative methods of resolving disputes have been considered and tried."² It is significant to underline that there are around 2.22 million (2,221,512) cases pending before all the courts in Pakistan.³ Out of these, 0.35 million (347,173) cases are pending in the Constitutional Courts (Supreme Court of Pakistan and the High Courts) while the bulk of the pendency is in the District Courts which constitutes 82% of these cases, translating into a backlog of 1.82 million (1,815,783) cases. This voluminous and chronic pendency necessitates exploration of new and out-of-box dispute resolution solutions. ADR is therefore the way head.

4. Mediation is evolving as a powerful mechanism for conflict resolution, bridging divides with creativity and fostering harmonious solutions. It is a testament to the potential of dialogue over confrontation. Mediation (and other mechanisms of ADR) can be philosophically framed as essential tools to ensure access to justice in a country where millions of cases are pending. This approach aligns with a broader understanding of justice as being not only about achieving outcomes but also about the process itself being fair, efficient, and accessible. Traditional court system is adversarial and often resource-intensive, leading to delays and alienation of marginalized groups. Mediation embodies a collaborative model of justice that prioritizes dialogue and empowerment, ensuring parties are active participants in resolving their disputes. The sheer volume of pending cases often renders justice delayed, and as the saying goes, "Justice delayed is justice denied." Mediation offers a timely and context-sensitive resolution that addresses the substance of disputes without being bogged down by procedural complexities. Philosophically, mediation reflects the relational nature of human beings. It prioritizes restoring relationships, preserving dignity, and finding mutually beneficial solutions over the zero-sum outcomes of litigation. Mediation accommodates the cultural, social, and economic diversity of disputing parties. It aligns with justice as capability-enhancing, allowing parties to exercise their agency and reach solutions that reflect their lived realities. Mediation bridges modern legal systems with indigenous practices, thereby strengthening communal harmony while maintaining legal validity.

5. Mediation must be increasingly seen as a right of the parties within the litigation process. Access to justice includes the right to have disputes resolved in a timely and efficient manner. Mediation, as a faster and cost-effective alternative, satisfies this fundamental aspect of justice. Mediation respects the autonomy of the parties by giving them control over the process and outcome, unlike litigation, where outcomes are imposed by judges. Litigants have the right to avoid the adversarial consequences of litigation, such as financial strain, emotional distress, and reputational harm. Mediation provides a non-confrontational environment that mitigates these risks. Procedural justice emphasizes the fairness of the process, and mediation upholds this by ensuring participation, neutrality, and respect - core elements of a fair process. In contexts where economic inequalities limit access to legal representation, mediation ensures that the justice system remains accessible to the underprivileged. Many societies have strong traditions of community-led dispute resolution. Mediation builds on these traditions, ensuring justice remains culturally relevant. "Mediation is at the heart of access to justice. Courts must embrace it as an essential tool for efficient and humane dispute resolution."⁴ In conclusion, mediation is not merely an alternative to litigation but a complementary and necessary component of the justice system.

6. The reasons which make mediation a compelling choice for an appropriate avenue to resolve disputes efficiently and effectively, *inter alia*, include: (i) Cost-effectiveness; mediation incurs lower legal fees and expenses due to shorter and less formal processes; (ii) Time efficiency; resolutions can often be reached much faster through mediation than through court proceedings, which can take years to conclude, (iii) Flexibility; the procedures in mediation are flexible, allowing parties to tailor the specific processes to their specific needs, including choosing their mediator and deciding the rules for the proceedings, (iv) Confidentiality; unlike trials in courts which are generally public, mediation processes are private. This confidentiality can be crucial for preserving personal relationships, protecting trade secrets or avoiding negative publicity, (v) Preservation of relationships; mediation encourages cooperation and communication, which can help maintain or even improve relationships between parties, a key consideration in business context or family disputes, (vi) Control over the outcome; parties have more control over the resolution as they are directly involved in negotiating the settlement, (vii) Expertise; parties have (sic) choose an expert in the field relevant to their dispute to act as the mediator, which can lead to more informed decisions and (viii) Reduced hostility; mediation tends to be less adversarial than court litigation, which can reduce tensions and hostility between parties.

7. It needs to be reiterated that "an ounce of mediation is worth a pound of arbitration and a ton of litigation."⁵ Our courts, more recently, have encouraged ADR.⁶ The courts should not only encourage "mediating more and litigating less"⁷ but also exhibit a pro-mediation bias which connotes a pre-disposition within the legal system for resolution of disputes through mediation rather than through litigation or other forms of dispute resolution. Such bias does not favor one party over another but rather prioritizes mediation as the preferred method of dispute resolution. It is grounded in the belief that settlements are generally more efficient and satisfactory for all parties involved compared to outcomes determined by a court.⁸ Mediation offers the best chance of a solution where both parties leave with dignity and satisfaction, as opposed to the all-or-nothing results of litigation.

8. The introduction of a robust legal landscape i.e., The Alternate Dispute Resolution Act, 2017 ("2017 Act") and the provincial legislations⁹ in each respective province allows courts to exercise this pro-mediation bias. These laws accord the courts the power to refer a case to ADR with the consent of the parties. Similarly, ADR has been defined very broadly 'as a process in which parties' resort to resolving a dispute other than by adjudication by courts and includes, but is not limited to, arbitration, mediation, conciliation and neutral evaluation.' The 2017 Act along with the Balochistan Alternate Dispute Resolution Act, 2022 separately define mediation 'as a process in which a mediator facilitates dispute resolution by encouraging communication and negotiation between the parties, in order for them to arrive at a mutually satisfactory agreement.'¹⁰ Similarly, the Code of Civil Procedure (Sindh Amendment) Act, 2018 offers the most holistic definition of mediation by defining it as 'a process which is conducted confidentially in which a neutral person (mediator) actively assists parties in working towards a negotiated agreement of a dispute or difference, with the parties in ultimate control of the decision to settle the terms of the resolution, the mediator having no decision-making power or authority to impose solutions on the parties or force settlement between the parties.'¹¹ To ensure inexpensive and expeditious justice by means of an alternate dispute resolution system, these legislations also provide for referral of cases to ADR centers. Further, various other laws¹² also encourage the use of out of court settlement, in particular mediation. More recently, the ADR Mediation Accreditation (Eligibility) Rules, 2023¹³ which provide for the eligibility requirements for any such center providing mediation services and Mediation Practice Direction (Civil) Rules, 2023¹⁴ which provide for the practice to be followed by the courts in cases involving mediation, have been notified. Therefore, by using this legal framework as a means to foster a pro-mediation bias, courts, in particular the District Courts can contribute to a more harmonious and efficient dispute resolution landscape, where parties are empowered to resolve conflicts collaboratively and constructively. Encouraging mediation aligns with the broader goals of justice systems worldwide: to resolve disputes in a manner that is fair, efficient, and conducive to the longterm well-being of all parties involved.

9. In actualizing the true spirit of these legislations, various mediation centers¹⁵ including the Islamabad High Court-Annexed Mediation Center have been introduced, marking a significant initiative to reduce case backlog and prioritize mediation for dispute resolution. This idea of a court-annexed mediation through judges is highly encouraged and should extend to all Provinces as it will increase the likelihood of a settlement because litigating parties respect both the bench and the mantle of the judge. At the same time, private centers are also encouraged to adopt mediation as an efficient means to foster timely access to justice to all.

10. From a global perspective, the value of mediation as a method of amicably resolving disputes has been recognized in various international legal instruments including the United Nations Convention on International Settlement Agreements Resulting from Mediation, known as, the "Singapore Convention on Mediation", ("Singapore Convention").¹⁶ The Convention provides a uniform and efficient framework for the recognition and enforcement of mediated settlement agreements that resolve international, commercial disputes - akin to the framework that the 1958 New York Convention provides for arbitral awards. To date, the Convention has 57 signatories, while only 12 states have ratified the same. To promote efficiency and align with the principle that 'in the future, it is likely that the traditional trial will be the exception rather than the rule'¹⁷ it is recommended that Pakistan becomes a signatory to the Convention. This will not only reduce the alarming backlog statistics through enhancing faster access to justice but will also serve as a turning point towards a comprehensive and profound transformation of the legal and judicial system.

11. In view of the aforesaid, these appeals are disposed of as being sent out for mediation. In case mediation or any other mode of ADR is unsuccessful, the parties may approach this Court and apply for the refixation of these appeals. These appeals are, therefore consigned to the record.

12. Copy of this Order be dispatched to the Attorney-General for Pakistan for considering the recommendation in paragraph 7 of this Order regarding the ratification of the Singapore Convention with the relevant quarters.

MWA/M-57/SC Appeals disposed of