

Order-16
16/06/2021

Petitioner present in person.

Respondent No. 1 present in person and as attorney for respondent No. 2.

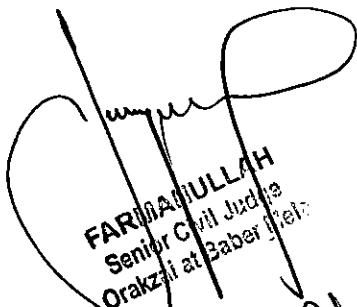
Arguments on maintainability of petition heard and record perused.

Perusal of the record reveals that petitioner through instant petition is seeking the decision of Salisan dated 03.03.2012 to be made as rule of court.

Petitioner averred in the petition that there was dispute between the parties in respect of landed property, which was resolved on 27.09.2003 by the Salisan and later on the decision of Salisan was reduced into writing on 03.03.2012 with the consent of parties and duly signed by the Salisan and parties. That both the parties are bound to observe the terms and condition of decision of Salisan but respondents are reluctant to act upon the decision and are inclined to occupy the property of petitioner, hence it is requested that decision of Salisan may kindly be made as rule of court.

Respondents contested the petition by submitting their written reply and contended the decision of Salisan dated 03.03.2012 could not be acted upon due to stubborn attitude of petitioner and later on the same decision was canceled and the matter in controversy between the parties was resolved through another decision of jirga/Salisan dated 17.02.2021. Hence, petition in hand is liable to be dismissed with cost.

From pleading of both the parties, it is evident that though both the parties are admitting the execution of decision of Salisan dated 03.03.2012. However, it is the contention of respondents that the same decision of Salisan has been canceled and matter in the controversy


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between the parties was resolved through another decision of Salisan dated 17.02.2021 while petitioner is of the view that decision of Salisan dated 03.03.2012 is still intact and both the parties are bound to observe and act upon its terms and conditions. Meaning thereby that both the parties have divergent view regarding the existence of decision of Salisan dated 03.03.2012. However, before expressing any opinion on this issue, the court deem it necessary to determine that

1. Whether the provisions of Arbitration Act 1940 are attracted to the instant case?
2. Whether the decision of Salisan dated 03.03.2012 falls in the definition of arbitration award or otherwise?

Answers to these questions are important as the petitioner is seeking to make the decision of Salisan dated 03.03. 2012 as the rule of the court under the Arbitration Act 1940.

To answers these questions section-2 (a) of Arbitration Act 1940 is reproduced as under:

“arbitration agreement” means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not.

From the bare reading of definition, it is evident that there must be a prior agreement between the parties to refer their differences to arbitration and such agreement must be in writing. In other words, a written agreement between the parties is pre-requisite to refer their differences to the arbitration and in absence of such agreement, the proceeding of arbitration could not be conducted. Reliance in this regard is placed on 2007 YLR-505, 2011 MLD-502, 2002 CLC-1880, 2014 MLD 1795, but in instant case no such agreement is available on file. Even during course of arguments

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Senior Civil Judge
Orakzai District
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petitioner and his counsel were asked that whether an agreement prior to the decision of Salisan was executed between the parties. On which they categorically stated that no such agreement was written between the parties rather the parties orally authorized the Salisan to decide the matter in controversy between the parties. Being such position, now a question that whether the decision of Salisan dated 03.03.2012 is award or otherwise? To answer this question definition of award as defined in section 2 (b) of Arbitration Act 1940 is reproduced as under for ready reference.

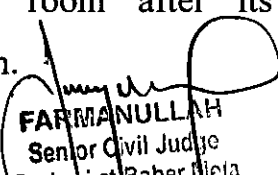
“Award” means an arbitration award.

From the bare reading of definition of award, it is evident that award is the decision of arbitrators in respect of matter refer to arbitration. However, in the instant case, it is evident that decision of Salisan dated 03.03.2012 is not the result of arbitration proceedings rather the same decision could be termed as a decision of jirga/Panchayat and it does not amount to award. In other words, it is only the award that can be made as rule of court and not any other decision made through jirga or Panchayat. Reliance in this respect is placed on 1994 SCMR-384, PLD-2010 Lah. 437.

In view of above discussion, it is held that the decision of Salisan dated 03.03.2012 is neither award nor the provisions of Arbitration Act, 1940 are attracted to make it as rule of court, hence petition in hand is held non-maintainable and thus dismissed. No order as to cost.

File be consigned to record room after its necessary completion and compilation.

Order announced
16/06/2021


FARMANULLAH
Senior Civil Judge
Orakzai at Baber Mela
Farman Ullah
Senior Civil Judge,
Orakzai at Baber Mela.