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**IN THE LAHORE HIGH COURT,
RAWALPINDI BENCH, RAWALPINDI
JUDICIAL DEPARTMENT**

JUDGMENT

FAO No.83 of 2023

Date of Hearing:	09.05.2024
Appellant by:	Ms. Asma Mushtaq, ASC for Appellant.
Respondents by:	M/s. Wasif Majeed, ASC and Raja Waqar Abid, Advocate for the Respondent No.1. Mr. Aqeel Ahmad Sheikh, Advocate for the Respondent No.2. Mr. Abid Aziz Rajori, Assistant Advocate-General Mr. Arshad Mahmood Malik, Assistant Attorney General. Malik Shaukat Mahmood, Advocate Raja Imran Aziz, ASC Mr. Arshad Mahmood, Advocate Barrister Talha Ilyas Sheikh, Advocate/Mediator.

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JAWAD HASSAN, J. This appeal has been filed by the Appellant against impugned order dated 04.07.2023 passed by the Presiding Officer, District Consumer Court, Rawalpindi (the "Consumer Court"), whereby his complaint filed against the Respondent/Hyundai Nishat Motors (Private) Limited has been returned to him due to lack of jurisdiction.

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(I) CONTEXT

2. Brief facts of the case are that the Appellant booked a Hyundai Tucson FWD vide pay order No.09141794, dated 25.05.2023, Meezan Bank, G.T. Road Morgah Branch, Rawalpindi amounting to Rs.5,921,200/- against full payment. The payment was acknowledged on the front side of Provisional Booking Order (PBO) dated 31.05.2022. The Appellant was given time of delivery in month of July-2022 instead of committed delivery time in the month of June-2022. The Appellant contacted the Respondent's sale representative and inquired her to confirm about delivery of vehicle otherwise cancel the order and refund his full payment. Thereafter the Respondent No.1/Company raised the price and demanded to pay more Rs.1,205,800/- from the appellant vide letter dated 22.07.2022. Whereupon the Appellant sent legal notice to the Respondent No.1 to deliver the vehicle at agreed price and the time/month. Upon their non-response, he filed a complaint before the Consumer Court, Rawalpindi for redressal of his grievance, which was contested by the Respondent No.1 and ultimately it was returned vide impugned order dated 04.07.2023.

(II) PETITIONER'S SUBMISSIONS

3. Ms. Asma Mushtaq, ASC submits that during proceedings of the case, the Respondent No.1 raised objections regarding maintainability of the complaint, which was turned down by the Consumer Court. Whereupon the matter was agitated by the Respondent No.1 in Writ Petition No.3679/2022 and this Court, vide order dated 01.06.2023, issued the following direction:-

*"In view of the above, this writ petition is **disposed of** with a direction that the Consumer Court will expedite the matter and conclude it after providing proper hearing to the parties, strictly as per law, through a speaking order, within two*

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months from the receipt of certified copy of this order. The question of jurisdiction as raised by the Petitioner will be first decided by the Consumer Court."

4. She contends that pursuant to the aforesaid order of this Court, the Consumer Court has passed the impugned order which is illegal and contrary to the law already developed by the superior Courts of the country on this issue. She maintains that cause of action has arisen at Rawalpindi and the office of Respondent No.1 is also located at Rawalpindi, therefore, question of jurisdiction does not arise at all. She has invited attention of the Court towards Section 27 of the Punjab Consumer Protection Act, 2005 (the "Act"), which clearly provides that an aggrieved person can file complaint/petition before the Consumer Court in whose jurisdiction the defendants or one of them voluntarily resides, or carries on business or personally works for gain or where the cause of action wholly or in part arises. Reliance is placed on the judgment passed by a Division Bench of this Court in the case of Messrs Bahria Town (Pvt.) Ltd. through Manager (Operations) versus District Consumer Court, Rawalpindi and 2 others (PLD 2022 Lahore 488).

(III) RESPONDENTS' SUBMISSIONS

6. Conversely, learned counsel for the Respondents objected to the maintainability of this Appeal and prayed for its dismissal.

7. Arguments Heard. Record Perused.

(IV) PROCEEDINGS AND DETERMINATION BY THE COURT

8. After hearing arguments of learned counsels for the parties to some extent, it was felt necessary that the matter may be resolved through the mediation process, scope of which has already been discussed in detail by this Court in a commercial case reported as Faisal Zafar and another

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versus Siraj-ud-Din and 4 others (2024 CLD 1) and then further elaborated in the case of Netherlands Financierings Maatschappij Voor Ontwikkelingslanden N.V. (F.M.O.) versus Morgah Valley Limited and SECP (PLD 2024 Lahore 315) by explaining the concept of Early Neutral-Party Evaluation (ENE). Mr. Wasif Majeed, ASC, who represented Respondent No.1, submitted that he, while acting as an 'Accredited Mediator', had resolved a number of such like matters through amicable settlement and showed his concurrence if the issue involved in this case may also be settled by way of mediation. Learned counsel for the Appellant did not raise any objection to the mediation.

9. In this view of the matter, an opportunity was granted for settling the matter between the parties through mediation by appointing Barrister Talha Ilyas Sheikh, Advocate as the *mediator*. Today (09.05.2024), the mediator has submitted his report, which reads as follows:

The mediation aimed to resolve the dispute between the parties amicably. The process spanned multiple sessions, both in-person and online, leading to a successful settlement agreement signed on 6th May 2024.

MEDIATION PROCESS

Initial Session (March 15, 2024)

- **Time & Location:** The session started at 3:00 PM in the mediator's chamber.
- **Participants:** Both parties were present along with their legal counsels, Asma Mushtaq ASC (representing Abbas Ali Khan) and Wasif Majeed (representing Hyundai Nishat Motor).

Mediator's Opening Statement

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Barrister Talha Ilyas Sheikh commenced the mediation by explaining the process, ensuring both parties understood their control over the proceedings, and reinforcing the confidentiality of the discussions. He clarified his role as a neutral facilitator and not as an advisor or a decision-maker.

Statements and Summaries

- **Appellant's Statement:** *Abbas Ali Khan outlined his grievances and expectations from the mediation.*
- **Respondent's Statement:** *The authorized representative from Hyundai Nishat Motor presented their position and concerns.*
- **Counsel's Statements:** *Both counsels provided legal insights supporting their clients' statements.*

AGENDA SETTING AND EXPLORATION OF ISSUES

The mediator set the agenda for the mediation, and both parties engaged in identifying and narrowing down the critical issues to be resolved.

Caucus Sessions

After the joint session, two private sessions (caucuses) were held with each party, lasting 20 and 40 minutes respectively, facilitating more in-depth discussions away from the opposing party.

Outcome

*The session concluded at 06:00 PM, with both parties having entered the **Zone of Possible Agreement (ZOPA)**, indicating a potential for resolution.*

NEGOTIATING PHASE (Follow up Sessions)

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Online Session (March 27, 2024)

- **Platform:** Conducted via Zoom due to the geographical distance of the respondent.
- **Proceedings:** Continued exploration of issues within the ZOPA through a joint session lasting 45 minutes, followed by private sessions with each party.

Subsequent Private Sessions

- **Dates:** April 4, 6, 8, 9, 17, 18, 23, 29, and May 2, 2024.
- **Process:** Several private sessions were conducted focusing intensely on the remaining issues, aiming towards a final agreement.

SETTLEMENT

- After extensive negotiations, the parties successfully reached an amicable settlement.
- **Date of Agreement:** May 6, 2024, through two original counterpart agreements.

Conclusion

The mediation process led by the Mediator Barrister Talha Ilyas Sheikh was successful in facilitating an agreement between the parties, showcasing the effectiveness of structured mediation in resolving complex disputes. The mediator acknowledges the constructive engagement and flexibility of both parties throughout the process, which were crucial to the successful resolution of the case.

(V) **ANTHOLOGY OF MEDIATION**

10. At this stage, it is pertinent to mention here that the Superior Courts of Pakistan have already reckoned the **scope, necessity, benefits, and wide**

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spread prospective impacts of the mediation as well as have contributed way ahead in promotion thereof whilst describing its anthology few instances in a bid whereof are as follows:

(a). SUPREME COURT OF PAKISTAN:

11. Recently, whilst dilating upon fostering a pro-settlement bias, the Supreme Court of Pakistan observed and held in the judgment reported as "Province of Punjab through Secretary C&W, Lahore, etc Vs. M/s Haroon Construction Company, Government Contractor, etc." (2024 SCMR 947) that "Mediation, as a form of alternative dispute resolution (ADR), has garnered widespread acclaim for its efficiency, cost-effectiveness, and ability to facilitate amicable settlements. In contrast to the adversarial nature of litigation, mediation embodies a collaborative approach, encouraging parties to find mutually beneficial solutions. The courts should not only encourage mediation but also exhibit a pro-settlement bias and a pro-mediation bias. By Pro-mediation bias or pro-settlement we mean a predisposition or preference within the legal system for resolving disputes through mediation rather than through litigation or other forms of dispute resolution. This bias is not about favoring one party over another but rather about favoring the process of mediation itself as a preferred method of dispute resolution. This bias is grounded in the belief that settlements are generally more efficient and satisfactory for all parties involved compared to outcomes determined by a court. ... By fostering a pro-settlement bias, 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

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long-term well-being of all involved parties.” In case pertaining excise tax issue, a four member Bench of the Supreme Court of Pakistan observed and held in case “Commissioner Inland Revenue Vs. Messrs RYK Mills” (2023 SCMR 1856) that “A show cause notice can also be viewed as being akin to alternative dispute resolution (“ADR”) as it provides a pre-litigation opportunity for the recipient to present their position and show cause. By doing so, the matter can potentially be resolved before it escalates and requires any adjudication. This not only saves time and resources but also encourages the efficient resolution of disputes, acting as an effective mode of resolving disputes outside of the traditional legal framework. Thus, while acting as a means to ensure due process and fair trial by allowing the recipient to explain their position and respond to the allegations before any legal action is taken, the issuance of a show cause notice also acts as a tool to resolve the issue in the pre-litigation stage, similar to the objective of ADR.” Earlier, the Supreme Court of Pakistan, in case particularly pertaining Sales tax issue reported as “Federation of Pakistan and others Vs. Attock Petroleum Ltd. Islamabad” (2007 SCMR 1095), has held that “The centuries old traditional method of settlement of private dispute through negotiation is not only familiar in the modern world, but this voluntary scheme for settlement of tax dispute through mediation and negotiation is an effective method to be followed. ... There are various forms of ADR such as mediation, arbitration, conciliation and compromise with or without intervention of court and provisions of the ADR in the above statutes clearly demonstrate that scheme of ADR is not applicable to the case in which in addition to the tax liability an aggrieved person is also facing criminal charge.”

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(b). **LAHORE HIGH COURT:**

12. Whilst deriving guidance formulated by the Supreme Court of Pakistan in aforementioned judgments, this Court in case relating to the Companies Act, 2017 reported as *Faisal Zafar's case (2024 CLD 1)* held that "a corporate dispute or petition under sections 286 and 287 of the "Act" alleging the mismanagement of members of a company may be resolved through mediation and compromise before passing any determination by the Court with the consent of the parties involved in such dispute, since the law permits it." Again in lis under the Companies Act, 2017, this court held in case "*Netherlands's case (PLD 2024 Lahore 315)* (High Court Citation) that "Section 276 and 277 of the "Act" can be invoked in order to protect the interest of the Company and the Court can initiate process of the "ENE" and then mediation. Parties are encouraged throughout the litigation process to attempt to settle disputes, for good reason, and this decision may encourage more litigants to explore settlement possibilities before being ordered to do so by the court. Mediation' outcomes not only save time and money of parties, but it also reduces load of work in the courts as well as it is a most updated way on resolutions based on the "divine culture of Peace." Both last mentioned judgments of this court had then been followed in "*Sohail Nisar Vs. Nadeem Nisar & others*" (2024 LHC 1435) (High Court Citation), wherein it was held that "As the statutory wording makes clear, a court is obliged to refer a case for mediation. This is a mandatory requirement enjoined by law now and equally applies to proceedings under the Companies Act, 2017 to the extent as this Court may determine in its discretion. Reference may be made to section 6(15) of the 2017 Act ... Mediation, in the first instance, should be the preferred mode of resolution

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and applies, a fortiori, to cases which involve wrangling between close family members. This method has many obvious benefits least of all to save cost, businesses and personal relations. If taken under the scrupulous attention of this Court and by a respectable Mediator, the process will likely succeed in its purpose.”

(c). **SINDH HIGH COURT:**

13. Significant to mention here that judgments in C.P.L.A.2226-L/2021, “Faisal Zafar” and “Netherlands Financierings” mentioned supra have been reiterated by Sindh High Court in case “Shehzad Arshad Vs. Pervez Arshad and 2 others” (Suit No.1721 of 2022) ¹ whilst holding that “pro-mediation bias is heightened by the overwhelming and ever-increasing pendency of cases before this Court on the Original Side due to the systemic bottleneck created by the Sindh Civil Courts Ordinance, 1962, as observed by a Division Bench of this Court in the case reported as Ghulam Asghar Pathan and others v. Federation of Pakistan and others PLD 2023 Sindh 187, making it all the more imperative to embrace alternate means of dispute resolution such as mediation. ... The parties have already expressed their desire for mediation through Clause 7.1, as reproduced above, and on query posed to learned counsel during the course of proceedings as to whether they had any preference as between the two aforementioned centres, they have jointly expressed familiarity with the workings of MICADR and concurred that a referral be made to that centre”. Even earlier, in case “Messrs FOCUS ENTERTAINMENT through Authorized Partner Versus Messrs TELEVISION MEDIA NETWORK (PVT.) LTD. through Chief Executive Officer and 5 others” (2021 CLD 885), a settlement agreement voluntarily executed amongst parties with

¹ <https://caselaw.shc.gov.pk/caselaw/viewfile/MjEzMdu3Y2Ztcy1kYzgz>.

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intervention of the mediator aiming at resolving wholesome disputes of parties, was acknowledged to be in line with requirements of section 89-A(1) and Rule 1-B of Order X of The Civil Procedure Code, 1908 as well as the relevant suit was decreed in accordance thereof on request of parties. Moreover, it was previously held in case "Asif S. Sajjan and another Vs. Rehan Associates through Partner and 4 others" (PLD 2012 Sindh 388) that "*The purpose of alternate dispute resolution by way of mediation is to bring the parties together at a neutral forum to which they have agreed, and to make an attempt to resolve the pending issues or disputes between them as a result of a mediation exercise to be carried out under the guidance and with the assistance of a neutral mediator. It is entirely incorrect to suggest or to believe that a mediation exercise is limited by any formal requirement ... In my view, any such fetters if imposed on the mediation exercise would in fact be against the spirit of such an exercise and may well reduce it to futility by making it subject to those very formalities the avoidance of which is one of the primary purposes and goals of alternate dispute resolution by way of mediation.*" It was also held in case "Messrs U.I.G. (Pvt.) Limited through Director and 3 others Vs. Muhammad Imran Oureshi" (2011 CLC 758) that "*the Court to bring an end to the controversy and for expeditious disposal of case by consent of the parties may adopt any alternate method of dispute resolution including mediation, conciliation or any other means.*"

(d). ISLAMABAD HIGH COURT:

14. It is also important to mention here that from the jurisdiction of Islamabad High Court, it has been held in case "Miss Memoona Zainab Kazmi Vs. Additional District Judge (MCAC) Islamabad West, Islamabad and 2 others" (2023 CLC 207) that "*the ordinary meaning of*

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the mediation procedure is to be considered firstly from the international standards, meaning that, "a unilateral intermediary, the mediator, help the parties to reach mutually satisfactory settlement of their dispute", as such, the mediation is non-binding procedure controlled by the parties and even a party to mediation cannot be forced to accept an outcome that it does not like, unlike arbitrator or a judge, primarily on the ground that mediator is not a decision maker. The mediator's role is, rather, to assist the party in reaching settlement of a dispute. ... The mediation also consists of negotiation between the disputing parties, assisted by mutual third party, voluntarily in reaching their own mutually acceptable settlement of the issues in dispute." In another case "The Imperial Electric Company (Pvt.) Limited Vs. ZHONGXING Telecom Pakistan (Pvt.) Limited and others" (2019 CLD 609) it is held that "*It is, therefore, obvious that there is a difference between 'arbitration' and 'mediation'. The latter merely endeavours to facilitate the settling of disputes between the parties through the tools of mediation, while the former, after holding an inquiry, decides the dispute and the parties accept the decision of their chosen person as binding upon them.*"

(VI) INTENT OF LEGISLATURE

15. After the detailed discussions upon legal anthropology of the mediation in judgments in C.P.L.A.2226-L/2021, "Faisal Zafar" and "Netherlands Financierings" mentioned supra, it is quite relevant to refer here that certain legislations have been enforced in Pakistan introducing provisions relating to mediation, arbitration or Alternate Dispute Resolution e.g; The Arbitration Act, 1940, the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011, the Arbitration International Investment Disputes Act, 2011, the

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Alternate Dispute Resolution Act, 2017 and the Punjab Commercial Court's Act, 2021. In addition thereto, Section 89-A and Order IX-A of the Code of Civil Procedure, 1908 warrant process of Alternate Dispute Resolution/mediation, whereas provisions of the Order IX-B ahead read as follows:

"RULE 1:

- (1) *Except where the Court is satisfied that there is no possibility of **mediation** or an intricate question of law or facts is involved, the Court shall refer the case for **mediation**.*
- (2) *While referring the matter for mediation, the Court may indicate the material issues for determination through **mediation**.*

RULE 2:

*Where a case is referred for mediation, the Court shall stay the proceedings for a period not exceeding thirty days and direct the parties to appear before the **Mediation** Centre, set up by Lahore High Court, on such date and time as the Court may specify.*

RULE 3:

- (1) *Where the **mediation** proceedings are successful and the parties have arrived at an agreement, the Mediator shall cause the same to be recorded in writing, signed by the parties or their recognized agents or their pleaders and attested by two independent witnesses.*
- (2) *The agreement shall be certified by the Mediator and transmitted forthwith, through the Administrator of the Mediation Centre, to the Court.*
- (3) *The Court shall, on receipt of the agreement, pass a decree in terms thereof unless the Court, for reasons to be recorded in writing,*

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finds that the agreement between the parties is not enforceable at law.

(4) Where the settlement relates only to a part of the dispute, the Court shall pass decree or an order in terms of such settlement and proceed to adjudicate the remaining issues.

RULE 4:

Where the meditation fails and no settlement is made between the parties, the Mediator shall submit a report to the Court and the Court shall proceed with the case from the stage it was referred to Mediation."

(VII) SETTLED OBJECT OF MEDIATION:

16. From all what has been discussed above, it is crystal clear that mediation has not only been provided in active legislations in Pakistan, but necessity and application thereof has been acknowledged by the Supreme Court of Pakistan having later been repeatedly followed by the Higher Courts of the Country, which otherwise is the need of the day as it is already settled by the Superior Judiciary of the Country that in mediation process parties in dispute are willingly engaged in discussions facilitated by a neutral third party known as the mediator. Unlike court proceedings, mediation is a more informal and flexible approach, fostering open communication and creative problem-solving. The mediator's role is not to make decisions but to guide the parties in finding common ground and exploring potential solutions. One of the key advantages of mediation is its cost-effectiveness compared to court proceedings. The informality of mediation contributes to a quicker resolution compared to the often time-consuming nature of court proceedings. Additionally, the process preserves relationships, as parties

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actively engage in finding mutually agreeable solutions. The flexibility of mediation allows for a more personalized and tailored resolution to the specific needs and concerns of the parties involved.

(VIII) CONCLUSION:

17. Today, the mediator has submitted settlement agreement through mediation, whereby the Parties have amicably settled down the matter, which is taken on record as Mark-A and Mark-A/1.

18. In view of above, this Appeal is disposed of in terms of settlement agreement (Mark-A and Mark-A/1). The parties are directed to take all necessary measures/steps for its enforcement. Before parting with this judgment, the Court appreciates conduct of parties for amicably suggesting, entering into and abiding by the mediation process for the resolution of dispute in hand. The Court also appreciates the valuable legal assistance rendered by the learned counsel for parties and the mediator.


(JAWAD HASSAN)
JUDGE


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