

Case 4630353188

Court	Circuit type	Case No.	Judgment pronounced	Judgment issued
Riyadh Court of Appeal	General	4630353188	–	October 22, 2024

Facts¹

On Thursday, July 4, 2024 (28/12/1445H), at 1:00 p.m., the hearing was opened, joined by the members of the Circuit as well as the attorney for the plaintiff [the claimant in the arbitration] and the attorney for the defendant [the respondent in the arbitration].² The plaintiff's attorney was asked about his client's claim, whereupon he submitted the claim in the chat window. The text thereof reads as follows:

Based on the response of the arbitral tribunal regarding the defendant having refused, from the outset, to pay the fees of the arbitrator they selected (Dr. [...]), and having refused to pay half the fees of the presiding arbitrator, [...], appointed by the Eighth Civil Circuit pursuant to Judgment No. [...] dated March 21, 2024 (21/9/1445H).³

The arbitral tribunal decided on April 19, 2024 (11/10/1445H) to suspend the arbitration proceedings due to the defendant's refusal to pay, stating in its decision, "The party harmed by the delay may apply to the competent court to take the action it deems appropriate."

On May 1, 2024 (23/10/1445H), we contacted the presiding arbitrator and informed him that we were prepared to bear the fees of the presiding arbitrator and the secretary of the tribunal. We requested that the defendant pay his arbitrator's fees or select another arbitrator to represent them instead of the arbitrator who has refused to proceed and whose fees are excessive (Exhibit No. 1).

The defendant's attorney replied by letter dated May 3, 2024 (25/10/1445H), indicating their refusal to pay the arbitrator appointed by them, [that

1 This is an unofficial English translation of the judgment from Arabic, prepared by the SCCA team.

2 Editorial insertions in square brackets have been made by the SCCA team for clarity or completeness and do not appear in the original Arabic text

3 Identifying information in this judgment has been redacted to protect personal and sensitive data.

arbitrator's] decision to refuse to take part in the arbitration proceedings, and [the defendant's] refusal to appoint another arbitrator (Exhibit No. 2). This resulted in delay, causing harm to me.

Article 18 (1) of the Arbitration Law provides:

If an arbitrator fails to perform his functions or ceases to do so in a manner that leads to unjustifiable delay in arbitration proceedings, and yet does not recuse himself, and the two arbitration parties do not agree on dismissing him, the competent court may dismiss him pursuant to a petition by either party; said court's decision shall not be subject to any form of appeal.

The letter of the presiding arbitrator dated May 5, 2024 (27/10/1445H) states, "With regard to your second request, you may apply to the competent court to take whatever action it deems appropriate, pursuant to Article 18 of the Arbitration Law" (Exhibit No. 3).

As this is a case that requires no more than four to five hearings to resolve, and as the fees of the arbitrator selected by the defendant are excessive, and since the defendant has refused to select another arbitrator and refused to pay the arbitrator appointed by them, and the arbitrator has refused to take part in the arbitration proceedings, while the harm to me continues, we therefore request Your Honors to dismiss the arbitrator Dr. [...] pursuant to Article 18 of the Arbitration Law and to appoint an arbitrator. In such event, we are prepared to pay his fees in order for the arbitration proceedings to proceed and to remove the harm caused to me by the defendant.

The claim was then presented to the defendant's attorney, who replied as follows:

With reference to the request submitted by the plaintiff, we respond as follows:

First: Formal plea

(1) This procedure is formally invalid due to its violation of the provisions of Article 7 of the Arbitration Law.

(2) This request is based on an incorrect premise and does not warrant acceptance.

Second: We reserve our right to respond on the merits should the Circuit deem it appropriate.

He then requested additional time to submit his response on the merits. His request was granted, and the hearing was adjourned.

[A subsequent] hearing was opened in the presence of the plaintiff's attorney and the defendant's attorney. When the defendant's attorney was asked about the response he had previously undertaken to provide, he submitted the following in the chat window:

Your Honors, the presiding judge and members of the Circuit.

In response to the plaintiff's claim, we state that this request is based on an incorrect premise and should not be accepted, as it was submitted after the lapse of the period prescribed in Article 7 of the Arbitration Law, which provides that objections to violations must be raised within thirty days.

As for the allegation that my client refused to pay the fees of the arbitrator appointed by them, this happened solely because the plaintiff demonstrated an inability to fulfill financial obligations, as its attorney repeatedly stated before the Court.

Accordingly, it would constitute a waste of funds if my client were to pay such costs, given their strong belief that the plaintiff will not fulfill its obligations— if the plaintiff fails to fulfill rights already established against it, it is even more likely that it will fail to fulfill obligations that will arise from this dispute, including payment of the value of the promissory note in dispute, in addition to arbitration costs, attorney fees, and similar expenses.

Based on the foregoing:

First: We maintain our formal plea.

Second: Should the Circuit decide to disregard such plea, then on the merits we maintain the arbitrator appointed by my client, provided that the plaintiff pays his fees in order to demonstrate his seriousness.

When asked about the amount of fees agreed upon between his client and the appointed arbitrator, he stated that the amount is SAR 180,000 (one hundred eighty thousand Saudi riyals).

The plaintiff's attorney then stated that these fees are excessive, noting that the fees of his client's arbitrator amount to SAR 60,000 (sixty thousand Saudi riyals). He further stated:

As it has become impossible to continue the arbitration proceedings due to the defendant's refusal to pay the fees, and as those fees are excessive, I request the dismissal of said arbitrator and the appointment of a substitute arbitrator.

My client has no objection to paying the fees of the defendant's arbitrator should the Court appoint one, so that the arbitration proceedings may commence and the arbitral tribunal may thereafter determine which party shall bear those fees.

The hearing was then adjourned.

[A subsequent] hearing was opened in the presence of both parties. When asked about the amount of the claim in dispute, the plaintiff's attorney stated that it amounts to SAR 1,200,000 (one million two hundred thousand Saudi riyals).

When asked the same question, the defendant answered: "Yes, the amount in dispute is SAR 1,200,000. My client continues to maintain the arbitrator previously appointed by them and is not prepared to pay the fees agreed with him, in the amount of SAR 180,000 (one hundred eighty thousand Saudi riyals), for the reasons stated in the previous hearings."

The case being ready for adjudication, the Circuit issued its judgment.

Reasoning

After examining the case file, hearing the claim and the response, and reviewing the exhibits submitted by the parties, the Circuit has jurisdiction to hear this matter pursuant to Article 8 (1) of the Arbitration Law.

The contract concluded between the parties contains an arbitration clause.

The arbitrator [...] appointed by the defendant has not commenced his duties due to the defendant's refusal to pay the agreed remuneration and due to the excessive amount determined by the defendant, amounting to SAR 180,000 (one hundred eighty thousand Saudi riyals). This has resulted in unjustifiable delay in the arbitration proceedings.

The parties to the arbitration do not agree about dismissing him. The plaintiff has requested the dismissal of the defendant's arbitrator, while the defendant insists on maintaining said arbitrator and refuses to pay his fees, which has delayed the consideration of the dispute before the arbitral tribunal.

The legislator has prescribed specific time limits for arbitration proceedings. In addition, Article 18 [(1)] of the Arbitration Law provides, "If an arbitrator fails to perform his functions or ceases to do so in a manner that leads to unjustifiable delay in arbitration proceedings, and yet does not recuse himself, and the two arbitration parties do not agree on dismissing him, the competent court may dismiss him pursuant to a petition by either party; said court's decision shall not be subject to any form of appeal."

In light of Articles 15 and 19 of the Arbitration Law, the defendant's insistence on maintaining his arbitrator despite his inability to commence his duties necessitates that the Circuit appoint a substitute arbitrator. After a number of arbitrators were contacted, the arbitrator Mr. [...], ID No. [...], mobile number [...], email [...], has confirmed his acceptance of the appointment as arbitrator on behalf of the defendant in the arbitration between the parties above, for fees in the amount of SAR 50,000 (fifty thousand Saudi riyals). Therefore, the Circuit concludes as stated in the ruling below.

Ruling

The Circuit hereby rules as follows:

First: The arbitrator [...] appointed by the defendant is hereby dismissed.

Second: [...], ID No. [...], is appointed as arbitrator on behalf of the defendant in the arbitration between the parties, for fees in the amount of SAR 50,000 (fifty thousand Saudi riyals).

This judgment is final and not subject to appeal by any means of challenge. Accordingly, the arbitral tribunal has been duly constituted to commence the arbitration proceedings in accordance with the Arbitration Law.

God grants success. May and prayer and peace be upon our Prophet Muhammad.