


COMPETENCY OF CIVIL SUIT  
DURING ARBITRATION AGREEMENT  
ANSWER OUTLINE



Ali Husnain Shah

## **Q. Competency of civil suit during arbitration agreement. ?**

**(2008)(2012 s),(2013 s),(2015 a),(2016 a)**

### **1. Introduction**

Where a party to an arbitration agreement starts a legal proceeding with respect to the subject matter of such agreement, the other party has a right to get such proceeding stayed so as to enable arbitration to proceed in terms of the agreement.

### **2. Relevant section:**

**Section 34 of arbitration act 1940**

### **3. Cross reference:**

**section 10 of the code of civil procedure 1908**

### **4. Arbitration agreement:**

**Section 2(a)**

Arbitration agreement means a written agreement to submit present or future difference to arbitration, whether an arbitrator is named therein or not.

### **5. Explanation of the definition:**

### **6. Procedure where contents of arbitration agreement is not provide:**

### **7. Stamp duty on arbitration agreement:**

### **8. Procedure of staying proceeding during arbitration**

**Agreement:**

### **9. Application for stay of proceedings:**

An application for stay is to be made by the opposite party before filling his

Written statement or taking steps in proceedings

[air 1937 lahore 851]

Nota bene:

Where a party/defendant appears in the court to obtain adjournment for

Filing a written statement such party deemed to have waived his right of

Arbitration

[klr 2008 cc (r.pindi) 10]

**10. Satisfaction of the court:**

**i. Valid arbitration agreement**

**ii. Arbitration clause**

**iii. Proceeding in the court:**

**Nota bene:**

Where the dispute does not fall at all within the purview of the arbitration clause the suit cannot be stayed under this section

[pld 1971 564]

**iv. Proceeding by the party:**

**v. Before a written statement:**

**vi. Willingness of parties:**

The proceeding have been commenced by the party to the arbitration agreement or by an person claiming under him against another part to the arbitration agreement or any person claiming under him

[air 1953 sc 182]

**vii. Application by party:**

The party applying for stay was at time when the proceedings are commenced and still remains ready and willing to do all things necessary to the proper conduct of the arbitration.

[air 1960 bom. 292]

**viii. No sufficient reason:**

**11. Effect of stay of proceedings:**

**12. Grant of stay—discretion of court:**

The making of an order staying proceedings is a matter largely in the discretion of the court.

**[pld 1956 sind 95]**

**Nota bene:**

The discretion must be judicially exercised and if not so exercised, the high court will have a right to interfere.

**[pld 1957 dacca 171]**

**13.** Appeal against stay of proceedings

**14.** Conclusion: