

Judgment Sheet

IN THE LAHORE HIGH COURT,
LAHORE

(JUDICIAL DEPARTMENT)

R.S.A No.14411 of 2019

Sui Northern Gas Pipelines Limited

Vs.

M/s Zam Zam CNG

JUDGMENT

Date of Hearing	03.05.2023
Appellant by:	M/s. Faisal Yaqoob Khan, Advocate. Khawaja Aurangzeb Alamgir, Assistant Attorney General.
Respondent by:	M/s. Hassan Iqbal Warraich & Arslan Abbas Buttar, Advocates.

MUHAMMAD RAZA QURESHI, J. Through this Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (“CPC”), the Appellant, Sui Northern Gas Pipelines Limited (“SNGPL”) has questioned the concurrent findings contained in the Impugned Judgments and Decrees dated 18.02.2016 and 29.11.2017 passed by the Trial Court and Appellate Court respectively. Since, the instant Appeal as well as connected Regular Second Appeal bearing No.14408 of 2019 raise identical questions of law and facts, therefore, same are decided together.

2. Inessential details apart, the Respondent filed a Suit for declaration and permanent injunction and challenged the enhanced rate of tariff for high GCV and questioned the recovery of an amount of Rs.1,692,452/-. The learned Trial Court decreed the Suit filed by Respondent through Judgment and Decree dated 18.02.2016. The said Judgment and Decree was questioned by the Appellant which upon evaluation of evidence and findings on six issues framed by learned Trial Court was dismissed by the Appellate Court through Judgment

and Decree dated 29.11.2017. The primary reason that prevailed with both learned Courts below was the admission of the witnesses of the Appellant who conceded in their depositions that upon shifting of source of supply to the Respondent from one zone to another, no notice was given to it with respect to change of rate at high GCV.

3. Learned counsel for the Appellant submits that while deciding issues of law as well as facts both the learned Courts below misread evidence on record and Appellant was well within its right to claim excessive amount without any notice to the Respondent. According to learned counsel the benefit extended to the Respondent through Impugned Judgments and Decrees is illegal and unlawful.

4. Conversely, learned counsel for the Respondent while supporting Impugned Judgments and Decrees submits that Respondent cogently established its case through evidence and according to learned counsel the contentions of misreading and non-reading of evidence cannot be entertained in Regular Second Appeal, as right to file Second Appeal as provided under Section 100 CPC, could only be set into motion when the decision Impugned is contrary to law or there was failure to determine some material issues of law, therefore, the questions now being raised by the Appellant cannot be entertained by this Court while adjudicating upon instant Appeals. Additionally, learned counsel submits that Judgment and Decree of the Appellate Court was passed on 29.11.2017 against which Appellant filed Appeal on 12.02.2018 through diary No.163588. According to learned counsel upon institution of Appeal, the office raised objections and file was retrieved by the Appellant from the office and after removal of objection, the Appeal was re-filed on 11.03.2019. Therefore, according to learned counsel these Appeals are barred by time and cannot be pressed by the Appellant. According to learned counsel despite having concurrent findings in its favour, the Respondent even after lapse of 07 years is unable to reap fruits and benefits of the Impugned Judgments and Decrees.

5. Arguments of learned counsel have been heard and record has been perused with their able assistance. The relationship *inter se* parties is admitted. The question that was determined by the Courts below through Impugned Judgments and Decrees was whether contrary to the terms of Gas Supply Agreement excess amount could have been claimed by the Appellant upon shifting of supply zones without notice or intimation to the Respondent.

6. In Gas Sector, CNG industry is only consumer of SNGPL which fills CNG cylinders by compressing natural gas instead of burning and consuming it. The tariff for consumption of Compressed Natural Gas is determined by the competent authority i.e. Oil & Gas Regulatory Authority (“OGRA”), which is actually Energy based instead of Value based and BTU’s consumed are calculated on the basis of Standard Cubic Feet which are measured by heating capacity of Gross Calorific Value (GCV). It was case of the Respondent that natural gas supplied from South zone was with BTUs/SCG950GCV and according to OGRA Tariff the price for gas from said zone was Rs.53.63 and Rs.55.33 per K.G. The Appellant issued gas bill to the Respondent for the month of June, 2010 and charged 16% exaggerated value on the ground that in the said month the gas was supplied to the Respondent from North zone with BUT’s/SCF1000GCV. It was this aspect evaluated by the learned Courts in the light of terms and conditions contained in the Gas Supply Agreement and upon analysis of respective evidence led by the parties both Courts below reached to concurrent findings that since witnesses of SNGPL in their depositions admitted that no notice as per agreement and practice for change of zones was given to the Respondent, therefore, 16% excessive charge for gas consumption for the month of June, 2010 was illegal and unlawful.

7. Learned counsel has been questioned about the questions of law that may justify institution of this Appeal in terms of Section 100 of the CPC and despite hectic efforts, this Court is not convinced that in peculiar circumstances of instant case, the questions of re-appraisal,

re-hearing and re-evaluating the evidence of the determination of facts can be undertaken at this stage, that too in a Second Appeal. Law clearly draws distinction between scope of first appeal and second appeal. Under Section 100 of the CPC, appeal only lies to High Court on the grounds that the decision is either contrary to law or it fails to determine some material issue of law or it suffers from substantial error or defect in the procedure provided by the Code or law. Meaning thereby that it does not lie to question the findings on facts especially when these findings are concurrent and nature of challenge raised by Appellant is bereft of material on record.

8. In the instant case, it is quite obvious that the Impugned Judgments and Decrees of the Courts below are neither contrary to law nor contrary to any usage having the force of law. The concurrent Impugned Judgments and Decrees also reflect that the Courts below had not omitted to decide any material issue on law or usage having the force of law. So far as the question of substantial error is concerned, this Court is satisfied that no substantial error arises from the Impugned Judgments and Decrees and the Instant Appeals even fail to cross the minimum standards set up by Section 100 of the CPC. Reliance in this regard is placed upon “Bahar Shah and others versus Manzoor Ahmad” (2022 SCMR 284), “Zafar Iqbal and others versus Naseer Ahmed and others” (2022 SCMR 2006) and “Syed Rafiul Qadre Naqvi versus Syeda Safia Sultana and others” (2009 SCMR 254). In a recent case of *Zafar Iqbal supra*, the Hon’ble Supreme Court of Pakistan while interpreting the scope and ambit of section 100 of the CPC has declared that:-

“Appeal under section 100 of the Code of Civil Procedure, 1908 ("C.P.C."), a second appeal to the High Court lies only on any of the following grounds: (a) the decision being contrary to law or usage having the force of law; (b) the decision having failed to determine some material issue of law or usage having the force of law; and (c) a substantial error or defect in the procedure provided by C.P.C. or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon merits. The scope of second appeal is thus restricted and limited to these grounds, as

section 101 expressly mandates that no second appeal shall lie except on the grounds mentioned in section 100. But we have noticed that notwithstanding such clear provisions on the scope of second appeal, sometimes the High Courts deal with and decide second appeals as if those were first appeals: they thus assume and exercise a jurisdiction which the High Courts do not possess, and thereby also contribute for unjustified prolongation of litigation process which is already chocked with high pendency of cases.”

9. The second contention of learned counsel for the Respondent about time barred appeal is also creditworthy and carries weight. It appears that the Impugned Judgment and Decree passed by the Appellate Court is dated 29.11.2017. The Appeal was filed through diary No.163588 on 12.02.2018 to which office raised objection and typed Objection Sheet (Civil) described date for re-submission of Appeal after removal of objections was 03 days.

10. Admittedly, instead of re-submitting the file after removal of objections within prescribed limitation, the Appellant re-filed the Appeal on 11.03.2019. Hence, when the Appeal was re-filed it had become barred by time. In a Judgment reported as “Asad Ali and 9 others versus The Bank of Punjab and others” (PLD 2020 SC 736), the Hon’ble Supreme Court of Pakistan has held that there is consistency in the principles that if objections raised by the office are not removed during the period allowed by the office and meanwhile the limitation period expires, the Petition become barred by time. While relying upon “Lahore Development Authority vs. Muhammad Rashid” (1997 SCMR 1224), the Hon’ble Supreme Court held:-

“Starting from the judgment of the Lahore High Court Lahore reported as Ghulam Hussain V. Bahadar (PLD 1954 Lahore 361) till judgment of this Court reported as Lahore Development Authority v. Muhammad Rashid (1997 SCMR 1224), there is consistency in the principle that if objections raised by the office are not removed during the period allowed by the office and meanwhile the limitation period expires, the petition would become barred by time. There are two subsequent judgments of this Court reported as Mst. Sabiran Bi v. Ahmad Khan (2000 SCMR 847) and Farman Ali v. Muhammad Ishaq (PLD 2013 SC 392) which are incorrectly understood to have decided that so long as the initial institution is within the limitation period, removal of objections raised by the office after expiry of the limitation period does not render the petition to be barred by time. The said judgments have been

rendered in a different set of facts and circumstances, do not lay down the entire law on the subject and are distinguishable on points of law as well as facts.”

11. Since concurrent findings contained in the Impugned Judgments and Decrees have been passed after evaluating the legal as well as factual aspects; evidence on record and admissions made during cross-examination by the witnesses presented by SNGPL and appreciating the position of law with respect to interpretation of subject matter Gas Supply Agreement, therefore, this Court is not persuaded to interfere in the Impugned Judgments and Decrees on their merits. Additionally, this Court holds that by virtue of delayed re-submission of the instant Appeal, the same is barred by time in view of law laid down in *Asad Ali's case supra*. Consequently, the instant as well as connected R.S.A are **dismissed** with no order as to costs.

(MUHAMMAD RAZA QURESHI)
JUDGE

Approved for reporting.

JUDGE

Ashfaq