

Judgment Sheet
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

Civil Revision No.54865 of 2023

China Harbour Engineering Company Limited, etc.

Versus

Z Z Enterprises, etc.

J U D G M E N T

Date of Hearing	06.10.2023
For the petitioners	M/s S. Naeem Bokhari and Ijaz Janjua, Advocates.
For Punjab	Barrister Hassan Khalid Ranjha, Additional Advocate General.
For respondents No.1 & 2	M/s Asad Ahmed Ghani and Muhammad Rizwan Rasheed, Advocates.

Raheel Kamran J:- This application under section 115 CPC seeks revision of order dated 31.05.2023 passed by the Civil Judge 1st Class (Special Court for Admin. Commercial Cases), Lahore whereby suit for recovery of Rs.851,170,923/- along with specific performance of contract filed by respondents No.1 & 2 was considered as commercial case.

2. Learned counsel for the petitioners contends that the impugned order is without jurisdiction inasmuch as the Civil Judge has acted contrary to the mandate of Rule 10, Part-K, Chapter-1, Volume-I of the Rules and Orders of the Lahore High Court, Lahore while treating the suit for recovery filed by the respondents as commercial case. He maintains that rule 10 ibid cannot operate in vacuum unsupported by any law as the Punjab Commercial Courts Ordinance, 2021 (‘the Ordinance’) which was promulgated on 13.04.2021 stood repealed on

12.06.2021 in terms of Article 128(2) of the Constitution of Islamic Republic of Pakistan, 1973 ('the Constitution') whereas suit in the instant case was instituted after such repeal on 14.09.2022. He finally contends that no Court can assume and exercise jurisdiction which is not vested in it by law, as mandated under Article 175(2) of the Constitution.

3. Conversely, learned counsel for respondents No.1 & 2 contends that Commercial Courts exercising jurisdiction in the instant case were in fact constituted prior to promulgation of the Ordinance in April 2020. He maintains that no proceedings in the Commercial Courts were carried out pursuant to the Ordinance and the same continued under the notification for the reason that the procedure contemplated under the Ordinance required leave to appear and defend as opposed to right of defence available to a party under the Code of Civil Procedure, 1908 and for all practicable purposes the Ordinance was never implemented. According to him, the notification dated 28.02.2020 and other similar notifications have been issued in exercise of authority conferred by Article 203 of the Constitution and section 14 of the Punjab Civil Courts Ordinance, 1962. He further contends that the very purpose for commercialization of the cases is expeditious disposal of the same and this Court adopted such course pursuant to the National Judicial Policy 2009 as manifest from Paras 15 & 16 thereof. While referring to rule 10, Part-K, Chapter-1, Volume-I of the Rules and Orders of the Lahore High Court, he states that plaintiff may apply for his/her case to be treated as commercial case for expeditious disposal thereof. He further contends that on all objections taken by the petitioners, issues have already been framed by the trial Court, therefore, it may approach the Court with appropriate application for treating any of the said issues as preliminary issue, if it could be done so. According to him, most of the pleas raised by the

petitioners involve either factual dispute or mixed question of law and facts which could not be resolved without recording evidence nonetheless the petitioners may approach the Court of competent jurisdiction for treating any issue as preliminary in accordance with law. According to him, no objection qua jurisdiction over the subject matter, territorial jurisdiction or pecuniary jurisdiction has been raised in the matter, hence, the titled revision is incompetent.

4. In rebuttal, learned counsel for the petitioners has referred to page 33 of the titled civil revision to contend that Commercial Courts established in the instant case were pursuant to the Punjab Commercial Courts Ordinance, 2021. He contends that notification dated 28.04.2020 was in fact issued in the year 2021 and mention of the year 2020, therefore, is a typographical error.

5. Learned Additional Advocate General contends that doing business is a flagship report of the World Bank Group wherein 190 economies are ranked on their ease of doing business for an overall ten indicators, including enforcing contracts. He maintains that according to the latest ease of doing business ratings, Pakistan is overall ranked at No.108 among 190 economies and holds the 156th position on 'enforcing contracts' indicator. He further contends that while obtaining guidance from Chapter-1, Part-K, Rules 10 and 11, Volume-I of Rules and orders of the Lahore High Court, Lahore, on 28.04.2020 this Court notified one Additional District Judge and two Civil Judges at Lahore to exclusively adjudicate upon commercial cases and similarly in four other districts i.e. Multan, Rawalpindi, Gujranwala and Faisalabad, one Additional District Judge and one Civil Judge were designated for such purpose. He adds that even under section 15 of the Punjab Civil Courts Ordinance, 1962 the District Judge is empowered to allocate to any Judge of the subordinate

Court any business i.e. any type of case that he deems fit provided the same is not beyond his jurisdiction altogether. According to him, the Sindh High Court vide notification dated 05.11.2020 has also designated individual Judges/Courts of the District Judiciary as Commercial Courts to handle commercial cases under the High Court Rules and Orders. He finally contends that this Court, through Rules and Orders of the Lahore High Court and the Punjab Civil Courts Ordinance, 1962 is vested with lawful authority to establish Courts that specifically deal with matters of commercial nature.

6. Arguments heard. Record perused.

7. It is case of the petitioners that functioning of Commercial Courts is without any backing of law and in particular after repeal of the Punjab Commercial Courts Ordinance, 2021 the same is legally invalid. In order to secure expeditious disposal of cases of commercial nature, the Lahore High Court vide its notification No.6032 DDJ/DR(PD&IT) dated 28.04.2020 designated one court of Additional District & Sessions Judge, Lahore and two courts of Civil Judges to hear and dispose of the said cases with further direction to the District & Sessions Judges, Multan, Faisalabad, Gujranwala and Rawalpindi to entrust the work of commercial cases pertaining to their districts to the Judicial Officers already dealing with the Overseas Pakistanis' cases. Rule 10, Part-K, Chapter-1, Volume-I of Rules and Orders of the Lahore High Court, Lahore provides that commercial cases should be disposed of as speedily as practicable, which are to include cases arising out of ordinary transactions of merchants, bankers and traders. The said rule is reproduced hereunder for ready reference: -

“10. Commercial Cases.--“Commercial Cases” should be disposed of as speedily as practicable. The term “Commercial Case” is taken to include cases arising out of the ordinary transactions of merchants, bankers and traders,

amongst others those relating to the construction of mercantile documents, export or import of merchandise, affreightment, carriage of goods by land, insurance, banking and mercantile agency, and mercantile usage, and debts arising out of such transactions.

A plaintiff or appellant may apply at the preliminary hearing at which his plaint or appeal is admitted or by subsequent application before the final hearing thereof, to have his case classed as a “Commercial Case”, and the Court before which such application is made shall, if satisfied that the case is a Commercial case, as defined in the above paragraph, cause the appeal or plaint to be marked with the words “Commercial Case”.

All cases which have been marked as “Commercial Cases” under the preceding paragraph shall be brought to a hearing as early as may be practicable. Such cases shall be given priority on the day of hearing over other cases, except part heard cases, and shall, so far as possible be heard from day to day until they are finally decided.”

Rules and Orders have been framed by the Lahore High Court in accordance with Article 202 of the Constitution that empowers it to do so subject to the Constitution. Article 203 of the Constitution envisages that each High Court shall supervise and control all courts subordinate to it with the object to establish orderly, honorable, upright, impartial and legally correct administration of justice¹. The supervision and control over the subordinate judiciary vested in the High Courts under Article 203 of the Constitution is exclusive in nature, comprehensive in extent and effective in operation².

8. The contention of the petitioners’ counsel that the Commercial Courts were established pursuant to the promulgation of the Ordinance and the year of issuance of the aforementioned notification was 2021 instead of 2020 is apparently based on misconception inasmuch as the official website of the Lahore High Court still shows the same notification dated 28.04.2020 and a judgment of this Court in the case of M.C.R. (Pvt.) Ltd. Franchisee of Pizza Hut v.

¹ Messrs Shaheen Air International Ltd. (SAI) and others v. Messrs Voyage De Air and others (2006 SCMR 1684)

² Sh. Liaqat Hussain and others v. Federation of Pakistan & others (PLD 1999 SC 504)

Multan Development Authority and others (2021 CLD 639)

rendered on 08.03.2021 relies on the same notification having the date as 28.04.2020. The said notification also does not show that the courts were being designated as Commercial Courts in accordance with the Ordinance. Therefore, it is quite clear that the subject notification was issued on 28.04.2020 prior to the promulgation of the Ordinance and its repeal has no legal effect upon functioning of the Commercial Courts. Even as per Rule 10 referred above, a plaintiff or appellant may apply at the time of preliminary hearing or by subsequent application before the final hearing thereof to have its case classed as commercial case.

9. Furthermore, the courts of ordinary civil jurisdiction have been designated to hear and dispose of the commercial cases that are dealing with the same in accordance with the procedure provided under the Code of Civil Procedure, 1908 with the sole object to ensure expeditious disposal of the same on priority basis. Thus, for all practicable purposes all courts designated as Commercial Courts under the notification dated 28.04.2020 are essentially Civil Courts exercising jurisdiction under the Code of Civil Procedure, 1908 for expeditious disposal of civil disputes. By considering a case as commercial one, the right of fair trial available to the opposite party is not being compromised since no special procedure has been laid down to dispose of the same. On being confronted as to what prejudice is being caused to the petitioners because of hearing and adjudication of the titled case by the Civil Judge designated as Commercial Court, learned counsel for the petitioners has not been able to point out any.

10. In view of the foregoing, the courts designated to hear cases of commercial nature are functioning in accordance with the CPC and the Rules and Orders of the Lahore High Court under its superintendence and control within the scope of

Articles 202 & 203 of the Constitution and this Court does not find any illegality or irregularity in the impugned order warranting interference in exercise of its revisional jurisdiction. Resultantly, this civil revision is devoid of any merit and is accordingly dismissed.

(RAHEEL KAMRAN)
JUDGE

Announced in open Court on 03.05.2024.

JUDGE

APPROVED FOR REPORTING

JUDGE

Saeed Akhtar