

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Mr. Justice Mushir Alam

Mr. Justice Sajjad Ali Shah

Civil Petition No.80 of 2018

Against the judgment dated 13.11.2017 passed High Court of Baluchistan, Quetta in Civil Revision No.109 of 2015.

Malik Khan Muhammad Tareen

Petitioner(s)

VERSUS

M/s Nasir & Brother Coal Company thr. its proprietor & others

Respondent(s)

For the Petitioner(s) : Mr.Sardar Muhammad Aslam, ASC

For the Respondent : Mr.Tariq Mehmood, ASC

Date of Hearing : 03.10.2018

JUDGMENT

Mushir Alam, J-. Petitioner, has impugned the judgment dated 13.11.2017 whereby the learned Bench of High Court of Baluchistan, at Quetta set aside the concurrent orders dated 25.03.2015 and dated 30.4.2015 passed by the learned Civil Judge (Judicial Magistrate-IX), Quetta and the learned District Judge, Quetta, respectively whereby Petitioner's/ Defendant No.3 objections as to the territorial jurisdiction of the Civil Judge at Quetta as sustained were set aside and the case was directed to proceed by the learned trial Court, in accordance with law.

2. In brief facts appears to be that the Respondent No.1/Plaintiff claimed to be in permissive possession of the mining lease, of the area situated in Duki, Loralai as detailed in the Plaint. Pursuant to various assignment and agreements some shown to have been executed at, Duki, Killa Saifullah, Loralai and Quetta. Plaintiff

filed a suit No.59/2012 on 14.11.2012 before learned Civil Judge-IX at Quetta, seeking declaration and directions against the official respondents stationed at Quetta for assignment and transfer of rights in respect of mining lease, restraining orders against the defendants including officials not to carry out joint survey of the subject mining leases, not to carry out mining activity, suspension of letter dated 2.11.2012 issued by the official respondents stationed at Quetta notifying on 13.11.2012 as date of joint survey.

3. It appears that on an application under Order XXXIX, Rule 1 & 2, CPC *ad-interim* injunction staying joint survey was granted on 24.11.2012, against which Petitioner/ Defendant No.3 filed Civil Appeal No.53 of 2012, same was dismissed on 13.12.2012, which was challenged in Civil Revision No.376 of 2012, before the High Court, wherein by consent of the contesting parties, joint survey was carried out. Parties accepted the Commission's survey report, which culminated into a compromise order dated 11.01.2013, parties were directed to proceed with the suit before the trial Court. However, instead of proceeding before the learned trial Court at Quetta, parties again engaged into number of contempt proceedings, review of the consent order, and at least four Constitution Petitions being C.P. No.61 of 2013, C.P. No.483 of 2013, C.P. No.638 of 2013 and C.P. No.178 of 2013, filed in the High Court and one Criminal Petition No.68 of 2013 two Civil Petitions being No.1110 of 2013 and No.162 of 2014 in this Court, including remand order in Civil Revision by this Court to the High Court.

4. It appears that when parties were left with no ammunition in their arsenal to continue their battle before the High Court and

Supreme Court, locked their horns before the learned trial Court. From record, of the learned trial Court it appears that the official respondents were proceeded ex-parte. Written statement was ultimately filed by the Petitioner/private defendant No.3 on 12.03.2014, wherein issue of territorial jurisdiction of the learned trial Court at Quetta, was raised and decided as preliminary issue.

5. Learned Civil Judge, at Quetta, in consideration of fact that mining lease is situated in Duki, vide order dated 25.3.2015 returned the plaint to be presented before the Court having territorial jurisdiction, which order was maintained, as noted above by the learned District Judge, Quetta on 30.4.2015.

6. Through impugned judgment, learned Bench of the High Court, taking stock of the entire facts and circumstances of the case concluded that *"the matter in issue pertained to an area of some mining lease and rights thereon, thus it did not directly relate to right and interest in the immoveable property, rather covered by the later part, thus suit could be filed at the place where the cause of action whole or in part arisen"* and in paragraph 11 of the impugned judgment, Learned Bench relying on section 21 CPC and on the case reported as Faqir Muhammad versus Pakistan through Secretary, Ministry of Interior and Kashmir Affairs Division, Islamabad (2000 SCMR 1312) observed that the objection as to territorial jurisdiction was not timely pressed, and such conduct of the Defendant No.3 amounts to waiver. Consequently, orders dated 25.3.2015 and 30.4.2015 passed by the learned Civil Judge, Quetta and District Judge, Quetta were set aside. Learned trial Court was directed to proceed with the matter in accordance with law.

7. Contentions of Sardar Muhammad Aslam, learned senior counsel for the Petitioner, is indeed correct that the objections as to territorial jurisdiction cannot be raised before the appellate and or revisional Court. According to him, objections as to territorial jurisdictions were raised before the Court of first instance, that is trial Court as required under section 21 CPC and before striking out issues. Therefore, impugned judgment, having overlooked such aspect of the matter, cannot be sustained. He conceded that after filing of the suits on 14.11.2012 parties engaged in legal battle before High Court and Supreme Court. Written statement raising objections as to territorial jurisdiction, was filed on 12.2.2014. It is also conceded that joint survey of mining lease was carried by consent of the parties and based on such survey and demarcation, consent order was passed in Civil Revision No.376 of 2012 on 13.01.2013, *"and as regards the suit the parties"* were directed to *"proceed the same before the trial Court"* One of the prayers in the suit as regards survey of the area of *"mining lease"*, by the official defendants, at Quetta, by consent of the parties, was set at rest.

8. In contrast to explicit conferment of jurisdiction on Criminal Courts (See Section 28 read with second schedule of the Code of Criminal Procedure, 1898) to try various offences under Pakistan Penal Code. Jurisdiction of the Civil Courts is not as explicitly defined in CPC. Section 9 CPC confers plenary jurisdiction, subject to part I of the Code, on Civil Courts to try *"all cases of civil nature"*, except suits of which cognizance is either expressly or impliedly barred. Jurisdiction of Civil Courts to try civil cases may be classified into **a)** territorial jurisdiction, **b)** pecuniary jurisdiction and **c)** jurisdiction over subject matter. Jurisdiction over subject matter of suit of civil nature is most

pivotal and determinative as regard assumption and exercise of jurisdiction by any civil Court. It is through special enactments and statute, like for instance Provincial and Islamabad Capital Territory and Cantonment Rent Restriction Laws, Federal and Provincial Service Laws, Excise and Taxation Laws, Customs Acts, Banking Laws, Company Laws etc.; subject matter jurisdiction is sliced and or carved out of the otherwise plenary jurisdictions possessed by ordinary Civil Court and is conferred on special Courts, Tribunals and forum through special statute some which are noted herein (*see Section 9 CPC*).

9. In order to regulate place of suing and institution of civil proceedings, same is to be instituted in the Civil Court of lowest grade competent to try it (section 15 CPC) and in the Court where the defendant or one of the defendants resides or work for gain, or where the cause of action occurs, or where it relates to right to or interest in immovable property, is required to be instituted within the local limits of whose jurisdiction the immoveable property is situated. It could also be the Court in whose jurisdiction action or inaction of any State or public authority/ functionary is involved. (*see section 15 to 20 CPC*).

10. In instant case controversy as to *mining lease*, is involved. In a case from Australian jurisdiction, Queensland Supreme in a case reported as **Sojitz Coal Resources Pty Ltd v. Commissioner of State Revenue** [2015] QSC 9 held "*that mining leases did not constitute an 'estate or interest in land' according to ordinary concepts*" Position in Pakistan is no different, mining lease means rights and interest in mines and minerals in and on the surface of earth or land, mines and minerals are regarded as moveable property. Rights and interest in mines and mineral on or in the surface of land is

separate and distinct from “rights to or interest in immoveable property” within the contemplation of *clause (d) of section 16 CPC*, mines and minerals are moveable property and in terms of Article 172 and 173 of the Constitution of Pakistan read with section 49 of the Land Revenue Act, 1967 and Provincial Mining Rules (in instant case Baluchistan Mineral Rules, 2002) all mines and minerals shall be and shall always be deemed to have been the property of Government, irrespective of fact that title to surface land vests in an individual, Forest Department or any other authority or even the Government itself. It is the relevant Government that exercise powers necessary for the proper enjoyment of its rights thereto, which is regulated under the Mineral Development (Control) Act, 1948 read with respective Provincial Mining Concession Rules (*see Water and Power Development Authority and another versus Assistant Director Mines and Minerals, Attock and others (PLD 2012 Lahore 83), Messrs National Highway Authority through Duly Authorized Director (Legal versus The Chief Secretary, Government of the Punjab, Lahore and 5 others (PLD 2017 Lahore 390) and Fateh-ul-Mulk Ali Nasir and 4 others versus Government of Khyber Pakhtunkhwa through Secretary Mines and Minerals and 6 others (2015 CLC 1762 [Peshawar])*).

11. In instant case as elaborately discussed by the learned Bench of the High Court, and rightly held that no rights and interest in the immoveable property is involved, and since the objections as to territorial jurisdiction was not raised promptly before the very civil Court seized of the matter as required under section 21 CPC, and no prejudice is shown to have been caused to the defendant, therefore Court of Civil Judge, Quetta has jurisdiction.

12. Section 21 CPC, makes exception as to general rules contained in sections 15 to 20 CPC in respect of place of suing as regards territorial and pecuniary jurisdiction, as opposed to subject matter jurisdiction or very competence of the Court to take cognizance is concerned, unless it is shown that the objections as to territorial jurisdiction was raised in the Court of first instance at the earliest possible opportunity and there has been a consequent failure of justice on such count, jurisdiction of Civil Court, unless expressly or impliedly barred, would be competent to try and adjudicate the civil claim. Section 21 CPC reads as follows:

"21. Objections to jurisdiction. No objection as to the place suing shall be allowed by any appellate or revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice."

13. On the bare reading of section 21 *ibid*; it is manifestly clear that the objections as to territorial jurisdiction unless raised before the Court of first instance *"at the earliest possible opportunity"* are not even considered by the appellate or Revisional Court. The Appellate or Revisional Court would only consider such objections provided all three conditions as set down in section 21 CPC are met viz firstly, objection as to territorial jurisdiction was raised in the Court of first instance, secondly such objection is raised at the earliest opportunity and in case the issues are settled, before settlement of issue and most importantly and thirdly, there has been consequent failure of justice. In the case of **Pathumma v. Kuntalan Kutty (AIR 1981 Supreme Court 1683)**, it was held that, it is necessary that the above mentioned three conditions must co-exist. In the case of **Faqir Muhammad (Supra)** it was held that *this section provides statutory recognition that an objection about territorial jurisdiction can*

be waived and objections as to competence of the Court cannot be ignored.

14. In the instant case, it is matter of record that the Petitioner instead of raising objections as to territorial jurisdiction of the Court, engaged into long drawn battle in High Court and Supreme Court. He was ultimately driven to trial Court to contest the suit on merits. Written statement was filed by the petitioner/defendant with considerable delay on 12.3.2014, raising issue of territorial jurisdiction. Issue of territorial jurisdiction though raised before settlement of issues but, not at the earliest opportunity. Learned counsel when confronted as to what prejudice has been caused or will be caused to him, Sardar Aslam, learned ASC, candidly conceded that no prejudice or failure of justice has been caused or will be caused to the Petitioner if suit is tried by the learned Civil Judge, Quetta. Since we have noted that the learned Civil Judge at Quetta, seized of the matter is otherwise competent to decide the controversy subject matter of the suit.

15. In this view of the matter, we do not see any merit in the instant petition. Therefore, this petition is dismissed and leave to appeal is refused.

JUDGE

JUDGE

Islamabad, the
3rd of Oct., 2018
Syed Farhan Ali

Approved for Reporting