

Form No: HCJD/C.

JUDGEMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT.

RFA No.148 of 2001.

Pakistan Industrial Development Corporation (PIDC) & another.

Vs.

Mr. M. Iqbal, Sole Proprietor of M/s PEMSECO & three others.

Appellants by: Barrister Afan Khan, Advocate

Respondents by: Mr. Abdur Rashid Awan, Advocate

Date of Decision: 28.01.2015.

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Aamer Farooq, J.- The instant regular first appeal is directed against the judgement and decree dated 30.04.2001, passed by Civil Judge 1st Class, Islamabad.

2. The brief facts leading to filing of the present appeal are that the appellants filed a suit against the respondents for permanent injunction and damages for the sum of Rs:3346000/-. In the plaint, it was alleged that appellant No.1, namely, Pakistan Industrial Development Corporation (Pvt.) Limited (PIDC) is a Private Limited Company and is owned and controlled by respondent No.2 namely, the Government of Pakistan.

3. The appellants decided to privatize 'Tarbella Cotton and Spinning Mills (Pvt.) Ltd.' and in this regard made an advertisement for the sale of the same and respondent No.1 was the successful bidder. A formal agreement dated 13.07.1986 was executed between the sellers and the purchaser whereby the appellants sold the referred Company including the factory situated at Khalabat Town Haripur with all the fixtures, fittings, machinery, stocks, buildings and lands.

Respondent No.2 had obtained various loans/finance facilities from different banks and PIDC/Federal Government stood as guarantor/surety for the referred finances. In this regard in the agreement, mentioned above, there was a clause dealing with the affairs of the banks and purchaser. The referred clause reads as follows:-

“Pakistan Banking Council and National Development Finance Corporation have confirmed that PIDC/Federal Government would stand absolve from all liabilities of loans outstanding against the Company from the date of takeover of the possession of the Mills by the Vendee. The Securities and Guarantees of P.I.D.C./Federal Government would be returned on completion of legal and other formalities by the Vendee with the Nationalized Commercial Bank and N.D.F.C. The required formalities will be completed by the Vendee within two months of signing of the Agreement.”

4. By virtue of the above mentioned clause, the Securities and Guarantees of PIDC/Federal Government were to be returned by the Banks on completion of legal and other formalities by the Vendee. On the failure by respondent No.4, to return the Securities/Guarantees, the instant suit was filed. Respondent No.4 filed a written statement controverting the claim of the appellants. One of the objections raised by respondent No.4 was that an earlier suit was filed by the appellants against Pakistan Banking Council and other Nationalized Banks and in the referred suit, respondent No.4, was not impleaded/arrayed as a defendant, hence the suit is liable to be dismissed under Order II Rule 2 CPC. Out of the pleadings of the parties, the following issues were framed:

1. **Whether the plaintiffs have got no cause of action against the defendants? OPD**
2. **Whether the defendant No.1 is neither a necessary nor a proper party? OPD**
3. **Whether the suit is bad for mis-joinder of causes of action? OPD**

4. **Whether there is absolutely no privity of contract between Plaintiff No.2 and the defendant No.1, hence plaintiff No.2 is neither a necessary nor a proper party to the present suit? OPD**
5. **Whether the suit is barred U/O 2 Rule 2 CPC? OPD**
6. **Whether the suit is bad for mis-joinder of the parties? OPD**
7. **Whether the matter is subjudice before the honourable High Court, in view of the preliminary objection No.4 of the written statement? OPD**
8. **Whether this Court lacks territorial jurisdiction to entertain and try the suit? OPD**
9. **Whether the plaintiffs are stopped by their own words and conduct, deeds and writings from instituting the present suit? OPD**
10. **Whether the suit is hopelessly barred by time? OPD**
11. **Whether the plaint is liable to be rejected U/O 7 Rule 11 CPC? OPD**
12. **Whether the plaintiffs have not specified facts constituting cause of action, which is a mandatory requirement of Order 7 Rule 1 (e) of CPC? Hence the plaint is liable to be rejected on this ground as well? OPP**
13. **Whether the plaintiffs are entitled to get the decree for permanent injunction and damages for Rs:3,346 Million as sprayed for? OPP**
14. **Relief.**

5. The parties led their oral as well as documentary evidence. The learned Trial Court vide judgement dated 30.04.2001 decided issues No.5 & 11 against the appellants and dismissed the suit on the basis of Order II Rule 2 CPC and also on the ground that under **Banking Companies (Recovery of Loans, Finances etc.) Act 1997**, the suit is to be filed before the Banking Courts constituted under referred Act.

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6. Learned Counsel for the appellants submitted that the impugned judgement and decree of the learned Trial Court is against law and facts of the case. He further submitted that the learned Trial Court has misread and misconstrued the oral as well as documentary evidence produced by the parties. It was submitted next that the findings of the learned Trial Court on issues No.5 & 11 are erroneous and based on extraneous considerations. In support of his contentions, learned Counsel submitted that the suit titled PIDC Vs. Muhammad Iqbal etc. earlier filed on 15.11.1989 was distinct from the present suit and, therefore, the bar provided under Order II Rule 2 CPC is not attracted. Learned Counsel for the appellants also submitted that the cause of action in the present suit is different from the one in the suit filed on 15.11.1989 as the referred suit relates to Nationalized Banks whereas the subject matter in the present suit relates to securities of NDFC which is a Corporate Body. It was further submitted that the learned Trial Court erred in rejecting the plaint under Order VII Rule 11 CPC particularly when proper trial had been concluded.

7. Learned Counsel for respondents, defended the impugned judgement and decree and submitted that the same has been passed in accordance with law.

8. The suit was filed by the appellants primarily for the return of securities/guarantees tendered by the appellants to respondent No.4. Though in the prayer there is also a request for passing of decree for permanent injunction against respondents No.1 to 3 for not disposing of assets till the securities/guarantees are returned and also a prayer for damages to the tune of Rs:3346000/- against the defendants, the primary relief sought for is for the return of securities/guarantees in the light of Clause-4 of the Agreement dated 15.07.1986. The relevant issues in the present appeal are issues No.5 & 11, on the basis of which impugned judgement & decree has been passed.

9. The fact that the appellants had filed a suit for damages and injunction, containing in essence the same prayer, against the Pakistan Banking Council and other Banks, therefore, the bar provided under Order II Rule 2 CPC is attracted. In this regard for the sake of brevity the relevant Rule is reproduced below:-

“Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court”.

10. In various pronouncements, the Courts have held that where Order II Rule 2 CPC is attracted, the suit of the plaintiff is to be dismissed on that score alone. In this regard reliance can be placed on 2011 SCMR 222, 2014 YLR 1620, 2014 YLR 2016 and 2014 MLD 1417.

11. In view of the above facts and the law, the bar provided in Order II Rule 2 is attracted and therefore, learned Trial Court decided issue No.5 in accordance with law.

12. So far as issue No.11 is concerned, at the time when appellants filed the present suit, the law dealing with disputes between the customers and Banking Companies was Banking Companies (Recovery of Loans) Ordinance, 1979 and Banking Tribunals Ordinance, 1984. **During the course of proceedings in the Trial Court Banking Companies (Recovery of Loans, Finances etc.) Act 1997 was enacted.** Under section 9 of the referred Act, a borrower and the customer can institute a suit against the Banking Companies in the Banking Courts which had exclusive jurisdiction to adjudicate upon the matter falling within its jurisdiction. It is an established principle of law that no one has vested right in procedure and that the procedural law operates retrospectively meaning thereby that all pending suits which come within the jurisdiction of any subsequent forum created under the same subject law need to be transferred to the same Court/Tribunal. Reliance is placed on **PLD 1996 SC 187, 2006 PTD 330 & 2011**

SCMR 1254. Since the dispute in the suit, filed by the appellants, was regarding return of the securities/guarantees tendered by the appellants for loan/finance facility of obtained by respondent No.2, therefore, it fell within the jurisdiction of Banking Companies (Recovery of Loans, Finances etc.) Act, 1997. In view of above position of law it is held that the learned Trial Court correctly decided issued No.11 as well.

12. In view of what has been discussed above, this Regular First Appeal is dismissed with no order as to costs.

(ATHAR MINALLAH)
JUDGE

(AAMER FAROOQ)
JUDGE

Altaf Malik
Blue slip added

Approved for reporting.