

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

R.S.A. No.22 of 2016
Muhammad Azam Khan Niazi
Versus
General Manager, SNGPL, Islamabad.

Date of Hearing: 28.11.2016
Appellant by: Ch. Abdur Rehman Nasir, Advocate,
Respondent by: Mr. Sohail Nawaz, Advocate.

MIANGUL HASSAN AURANGZEB J:- Through the instant Regular Second Appeal, the appellant, Muhammad Azam Khan Niazi, impugns the judgment and decree dated 19.09.2016, passed by the Court of the learned Additional District Judge, Islamabad, whereby the appellant's appeal against the order and decree dated 07.06.2016, passed by the Court of the learned Civil Judge, Islamabad, was dismissed. Vide the said order and decree dated 07.06.2016, the learned Civil Court dismissed the appellant's suit for declaration and permanent injunction by invoking the provisions of Order VII, Rule 11 of the Code of the Civil Procedure, 1908 ("C.P.C.").

2. The appellant's case is that a natural gas meter, bearing No.MR2113635, was installed by the respondent (Sui Northern Gas Pipelines Limited) at the premises owned by the appellant; and that the appellant paid the last gas bill on 29.12.2006, whereafter no gas bill had been issued to the appellant. Fearing the disconnection of the gas meter, the appellant instituted the said suit against the respondent. Along with the said suit, the appellant filed an application for interim relief. It appears that after the institution of the civil suit on 11.04.2009, the appellant enjoyed injunctive relief until the learned Civil Court vacated the same on 07.06.2016.

3. The respondent contested the suit by filing a written statement. In the said written statement, the respondent took preliminary objections to the maintainability of the suit. One such objection was that the appellant could agitate his grievance before the Oil and Gas Regulatory Authority ("OGRA") in terms of Section 11 of the Oil and Gas Regulator Authority Ordinance,

2002 (“the OGRA Ordinance, 2002”). On merits, the position taken by the respondent was that gas meter, bearing No.MR2113635, had been installed on the appellant’s application; that the appellant was a habitual defaulter of gas bills; that the appellant’s gas meter was disconnected by the respondent on 24.08.1999 due to non-payment of gas bills; that the appellant never applied for the restoration of the gas meter; that the appellant was consuming gas since the past several years using an undocumented gas meter; that the meter reading section of the respondent had confirmed that gas meter No.2858718 had been installed in the bath room at the appellant’s premises; and that the meter reader was restrained by the appellant from reading the meter.

4. The learned Civil Court, vide the impugned order dated 07.06.2016, rejected the plaint under Order VII, Rule 11 of C.P.C. It was held that, the appellant could have filed a complaint against the respondent before OGRA under Section 11 of the OGRA Ordinance, 2002. The decision taken by OGRA on a complaint was appealable under Section 12 of the OGRA Ordinance, 2002. Section 13 of the OGRA Ordinance, 2002, also provided for the remedy of review against the decisions taken by OGRA.

5. The appellant’s appeal against the said order dated 07.06.2016, was dismissed by the Court of the learned Additional District Judge, Islamabad, vide order dated 19.09.2016. The said concurrent orders of the Courts below were challenged by the appellant in the instant appeal.

6. This appeal was first taken-up for hearing on 03.10.2016 whereon the learned counsel for the appellant submitted that the appellant was ready, willing and able to pay the gas dues, but no gas bill had been issued to the appellant. On 24.10.2016, the learned counsel for the respondent submitted that he shall liaise with the appellant to resolve the issue of the non-payment of the gas bill. During the pendency of this appeal, the appellant was issued a gas bill against which payment was duly made. The learned counsel for the respondent confirmed that gas bill amounting to Rs.2,21,969/- had been paid by the appellant on

16.11.2016. On 23.11.2016, learned counsel for the respondent submitted that there is no impediment before the appellant to apply for a fresh gas connection, which shall be processed in accordance with the law. He further submitted that the gas meter at the appellant's premises was undocumented, which could not be allowed to remain operational.

7. The learned counsel for the contesting parties made their submissions in reiteration of their pleadings before the learned Civil Court. Learned counsel for the appellant in support of his contentions placed reliance on the law laid down in the cases of Aurangzeb through L.Rs Vs. Masood Hussain through Legal Heirs and others (2016 MLD 644), Pakistan Oil Fields Ltd Vs. District Government, Attock (2009 MLD 608), Messrs Express Link Filling Station and another Vs. Oil and Gas Regulatory Authority and two others (2010 YLR 206), Ghulam Farid and others Vs. Province of Punjab and others (2013 MLD 77), Khawaja Jahangir Vs. Aurangzeb and others (2016 YLR 2418), whereas the learned counsel for the respondent placed reliance on the cases of Zahid Raza Khan Vs. Provincial Government N.-W.F.P. and others (2015 CLC 699), Messrs Sui Southern Gas Company Limited Vs. Arbab Najeebullah (PLD 2015 Balochistan 110), Ram Swarup and others Vs. Shikar Chand and another (AIR 1966 Supreme Court 893), Zafar ul Ahsan Vs. The Republic of Pakistan (PLD 1990 Supreme Court (Pak.) 113), Anjum Niaz Chaudhry and others Vs. Managing Director, Sui Northern Gas Pipeline Limited and others (2011 MLD 1402), Samina Anwaar Ullah Khan Vs. General Manager, SNGPL, Lahore (PLD 2012 Lahore 554).

8. I have heard the contentions of the learned counsel for the contesting parties and perused the record with their able assistance. The facts leading to the filing of this appeal have been set out in sufficient detail in paragraphs 02 to 06 above, and the same need not be recapitulated.

9. The dispute between the appellant and the respondent pertains to the respondent's intention to remove the gas meter installed at the appellant's premises. The appellant's case is that the said meter was installed in accordance with the law, and that

the gas bills with respect to the said gas meter have been paid by the appellant. On the other hand, the respondent's position is that the gas meter at the appellant's premises is undocumented (i.e. not in the appellant's name) and, therefore, liable to be disconnected/removed, regardless of the fact that payment against the gas bill has been made by the appellant.

10. The vital question that needs to be determined is whether the appellant could agitate this matter before the forum provided under the OGRA Ordinance, 2002, or the learned Civil Court. The exclusion of the jurisdiction of a Civil Court is not readily inferred. Section 9 of the Code of Civil Procedure, 1908, provides that Courts shall have jurisdiction to bring all suits, excepting suits of which the cognizance is either expressly or impliedly barred. It is an admitted position that the provisions of the OGRA Ordinance 2002, do not specifically bar the jurisdiction of the Civil Court. The principle is that in the absence of an express provision excluding the jurisdiction of the Civil Court, an enquiry into whether there is an implied bar to the exercise of such jurisdiction would depend upon the scheme of the statute and the relevant provisions. It is an analysis of the statutory scheme and the substantive provisions which would guide the Court to determine whether the statute has provided a right and a remedy and whether the procedure provided therein would impart conclusiveness to the orders of the forum provided by the statute, and thereby exclude the jurisdiction of the Court.

11. OGRA was established under Section 3 of the OGRA Ordinance, 2002. Section 11 of the OGRA Ordinance, 2002, is reproduced herein below:-

"11. Complaints.- (1) Any interested person may file a written complaint with the Authority against the licensee for contravention of any provision of this Ordinance or of any rule or regulation.

(2) The Authority shall, on receipt of a complaint, provide an opportunity to the complainant as well as to the licensee, or any other person against whom such complaint has been made to state its case before taking action thereon."

12. "Authority" has been defined in Section 2 (1) (i) of the OGRA Ordinance, 2002, to mean the Oil and Gas Regulatory Authority. An order or a decision of the Authority/OGRA passed

under Section 11 *ibid.*, is appealable under Section 12 of the OGRA Ordinance, 2002. The appeal is required to be decided within ninety days from the date of its presentation. Under Section 12 (2) of the OGRA Ordinance, 2002, a party aggrieved by any decision of OGRA concerning a regulated activity, can file an application to the High Court. The High Court in such a case can direct OGRA to refrain from doing anything it is not permitted by law to do, or to do anything that OGRA is required by law to do. The High Court can also declare that any act done or proceeding taken by OGRA has been done or taken without lawful authority and is of no legal effect. Additionally, under Section 13 of the OGRA Ordinance, 2002, OGRA can review, rescind, change, alter or vary any decision, or rehear an application before deciding it in the event of change in circumstances or the discovery of evidence which, in the opinion of OGRA, could not have reasonably been discovered at the time of the decision, or (in the case of a rehearing) at the time of the original hearing if consideration of the change in circumstances or of the new evidence would materially alter the decision. This Court in the case of Sui Northern Gas pipelines Ltd. Vs. Oil and Gas Regulatory Authority (2016 CLC 562), has interpreted Section 13 of the OGRA Ordinance, 2002, in the following terms:-

“5. ... The Ordinance of 2002 provides for two stage remedies to a person aggrieved on account of a determination made by the Authority under the Ordinance of 2002. Section 13 empowers the Authority to review, rescind, change, alter or vary any decision, or to rehear an application before deciding it in the event of a change in circumstances or the discovery of evidence which, in the opinion of the Authority, could not have reasonably been discovered at the time of making the decision, or at the time of the original hearing. The change in circumstances or discovery of the new evidence should be of a nature which would have materially altered the decision if it had been considered by the Authority at the relevant time. The powers of the Authority are expansive but circumscribed by the scope of review. The power of review under section 13, vested in the Authority, can be exercised to review, change, alter, rescind or vary any decision, provided the circumstances exist as have been described in section 13 of the Ordinance of 2002. If the Authority is of the opinion that there has been a change in circumstances or there has been a discovery of some new evidence which could not have reasonably been discovered at the time of the decision, then the Authority may exercise its powers to rescind, review, change, alter or vary any decision.”

13. Section 43 (1) of the OGRA Ordinance, 2002, *inter-alia*, provides that OGRA shall be exclusively empowered to determine the matters in its jurisdiction as set out in this Ordinance. Under Section 6 of the OGRA Ordinance, 2002, one of the powers and functions of OGRA is to *“resolve complaints and other claims against licensees for contravention of the provisions of this Ordinance, rules or regulations.”* Under Section 42 (1) of the OGRA Ordinance, 2002, OGRA has been empowered to make regulations, not inconsistent with the provisions of the said Ordinance or the rules, for the carrying out of its functions under the said Ordinance. As per Section 42(2) (e) of the OGRA Ordinance, 2002, OGRA can make regulations with respect to the *“procedure for resolving disputes amongst the licensees, consumers and licensees, and users of open access facilities”*. Learned counsel for the appellant does not dispute that the respondent was a “licensee” as defined in the OGRA Ordinance, 2002.

14. In exercise of the powers conferred by Section 42 of the OGRA Ordinance, 2002, OGRA has made Complaint Resolution Procedure (for Natural Gas, Liquefied Petroleum Gas (LPG), Compressed Natural Gas (CNG) and refined oil products) Regulations, 2003 (“the 2003 Regulations”). These Regulations provide for a mechanism for any person, including gas consumers, to submit applications/complaints with OGRA against a licensee on any of the following matters:-

“(a) any act or thing done or omitted to be done by a licensee or dealer in violation or alleged violation of the ordinance, rules, regulations, order of the Authority or terms and condition of the license;

(b) non-compliance by the licensee or dealer with the service standards in the areas including but not limited to;

(i) billing and overcharging;

(ii) connection and disconnection of service;

(iii) metering;

(iv) undue delay in providing service;

(v) safety practices; or

(vi) quantity and quality of natural gas, LPG or CNG being supplied; or

(c) discriminatory practices of the licensee or dealer.

(d) for redressal of complaints in respect of matters relating to easements as given in section 32 of the Ordinance.”

(Emphasis added)

15. The 2003 Regulations also require a licensee/gas utility company, such as the respondent, to establish a complaints resolution system with the approval of OGRA for addressing the complaints of gas consumers. A gas consumer cannot file a complaint before OGRA unless he has sought redress from the licensee pursuant to the complaint resolution system. It is only in the event where the complainant has failed to obtain redress from the licensee, that he can submit a complaint to OGRA pursuant to the 2003 Regulations. On the receipt of a complaint by OGRA, the same is required to be forwarded to a designated officer at OGRA for further action. The designated officer can require the licensee against whom the complaint is filed to respond to the complainant within a stipulated period. The designated officer at OGRA has been given wide ranging powers including the power to inspect any site, and to arrange a meeting between the complainant and a licensee. In terms of Regulation No.8 (2) of the said Regulations, the designated officer of OGRA is required to conclude his actions and notify the complainant and the licensee in writing of his decision within ninety days of the admission of the complaint. The designated officer at OGRA has also been empowered to issue temporary injunctions. The decision on a complaint under the 2003 Regulations is appealable under Regulation No.9.

16. Although, the learned counsel for the appellant is correct in his submission that ordinarily the Trial Court should not reject the plaint under Order VII, Rule 11 C.P.C. while deciding an application for interim relief under Order XXXIX, Rules 1&2 C.P.C., however, where a suit is clearly barred by law, or a statute specifically provides an alternative remedy/forum to the plaintiff or a mechanism for dealing with the plaintiff's complaint, there is no impediment before the learned Trial Court to reject the plaint at any stage of the proceedings.

17. In order to sustain an implied exclusion of the jurisdiction of the Civil Court, it is not necessary that the Legislature should have conferred jurisdiction on a Special Tribunal on all aspects. To the extent to which the Legislature has spoken and has created a special forum for addressing specified grievances of

employees, the jurisdiction of the Civil Court must, to that extent, be ousted. In the case at hand, I am of the view, that Section 11 of the OGRA Ordinance, 2002, read with the 2003 Regulations provides an adequate and efficacious remedy for the appellant to agitate his complaints and grievances against the respondent/licensee. There was nothing preventing the appellant from filing a complaint against the respondent as regards the latter's intent to remove or disconnect the gas meter installed at the appellant's premises. The appellant could have also sought an injunction against the respondent under the provisions of the 2003 Regulations.

18. At this stage, I deem it appropriate to refer to the following precedents/case law on the subject:-

- (i) This Court in the unreported order dated 16.04.2015, passed in W.P. No.1081/2015, titled "M/s Disposable Utensils Industries (Pvt.) Ltd. Vs. Sui Northern Gas Pipelines Limited (SNGPL) and another", dismissed a writ petition instituted by a consumer seeking a direction to the respondent to rectify/correct his monthly gas bill on the basis of actual gas consuming. The primary ground on which the said writ petition was dismissed was that the petitioner had an alternative remedy available to him under the provisions of the OGRA Ordinance, 2002, which remedy the petitioner had not availed. Furthermore, it was observed that the matter agitated by the petitioner did not fall within the purview/domain of this Court, since a complete mechanism for the redressing of the consumers' grievances had been provided in the OGRA Ordinance, 2002.
- (ii) Similarly, in the unreported order dated 07.04.2015, passed by this Court in OGRA Application No.1/2014, titled "M/s Sadaat CNG Vs. Oil and Gas Regulatory Authority, etc." this Court dismissed the petitioner/consumer's petition primarily on the ground that the OGRA Ordinance, 2002, read with the Complaints Resolution Procedure Regulations, 2003, had provided a mechanism for complaints by the consumers against the licensee.

- (iii) In the case of Sui Southern Gas Company Ltd. Vs. Arbab Najeebullah (PLD 2015 Balochistan 110), a gas consumer had instituted a civil suit against the licensee/Sui Southern Gas Company Limited, before the Court of the learned Civil Judge, Quetta. The subject matter of the civil suit was the disconnection of a gas meter on account of non-payment of a gas bill. The civil suit was decreed by the learned Civil Court and SSGC's appeal was dismissed by the Court of the learned Appellate Court. SNGPL's civil revision petition before the Hon'ble Balochistan High Court was allowed primarily on the ground that the provisions of the OGRA Ordinance, 2002, read with the Complaints Resolution Procedure (for Natural Gas, Liquefied Petroleum Gas (LPG) and Compressed Natural Gas (CNG) and Refined Oil Products) Regulations, 2003, had provided a mechanism and a procedure for the disposal of consumers' complaints. Paragraph-14 of the said report is reproduced herein below:-

“14. The outcome of the discussion is that the Statute provides a proper procedure for resolution of dispute between a consumer and a licensee and the Regulation framed thereunder are in addition thereto. Thus the provisions of law and Regulations were to be adhered to by the parties. The respondent (plaintiff) required to set into motion the relevant provisions and to avail the provided remedy, but he directly approached a court of civil jurisdiction for declaration to the effect which was an error. The matter pertains to natural gas, thus to be governed by the Ordinance XVII of 2002, and by the Rules and Regulations framed there-under. The alternate remedy provided by the law and the Regulations was to be availed at the first instance by the respondent (plaintiff), while a civil suit would be the last resort, but it was other way round. In presence of the Regulations 2003, a civil suit was not maintainable without availing of the remedy provided therein for redressal of the grievances of a consumer against a licensee.”

- (iv) Similarly, in the case of “Samina Anwaar Ullah Khan Vs. General Manager, SNGPL (PLD 2012 Lahore 554), a writ petition instituted by a gas consumer was dismissed *inter-alia*, on the ground that an alternative remedy under the Complaints Resolution Procedure Regulations, 2003, issued by OGRA was available to the petitioner/gas consumer.

- (v) In the case of “Anjum Niaz Chaudhry Vs. Managing Director, Sui Northern Gas Pipelines Limited” (2011 MLD 1402), the Hon'ble Lahore High Court dismissed a writ petition instituted by a gas consumer on the ground that the petitioner had not availed his remedy under Section 11 of the OGRA Ordinance, 2002. Section 11 of the OGRA Ordinance, 2002 was held to be an alternative remedy provided by law.

19. It is well settled that interference in a second appeal under Section 100 C.P.C. was permissible only if the impugned judgment was contrary to law or it had been rendered without deciding some material issue of law or there had been any error or defect of procedure provided by law. The learned counsel for the appellant has not been able to point out any finding in the concurrent judgments of the Courts below, which are contrary to the law.

20. By reason of the aforementioned, I do not find any merit in this appeal, which is accordingly, dismissed. The appellant is at liberty to agitate his grievance before OGRA under Section 11 of the OGRA Ordinance, 2002 read with the 2003 Regulations. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2017

(JUDGE)

APPROVED FOR REPORTING

Sultan*

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