

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

I.C.A. NO.644 OF 2014

**SAUDI PAK INDUSTRIAL AND AGRICULTURAL INVESTMENT
COMPANY LIMITED, ISLAMABAD.**

Versus

**AL-HAMRA HILLS (PVT.) LIMITED THROUGH ITS CHIEF
EXECUTIVE, ETC.**

**Appellant by : M/s Azid Nafees and Syed Mudassir
Rizvi, Advocates.**

Respondent by : Mr. Amjad Hameed Ghauri, Advocate.

Date of hearing : 17.01.2023.

SAMAN RAFAT IMTIAZ, J. Through this Intra Court Appeal, the Appellant (Saudi Pak Industrial and Agricultural Investment Company Limited) has challenged the Order dated 20.11.2014 (“**Impugned Order**”) whereby the learned Single Judge-in-Chambers has returned the plaint to the Appellant under Order VII, Rule 10, C.P.C.

2. Succinctly, the facts of the case are that the Appellant filed a Civil Suit for Declaration and Permanent Injunction against the Respondents/Defendants on 18.02.2014 before this Court. The Respondents/Defendants filed an application under Order VII, Rules 10 & 11 read with Section 151, C.P.C for rejection/return of plaint. The learned Single Judge-in-Chambers after hearing the learned counsel for the parties disposed of the Respondents/Defendants’ application and directed to return the plaint to the Plaintiff. Hence, the present appeal.

3. The learned counsel for the Appellant contended that the learned Single Judge-in-Chambers erred in holding that no relief is claimed in the prayer clause against the land situated in Islamabad whereas paragraph (d) of

the prayer clause expressly mentions seeking restraining order against transferring and/or dealing with the land in any way. Moreover, the learned Single Judge-in-Chambers did not take into consideration that the Respondent No.4/Defendant No.4 has to perform all his activities in Islamabad in collaboration with Respondent No.5/Defendant No.5 which includes getting approval from the Capital Development Authority (CDA) in respect of the property situated in Islamabad and thus the cause of action partly arose in Islamabad. The learned counsel in support of his contentions placed reliance on *Province of Punjab through District Collector, Mianwali and others versus Mehmood-ul-Hassan Khan*, 2007 SCMR 933 and *Messrs BRADY & Co. (Pakistan) Ltd. versus Mesrs Sayed SAIGOL Industries, Ltd.*, 1981 SCMR 494.

4. Conversely, learned counsel for Respondents No. 1 to 4 strongly opposed the contentions of the Appellant and while supporting the Impugned Order submitted that the such order is based on a correct appreciation of the law and do not suffer from any infirmity or illegality.

5. We have heard the arguments of the learned counsel for the parties and perused the record.

6. The learned Single Judge-in-Chambers while returning the plaint vide the Impugned Order concluded that the registered office of the company/Respondent No.2 is in Lahore and as such the Appellant/Plaintiff has wrongly filed the suit in Islamabad. The learned counsel for the Appellant argued that the learned Single Judge-in-Chambers erred because the cause of action partly accrued in Islamabad.

7. We have examined the contents of the plaint filed by the Appellant in his Civil Suit No. 07/2014 against the Respondents with the assistance of the learned counsel for the Appellant and it is revealed that the Petitioner has alleged that the resolutions passed by the board of directors of the Respondent No. 1 on 21.06.2013 (“**Impugned Resolutions**”) are invalid

and unlawful on account of being *ultra vires* the Respondent No. 1's Memorandum and Articles of Association; in breach of fiduciary duties of the directors; discriminatory against minority shareholders; and also against the rules of natural justice. The cause of action is alleged to have accrued to the Appellant on June 21, 2013 when the Impugned Resolutions were passed. The relief claimed is also declaration and permanent injunctions with regard to the Impugned Resolutions and only one consequential relief by way of permanent injunction in respect of the land located in Islamabad has been claimed. In view of the foregoing, it is necessary to consider the contents of the Impugned Resolutions which are as such reproduced herein below:-

“RESOLVED THAT Mr. Muhammad Hammad Arshad is hereby authorized to nominate and to delegate to representatives to enter into negotiations with DHAI and their authorized representatives, nominees, assignees, assigns, project companies on behalf of the company in matters pertaining to collaboration and business arrangements. He further authorized to finalise, implement, execute any such arrangements and is also authorized to take all such steps and sign all such documents which may be required or necessary in this regard to achieve the desired objectives.” (Emphasis added)

and

“RESOLVED THAT Approval has been given for Indemnity provided to CEO and his nominees as circulated in the last Board of Directors Meeting.”

8. As may be seen from the above reproduction, the Impugned Resolutions simply authorize the Respondent No. 4 to (i) nominate representatives to negotiate certain matters with the Respondent No. 5 on behalf of the Respondent No. 1 and to delegate in this regard and (ii) to finalize, implement, execute any such arrangements and to take all necessary, ancillary steps and sign all necessary documents apart from granting approval for Indemnity Bond.

9. Since the subject matter of the suit is whether or not the Impugned Resolutions were validly passed, the place of occurrence of the alleged cause of action is where such Resolutions were passed under Section 20(c), C.P.C.

10. It was argued by the learned counsel for the Appellant that the powers conferred upon the Respondent No.4 by way of the Impugned Resolutions shall be used in respect of the land situated in Islamabad and as such cause of action partly accrued in Islamabad. However, there is no allegation in the plaint that such powers have been used in respect of the land in Islamabad. The territorial jurisdiction cannot be determined on the basis of where the land is situated that is likely to be affected by the Impugned Resolutions particularly when the land is not even mentioned in such Impugned Resolutions.

11. We reply upon *Bashir Ahmad Badini, District & Sessions Judge, Dera Allah Yar and others versus Honorable Chairman and Member of Administration Committee and Promotion Committee of Honorable High Court of Balochistan and others*, 2022 SCMR 448, wherein the Honorable Supreme Court explained the concept of cause of action as follows:-

*“23. A cause of action is predominantly a technical legal term meant for the set of circumstances and facts which give rise to institute and lodge the claim in the court of law but not any premature claims or grievances. It is legally acknowledged and recognized that it is the wrongdoing which in fact originates and triggers the right to sue. The court cannot hear any case nor render any decision without a valid cause of action or without accrual of right to sue or in other words without accrual of cause of action to set the law into motion. The expression "cause of action" means a bundle of facts which if traversed, a suitor claiming relief is required to prove for obtaining judgment. **It is also well understood that not only the party seeking relief should have a cause of action when the transaction or the alleged act is done but also at the time of the institution of the claim. The expression "cause of action" is a fundamental element to confer the jurisdiction and is commonly empathized to mean a state of affairs that enables a party to carry on an action in a court of law or a Tribunal.**”[Emphasis added]*

12. Admittedly no action has been taken in respect of the land in Islamabad by the Respondent No. 4 in exercise of the powers conferred upon him vide the Impugned Resolutions to date let alone at the time of institution of the suit, as such no cause of action has been disclosed by the Petitioner in the plaint to have arisen against the Petitioner in Islamabad. In view of the above, we find no illegality in the Impugned Order which has correctly held

that cause of action has not arisen in Islamabad and as such this Court does not have jurisdiction.

13. For what has been discussed above, present appeal, being devoid of any merit is hereby **dismissed.**

(CHIEF JUSTICE)

**(SAMAN RAFAT IMTIAZ)
JUDGE**