JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

F.A.O.No.172/2019
Nauman Azhar
Versus
CELVAS Private Limited and others

Date of Hearing:	16.10.2019.
Appellant by:	Mr. Imran Feroze Malik, Advocate
Respondents by:	Barrister Raja Jibran Tariq Ali for respondents No.1 and 2

MIANGUL HASSAN AURANGZEB, J:- Through the instant appeal, the appellant, Nauman Azhar, impugns the order dated 26.07.2019 passed by the Court of the learned Civil Judge, Islamabad, whereby application for interim injunction under Order XXXIX, Rules 1 and 2 Civil Procedure Code, 1908 **("C.P.C.")** filed along with the suit for declaration, etc. filed by respondents No.1 and 2 was allowed and respondent No.4 was restrained from usage of the software (e-challan application) which respondents No.1 and 2 claim to have developed. In the said suit, respondents No.1 and 2 had also prayed for the recovery of the cost of development of e-challan application, general and special damages and future loss of earnings to the tune of Rs.1,98,80,000/-.

2. Learned counsel for the appellant submitted that there did not exist a written agreement between the appellant and respondents No.1 and 2 for the development of an application that would include hardware and software solution for traffic challan management to be used by the Islamabad Traffic Police for the generation of challans against offenders of traffic laws; that a written agreement of such a nature also did not exist between the Islamabad Traffic Police and respondents No.1 and 2; that respondents No.1 and 2 were not able to develop the e-challan application within a reasonable period; that in the suit, respondents No.1 and 2 have pleaded that vide e.mail dated 12.08.2016, the appellant had asked the said respondents to submit a draft contract for the e-challan application to be signed between M/s Virtual Remittance Gateway ("V.R.G.") and the said respondents; that the said pleading clearly establishes that a written agreement regarding the development of

an application of e-challan was never executed with the said respondents; that respondents No.1 and 2 have also pleaded that on 19.05.2017, the said respondents were asked to sign an agreement for software development and support; and that the software development and support agreement dated 19.05.2017 was executed between respondent No.1 and M/s Facility Specialist and Multi-Services (Pvt.) Ltd. which has not been made a party in the suit.

3. Learned counsel for the appellant further submitted that it is well settled that an interim injunction cannot be granted to prevent a breach of an agreement for services; that an interim injunction cannot be granted to prevent the breach of an oral agreement, the terms and conditions whereof were yet to be proved during the trial; that since respondents No.1 and 2, in their suit, had specifically prayed for the recovery of damages, the learned Trial Court erred by allowing their application for interim injunction; that since the loss caused to respondents No.1 and 2 due to the breach of an oral agreement, if any, could be remedied in terms of money; and that the impugned order is against the mandate in Section 56 of the Specific Relief Act, 1877. Learned counsel for the appellant prayed for the appeal to be allowed and for the impugned order dated 26.07.2019 to be set-aside.

4. On the other hand, learned counsel for respondents No.1 and 2 took an objection to the maintainability of the appeal on the ground that the same was barred by time. He submitted that the appeal should have been filed within the limitation period of thirty days. In taking this objection, learned counsel for respondents No.1 and 2 placed reliance on the judgments reported as *2015 YLR 209* and *2010 MLD 1578*. Furthermore, he submitted that the impugned order dated 26.07.2019 does not suffer from any legal infirmity; that an oral agreement had been entered into between the appellant and respondents No.1 and 2 for the development of an application that would include hardware and software solution for traffic challan management to be used by the Islamabad Traffic Police for the generation of challans against offenders of traffic laws; that the factum as to such an agreement having been entered into was not

expressly denied by the appellant; that respondents No.1 and 2 had spent a huge amount in developing the e-challan application; that not a single penny has been paid to respondents No.1 and 2 for their efforts in developing the e-challan application; that after taking advantage of respondents No.1 and 2's hard work, the appellant fraudulently gave the project to another developer; and that the mere fact that respondents No.1 and 2 had prayed for the recovery of damages against the defendants in the suit, did not bar them to seek the grant of interim injunction. Learned counsel for respondents No.1 and 2 prayed for the appeal to be dismissed.

5. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

6. Article 156 of the Schedule to the Limitation Act, 1908 provides a limitation period of ninety days for filing an appeal to the High Court against an order or a decree passed under the C.P.C. except in the cases provided by Article 151 and 153. The limitation period of ninety days is to be computed from the date of the decree or order appealed from. In the case at hand, the order against which the instant appeal has been filed was passed under Order XXXIX, Rules 1 and 2 C.P.C. Therefore, the limitation period for filing an appeal against the impugned order dated 26.07.2019 before this Court would be ninety days. Since the instant appeal was filed on 23.09.2019, the same was within the limitation period provided in Article 156 of the Schedule to the Limitation Act, 1908. Therefore, argument of the learned counsel for the respondents No.1 and 2 to the maintainability of the instant appeal is spurned.

7. Respondents No.1 and 2, in their suit for declaration, etc. took the stance that an oral agreement between the appellant and respondents No.1 and 2 was made for the development of an application that would include hardware and software solution for traffic challan management to be used by the Islamabad Traffic Police for the generation of challans against offenders of traffic laws. Furthermore, it was contended that the appellant had breached his obligations under the oral agreement by using the e-

challan application developed by respondents No.1 and 2 without remunerating the said respondents.

8. It is not disputed that respondents No.1 and 2, in their suit, had prayed for the recovery of general and special damages amounting to Rs.1,98,80,000/-.

9. It is well settled that if the plaintiff's loss is measurable in terms of money, injunction cannot be granted in his favour. The mandate of Section 56(i) of the Specific Relief Act, 1877 is that no injunction should be granted when equally efficacious relief can be obtained by any other usual mode of proceedings. In the cases of Mehran Sugar Mills Vs. Sindh Sugar Corporation Limited (1995 CLC 707), Qasimabad Enterprises Vs. Province of Sindh (1998 CLC 441), I.Puri Terminals Limited Vs. Port Qasim Authority (2003 CLD 153), Muhammad Hussain Khan Vs. N.I.B. Bank Limited (2009 CLD 42), Ghulam Nabi Shah Vs. Pakistan International Airline Corporation (2013 PLC C.S. 768) and Muhammad Kashan Vs. Coca Cola Export Corporation (2015 CLD 1513), it was held that where plaintiffs themselves estimated the damages/losses suffered by them on account of breach of an agreement, no case for temporary injunction was made out. Furthermore, in the cases of Ghulam Nabi Vs. Seth Muhamamd Yaqoob (PLD 1983 S.C. 344) and Puri Terminal Ltd. Vs. Government of Pakistan (2004 SCMR 1092), it has been held *inter alia* that where the plaintiff had claimed compensation/damages as an alternative relief in the suit, interim injunction could not be granted to him. In the case of Imtiaz Ali Khan Babar Vs. Federation of Pakistan (2018 CLD 80), it has been held that where a definite amount of damages as compensation is claimed by a plaintiff in his suit, he loses the right to seek restraining orders on the ground of *"irreparable loss"*. Furthermore, it was held that where a plaintiff's loss is calculated by the plaintiff himself, it becomes reparable.

10. Another crucial feature of this case is that the terms of the oral agreement between the appellant and respondents No.1 and 2 for the development of the e-challan application are not certain. It is only after the recording of evidence that it can be determined whether the appellant had committed breach of the oral agreement.

In the case of Muhammad Aslam Vs. Muhammad Khan (1999 SCMR 2267), it has been held that where the assertion by a party as to the existence of an oral agreement is denied by the other side, there did not exist any *prima facie* case for the grant of a temporary injunction. In the case of Muhammad Yousaf Vs. Ch. Tajammal Hussain (2019 CLC Note 38), the Hon'ble Lahore High Court upheld the dismissal of an application for interim injunction on the ground that the existence of an oral agreement was yet to be proved. In the case of Ghulam Muhammad Vs. Ashiq Hussain (2018 MLD 1449), the application for the grant of an interim injunction was concurrently turned down by the Civil Court and Hon'ble Lahore High Court after holding that convincing and reliable evidence was required to be produced by the plaintiff to establish the alleged oral sale. Furthermore, it was held that temporary injunction could not be granted as a matter of course in cases where evidence was yet to be produced to establish a *prima facie* case.

11. Since respondents No.1 and 2 had prayed for a recovery of a quantified amount in their suit against *inter alia* the appellant, and since I am of the view that the loss caused to respondents No.1 and 2 by the breach, if any, of the oral agreement, can be measured in terms of money, the question of any irreparable loss to respondents No.1 and 2 does not arise. For a Court to grant an interim injunction, the existence of all three ingredients i.e., irreparable loss, balance of convenience, and strong *prima facie* arguable case are necessary. Since the essential element of irreparable loss to respondents No.1 and 2 is lacking in the case at hand, the instant appeal is allowed and the impugned order dated 26.07.2019 is set-aside. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2019

(JUDGE)

*Qamar Khan**

APPROVED FOR REPORTING