

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

W.P. No.4119/2017

Nokia Solutions and Networks Pakistan (Pvt.) Ltd.

versus

Additional District Judge (West), Islamabad, etc.

Petitioner by: Mr. Rashid Hanif, Advocate.

Respondents No.2 to 55 by: Mr. Muhammad Umair Baloch, Advocate.

Date of Hearing: 19.06.2019.

MOHSIN AKHTAR KAYANI, J: Through this writ petition, the petitioner impugns order dated 04.11.2017 of the learned Additional District Judge-IX (West), Islamabad, whereby application under Order VII Rule 11 CPC of respondents No.2 to 55 has been allowed and civil suit filed by petitioner has been rejected.

2. Brief facts referred in the instant writ petition are that petitioner is a company incorporated under the Companies Ordinance, 1984 and respondents No.2 to 55 had remained employees of the petitioner, who after availing Voluntary Separation Scheme and receiving full and final settlement have filed joint petition under Section 41 of the Industrial Relations Act, 2008 "*IRA, 2008*", which was ultimately accepted vide order dated 04.02.2011. The petitioner feeling aggrieved thereby preferred appeal under Section 17 of the Payment of Wages Act, 1936 after depositing an amount of Rs.26,749,663/- with District Nazir of Deputy Commissioner, Islamabad on 12.03.2011. During pendency of the appeal, IRA, 2008 ceased to exist and later on Industrial Relations Act, 2011 was promulgated, though no forum of Labour Court was mentioned therein, which resulted into diverse litigations on the point of

forum. On 12.02.2015, petitioner filed a civil suit in terms of Section 9 CPC before Civil Court, Islamabad, which was contested by respondents No.2 to 55 by filing their written statement together with application under Order VII Rule 11 CPC, wherein maintainability of civil suit and jurisdiction of Civil Court was objected. The learned Civil Court decided the said objection vide order dated 13.03.2015 with the observation that the Court has jurisdiction to try the suit and consequently the parties contested the said application through their respective evidence and arguments, ultimately the application under Order VII Rule 11 CPC was dismissed vide order dated 06.03.2017 on the basis of earlier order of 13.03.2015. Feeling aggrieved thereby, respondents No.2 to 55 filed revision petition before learned District Judge (West), Islamabad, which was entrusted to the learned Additional District Judge-IX (West), Islamabad, who accepted the civil revision petition vide impugned order dated 04.11.2017 and plaint of suit filed by petitioner was rejected. Hence, the instant writ petition.

3. Learned counsel for petitioner contended that learned Additional District Judge-IX (West), Islamabad has not appreciate the fact that question of jurisdiction and maintainability of suit was already decided vide order dated 13.03.2015, which was not challenged by respondents No.2 to 55; that learned Additional District Judge erred in law as it is well established that Civil Courts have been granted general jurisdiction by virtue of provisions of Section 9 CPC to try all suits of a civil nature; that the learned Additional District Judge has not appreciated the principle of '*ubi jus ibi remedium*' i.e. where there is a right, there is a remedy; that objection of the maintainability of the civil suit was also

settled by the apex Court in CPLA No.2341/2016 after hearing the arguments of respondents No.2 to 55 with the direction that petitioner has rightly opted the appropriate remedy of a civil suit under Section 9 of CPC, but despite the said order, the learned Additional District Judge passed the impugned order, which is liable to be set-aside.

4. Conversely, learned counsel for respondents No.2 to 55 contended that the learned Additional District Judge through impugned order has rightly rejected the plaint of suit filed by plaintiff/petitioner as appropriate forum i.e. NIRC and High Court have already decided the matter in question, therefore, suit of petitioner/plaintiff was liable to be dismissed; that the matter in dispute is regarding clearance of dues/gratuity relating to Payment of Wages Act, 1936, for which the proper forum is NIRC and in this regard, the Hon'ble Islamabad High Court also directed the petitioner to approach NIRC, but the petitioner with malafide intention approached Civil Court by filing a civil suit; that the suit filed by petitioner is false, frivolous and vexatious, which has rightly been rejected by learned Additional District Judge, therefore, the instant writ petition may be dismissed.

5. Arguments heard, record perused.

6. Perusal of record reveals that the petitioner company i.e. M/s Nokia Solutions & Networks Pakistan (Pvt.) Ltd. has been non-suited by the Revisional Court vide judgment and decree 04.11.2017 on the ground that the suit filed by petitioner is not maintainable as Section 9 CPC excludes the jurisdiction of the Civil Court as it could not assume the jurisdiction of court of appeal on the pretext that concept of appellate forum is not provided in statute.

7. The facts in brief drawn from the record reveal that respondents No.2 to 55 after availing Voluntary Separation Scheme by tendering their resignation and receiving full and final payment under the said settlement filed petition under Section 9 of the Payment of Wages Act, 1936 seeking direction against petitioner to pay them their gratuity, however the learned Labour Court transferred the said petition to Payment of Wages Authority under the Payment of Wages Act, 1936, whereby the authority has accepted the application vide order dated 04.02.2011. The petitioner feeling aggrieved thereby had filed an appeal under Section 17 of Payment of Wages Act, 1936 with the erstwhile Labour Court and has also deposited Rs.26,749,663/- with the District Nazir Deputy Commissioner Office on 12.03.2011, whereafter the appeal was admitted by the Labour Court/District Judge, Islamabad and direction was passed not to release the said amount as interim relief vide order dated 12.03.2011. However, during pendency of said matter, the apex Court in case reported as 2011 SCMR 1254 (Air League of PIAC Employees vs. Federation of Pakistan, etc.) has held that Industrial Relations Act, 2008 ceased to exist. Consequently, the Labour Court, Islamabad stopped functioning and appeal of petitioner remained pending to await new legislation.

8. On 17.11.2011, Industrial Relations Act, 2011 was promulgated, but forum of Labour Court was not provided under the said law. Subsequently, Industrial Relations Act, 2012 was enacted with similar flaw of non-existence of forum of Labour Court. Eventually, appeal of petitioner was transferred from Labour Court to NIRC vide order dated 17.10.2011 and parties were directed to appear before the NIRC on

31.10.2011. The petitioner approached the High Court through W.P. No.2945/2011 on 20.07.2011 on the analogy that Labour Court was abolished in Islamabad and petitioner has been deprived of his legitimate forum. Respondents No.2 to 55 in the meanwhile filed execution petition, which was suspended by the High Court vide order dated 11.01.2012. Similarly, the appeal pending before NIRC was numbered as 4-B(230)/2012 and had been placed before the Single Bench of NIRC, however during the said period, the Islamabad High Court dismissed W.P. No.2945/2011 against execution of order and thereafter a series of writ petitions i.e. i.e. W.P. No.250/2012, W.P. No. 2945/2011, W.P. No.1124/2012 have been instituted against each and every step, and even respondents No. 2 to 55 also assailed judgment of this Court in ICA No.207/2012, which further went up to the apex Court. During pendency of the same, the petitioner filed a suit in terms of Section 9 CPC with the claim that he could not be remedy less on the maxim of *ubi jus ibi remedium*. The apex Court vide its order dated 01.12.2016 disposed of CP No.2341/2016 on the following analogy.

"6. In this view of the matter, the titled Civil Petition for Leave to Appeal is disposed of in the terms that the amount in question may be released to the said Respondents, subject to furnishing security to the satisfaction of the Notified Authority i.e. Assistant Commissioner (City), Islamabad, for the refund of the amount in case the Civil Suit is finally decided in favour of the Petitioner. Disposed of accordingly."

9. The Civil Court while hearing civil suit qua the claim of petitioner has rejected the application under Order VII Rule 11 CPC filed by respondents No.2 to 55 vide order dated 06.03.2017. However, the revisional court through impugned order dated 04.11.2017 has accepted the application under Order VII Rule 11 CPC for the reason that Civil

Court could not assume the jurisdiction of court of appeal, on the pretext that appellate forum provided under statute is no more available.

10. The entire discussion and background of the case clearly spells out that the forum to deal with the orders of Payment of Wages Authority has been referred in terms of Section 17 of the Payment of Wages Act, 1936, which reads as follow:

“17. Appeal.(1) An appeal against a direction made under sub-Section (3) or sub-Section (4) of Section 15 may be preferred, within thirty days of the date on which the direction was made before the Labour Court constituted under the Industrial Relations Ordinance, 1969 (XXIII of 1969) within whose jurisdiction the cause of action to which the appeal relates arose.”

11. The above referred provision of the law refers the Labour Court and as such, two subsequent legislations namely Industrial Relations Act, 2011 and Industrial Relations Act, 2012 are silent qua the forum of Labour Court and at present there is no appellate forum to deal with the proposition as to whether the gratuity fixed by Payment of Wages Authority in favour of respondents No. 2 to 55 is in accordance with law and the same could be appreciated in the light of evidence by the appellate forum. However, in absence of appellate forum the principle of *ubi jus ibi remedium* comes into play and accordingly the concept of jurisdiction has to be drawn with reference to Section 9 of the CPC, and Section 22 of Payment of Wages Act, 1936.

12. There is no cavil to proposition that Civil Court has parallel jurisdiction to adjudicate upon all suits unless barred in terms of Section 9 of the CPC as held in 2009 YLR 1408 Karachi (Abdullah through L.Rs., etc. vs. Muhammad Ibrahim, etc.), PLD 1993 Lahore 390 (Bahadur, etc. vs. Umar Hayat, etc.), PLD 2008 Karachi 458 (Raees Ghulam Sarwar vs.

Mansoor Sadiq Zaidi, etc.), 1989 CLC 2252 Karachi (Mrs. Nawab Begum vs. Dr. M.A. Mahboob, etc.), but Section 22 of the Payment of Wages Act, 1936 has been enacted to deal with the proposition of barring of suits.

For ready reference, Section 22 of the Act is reproduced as under:

“22. Bar of suits.— No Court shall entertain any suit for the recovery of wages or of any deduction from wages in so far as the sum so claimed—

- (a) forms the subject of an application under section 15 which has been presented by the plaintiff and which is pending before the authority appointed under that section or of an appeal under section 17; or*
- (b) has formed the subject of a direction under section 15 in favour of the plaintiff; or*
- (c) has been adjudged, in any proceeding under section 15, not to be owed to the plaintiff; or*
- (d) could have been recovered by an application under section.*

13. Keeping in view the above statutory provision, this Court comes to the irresistible conclusion that any amount so determined by the Payment of Wages Authority and claimed by any individual or remains the subject matter of appeal in terms of Section 17 of the Act are to be adjudged upon or is recoverable in terms of Section 15 of the Act shall not be entertained by any Court by way of any suit for recovery of wages or of any deduction from wages insofar as the sum so claimed. In other way, the concept referred in Section 22 of the Act put a clog in the way of petitioner's claim in this case and as such, the jurisdiction of Civil Court has specifically been barred in all kinds of proceedings under the Payment of Wages Act, 1936, although the general rule in terms of Section 9 CPC is different, but the legislative intent referred in Section 22 of the Act clearly bars the claim in shape of suit, therefore, the learned revisional court has rightly passed the impugned judgment dated 04.11.2017.

14. Similarly, the petitioner reserves his right to challenge the order of Payment of Wages Authority in terms of Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 while relying upon the principle of *ubi jus ibi remedium*. However, the claim of petitioner, who intends to place certain evidence or brought any new evidence on record, has to be seen in the light of principles of Civil Procedure Code, 1908, whereby the appellate forum can also entertain additional evidence in terms of Order XLI Rule 25 CPC, if so required. The Payment of Wages Act, 1936 provides certain powers and mechanism for determination of any claim under the said law, whereby the authority can act and exercise its powers of Civil Court under the Civil Procedure Code, 1908 for the purpose of taking evidence and enforcing of attending the witnesses, compelling the production of documents in terms of Section 18 of the said Act and for every legal purpose the authority shall be deemed to be a Civil Court, therefore, the claim of petitioner could not be considered for re-appraisal and re-evaluation by the Civil Court under any stretch of imagination due to bar contained in Section 22 of the Act.

15. In view of discussion made hereinabove, the instant writ petition is hereby DISMISSED.

(MOHSIN AKHTAR KAKANI)
JUDGE

Announced in Open Court on: 5th July 2019.

JUDGE

Khalid Z.