

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE MIAN SAQIB NISAR, HCJ
MR. JUSTICE MAQBOOL BAQAR
MR. JUSTICE FAISAL ARAB

**CIVIL PETITION NOS. 3195-L TO 3198-L, 3268-L, 3269-L, 3352-L
TO 3358-L, 3570 TO 3576, 3603, 3604, 3631, 3669 TO 3673 OF
2016 & 69-L OF 2017**

(On appeal against the judgment dated 14.10.2016 passed by the Lahore High Court, Lahore in FAO Nos. 213 to 216, 218, 239 to 258, 289 to 292 of 2015)

State Life Insurance Corporation of Pakistan
through its Chairman etc

...Petitioner

VERSUS

Mst. Sardar Begum	(In CP 3195-L/2016)
Mst. Irshad Begum	(In CP 3196-L/2016)
Mst. Abida Parveen	(In CP 3197-L/2016)
Mst. Tasneem Akhtar	(In CP 3198-L/2016)
Mst. Nuzhat Parveen	(In CP 3268-L/2016)
Mst. Parveen Akhtar	(In CP 3269-L/2016)
Mst. Bashiran Bibi	(In CP 3352-L/2016)
Malik Muhammad Ayub	(In CP 3353-L/2016)
Niaz Ali	(In CP 3354-L/2016)
Mst. Nusrat Ara	(In CP 3355-L/2016)
Mst. Robina Shaheen	(In CP 3356-L/2016)
Riaz Ahmad Naveed	(In CP 3357-L/2016)
Haji Muhammad Sharif etc	(In CP 3358-L/2016)
Mst. Syed Mazhara Fatima	(In CP 3570/2016)
Mst. Shamshad Akhter	(In CP 3571/2016)
Ghulam Raza Sajid	(In CP 3572/2016)
Mst. Khalida Parveen	(In CP 3573/2016)
Mst. Rukhsana Kausar	(In CP 3574/2016)
Mst. Kaneez Begum	(In CP 3575/2016)
Mst. Safia Bibi	(In CP 3576/2016)
Mst. Kaneez Bibi (decd) through LRs	(In CP 3603/2016)
Mst. Rukia Bibi	(In CP 3604/2016)
Mst. Inayat Begum	(In CP 3631/2016)
Mst. Anwar Begum	(In CP 3669/2016)
Mst. Rashida Bibi	(In CP 3670/2016)
Mst. Razia Begum	(In CP 3671/2016)
Mst. Zareena Bibi	(In CP 3672/2016)
Mst. Shafqat Jahan	(In CP 3673/2016)
Mst. Bashiran Bibi	(In CP 69-L/2017)

... Respondents

For the Petitioner: Syed Waqar Hussain Naqvi, ASC
(In CPs 3195-L to 3198-L/2016)

Mr. Ibrar Ahmed, ASC
Syed Rifaqat Hussain Shah, AOR
(In CPs 3268-L, 3269-L, 3669 TO 3673/2016 & 69-L/2017)

Mr. Jehanzeb Khan Bharwana, ASC
(In CPs 3352-L TO 3358-L/2016)

Rana Muhammad Ibrahim Satti, Sr. ASC

Syed Rifaqat Hussain Shah, AOR
Mr. Safdar Ali Qureshi, Law Officer, State Life Insurance Corporation
(In CPs 3570 TO 3576, 3603, 3604 & 3631/2016)

For the Respondents: Mr. Liaqat Ali Butt, ASC
(In CP 3195-L/2016)

N.R.
(In all CPs except CP 3195-L/2016)

Date of Hearing: 28.03.2017

JUDGMENT

FAISAL ARAB, J.- The dispute in all these connected cases is with regard to determining the correct place of suing under the provisions of the repealed Insurance Act, 1938 as there is no dispute between the parties that suits can still be filed before the forum provided in the repealed Act for any relief in respect of contract of insurance executed when the repealed Act was in operation. This has also been held by a Full Bench of the Lahore High Court in the case of Mst. Robina Bibi Vs. State Life Insurance (2013 CLD 477).

2. For the settlement of their respective claims arising from the contracts of insurance executed when the repealed Insurance Act, 1938 was in operation, the respondents filed suits against the petitioners in the Courts of various District Judges of Punjab. In all such suits, the petitioners filed applications under Order VII Rule 10

of the Code of Civil Procedure seeking return of the complaints back to the respondents to be presented in the Civil Courts of appropriate jurisdiction. The basis for moving such applications was that as Section 46 of the Insurance Act, 1938 provides that the holder of insurance policy can sue the insurer in any Court of competent jurisdiction, such Court, by virtue of Section 15 of the Code of Civil Procedure, has to be the Court of the lowest grade competent to try the suit, hence, the Civil Court and not the District Court has jurisdiction.

3. Accepting the plea of the petitioner as to the place of suing, the District Judges of various districts, by applying the provisions of Section 15 of the Code of Civil Procedure, returned the complaints to the respondents to be presented before the Civil Courts of competent jurisdiction. Feeling aggrieved, the respondents challenged such decision before the Lahore High Court in appeals i.e. FAO Nos. 213 to 216, 218, 239 to 258, 289 to 292 of 2015, which were clubbed together for decision. The Lahore High Court vide single consolidated judgment dated 14.10.2016, set aside the orders of the District Judges after holding that as Section 2 (6) of the Insurance Act, 1938 defines 'Court' to be '*the principle Civil Court of Original jurisdiction in a district*' and the Courts of the District Judges being undisputedly the principal Civil Courts of Original jurisdiction of their respective districts, the suits are to be tried not by the Civil Courts but by the District Courts having jurisdiction over the subject matter of the dispute. The petitioner has impugned the decision of the Lahore High Court in these petitions and have sought leave to appeal.

4. A team of four lawyers engaged by the petitioners in various sets of these 29 connected petitions argued in common that

the definition of '*Court*' contained in Section 2(6) of the Insurance Act, which states '*Court*' means '*the principal Civil Court of Original jurisdiction in a district,...*' is not relevant for determining the place of suing. They maintained that on the contrary, for determining the place of suing, the phrase '*..... sue for any relief in respect of the policy in any Court of competent jurisdiction*' contained in Section 46 of the Insurance Act is relevant which when read with the provisions of Section 15 of the Code of Civil Procedure indicate that every suit shall be instituted in the Court of the lowest grade competent to try it and the Civil Court being such a Court, the proceedings for seeking any relief relating to insurance policy can only be competently initiated in the Civil Court having jurisdiction in the matter. As to the definition of '*Court*' contained in Section 2(6) of the Insurance Act, it was argued that this definition is relevant only for determining the forum where money payable under insurance policy is to be deposited by the insurer, as envisaged under Section 47(1) of the said Act and cannot override the phrase '*in any Court of competent jurisdiction*' contained in Section 46. It was lastly argued that in case this Court upholds the impugned decision of the Lahore High Court then it would deprive the petitioners even the right of appeal, which would have been otherwise available to it, in case the suits are tried by the Court of the first instance i.e. the Civil Court of competent jurisdiction. In support of their contentions, learned counsel for the petitioners relied upon the cases of Mst. Robina Bibi Vs. State Life Insurance (2013 CLD 477), Mst. Naseem Begum Vs. State Life Insurance Corporation of Pakistan (2014 SCMR 655), Patricia Ann Patel Vs. Gerald Cowling Patel (PLD 1972 Karachi 444), Akhtar Hussain Zaidi Vs. Abdul Majeed (PLD 1986 Lahore 663), S. Ghulam Dastagir & Sons Vs. Union Insurance

Company of Pakistan Ltd (PLD 1995 Lahore 290), Lahore Race Club Vs. Khushbakht-ur-Rehman (2008 CLD 1117), Ghulam Nabi Vs. Muqarab Hussain (PLD 1974 Karachi 408), State Life Insurance Corporation of Pakistan Vs. Mst. Bashiran Bibi (2015 CLD 342) and All India Motor Transport Mutual Insurance Co Vs. Raphael George of Bombay Indian Inhabitant (AIR 1963 Bangal 7).

5. In order to appreciate the arguments of petitioners' counsel, contents of Sections 2(6) and 46 of the Insurance Act, 1938, being relevant, are reproduced for the sake of convenience:-

***2(6)** "Court" means the principal Civil Court of Original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction.*

***46.** The holder of a policy of insurance issued by an insurer in respect of insurance business transacted in Pakistan after the commencement of this Act shall have the right, notwithstanding anything to the contrary contained in the policy or in any agreement relating thereto, to receive payment in Pakistan of any sum secured thereby and to sue for any relief in respect of the policy in any Court of competent jurisdiction in Pakistan; and if the suit is brought in Pakistan any question of law arising in connection with any such policy shall be determined according to the law in force in Pakistan.*

(Underlining is ours).

6. Section 2(6) of the Insurance Act, 1938 gives composite meaning to the term 'Court'. The first part says '*the principal Civil Court of Original jurisdiction in a district*'. Undoubtedly this part of the definition points towards the Courts of the District Judges which act as the principal Court of Original jurisdiction in every district. Hence,

in absence of any exception provided in any other provision of the Insurance Act, 1938 with reference to a Court, no other meaning can be attributed to such part of the definition other than a District Court. Now the question arises as to why the need arose to use the phrase '*in any Court of competent jurisdiction*' in Section 46 and mere mention of '*Court*' was not enough. There appears to be a strong reason for that. The second part of the definition of '*Court*' contained in Section 2(6) states "*and includes the High Court in exercise of its Ordinary Original Civil jurisdiction*". As three High Courts of the sub-continent possessing 'Ordinary Original Civil jurisdiction' were also given jurisdiction to entertain such suits, which were also called the Presidency High Courts i.e. High Courts of Bombay, Madras and Calcutta, it was necessary to mention in Section 46 '*in any Court of competent jurisdiction*'. Furthermore, the principal seat of Sindh High Court at Karachi also possesses jurisdiction to act as the principal Civil Court of Original jurisdiction for the district of Karachi, which jurisdiction though not the same as the '*Ordinary Original Civil jurisdiction*' conferred on the High Court of Bombay, Madaras and Calcutta, nevertheless it exercises jurisdiction as the District Court of Karachi (now covering all five districts of Karachi). Such jurisdiction of Sindh High Court exercised only at its principal seat stands covered under the first part of the definition of '*Court*' provided in Section 2(6) of the Insurance Act, 1938. With regard to the nature of jurisdiction exercised by Sindh High Court discussed above, reference can be made to a decision of this Court in the case of Province of Sindh Vs. Hafiz Razzaq (1991 SCMR 920). Therefore, for any relief relating to a contract of insurance, if suit is to be filed in any of the five districts of Karachi then depending upon the pecuniary value of the suit, which is

prescribed under the law from time to time, it is to be filed either in the District Court having jurisdiction on the subject matter or in the principal seat of the Sindh High Court at Karachi. Then by virtue of Section 4 of the Islamabad High Court Act, the Islamabad High Court possess Original jurisdiction for suits which is exercised in the districts of the Capital Territory of Islamabad, subject of course to the pecuniary limit that is prescribed by law from time to time for the suits. So for any relief relating to contract of insurance arising from the Insurance Act, 1938, depending upon the pecuniary value and territorial jurisdiction a suit can be filed in the Original jurisdiction of the Islamabad High Court as well. On account of all these multiple forums available for filing of the suit under Section 2(6) i.e. the phrase '*in any Court of competent jurisdiction*' had to be used in Section 46 so that appropriate Court competent to try the suit could be identified for filing of the suit. Therefore, when Section 46 provides that for any relief arising from the contract of insurance, suit is to be filed in the Court of competent jurisdiction, then taking aid from the provisions of Section 20 of the Code of Civil Procedure and keeping in view the pecuniary value of the suit, it is to be filed in any of the two District Courts as provided in Section 20 of the Code of Civil Procedure or in the concerned High Court competent to try the suit but certainly not in the Civil Court.

7. As to the argument that the definition of '*Court*' in Section 2(6) of the Insurance Act was meant only for deposit of money in Court by an insurer and for such reason the term '*Court*' appearing in Section 47(1) is not followed by the term '*competent jurisdiction*', the relevant provision of Section 47(1) of the Insurance Act, 1938 reads

"....to pay the amount into the Court within the jurisdiction of which is situated the place at which such amount is payable under the terms of the policy or otherwise....". It shows that the use of the term 'Court' in Section 47(1) was intended to leave it to the parties to agree in which Court the amount payable under the terms of the policy or otherwise was to be deposited by the insurer. As it was to be left to the parties to choose the Court in which money was to be deposited, the definition of 'Court' provided in Section 2(6) would certainly not be attracted. The application of the definition of 'Court' as provided in Section 2(6) to the term 'Court' appearing in Section 47(1) would have left no choice with the parties to select for themselves the Court where money was to be deposited by the insurer. This would have nullified the context in which the term 'Court' in Section 47(1) of the Insurance Act was used. So this argument of the petitioners' counsel is also misconceived.

8. As to the argument that for the purpose of determining the place of suing, provisions of Section 15 of the Code of Civil Procedure are to be taken into consideration which provides that the suits are to be filed in the Court of the lowest grade competent to try the suit, suffice it is to state that Section 15 cannot be read in disregard of the provisions of Section 4(1) of the Code of Civil Procedure. In the case of Muhammad Siddiq Vs. Zawar Hussain (PLJ 1976 SC 493), after quoting Section 4(1) of Code of Civil Procedure, it was held by this Court as under:-

"It is no doubt true that whenever any special jurisdiction is created or a power is conferred upon a Civil Court then in the absence of any provision to the contrary, the provisions of the Code will apply to such proceedings. But it is equally well settled that in the case of any conflict between the provisions of the

Code and any local law the latter will over-ride any provisions to the contrary contained in the Code."

Hence where a Special law determines a place of suing, which in the present case in terms of Section 2(6) could be either the principal Civil Court of Original jurisdiction in a district or the special Civil jurisdiction of the Sindh High Court and Islamabad High Court, the same would prevail over the provisions of Section 15 of Code of Civil Procedure. It is now trite law that the provisions of special law always override the provisions of the general law to the extent of any conflict or inconsistency between the two. When it comes to filing of a suit under the provisions of Insurance Act, 1938, Section 15 of the Code of Civil Procedure would stand eclipsed as it comes under the shadow of Section 4(1) of the Code of Civil Procedure. Section 4 (1) of the Code *inter alia* provides '*.....nothing in the code shall be deemed to limit or otherwise affect any special or local law ... or any special jurisdiction ...conferred by or under any other law for the time being in force.*' Thus the Court competent to try the suit would only be the one that falls within the definition of Section 2(6) of the Insurance Act, 1938.

9. With regard to the argument of petitioner's counsel that in case it is held that the suits are to be filed before the principal Civil Court of Original jurisdiction of a district, it would deprive the petitioner the right of appeal which would have been otherwise available had the suits been filed in the Civil Court, in our view such an apprehension is misconceived. We may point out that the right of appeal is creation of statute and where the legislature does not provide for it, the same cannot be claimed as an inherent right. Having said so, Section 96 Code of Civil Procedure provides that for every decree

passed by any Court exercising Original jurisdiction, the appeal shall lie to the Court authorized to hear appeals arising from such decree. As the appellate forum from the decrees passed by the District Courts exercising Original Civil jurisdiction or from the decree passed by the High Court in its special Civil jurisdiction would be the High Court, therefore, a forum of appeal is nevertheless available to the parties.

10. We may also clarify here that where a claim is not relatable to a contract of insurance and for some other reason a person sues the insurance company, then obviously the forum provided under the Insurance Act, 1938 would have no application to such suits. To such suits, the provisions of Section 15 of Code of Civil Procedure, where attracted can be applied. Likewise, the forum of appeal in cases where the matter is not relatable to the contract of insurance would also be the one that is available under the provisions of Code of Civil Procedure. The jurisdiction of civil court is ousted only in cases where the provisions of special law, such as the Insurance Act, 1938, are attracted which provide a separate forum for seeking legal remedy.

11. We, therefore, conclude that all claims, whether directly arising from or relatable to a contract of insurance are covered under the provisions of Section 46 of the Insurance Act, 1938. All such suits are to be filed in a District Court of competent jurisdiction or depending upon the territorial jurisdiction and pecuniary value of the suit, in the principal seat of Sindh High Court or the Islamabad High Court as the case may be instead of the District Court. However, no such suit can be entertained in the Civil Court.

12. In view of what has been discussed above, we find no legal error in the impugned judgment. Hence, no case for grant of leave is made out. These petitions are therefore dismissed.

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad, the
28th of March, 2017
Approved For Reporting
Khurram