SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
Mr. Justice Sardar Tariq Masood
Mr. Justice Amin-Ud-Din Khan
Mr. Justice Jamal Khan Mandokhail

(AFR)

C.P.L.A No. 2063 of 2020
(Against the order dated 05.06.2020 passed by the Peshawar High Court, Peshawar in RFA.No.290-P of 2015.)

M/s. Mardan Ways CNG Station. ...*Petitioner*

Versus

General Manager SNGPL & Others ...*Respondents*

For the petitioner: Mr. Mudassar Khalid Abbasi, ASC.

For the Respondent: Mr. Asad Jan, ASC.

Date of Hearing: 22.11.2021

ORDER

AMIN-UD-DIN KHAN, J. Through this petition filed under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973 leave has been sought against the order dated 05.06.2020 passed by the learned Single Judge of the Peshawar High Court whereby RFA No. 290-P of 2015 filed by the petitioner was dismissed.

2. We have heard the learned counsel for the parties at length and gone through the record with their able assistance. The petitioner filed a suit for declaration whereby it has sought a decree from the Court that plaintiff-petitioner CNG Station is a consumer under No. 95952930006 and there are no arrears outstanding against the petitioner as it is regularly paying monthly bills, therefore, without any notice and reason disconnection of the gas supply is against the law and Shariah. A decree for mandatory injunction was also

sought to restrain the respondents from disconnecting its gas connection till the decision of the suit. The value fixed by the plaintiff-petitioner for the purposes of jurisdiction of the suit was Rs:10,000/-. The Managing Director, SNGPL etc. also filed a suit for recovery of Rs:4,94,82,480/- against the petitioner. Value of the said suit was fixed as the amount claimed by the respondents in their suit. It is pleaded in the plaint of the respondents that on checking, the meter of the petitioner was found tampered, therefore, the detection and evaluation committee of the respondents fixed a fine of Rs:1,50,80,206/-. It is on the record that during the pendency of the suit of the petitioner a learned Civil Judge ordered reconnection of the gas supply which was reconnected without the installation of the meter and direct supply was given to the petitioner which it used for a period of 157 days as admitted by the learned counsel for both the parties. Learned counsel for the respondents states that for this period and after deducting the payments made by the petitioner, an amount of Rs:4,94,82,480/- was found payable against the petitioner. Both the suits were consolidated. Learned trial court invited the parties to produce their respective oral as well as documentary evidence. Petitioner was presumed as plaintiff as its suit was prior in time and the respondents as defendants. Oral as well as documentary evidence was recorded. Learned trial court dismissed the suit of the petitioner and decreed that of the respondents. Regular First Appeal ("**RFA**") against the consolidated judgment was filed, in which both the decrees were challenged whereby suit of the petitioner was dismissed and that of respondents was decreed. After dismissal of the appeal, instant petition for leave to appeal has been filed.

3. Admittedly, the contract of the petitioner for supply of gas is with SNGPL but SNGPL has not been arrayed as defendant in the suit. When confronted with the learned

counsel that how the suit against the General Manager and the other officials of the company, without impleading SNGPL, was competent, the only response of the learned counsel was that this objection was not raised by the defendants-respondents or any court before today, therefore, states that at this stage this defect, if any, should be ignored. It is well settled that as per company laws, a company is a separate legal entity distinct from its owners or shareholders or directors or officials or employees. A company has a perpetual existence and can sue and be sued in its own name. Any director or employee of a company is not personally liable for the liability of the company even if he acted on behalf of the said company. Conversely, a company is also not liable for the liability of its directors/employees arising out of an act in their individual capacity.

4. We are afraid that we cannot shut our eyes to ignore this defect of non-impleading of SNGPL as party to the suit, which is fatal and goes to the roots of the case. In our view, the suit was not proceedable without impleading SNGPL. In this regard, reference may be made to the case of "*Sh. Shajar Hussain vs. Haji Abdul Majeed and Others*" **(2006 SCMR 913)**.

5. Further, in light of this Court's judgment in "*General Manager, SNGPL, Peshawar vs. Qamar Zaman*" **(2021 SCMR 2094)**, we are of the view that the petitioner's civil suit before the Civil Court was not maintainable as under the Oil and Gas Regulatory Authority Ordinance, 2002 (the "**Ordinance**") the Oil and Gas Regulatory Authority (the "**Authority**") has the exclusive jurisdiction to determine the matters in its jurisdiction as set out in the Ordinance and the jurisdiction of the Civil Court was barred. In the above-referred judgment, this Court, while examining section 43 of the Ordinance, held that the provisions of the Ordinance have

overriding effect and the Authority shall, subject to provisions of the Ordinance, be exclusively empowered to determine the matters in its jurisdiction set out in the Ordinance. Section 43 of the Ordinance is reproduced below for reference:-

> "43. **Ordinance to override other laws**. (1) The provisions of this Ordinance, the rules and the regulations, and any licences issued hereunder shall have effect notwithstanding anything to the contrary contained in any other law, rule or regulation, for the time being inforce, and any such law, rule or regulation shall, to the extent of any inconsistency, cease to have any effect on the commencement of this Ordinance and the Authority shall, subject to the provisions of this Ordinance, be exclusively empowered to determine the matters in its jurisdiction as set out in this Ordinance.
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> (2) Nothing in this ordinance, or any repeal effected thereby, shall affect or be deemed to affect anything done, action taken, proceedings commenced, directions given, instruments executed or orders, rules or regulations issued under or in pursuance of any law repealed are amended by this Ordinance and any such things, action, proceedings, directions, instruments or orders shall, if in force on the commencement of this Ordinance, continue to be in force and have effect as if the same were respectively done, taken, commenced, given executed or issued under this Ordinance."

Section 6 of the Ordinance defines the powers and functions of the Authority and it was also observed that under sub-section (2) clause (q) of section 6 of the Ordinance; the Authority is empowered to protect the interests of all stakeholders including consumers and licensees. The relevant provision of section 6 is provided as under:

> "6. **Powers and functions of the Authority.** (1).....
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> (2) Without prejudice to the generality of the foregoing, the Authority shall-
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> ...
>
> (q) protect the interests of all stakeholders including the consumers and the licensees in accordance with the provisions of this Ordinance and the rules;

6. In the aforenoted judgment, this Court also observed that a mechanism for redressal of disputes has been provided by filing a complaint under section 11 of the Ordinance and section 12 of the Ordinance provides for the right of appeal. In such view of the matter, it was held that even in the absence of a specific bar provided in the statute over the jurisdiction of the Civil Court, the above-referred provisions reflect the intent of the legislature and therefore, *"the jurisdiction of the Authority is exclusive and the jurisdiction of the Civil Court is barred but this would be an implied bar, very much permissible under the settled law and it will be equivalent to the specific bar provided in any statute"*. Therefore, this Court held that a civil suit for declaration filed before the Civil Court of plenary jurisdiction was not maintainable and as wrongly entertained by the Civil Court.

7. With regard to bar of jurisdiction contained in any statute we are clear in our mind and it is concurrently declared by this court that if in any statute there is a bar of plenary jurisdiction of civil court, the bar will be applicable if the authority acts in accordance with the said statute and its acts, orders do not violate the jurisdiction conferred upon that authority under the said statute then the bar of jurisdiction contained in the said statute applies and if the authority acts or passes any order in violation of the jurisdiction vested in it under the said statute and transgresses jurisdiction or the orders or action if scrutinized keeping in view the jurisdiction available under the said statute and the orders or action is found without jurisdiction then certainly the bar contained in the said statute on the plenary jurisdiction of the civil court is not applicable and the suit would be competent. In the instant case when the authority has found that the meter is tampered, they have charged the average bill, therefore, the detection and evaluation committee of the respondent fixed a fine, that

action was within the jurisdiction of the respondents, therefore, the bar contained in the statute against filing of civil suit was applicable and civil court was having no jurisdiction in the matter.

8. Further we have also noticed that jurisdictional value fixed by the plaintiff-petitioner in its suit was Rs:10,000/- which was never changed, therefore, in accordance with the jurisdictional value of the *lis*, the forum of appeal is to be determined. Admittedly, when the jurisdictional value of the suit of the plaintiff-petitioner was Rs:10,000/-, the appeal was competent before the learned District Judge and not before the learned High Court though both the suits were consolidated and where the value for the purposes of jurisdiction in a suit filed by the respondents was Rs:4,94,82,480/-, against that decree an appeal was competent before the learned High Court and said appeal was filed rightly. When two suits are consolidated, the judgment can be consolidated but in each suit a separate decree is passed and needless to observe that an appeal is against a decree and not the judgment, therefore, the RFA filed against the consolidated judgment can be presumed only against the decree in the suit filed by the respondents for recovery of money in which the jurisdictional value was Rs:4,94,82,480/. Hence, the learned High Court was having no jurisdiction to entertain and decide the appeal against a decree whereby the jurisdictional value was fixed as Rs:10,000/- when the jurisdiction was with the learned District Judge to hear and decide the appeal. Reference is made to a judgment of this Court in **Zahid Zaman Khan and Others vs. Khan Afsar and Others (PLD 2016 Supreme Court 409)**, wherein it was held as under:

> "8. Adverting to the third question; it is settled law that a consolidated appeal is permissible against a consolidated judgment before the appellate forum provided that it has the pecuniary jurisdiction to

> hear the appeal against the decrees according to their valuation i.e. the valuation of the original suit. The appellants are required in law to specifically challenge both the decrees and also to affix the requisite court fee in the same manner as they would be so obliged to affix if separate appeals were filed. This brings us to the matter of those appeals in which the decrees passed have different valuations i.e. the one falling within the jurisdiction of the High Court and the other in the jurisdiction of the District Court; obviously no consolidated appeal can be filed. In such a situation the appellants are required in law to file two appeals according to the value of the original suit i.e. one before the District Judge and the other before the High Court. ..."

9. Our view is already clear in this matter that when the learned High Court was having no pecuniary jurisdiction and the learned District Judge was having jurisdiction, wrong filing of appeal before the learned High Court does not give the High Court jurisdiction if in a consolidated judgment appeal against a decree in the other suit was competent before the High Court. We have also gone through the prayer made in the instant petition which is reproduced:-

> "It is therefore most humbly prayed on behalf of the Petitioner that this Honorable Court may be pleased to grant leave to appeal against the Impugned Judgment dated 05.06.2020 of the Peshawar High Court, Peshawar passed in RFA. No. 290-P of 2015 and consequently it is prayed that the Impugned Judgment and order may very magnanimously be set aside and the suit so filed by the Petitioner may very graciously be allowed with costs throughout and/or grant such other relief as may be deemed just and proper to meet the ends of justice in this case."

Since the appeal of the petitioner against dismissal of its suit was not competent before the High Court, the consolidated judgment and decree to the extent of the dismissal of its suit remained unchallenged. In this prayer no request for setting aside the judgment for recovery of money passed in a suit filed by the respondents is made and the prayer is that the suit of the petitioner be decreed. When a part of the consolidated judgment is not challenged and remains intact

no question of filing of appeal by the petitioner will arise when its RFA against dismissal of its suit was not competent before the High Court.

10. A further point was raised that the written arguments were submitted but the learned High Court has not considered the same. Learned counsel for the petitioner has referred to the affidavit of the petitioner's representative available at Page 187 of the Paper Book and the affidavit of the learned counsel who appeared on the petitioner's behalf in the High Court which is available at Page 188. The assertion of the learned counsel is that without hearing the learned counsel the judgment was pronounced by the High Court. We have gone through the affidavits which are self-contradictory. In accordance with the facts mentioned in the judgment the arguments were heard on 6.5.2020 and the judgment was announced on 5.6.2020 and according to the affidavit of Syed Muhammad Ilyas, Advocate dated 17.7.2020 available at Page 188 of the paper book the Hon'ble Judge decided the case on 6.5.2019 without any opportunity of hearing to assist the court. Whereas, the affidavit of the petitioner available at Page 187 dated 17.7.2020 shows that the case was fixed for 6.5.2020 and on 6.5.2020 the petitioner was informed that it was adjourned for 8.6.2020 but on 4.6.2020 he received a phone call from the Peshawar High Court that his case is fixed for tomorrow i.e. 5.6.2020 for orders and it is further mentioned that he appeared along with his counsel in the Court who announced the order of dismissal of the RFA. This clearly contradicts his counsel's affidavit.

11. There are concurrent findings of fact recorded by the two courts below. Learned counsel failed to make out a case for grant of leave. Even there are many defects which are

noted above. Resultantly, leave is refused and this petition stands dismissed.

Islamabad, the
22.11.2021
(Mazhar Javed Bhatti)

'Approved for Reporting'