

# HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

**1<sup>st</sup> Civil Appeal No.S-04 of 2024**

Appellant: Sui Southern Gas Company Limited through Mr. Shakeel Ahmed S. Abro, Advocate.

Respondent: Abdullah s/o Lal Muhammad Bhutto through Mr. Ashique Hussain Kalhoro, Advocate.

Date of hearing: **24.11.2025**

Date of Decision: **24.11.2025**

## **J U D G M E N T**

**ARBAB ALI HAKRO, J.-** The appellant, Sui Southern Gas Company Limited (SSGC), a public limited company incorporated under the Companies Ordinance, 1984 (now Companies Act, 2017), engaged in the business of transmission and supply of natural gas in Sindh and Balochistan, instituted Summary Suit No.08 of 2023 before the learned District Judge, Kamber-Shahdadkot @ Kamber. The suit was filed under Section 6 of the Gas (Theft Control and Recovery) Act, 2016 ("**GTCRA, 2016**"), seeking recovery of Rs.13,98,000/- from the respondent, Abdullah Bhutto, the proprietor of an ice factory, on allegations of gas theft.

2. It was the case of the appellant that the respondent's gas meter bearing No. W534530 had been removed earlier on 25.09.2019 due to non-payment of bills. Subsequently, on 29.06.2020, officials of the appellant inspected the respondent's premises. They allegedly discovered the illegal use of gas through a rubber pipe connected directly to the commercial service line, with a six-cylinder Hino engine operating for ice production. The rubber pipe

was disconnected on the spot, and photographs, inspection reports, and a joint load survey were prepared to substantiate the claim.

3. The matter was thereafter placed before the appellant's Claim Assessment Committee, which, upon consideration of the inspection material and connected load, assessed the loss at 208 MCF for the summer season and minimum charges for the winter season. On this basis, the billing department estimated a final claim of Rs.13,98,000/-, which was communicated to the respondent through a claim letter dated 21.10.2020, requiring payment within 15 days. The respondent, however, failed to discharge the liability, compelling the appellant to institute the recovery suit.

4. Parallel to the civil proceedings, an FIR No.35/2020 was lodged against the respondent under GTCRA, 2016 and relevant provisions of the Pakistan Penal Code. The respondent was tried in Sessions Case No. 228/2020 and acquitted on 30.07.2021, the benefit of doubt being extended. The acquittal attained finality as no appeal was preferred against the said Judgment.

5. Upon institution of the civil suit, the respondent filed an application under Section 7 of GTCRA, 2016, seeking leave to defend. Subsequently, he moved an application under Order VII Rule 11 read with Section 151 CPC, praying for rejection of the plaint on the ground that the suit was not maintainable after his acquittal in the criminal case and that the claim was fabricated and devoid of lawful basis.

6. The appellant filed objections to the said application, contending that acquittal in criminal proceedings does not bar civil recovery, as the standard of proof in civil cases is preponderance of probability, unlike criminal cases, which require proof beyond a reasonable doubt and that civil liability may subsist notwithstanding acquittal in criminal proceedings.

7. The learned District Judge, however, vide order dated 28.11.2023, allowed the respondent's application under Order VII Rule 11 CPC and rejected the plaint, holding that the suit was not maintainable in view of the respondent's acquittal and absence of cause of action. Aggrieved thereby, the appellant has preferred the present appeal under Section 13 of GTCRA, 2016.

8. At the very outset, learned counsel for the appellant submitted that the impugned order dated 28.11.2023 passed by the learned District Judge, Kamber-Shahdadkot @ Kamber, is contrary to law and facts and has been passed without proper application of judicial mind. It was argued that the rejection of the plaint under Order VII Rule 11 CPC was wholly unwarranted, as none of the statutory grounds enumerated therein were attracted from the bare reading of the plaint. Counsel contended that the plaint clearly disclosed a cause of action, supported by inspection reports, photographs, joint load survey, claim assessment committee's findings, and the claim letter dated 21.10.2020. The liability of the respondent was specifically pleaded, and the suit was competently instituted under Section 6 of the GTCRA, 2016. It was emphasized that the trial Court erred in holding that the suit was barred merely because the respondent had been acquitted in criminal proceedings. Learned counsel further submitted that an acquittal in a criminal case does not extinguish civil liability, as the standards of proof in civil and criminal proceedings are distinct. In civil matters, a mere preponderance of probability suffices, whereas in criminal cases guilt must be proved beyond a reasonable doubt. It was argued that the GTCRA, 2016, being a special statute, prevails over the general provisions of the CPC and mandates adjudication of recovery suits after consideration of leave to defend under Section 7. The trial Court misapplied the law by entertaining the respondent's application under Order VII Rule 11 CPC at a premature stage. The rejection

of the plaint, it was urged, amounts to a denial of a fair trial and is a grave illegality liable to be set aside.

9.               Conversely, learned counsel for the respondent, on the other hand, supported the impugned order and submitted that the suit filed by the appellant was mala fide and not maintainable in law. It was contended that the appellant had already lodged FIR No.35/2020 against the respondent on allegations of gas theft, in which the respondent stood trial and was acquitted vide Judgment dated 30.07.2021. The acquittal, having attained finality, disbelieved the prosecution's version; therefore, the institution of the present civil suit on the same allegations amounted to harassment. Counsel argued that the appellant failed to prove gas theft in criminal proceedings, and without challenging the acquittal Judgment, the appellant could not re-litigate the same matter in civil jurisdiction. It was further submitted that no valid gas bills or lawful assessment notices were ever issued to the respondent, and the claimed amount of Rs.13,98,000/- was arbitrary, fabricated, and without legal basis. Learned counsel emphasized that the plaint did not disclose a valid cause of action and continuation of proceedings would be futile and waste judicial time. The trial Court rightly exercised jurisdiction under Order VII Rule 11 CPC to reject the plaint at the threshold, thereby preventing unnecessary harassment of the respondent. It was prayed that the appeal be dismissed.

10.              I have heard the learned counsel for the parties at considerable length and have perused the record with anxious care. The submissions advanced on behalf of the appellant revolve around the proposition that the rejection of the plaint under Order VII Rule 11 C.P.C. was unwarranted, inasmuch as the plaint disclosed a clear cause of action and the special procedure envisaged under Sections 6 and 7 of the GTCRA, 2016 was required to be adhered to. Conversely, the respondent's counsel has sought to sustain the impugned order on the premise that the respondent's acquittal in the

criminal proceedings has attained finality and that the civil suit founded upon identical allegations is misconceived and amounts to harassment. The rival contentions thus necessitate a careful examination of the scope of Order VII Rule 11 C.P.C. vis-à-vis the special law under GTCRA, 2016 and the settled principle that findings of a criminal Court do not *ipso facto* bind civil adjudication.

11. Having meticulously examined the record, the impugned order and the statutory framework, the rejection of the plaint under Order VII Rule 11 C.P.C. was not in consonance with the law. The trial Court appears to have conflated the acquittal of the respondent in criminal proceedings with the maintainability of the civil suit, thereby eliding the fundamental distinction between criminal liability and civil obligation.

12. Order VII Rule 11 CPC is a provision of exceptional and somewhat drastic nature, intended to non-suit a plaintiff at the very threshold where the plaint is demonstrably barred by law, fails to disclose any cause of action, or suffers from incurable defects which render it legally untenable. The settled exposition of law, as articulated by the apex and superior courts, has consistently underscored that this provision must be invoked sparingly and with circumspection, as it denies a litigant the right to a trial. It is now a settled principle that while considering an application under Order VII Rule 11 CPC, the Court is confined strictly to the averments contained in the plaint itself, treating those averments as correct for the limited purpose of such determination and is not permitted to embark upon an appreciation of defence material or traverse into disputed questions of fact. The rationale is clear that the rejection of plaint is not a substitute for adjudication on merits, but a procedural safeguard against suits that are *ex facie* barred.

13. In the case at hand, the plaint filed by the appellant company clearly disclosed a cause of action. It narrated the inspection of the respondent's premises, the discovery of illegal gas use through a rubber pipe, the assessment of loss by the claim assessment committee, the issuance of a claim letter demanding payment and the subsequent non-payment thereof. These averments, taken at face value, constituted a complete bundle of facts sufficient to sustain a civil *lis* and warranted adjudication in accordance with the special procedure prescribed under the GTCRA, 2016. To hold otherwise would amount to a premature dismissal of the suit without affording the plaintiff its statutory right to trial. The guiding maxim in such circumstances is *ubi jus ibi remedium*, where there is a right, there is a remedy, which obliges the Court to ensure that a party asserting a legally cognizable right is not shut out at the inception merely because the defendant disputes the claim. The plaint, therefore, could not have been rejected under Order VII, Rule 11, C.P.C., and the trial Court's approach in doing so was contrary to both the letter and the spirit of the law.

14. The trial Court, however, proceeded to reject the plaint solely on the premise that the respondent had earlier been acquitted in criminal proceedings. Such reasoning, with respect, is legally untenable and cannot be sustained. The statutory framework embodied in the GTCRA, 2016, makes it abundantly clear that civil liability and criminal culpability are distinct and independent spheres. Section 20 of the Act explicitly stipulates that the imposition of penalties under the statute does not extinguish or otherwise affect other liabilities, thereby preserving the right of a Gas Utility Company to pursue recovery of sums due notwithstanding the outcome of criminal prosecution. Likewise, Section 6 of the Act expressly envisages suits for recovery of arrears, dues, or claims before the Gas Utility Court, independent of any criminal charge or trial.

15. The legislative scheme thus recognizes the coexistence of civil and criminal proceedings, each serving separate objects, the former designed to enforce civil rights and obligations and the latter intended to punish offences against the law. To conflate the two, as the trial Court has done, is to disregard the express intent of Parliament and to collapse the distinction between liability and culpability. The acquittal of a person in criminal jurisdiction, often resting upon the doctrine of the benefit of the doubt, does not *ipso facto* obliterate the civil claim, which is adjudicated on the lesser standard of preponderance of probability. The law, therefore, permits both proceedings to run their course simultaneously or successively, without either nullifying the other.

16. By rejecting the plaint at the threshold on the basis of criminal acquittal, the trial Court not only misapplied the law but also undermined the very object of the special statute, which was enacted to provide an expeditious and efficacious mechanism for recovery of amounts due to Gas Utility Companies. Such an approach is contrary to the express legislative intent, inconsistent with the settled principles of civil adjudication and amounts to a denial of the plaintiff's statutory right to have its claim tested on the merits.

17. The distinction between the standards of proof in criminal and civil jurisdictions is cardinal and admits of no ambiguity. In criminal law, the prosecution shoulders the onerous burden of establishing guilt beyond a reasonable doubt, a threshold deliberately set high to safeguard a person's liberty against wrongful conviction. In civil law, however, the requirement is far less exacting, for the adjudication of civil rights and obligations rests on the balance of probabilities, in which the Court determines which version of events is more probable in light of the evidence. This dichotomy is not merely procedural but substantive, reflecting the divergent purposes of the two jurisdictions: the former seeks to punish and deter offences against the State,

while the latter is concerned with enforcing private rights and obligations between parties.

18. The maxim *res judicata pro veritate accipitur*, a matter adjudged is taken for truth, applies only within the same jurisdictional framework and cannot be transposed across the divide between criminal and civil fora. Findings rendered by a criminal Court, particularly an acquittal based on the benefit of the doubt, do not ipso facto bind civil proceedings, which are governed by their own evidentiary thresholds and objectives. This principle has been reiterated in the **Karachi Transport Corporation**<sup>1</sup>, wherein the Supreme Court observed that the standards of appraisal of evidence in criminal and civil cases are altogether different, and the findings of a criminal Court would not bind a civil Court. To hold otherwise would be to collapse the distinction between liability and culpability, thereby frustrating the legislative intent that civil claims may subsist notwithstanding criminal acquittal. The trial Court's reliance on the respondent's acquittal as a ground for rejecting the plaint was therefore misplaced, for it ignored the substantive divergence between the two standards of proof and the independent existence of civil remedies under the special statute.

19. Section 7 of the GTCRA, 2016, lays down a complete and self-contained mechanism for the defendant to seek leave to defend in recovery suits instituted under the special statute. The legislative intent is manifest: a defendant, upon service of summons, is not entitled to contest the suit unless he discloses in his application substantial questions of law or fact which, in the opinion of the Court, warrant the recording of evidence. In default of such disclosure, the statute mandates that the allegations in the plaint shall be deemed admitted and the Court shall forthwith pass a decree

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<sup>1</sup> Karachi Transport Corporation v. Muhammad Hanif (2009 SCMR 1005)



in favour of the plaintiff. The provision thus creates a summary procedure, designed to ensure expeditious adjudication and to prevent frivolous defences from obstructing recovery of public dues.

20. In the present case, the respondent did file an application for leave to defend, but the trial Court, instead of adjudicating that application in accordance with Section 7, entertained a subsequent application under Order VII Rule 11 C.P.C. This procedural deviation was not merely irregular but struck at the very foundation of the special law. Section 31 of the Act unequivocally provides that the provisions of the GTCRA, 2016 shall override all other laws for the time being in force. The maxim *generalia specialibus non derogant*, general provisions do not derogate from special provisions, is directly attracted. The Code of Civil Procedure, being a general law, cannot be invoked to circumvent or dilute the special procedure prescribed by the GTCRA.<sup>2</sup>

21. The trial Court was, therefore, bound first to determine the leave to defend application under Section 7 and only upon satisfaction that substantial questions of law or fact had been raised, proceed to frame issues and record evidence. By entertaining and allowing the respondent's application under Order VII Rule 11 C.P.C. at a premature stage, the trial Court disregarded the overriding effect of the special statute, misapplied the law, and deprived the appellant of its statutory right to have its claim adjudicated under the summary procedure envisaged by Parliament. Such an approach not only undermines the efficacy of the GTCRA, 2016, but also contravenes the principle that special law must prevail over general law.

22. The respondent's assertion that the claim amount was arbitrary, inflated or fabricated is, in its very nature, a matter of defence which

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<sup>2</sup> Packages Limited through its General Manager and others v. Muhammad Maqbool and others (PLD 1991 Supreme Court 258)

necessitates the recording of evidence and cannot be conclusively determined at the threshold stage. Such disputed questions of fact are not amenable to adjudication under Order VII Rule 11, C.P.C., which is confined to examining the averments of the plaint alone. The proper statutory course, as delineated under Section 7 of the Gas (Theft Control and Recovery) Act, 2016, was for the trial Court to adjudicate upon the respondent's application for leave to defend, ascertain whether substantial questions of law or fact had been raised, and thereafter frame issues and proceed to record evidence. By short-circuiting this mandatory process and entertaining a collateral application under Order VII Rule 11 CPC, the trial Court effectively deprived the appellant of its statutory right to have its claim adjudicated on merits in accordance with the special procedure prescribed by Parliament.

23. In light of the foregoing, I hold that the impugned order dated 28.11.2023 is legally unsustainable. Therefore, the same is set aside, and the matter is remanded to the trial Court with direction to decide the suit on the merits in accordance with law, uninfluenced by any observations herein. Parties are left to bear their own costs.

**JUDGE**

Qazi Tahir PA/\*