

IN THE HIGH COURT OF SINDH AT KARACHI

Present: **Muhammad Ali Mazhar** and **Agha Faisal, JJ.**

High Court Appeal No.411/2016 M/s. Zaidi Enterprises vs. Civil Aviation Authority & Others.

High Court Appeal No.412/2016 M/s. Leather Master vs. Civil Aviation Authority & Others

High Court Appeal No.413/2016 M/s. Valencia Arts Craft vs. Civil Aviation Authority & Others

High Court Appeal No.414/2016 M/s. Pak Carpet Palace vs. Civil Aviation Authority & Others

High Court Appeal No.415/2016 M/s. Baba Handicraft vs. Civil Aviation Authority & Others

High Court Appeal No.416/2016 M/s. Crafts Junction vs. Civil Aviation Authority & Others

High Court Appeal No.417/2016 M/s. Sarhad Handicrafts vs. Civil Aviation Authority & Others

High Court Appeal No.418/2016 M/s. Tobacco Shop vs. Civil Aviation Authority & Others

High Court Appeal No.423/2016 M/s. Federal Handicrafts vs. Civil Aviation Authority & Others

High Court Appeal No.424/2016 M/s. Punjab Handicrafts vs. Civil Aviation Authority & Others

High Court Appeal No.426/2016 M/s. Standard Boutique vs. Civil Aviation Authority & Others

For the Appellants Mr. Mirza Adil Mustafa Baig,
Advocate (in HCAs Nos.411 to
418 of 016)

Syed Wajahat Abbas, Advocate
(in HCAs Nos.423 and 424 of
2016)

Mr. Abdul Khalil, Advocate
(in HCA No.426 of 2016)

For Respondents	Dr. Shahnawaz Memon, Advocate along with Muhammad Asim Rasheed, Asstt: Director (Legal), Civil Aviation Authority.
Date of Hearing	30.05.2018

JUDGMENT

Agha Faisal, J: These are 11 High Court Appeals, which assail the same Judgment dated 08.12.2016, rendered by a learned Single Judge of this Court in Suit Nos. 2348 to 2359 of 2016 (“**Impugned Judgment**”). Since all these connected appeals pertain to a common judgment and raise the same questions of law, therefore, they shall be collectively decided through this judgment.

2. The facts pertaining to HCA 411/2016 (“**Lead Appeal**”) are representative of the facts pertaining to the remaining appeals, listed supra, and, therefore, it may suffice to predicate the factual discussion upon the controversy cited in the Lead Appeal.

3. The Appellants were engaged in retail business in the International Transit Lounge of the Karachi Airport (“**Airport**”). It was contended that some of the Appellants had been plying their trade at the Airport since 1977 and that the agreements in respect thereof were extended from time to time by the Respondent No.1.

4. It was submitted that the last contractual document executed *inter se* was a license agreement, executed between the Respondent No.1 and the Appellants in 2015, and the said agreement was valid till 2016. The Appellants sought to have the license agreement extended but their request was denied by the Respondent No.1.

5. The Appellants had filed individual suits against the present Respondents, seeking a declaration that the Appellants are lawful tenants/lessees of the Respondents and that they may not be dispossessed from their allotted/retailed space at Airport. It was further prayed that the Court be pleased to declare the license agreement, executed between the Appellants and the Respondent No.1, to be a tenancy agreement. The suits filed by the Appellants were declared to be incompetent by virtue of Impugned Judgment and, therefore, the plaints in respect thereof were rejected and returned under Order VII Rule 11, CPC and the suits stood dismissed. The present High Court appeals were filed assailing the Impugned Judgment.

6. Mr. Mirza Adil Mustafa Baig, learned counsel for Appellants in HCAs Nos.411 to 416 of 2016, contented that the subsistence of license for a prolonged period of time confers overriding rights in respect of the licensee and, therefore, the licensee may be deemed to be a lessee. It was further contended that just like a temporary employee could become a permanent employee over a period of time by fiction of law, hence the same principle should apply to licensees as well. The learned counsel also pleaded discrimination and submitted that a request for renewal of the license agreement at the Lahore Airport was accepted by the Respondent No.1. In support of his contentions, learned counsel relied upon the case of *Diamond Food Industries Limited vs. Joseph Wolf GmbH & CO. and another*, reported in 2004 CLD 343 ("**Diamond Food**").

7. Mr. Wajahat Abbas, learned counsel in HCAs Nos.423 & 424 of 2016, supplemented the aforesaid arguments and submitted that the license agreement contained a provision whereby a licensee would have

to pay the agreed amount even if the licensee remains in occupation beyond the expiration of the license agreement. It was contended that the said provision actually permitted the Appellants to continue using the premises at the Airport notwithstanding the expiry of their respective license agreements. Learned counsel submitted that the license agreement also had a provision for enhancement of the charges payable and that the Appellants remain ready and committed to pay any reasonably enhanced rates so long as they permitted to occupy the retail premises at the Airport.

8. Mr. Abdul Khalil, learned counsel for the Appellant in HCA 426/2016, submitted that the plaint could not have been rejected, as undertaken vide the Impugned Judgment, as there was a claim for the restitution of goodwill and value of goods contained in the plaint and that such a claim amounted to a claim for damages which should have survived even if their contention in respect of the rights in or possession of the retail spaces at the Airport was held to be untenable.

9. In response to the arguments advanced by the learned counsel for the successive Appellants, Dr. Shah Nawaz, learned counsel for Respondents, submitted that the Impugned Judgment was in due consonance with the law and it was imperative that the same be maintained.

10. Per learned counsel a claim under Section 42 of the Specific Relief Act could only be maintained when it could be demonstrated that the claimants had a right in the property. A license does not confer any right in the property and only permits usage thereof in terms delineated in the respective agreement.

11. It was contended that the license agreements, with respect to the Appellants, had admittedly expired in each respective case and as a consequence thereof any rights which the Appellants enjoyed at some point in time have come to a conclusive end.

12. By way of an illustration, the learned counsel referred to paragraph 6 of the memorandum of appeal, filed by the Appellant in the Lead Appeal, which stated that access to the retail space was regulated by the Respondents and the Appellants were only permitted to enter the retail space during prescribed hours. The object of the illustration was to demonstrate that by the pleadings of the Appellants themselves it was apparent that there were mere licenses in respect of the retail spaces at Airport.

13. The learned counsel sought for the subject appeals be dismissed and in regard thereof placed reliance on the following judgments of the superior Courts:

- i. *M A Naser vs. Chairman Pakistan Eastern Railways and Others* reported as *PLD 1965 Supreme Court 83*.
- ii. *Messrs Noorani Traders Karachi vs. Pakistan Civil Aviation Authority* reported as *PLD 2002 Supreme Court 83*.
- iii. *Bank Alfalah Limited vs. Neu Multiplex and Entertainment Square Company (Pvt.) Limited* reported as *2015 YLR 2141*.
- iv. *Aftab Hussain vs. Government of Sindh and 2 Others* reported as *2015 MLD 1688*.
- v. *Malik Muhammad Jawaid vs. Province of Sindh and 6 Others* reported as *2009 CLC 1022*.

- vi. *Khalid & Company vs. Cantonment Board Malir* reported as *PLD 2002 Karachi 502*.
- vii. *Messers Zaidi Enterprises and Others vs. Civil Aviation Authority and Others* reported as *PLD 1999 Karachi 181*.
- viii. *Royal Foreign Currency vs. The Civil Aviation Authority and Another* reported as *1998 CLC 374*.
- ix. *Messers Ad-Mass Advertising (SMC-Pvt.) Limited vs. Civil Aviation Authority* reported as *2010 CLC 625*.
- x. *Daewoo Pakistan Motorway Services Limited vs. Sunshine Service (Regd) and Anothet* reported as *2009 CLC 406*.

14. We have heard the learned counsel and also have the benefit of perusal of the record. The primary issue before this Court is to determine whether there is any irregularity contained in the Impugned Judgment that merits interference in appeal.

15. The learned single Judge has conducted an exhaustive discussion in the Impugned Order to determine the nature of the rights that Appellants enjoyed at the respective retail spaces at Airport. It was concluded in the Impugned Judgment that the relationship between the Appellants and the Respondent No.1 in respect of the retail outlets at the Airport is in the nature of a license and not a lease.

16. The learned single Judge has referred to the case of *M/s. Zaidi's Enterprises and Others vs. Civil Aviation Authority and Others*, reported as *PLD 1999 Karachi 181*, which dealt with the facts almost identical to those in the present appeals. In the said judgment, the plaintiffs were also occupants in respect of the retail spaces situated at the Airport and the same arguments were raised on their behalf as have been raised in the

present appeals. The learned single Judge, authoring the aforesaid judgment, dismissed the stated arguments and concluded as follows:

“28. In view of the above discussion, I am of the confirmed view that the agreement between the Plaintiffs and C.A.A. is a License Agreement and that all the Plaintiffs are licensee of C.A.A. and accordingly not entitled to the relief of Injunction. The Licenses have expired, the Plaintiffs have no right to remain in the premises and the Defendants would be justified in taking action against the Plaintiffs for obtaining possession of the premises in accordance with the law. If the Plaintiffs are aggrieved by the action of C.A.A. their remedy is not by way of Injunction but by way of damages as held in PLD 1965 SC 83. Having come to the conclusion that the Plaintiffs are licensees of C.A.A. and have no right whatsoever in respect of the premises in question, it is obvious that the present suits are not maintainable and are accordingly rejected with costs under Order 7, Rule 11, CPC (PLD 1967 Dacca 190). Consequently, all miscellaneous applications also stand dismissed.”

17. In the Impugned Judgment, the learned single Judge has also relied upon the cases of *M. A. Naser vs. Chairman Pakistan Easter Railways* reported as *PLD 1965 Supreme Court 83*, *Noorani Traders, Karachi vs. Pakistan Civil Aviation Authority*, reported as *PLD 2002 Karachi 83* and *Abdul Rashid Khan and 8 Others vs. President Services Institute, P.A.F. Base Lahore* reported as *1999 MLD 1870* to cement his conclusion that the relationship between the Appellants and the Respondent No.1 fell within the definitive purview of a license and no other.

18. We have considered the Impugned Judgment, and the ratio of the judgments cited therein (as narrated supra), and concur with the learned Single Judge that the relationship between the Appellants and the Respondent No. 1 was in the nature of a license.

19. It was also observed during the course of the Appellants' arguments that one the one hand the learned counsel submitted that they were in a relationship with the Respondent No. 1 as tenant but on the other hand they also argued their license agreement may be deemed to

be a lease agreement, based upon the protracted tenure thereof, by fiction of law.

20. The aforesaid postures of the Appellants are self-contradictory and fall squarely within the principle of approbate and reprobate, which puts a person to his election between alternative inconsistent courses of conduct. It is settled law that where a deed professes to make a general disposition of property for the benefit of a person named in it, such person cannot accept a benefit under the instrument without at the same time confirming to all its provisions, and renouncing every right inconsistent with them.

21. Therefore, it is the considered view of this Court that the learned Single Judge has rightly maintained, in the Impugned Judgment, that the Appellants were licensees in respect of the retail space at the Airport and that the nature of the relationship did not stand novated into that of a lease by fiction of law or otherwise.

22. The claim of discrimination levelled against the Respondent No. 1, on account of the Respondent No. 1 having purportedly extended certain license agreements with respect to the Lahore Airport, is also found to be unsustainable as the same has no nexus with the facts and circumstances herein.

23. The specter of damages was only raised before us in arguments by the learned counsel for the petitioner in HCA 426 of 2016 and the respective learned counsel submitted that the claim for restitution of goodwill and return of the valuable goods of the Appellant should have been deemed to be a claim for damages by the learned Single Judge. No claim for damages was pleaded and no prayer clause was predicated thereupon in the respective plaint. We do not find merit in such a

contention as a claim for damages has to be preferred, pleaded and corroborated. Mere urging of an unsubstantiated argument belatedly in appeal could not entitle the said Appellant to sustain his otherwise incompetent suit.

24. The learned Single Judge has appropriately dealt with the said issue in the Impugned Judgment and recorded that the same was not an independent claim as it was entirely dependent upon the agreements in question. It was also recorded that such claims were without cause as at the time of preferring the plaint the Appellants had not been dispossessed from the retail spaces.

25. The claim for compensation was premature at the time of filing of the plaint as the appellant was admittedly in possession of the retail space at the said time. At no time thereafter, in the Suit or in the appeal, did the respective Appellant raise any allegation of being deprived of its merchandise / goods therefore a claim for their purported value did not arise, and nor had it arisen when the suits were filed.

26. On the contrary the Appellants had themselves stated that the Respondents were undertaking new construction in the retail area of the Airport and at no juncture was it pleaded or demonstrated that such construction was taking place while the Appellant's merchandise was present thereat or that any merchandise had been misappropriated by the Respondents. On the contrary a counter affidavit filed by the respondents, to CMA 4481 of 2016 in HCA 426 of 2016, clearly stipulates, in paragraph 8 thereof, that "*admittedly the demolition of the shops was started they already removed all items*". The record reflects that this sworn counter affidavit of the Respondents was never

controverted by the Appellants either by preferring a rejoinder thereto or even in verbal arguments.

27. The reliance by the Appellants upon the case of *Diamond Food*, being an order of a learned Single Judge of this Court dismissing an injunction application, is fruitless as the decision is duly distinguishable in the present facts and circumstances. It is categorically held in the said decision that a license agreement having come to an end could not be sought to be enforced or given life for any further extended period without the concurrence of the other party.

28. For the reasons discussed herein, this Court is of the opinion that the Impugned Judgment is in due consonance with law and the same is hereby maintained and upheld.

29. In view of the above, the present High Court Appeals, along with applications listed therein, are hereby dismissed with no order as to costs.

30. It is however observed that in the event that a fresh tender process is initiated in respect of retail space at the Airport then the Appellants shall remain at liberty to apply and participate therein in accordance with the law and that the Respondents shall determine the applications of the Appellants without being influenced by any litigation between the parties inter se and that no adverse inference shall be drawn against the Appellants in such regard.

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