

IN THE HIGH COURT OF SINDH AT KARACHI**Suit No. 2372 of 2014****Siddiqsons Limited ----- Plaintiff****Versus****Inspectorate Griffith India Pvt. Limited ----- Defendant**

- 1) **For hearing on CMA No. 11149/2015.**
- 2) **For examination of parties / settlement of issues.**

Date of hearing: 30.10.2017.**Date of Order: 06.12.2017.****Plaintiff: Through Mr. Ghulam Murtaza Advocate.****Defendant: Through Ms. Alizeh Bashir Advocate.****ORDER**

Muhammad Junaid Ghaffar, J. By means of application listed at serial No. 1, the Defendant seeks return of the Plaint in question in terms of Order 7 Rule 10 CPC to the Court having appropriate jurisdiction.

2. Learned Counsel for the Defendant has contended that this is a Suit for Recovery, whereas, the Defendant is a company having its office outside the territorial jurisdiction of this Court being a resident company in India and therefore, this Court has no jurisdiction to adjudicate the claim of the Plaintiff. She further submits that even otherwise, there is no privity of contract between the parties as the Defendant was engaged as an inspection company in India by the supplier of goods to the Plaintiff, whereas, the said supplier has not been arrayed as a Defendant. She further submits that they never

entered into a contract for inspection with the Plaintiff, whereas, even otherwise, at the time of inspection they had issued the report according to the specification of the goods and such report even otherwise, never confirmed that the said goods were in fact according to the contract. She submits that if the Plaintiff has any remedy it is against the supplier of the goods and not against the present Defendant. In support she has relied upon *United Distribution Pakistan Ltd. V. Al-Syed Agrochemicals Services and others* (2005 C L C 1659), *Muhammad Afzal Khan and others V. Ali Akbar and others* (2005 C L C 988), *Fasihuddin V. Umar Cheema* (2013 M L D 1532) and *Ismat Asad V. Pakistan Oxygen Limited and another* (2010 C L C 1226).

3. On the other hand, the Learned Counsel for the Plaintiff has referred to the provision of Order 49 Rule 3(1) CPC and has contended that the provision of Order 7 Rule 10 do not apply to this Court exercising its original civil jurisdiction and therefore, the application being misconceived in law is liable to be dismissed. He has further contended that the Defendant was appointed as an inspection company by the supplier of the goods with whom they had entered into a contract and therefore, the Defendant is equally liable for supply of substandard goods. He has submitted that since the goods arrived at Karachi and upon inspection, it transpired that the same are defective, the cause of action has partly accrued at Karachi and therefore, this Court has jurisdiction to adjudicate the Plaintiff's claim. In support he has relied upon *Mirza Abdul Rahim Baig and another V. Abdul Haq Lashari and 3 others* (P L D 1994 Karachi 388), *Muhammad Yasin and 2 others V. Ch. Muhammad Abdul Aziz* (P L D 1993 SC 395), *Messrs Sh. Muhammad Amin & Co. V. The Provincial Industrial Development Corporation* (1991 C L C 684), *West Pakistan Industrial Development Corporation V. M/s Sheikh Muhammad Amin & Co.*

(1992 C L C 2047) and Provincial Industrial Development Corporation, Karachi V. Sh. Muhammad Amin & Co., Lyallpur (P L D 1973 Karachi 707).

4. I have heard both the learned Counsel and perused the record. It appears that instant Suit has been filed by the Plaintiff for Recovery of US\$ 1,823,268.19 and the case of the Plaintiff is that a contract was entered into on 29.5.2014 with MMTC Limited India (“**MMTC**”) for supply / sale of 10,000.00 MT Manganese Ore Fine of Indian origin which was to be supplied onwards to Pakistan Steel Mills Corporation (Pvt.) Ltd. Karachi, by the plaintiff. It is further stated that there were certain terms and conditions of the contract which required the goods to be of certain standard specification, details of the same are not relevant for the present purposes. The contract entered into with MMTC as above provided that the Defendant who was nominated as an inspection company in the said contract will take representative sample and will determine the analysis of manganese ore content in terms of Article 9 of the agreement, whereas, such survey and inspection was though carried out but the Plaintiff was never notified in advance to enable it to send its representative for the survey. It is the case of the Plaintiff that when the goods arrived at Karachi and inspection was carried out there were major deviations in the analysis report, hence instant Suit.

5. Insofar as the facts of the present case are concerned, it is an admitted position that the Plaintiff did not enter into any contract with the Defendant and the nomination of Defendant as an inspection company for carrying out the inspection of the goods is concerned, the same is a matter between the Plaintiff and MMTC, the supplier of the goods with whom the contract was entered into. Therefore, it can be safely said that insofar as the present Defendant is concerned, there is no privity of contract between the parties. Even otherwise, on perusal of

the inspection report as pointed out by the learned Counsel for the Defendant, it reflects that the test was carried out and the results were stated therein according to the specification of the goods and the short coming were duly pointed out. The question that the Defendant did not act in consonance with the contract by not calling upon the representative of the Plaintiff for carrying out the inspection jointly is concerned; it may be observed that the same is not part of the contract of the Defendant with the Plaintiff. It would also be advantageous to refer to Article 9 which has been vehemently relied upon by the Counsel for the Plaintiff which reads as under:-

“ARTICLE 9: SAMPLE & ANALYSIS.

- a) Analysis at load port. At the time of loading at Indian port M/s. Inspectorate Griffith India Pvt. Ltd., appointed by Seller, shall take representative sample and shall determine the analysis for manganese ore (Mn) content and other chemical composition and dry weight at 105 degree centigrade on dry basis, as set forth in Clause 4, as per ISO Standard. The cost of such Sampling & Analysis shall be to Seller's A/c.

The Analysis shall be conducted in accordance with the Bureau of Indian Standard (BIS). The Buyer may, at his expense, send his representative to be present at the time of such sampling. The analysis thus determined shall be final and the basis for making out the final invoice. Copy of such certificate shall be forwarded to the Buyer through courier / airmail / fax / E - mail with utmost speed after completion of loading of vessel at the Indian port.”

6. Perusal of the aforesaid Article which is part of the contract between the Plaintiff and its supplier further reflects that it does not provide for the Defendant to have necessarily called upon the Plaintiff to join the proceedings of inspection and rather it was the Plaintiff who was supposed to send its representative, if so advised and on its own expenses. Further, since the defendant was not a signatory to the contract, and was only a nominee as an Inspection Company, it was not obligated in law to send any advance copy of the Inspection report as contended. Notwithstanding, it is an admitted position that the

Defendant is not a signatory to this contract; whereas, it could not be said with certainty that it even had any knowledge of such a contract between the Plaintiff and its supplier. It has further come on record that insofar as the certificate of analysis issued by the Defendant is concerned, they have pointed out the specification found in the goods which does not meet the requirement of the Plaintiff. If the Plaintiff has entered into a defective contract in respect of the liability of the inspection company, it is for the Plaintiff to suffer. Therefore, it can be safely said that insofar as the Defendant is concerned, neither there is privity of contract nor it could be said that the cause of action against the Defendant, if any, accrued within the territorial jurisdiction of this Court.

7. Coming to the objections so raised by the learned Counsel for the Plaintiff whereby reliance has been placed upon the provision of Order 49 Rule 3 CPC, I may observe that in the case reported as ***Mirza Abdul Rahim Baig and another V. Abdul Haq Lashari and 3 others (P L D 1994 Karachi 388)***, a learned Single Judge of this Court has dealt with this question in the following manner and has repelled such contention. The relevant finding is as under:-

“It would thus seem that in relation to Order 49, Rule 3, C.P.C. the legislative intendment was to exclude the operation of the various provisions mentioned therein, including Order 7, rule 10, only from the exercise of “Ordinary or extraordinary original civil jurisdiction of a High Court” and not, generally, from the broader ambit of its original civil jurisdiction as such which in contradistinction, as stated, was the subject of section 120 of the Code. Needless to recount that the original civil jurisdiction of this Court, exercisable at the main seat in Karachi, is not “ordinary original civil jurisdiction”, as covered by Order 49, Rule 3, C.P.C. but a special or statutory civil jurisdiction of an original nature. In consequence, it can be plausible found that, for the purpose in hand, a plaint filed on the original side at Karachi in this Court can, if the required conditions are satisfied, be returned for presentation to the proper Court under Order 7, Rule 10, C.P.C. because that provision, in relation to the peculiar original civil jurisdiction exercisable by the Court

at Karachi, does not stand excluded per Order 49, Rule 3, C.P.C. Yet, when a suit has been removed to be tried and determined by this Court, in the exercise of its extraordinary original civil jurisdiction, which also vest as in it, the plaint therein cannot be sought to be returned under Order 7, Rule 10, C.P.C. because Order 49, Rule 3, C.P.C. has shut out the last-mentioned provision from recourse in this Court for the purpose of the Court's referred extraordinary civil jurisdiction of original character.

Assuming, however, that Order 7, Rule 10 C.P.C. did not apply also to the statutory original civil jurisdiction of this Court then too, at the discretion of the Court, alternatively the suit can be ordered to be sent to the appropriate Court if the exigencies of the situation so demand. The principle has been recognized in *Azam Ali v. Akhtar*, 33 IC 808, *Harnam Das v. Salamat Ali*, AIR 1952 Pepsu 105, *National Bank of Pakistan v. Humayoon Sultan Mufti*, 1984 CLC 1401 and *Shafiq Hanif (Pvt.) Ltd. v. Bank of Credit*, PLD 1993 Kar. 107."

8. A learned Division Bench of this Court has given a complete answer to this issue in the case reported as ***Murlidhar P. Gangwani (Engineer) V. Engineer Aftab Islam Agha and others (2005 M L D 1506)*** and the relevant findings is at paragraphs 12 & 13 which reads as under:-

"12. The submission of Mr. Khawaja Shamsul Islam with reference to non-applicability of sections 16, 17 and 20, C.P.C. to the High Court in exercise of its original jurisdiction, by virtue of section 120, C.P.C., is without force and of no help to the appellant, as this legal aspect has been dilated in a prudent manner in the case of *M/s. Muslim Commercial Bank Limited v. M/s. Nisar Rice Mills and another* (1993 CLC 1627) (some relevant portion also reproduced in the impugned order) which furnishes complete answer of such submission. **The other submission of the learned counsel with reference to rule 3 of Order XLIX, C.P.C. which excludes the applicability of certain provisions of C.P.C., including Order VII rules 10 and 11 (b) and (c) C.P.C., to the ordinary or extraordinary original civil jurisdiction of the High Court, is also equally without force, as non-applicability of such provisions of C.P.C. do not deny or curtail the power of High Court either to reject or return the plaint in appropriate cases. If any case is needed to fortify this view, reference can be made to the case of *Mirza Abdur Rahim Baig (supra)*.**

13. As to the last submission of Mr. Kh. Shamsul Islam that due to the passing of impugned order by the learned Single Judge resulting in the return of plaint, the appellant will be put to heavy expenditure pursue all his litigation against respondents at Lahore and the doors of this Court have been closed for him forever, suffice it to observe that the territorial jurisdiction of the Court cannot be extended or curtailed on compassionate grounds or looking to the financial position of a party

and the expenses which he might have to incur in pursuing the litigation before the proper Court, having jurisdiction in the matter. Further, the question of maintainability of a suit with reference to the territorial jurisdiction, vis-a-vis cause of action accrued to a party for institution of such suit, is to be judged on the basis of averments made in the plaint of C each suit and no perpetual order could be passed against a party that since plaint in one suit earlier instituted by him was returned for want of cause of action then for all future times to come no other suit instituted, though having cause of action accrued within the territorial jurisdiction of this Court could be entertained, or the findings on the point of jurisdiction recorded in the earlier suit will operate as res judicata, irrespective of distinguishable facts."

9. After responding to the objection of the Counsel for the plaintiff regarding applicability of Sections 16 to 20 CPC as well as Order 49 rule 3(1) CPC I would like to now deal with the issue as to whether this Court in the given facts has the jurisdiction or not. It appears that this is a case of recovery of money and for determination of the question of jurisdiction of this Court reference has to be made to the relevant provisions of CPC. In this matter section 16 to 18 would not apply as this is not a matter in respect of any immovable property. In my view the appropriate provision would either be section 19 or at the most part of Section 20 CPC. Section 19 *ibid* reads as under;

19. Suits for compensation for wrongs to person or movable:- Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another court, the suit may be instituted at the option of the plaintiff in either of the said courts.

The aforesaid provision provides that a Suit for compensation for a wrong done to the person or to immovable property, (recovery in this matter), if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides or carries on business or personally works for gain within the local limits of the jurisdiction of

another Court, the Suit may be instituted at the option of the plaintiff in either of the said Court. Here, it may be appreciated that reference to two Courts having jurisdiction is only in respect of Courts in Pakistan, and admittedly and as already stated hereinabove, the cause of action, if any, against the defendant has not accrued within the territorial jurisdiction of any Courts in Pakistan. At the most, and without prejudice to the rights of defendant, it has accrued within the territorial jurisdiction of a Court, wherein, either the inspection was carried out or the defendant is situated.

Coming to Section 20 CPC it would be advantageous to reproduce the relevant provision which reads as under:-

“20. Other Suits to be instituted where defendants reside or cause of action arises .- Subject to the limitations aforesaid, every Suit shall be instituted in a Court within the local limits of whose jurisdiction—

- (a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the Suit, actually and voluntarily resides, or carries on business, or personally works for gain; or
- (b) any of the defendants, where there are more than one, at the time of the commencement of the Suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or
- (c) the cause of action, wholly or in part, arises.

Explanation I. Where a person has a permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence.

Explanation II: A corporation shall be deemed to carry on business at its sole or principal office in Pakistan or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.”

Section 20 Subsection (a) provides that subject to the limitations aforesaid (i.e. Sections 16,17,18 & 19 C.P.C) every Suit shall be instituted in

a Court within local limits of whose jurisdiction the defendant or each of the defendants where there are more than one, at the time of the commencement of the Suit, actually and voluntarily resides or carries on business, or personally works for gain. Similarly, Section 20(b) provides for institution of a Suit when any of the defendants where there are more than one, at the time of the commencement of the Suit, actually and voluntarily resides or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution. And Section 20(c) caters to the situation for institution of a Suit where the cause the action, wholly or in part, arises. There are two Explanations to this Section and Explanation-I provide that where a person has a permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence. Explanation-II provides that a Corporation shall be deemed to carry on business at its sole or principal office in Pakistan or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place. In this case neither clause (a) nor clause (b) applies as admittedly the defendant has no office within the territorial jurisdiction of this Court. Insofar as applicability of clause (c) is concerned, again as already observed, no cause of action has accrued within the territorial jurisdiction of this Court.

10. The upshot of the above discussion is that this Court has no territorial jurisdiction as against the defendant and accordingly, the plaint is liable to be returned to the Plaintiff for presenting the same before the Court having appropriate jurisdiction. Resultantly, listed

application is allowed. Plaint is hereby returned. Office to return the
plaint after retaining copies of the same.

Dated: 06.12.2017

J U D G E

ARSHAD/