

# **IN THE HIGH COURT OF SINDH AT KARACHI**

**SUIT NO. 1225 / 2011**

**Plaintiff:** Rehmat Ullah through Mr. Abdul Qayyum Abbasi  
Advocate.

**Defendant:** Pakistan State Oil through Mr. Asim Iqbal  
Advocate.

- 1) For hearing of CMA No. 3753/2018.
- 2) For hearing of CMA No. 2126/2018.
- 3) For hearing of CMA No. 10331/2011.
- 4) For hearing of CMA No. 2802/2012.
- 5) For hearing of CMA No. 331/2013.
- 6) For orders on Nazir report dated 12.03.2018.
- 7) For examination of parties / settlement of issues.

**Date of hearing:** 23.04.2018.  
**Date of order:** 23.04.2018.

## **ORDER**

**Muhammad Junaid Ghaffar, J.** These two applications at Serial No.3 & 5, bearing CMA Nos. 10331/2011 and 331/2013 have been filed by the Plaintiff under Order 39 Rule 1 & 2 CPC and Order 12 Rule 6 CPC.

2. Learned Counsel for the Plaintiff submits that this is a Suit for Declaration and Injunction against the Defendant, with a prayer that Plaintiff is the dealer of Defendant and cannot be ousted from the Petrol Pump in question situated on Plot No. SD-II, Block A, KDA Scheme No. 2, North Nazimabad, Karachi and so also for determination of the correct amount outstanding in respect of various products supplied by the Defendant. He submits that originally the dealership of M/S Globe Petroleum Services was in the name of Muhammad Hussain with whom the predecessor in interest of the Defendant had an arrangement on the

basis of a license. He submits that after expiry of said Muhammad Hussain his wife Khadija Bai was running the business and the Plaintiff entered into a partnership arrangement on 1.7.2001 with her. However, Per learned Counsel there was no dealership agreement with the present Plaintiff, but as per letter dated 06.03.2003 and Certificate dated 27.06.2006 the Plaintiff has been accepted and acknowledged as the authorized dealer of the Defendant. He submits that there was some dispute regarding payments in respect of the supplies made by the Defendant and therefore, the Plaintiff approached the Defendant to clarify the actual outstanding amount which the Plaintiff was willing to pay but instead, the Defendant attempted to dispossess the Plaintiff from the Suit premises; hence, instant Suit. Per learned Counsel on the very first date a restraining order was passed but the same was violated and therefore, contempt application was also filed. He submits that during pendency of these proceedings on 29.08.2012 the Defendant has terminated the dealership arrangement which could not have been done as the matter was already pending and restraining orders were passed. Per learned Counsel insofar as the recovery of the amount is concerned, the Defendant has filed an independent Suit wherein, stay application has been disposed of on Plaintiff's undertaking that they will not create third party interest. Learned Counsel submits that the agreement in question is not with the present Plaintiff and therefore, the termination clause invoked is also not applicable. He prays for grant of these two applications.

3. On the other hand, learned Counsel for the Defendant submits that the property in question is owned by the Defendant and the entire development work has also been carried out at the expense of the Defendant. Per learned Counsel the dealership was only in respect of

providing services and admittedly huge default was committed therefore, initially the Plaintiff directed to handover possession and upon failure to pay the outstanding bills, the dealership agreement stands terminated; hence, no prima facie case is made out at this stage of the proceedings. Learned Counsel further submits that even postdated cheque were issued by the Plaintiff which were dishonored and this clearly reflects upon the conduct of the Plaintiff as on the one hand the liability has been admitted, and on the other, default has been committed. He prays for dismissal of both these applications.

4. I have heard both the learned Counsel and perused the record. The brief facts as they appear are that Plaintiff entered into a partnership agreement with one Khadija Bai who was running the dealership in the name of Globe Petroleum Services after death of her husband. The said dealership was issued in the name of Muhammad Hussain, the deceased husband and accordingly, a license agreement was entered into between the parties. On perusal of the partnership agreement between plaintiff and Mst. Khadija, it appears that there is no disclosure of any transfer of the dealership in the name of the Plaintiff; however, through correspondence he has been acknowledged as a dealer. The Plaintiff's stance is somewhat un-clear, as on the one hand it is denied that there was any dealership agreement with the Defendant and at the same time, relief is also being sought against the same Defendant. If there is no dealership agreement as pleaded, then merely on the basis of some certificate or letter, no relief of the nature being sought in this Suit can be granted. I had confronted the learned Counsel to refer to any dealership agreement in support of his case to which he conceded that there is no agreement. It is not conceivable as to how he has been acknowledged as a dealer and at the same time

there is no agreement. In fact the agreement with M/s. Globe Petroleum Services is the agreement of dealership and the Plaintiff has entered into the shoes of such dealership agreement. It is not relevant that he did not enter into any such agreement after creation of partnership.

5. Moreover, it is a case of default on the part of the Plaintiff and such default is not denied, rather acknowledged. In the plaint itself in Para 6 he has stated that *“as per Plaintiff’s record the last invoice in respect of the supplies made by the Defendant to the Plaintiff as its dealer was for an amount of Rs. 148,00,000/”* and to that according to the Plaintiff a letter was written. In the application under Order 12 Rule 6 CPC the Plaintiff has made an attempt to seek judgment and decree on the ground that he has been acknowledged as a dealer, whereas, he is willing to deposit the principal amount of Rs. 15,899,209/- as the principal outstanding towards purchase of petroleum products. This appears to be a belated effort on the part of the Plaintiff as admittedly he was in default. As to the order passed on the very first date i.e. 14.10.2011, I may observe that it was only to the extent that the Plaintiff would not be dispossessed nor his dealership will be cancelled except strictly in accordance with law. This was a qualified order and upon failure of the Plaintiff to honour his commitment, and acknowledged default, the Defendant was within its right to proceed in accordance with the agreement. It cannot be said and justified that though petroleum supplies were purchased, default was committed, and after certain action has been initiated, the Plaintiff agrees to deposit the said amount. It is also a matter of record that the termination letter dated 29.8.2012, has not been challenged any further by seeking amendment of the plaint, and only a contempt application has been filed, which in my view does not suffice, as to the relief being sought.

6. In view of hereinabove facts and circumstances of this case, I am of the view that no prima facie case is made out nor balance of convenience lies in favour of the Plaintiff, rather it is in favour of the Defendant and no case for any irreparable loss is made out. All these three ingredients are missing in the case of the Plaintiff and therefore, by means of a short order in the earlier part of the day the applications under Order 39 Rule 1 & 2 CPC bearing CMA Nos. 10331/2011 and Order 12 Rule 6 CPC bearing No. 331/2013 were dismissed and these are the reasons thereof.

**J U D G E**

ARSHAD/