

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.1949 of 2014

Plaintiff: M/s. Global Pharmaceuticals (Pvt) Ltd through M/s. Malik Naeem Iqbal and Muhammad Saleem Khaskheli, Advocates.

Defendants No.1 to 3: (i) Province of Sindh through its Chief Secretary, having office at New Sindh Secretariat, Karachi, (ii) The Secretary Health Department, having office at New Sindh Secretariat, Karachi, (iii) The Program Manager Hepatitis Prevention & Control Program having office at Directorate General, Health Services, Sindh Hyderabad, through Mr. Suneel Talreja, AAG along with Mr. Ali Safdar Deepar, AAG.

For hearing of CMA No. 16234/2019.

Date of hearing: 16.03.2020.

Date of order: 16.03.2020.

ORDER

Muhammad Junaid Ghaffar, J. This application has been filed on behalf of Defendants No.1 and 2 under Order VII Rule 10, C.P.C. for return of the Plaint in this matter.

2. Learned AAG submits that this Court lacks jurisdiction, inasmuch as, no cause of action has accrued as yet against Defendants No.1 and 2; that the program in question was initiated at Hyderabad after calling bids; that delivery of supplies was made at Hyderabad, whereas, entire correspondence, including reminders issued by the plaintiff were addressed to defendant No.3, who resides in Hyderabad; that in view of such position, this Court lacks jurisdiction and Plaint be returned to the Court having appropriate jurisdiction; that any letter of Defendant No.3 to the Plaintiff cannot confer any jurisdiction. In support, he has relied upon the case laws reported as **2018 YLR 2143 [Messrs. Land Mark Associates through partner v. Sindh Industrial Trading Estate Ltd. through Chief Executive Officer and another], 2016**

YLR 157 [Muhammad Waseem Ghori v. Altaf Hussain Tunio] and Order dated 04.09.2019 passed in Suit No.141 of 2012.

3. On the other hand, learned Counsel for plaintiff has opposed this application and submits that specific prayer has been made against defendant No.2; that for the purposes of an application under Order VII, the contents of the plaint are to be accepted as correct and true; that vide letter dated 08.05.2014, defendant No.3 had asked the plaintiff to approach defendant No.2; that the liability in question has never been disputed by defendant No.3; that several orders have been passed by this Court when such undertaking and the admissions of liability of Defendants No.1 and 2 has been recorded by the Court in its orders dated 30.11.2017, 01.03.2018 and 03.04.2018; that in the counter affidavit to his application under Order XII Rule 6, C.P.C., some inquiry report has been annexed, which also admits the liability of the Defendants; therefore, he has prayed for dismissal of this application.

4. I have heard both learned Counsel and perused the record. It appears to be an admitted position that Notice Inviting Tender was published by the Program Manager, Hepatitis Prevention and Control Program from the office of Directorate General, Health Services at Hyderabad and the plaintiff participated in the bidding where he was declared a successful bidder. Thereafter, purchase order was also issued to him from Hyderabad and admittedly all supplies were also made by the plaintiff at Hyderabad, which is clearly reflected from the delivery challans and acknowledgments of these supplies. It further appears that subsequent to the supplies, bills were submitted and now dispute is in respect of non-payment of the said amount. To claim such amount, the Plaintiff has filed instant Suit before this Court and has also joined Defendants No.1 & 2. However, it cannot be disputed that the cause of action, or for that matter, the main and primary cause of action had accrued at Hyderabad and for that this Court lacks jurisdiction as conferred through section 7 of the Civil Court Ordinance, 1962, for exercising original jurisdiction. Merely for the fact that amount has to be reimbursed or funded out of the budget

allocations to be made by the defendant No.1 and 2, and a prayer has been made in the Suit against these Defendants, this Court cannot assume the jurisdiction in such matters. It is needless to observe that the Province of Sindh or any affiliated department can always be sued in the entire Province through the concerned Secretary of the department, and it is not mandatory to sue the said department at Karachi, more so before this Court. If otherwise, then every dispute with any of the departments of Government of Sindh, outside Karachi, would land before this Court. In this matter, the main grievance and cause of action, including the dispute is against and with defendant No.3 and if for some reason, payment has not been released by Defendants No.1 and 2 as informed by defendant No.3, would not in any manner bring the matter within territorial jurisdiction of this Court, which is only confined to the districts of Karachi. It is not a constitutional jurisdiction, which is being exercised by this Court in the instant matter, which perhaps is broader and wider, as against the jurisdiction conferred on this Bench while trying Suits on the Original Side of this Court.

5. Insofar as, reliance on the orders passed by this Court is concerned, it may be noted that passing of such order does not confer jurisdiction or for that matter, this Court by itself cannot assume such jurisdiction, which in law is not available. As to the letter of defendant No.3 whereby, the plaintiff was informed that payments and funds have been withheld by Defendants No.1 and 2, it would suffice to observe that again it would not confer any jurisdiction on this Court as it is settled law that jurisdiction cannot be conferred upon the Court by consent of the parties.

6. Indeed, it is elementary principle of law that for examining the question of maintainability of the suit with reference to or on the analogy of the provisions of Order VII, rules 10 and 11 C.P.C., the averments made in the plaint are to be taken as a whole and with presumption of correctness attached thereto. But at the same time, it is also pertinent to mention that for determining the question of territorial jurisdiction with reference to the cause of action, whether accrued wholly or in part, the averments of the

plaint are to be read in conjunction with the relief sought by a party in the suit and such reading of plaint should be meaningful, rational to the controversy and not merely formal¹. The essential factor for determining of jurisdiction for the purposes of entertaining the Suit would be judged from the contents of the plaint and the dispute subject-matter of Suit and not from the consequences flown from the Suit.²

7. It may also be of relevance to note that while confronted, learned Counsel for the Plaintiff has admitted that there is no privity of contract between Plaintiff and Defendants No.1 & 2, and therefore, joining them in this Suit appears to be an attempt to bring this Suit within the jurisdiction of this Court. In fact, any relevance or for that matter undertaking and liability of Defendants No.1 & 2 would only come into force when the Suit of the Plaintiff is decreed against Defendant No.3 and its execution is being sought.

8. In view of hereinabove facts and circumstances of this case, it appears that this Court lacks jurisdiction in the matter as the cause of action is against Defendant No.3, who does not reside within the territorial jurisdiction of this Court; and therefore, by means of a short order passed during the earlier part of the day, I had allowed this application by returning the Plaint and directing the office to act accordingly and these are the reasons thereof.

Judge

*Faizan PA/ **

¹ Murlidhar P. Gangwani (Engineer v. Engineer Aftab Islam Agha and others ([2005 MLD 1506](#)))

² Haji Abdul Malik v Muhammad Anwar Khan (2003 SCMR 990)