

ORDER SHEET
THE HIGH COURT OF SINDH KARACHI

Suit No. 1731 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGE
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For hearing of CMA Nos:

1. 14382 of 2019.
2. 15859 of 2019.
3. 15864 of 2019.

31-01-2022

Mr. Ayan Mustafa Memon, Advocate for the Plaintiff.
Mr. Fayyaz Ali Metlo, Advocate for Defendants 2 and 3.
Mr. Pervez Ahmed Mastoi, Assistant Advocate General Sindh.

Adnan Iqbal Chaudhry J. - In their written statement and counter affidavit, the Defendants 2 and 3 have raised a preliminary objection that this Court does not have territorial jurisdiction to entertain this suit. To quote a learned Division Bench of this Court from *Muhammad Naveed Aslam v. Aisha Siddiqui* (2011 CLC 1176): "The provisions of Order VII Rule 10 are mandatory in nature and adjudication by a court without jurisdiction is *coram non judice* and when any court lacks pecuniary or territorial jurisdiction, the proper course is to return the plaint for presentation to the proper court and such court cannot pass any judicial order except that of returning the plaint." Therefore, it is imperative to first decide the objection to territorial jurisdiction.

2. The Shikarpur campus of Shah Abdul Latif University, which then became the Shaikh Ayaz University Shikarpur under Sindh Act No. XLIII of 2018, had published a notice dated 11-09-2018 inviting pre-qualification of contractors for constructing a building project at its campus at Shikarpur. Per the plaint, the Plaintiff was successful in the pre-qualification process; that it was issued tender documents and subsequently emerged as the lowest bidder; that even though its bid security was encashed, but still the University avoided to award the

contract to the Plaintiff; hence this suit. The Province of Sindh has been arrayed as the Defendant No.1 at the Sindh Secretariat, Karachi. The University and its Project Director at Shikarpur have been arrayed as Defendants 2 and 3. The Defendant No.4 is the Sindh Public Procurement Regulatory Authority with its office at Karachi. And, the Defendant No.5, also shown at Karachi, is the consultant appointed by the University to assistance in the evaluation of tender documents. The Plaintiff prays for a declaration that being the lowest evaluated bidder it is entitled to the award of the contract by the Defendant No.2; for an injunction directing the Defendants 2 and 3 to award the contract to the Plaintiff; for an injunction restraining the Defendants from cancelling the tender process and from awarding the contract to any other party.

3. Learned counsel for the Defendants 2 and 3 submits that the relief sought in the suit is essentially against the University which is at Shikarpur; that the tender documents were issued and submitted at Shikarpur, bids were opened at Shikarpur, and the contract, if any, was to be awarded at Shikarpur and for a project at Shikarpur; therefore, if any cause of action accrued to the Plaintiff, the civil court at Shikarpur had territorial jurisdiction.

On the other hand, learned counsel for the Plaintiff submits that the University is a statutory body under the control of the Province of Sindh, and therefore, it can be sued at Karachi on the theory that it is performing functions of the State; that the Defendants 4 and 5 (SPPRA and the consultant) are based at Karachi; and since the letter dated 06-05-2019 informing the Plaintiff that it had pre-qualified, was issued addressed to the Plaintiff at Karachi, part of the cause of action arose at Karachi; and hence the suit at Karachi. Learned counsel further submitted that by virtue of section 120 CPC, the provisions of sections 16, 17 and 20 CPC were not applicable to the High Court in the exercise of its original civil jurisdiction; and that in *Searle IV Solution (Pvt.) Ltd. v. Federation of Pakistan* (2018 SCMR 1444), the Supreme Court has already held that the High Court of

Sindh at Karachi exercising jurisdiction over civil suits was not a civil court but a High Court.

4. Heard the learned counsel and perused the record.

5. Firstly, reliance by the Plaintiff's counsel on the case of *Searle IV Solution* is completely misplaced. There, it was held that :

“The Single Bench of the Sindh High Court is therefore a ‘High Court’ and cannot be equated with any other civil court and hence falls outside of the ambit of the ouster clause.”

Thus, the observation above that the High Court of Sindh at Karachi exercising jurisdiction over civil suits was a High Court and not a civil court, was made to distinguish a ‘High Court’ from a ‘civil court’ in the context of an ouster clause that ousted jurisdiction of a ‘civil court’. Such observation does not in any way alter the territorial jurisdiction of the High of Sindh at Karachi in dealing with civil suits. Secondly, the comparison made by learned counsel with the territorial jurisdiction of the High Court under Article 199 of the Constitution is equally misplaced, inasmuch as the territorial jurisdiction of this Court while dealing with civil suits is not governed by Article 199 of the Constitution.

6. As regards the submission that sections 16, 17 and 20 CPC are excluded by section 120 CPC in the original civil jurisdiction of the High Court of Sindh at Karachi, that would be so and section 120 CPC would be triggered only if the cause of action for a suit arises within the territorial limits of Karachi and the suit falls within the pecuniary jurisdiction of the High Court of Sindh at Karachi. If both of those prerequisites are not met, then sections 16, 17 and 20 CPC continue to hold the field. That proposition of law was explained by a learned Single Judge of this Court in the case of *Muhammad Naveed Aslam v. Aisha Siddiqui* (PLD 2010 Kar 261) as follows:

“13. A bare reading of Section 120 of Civil Procedure Code show that firstly it makes sections 16, 17 and 20 of Civil Procedure Code inapplicable for the High Court in exercise of its original civil

jurisdiction. The need to make sections 16, 17 and 20 of CPC inapplicable to a High Court arose because the jurisdiction of Civil Courts under sections 16, 17 and 20 CPC and the original civil jurisdiction of the High Courts under the then Letters Patent determine separate places where a civil suit and proceedings could be filed. Section 120 of C.P.C. was enacted to settle the conflict of sections 16, 17 and 20 of C.P.C. with the laws that conferred original civil jurisdiction on the High Courts and to obviate any confusion as regards place of suing. This can be understood through an example. Ordinarily a suit relating to a dispute of immovable property situated in Saddar, Karachi is to be brought in the Civil Court, which under the provisions of sections 16 and 17 of Civil Procedure Code has jurisdiction to try such suit. As the area of Saddar in Karachi falls within the limits of Police Station, Saddar which is in District East, Karachi, therefore the Civil Court which can try suits of area falling in Police Station Saddar becomes the place where such a suit is to be filed when sections 16 and 17 of the Civil Procedure Code are applied. However, if the same suit is of a value, which is more than three million rupees then by virtue of section 7 of Sindh Civil Courts Ordinance, 1962 the place of suing shifts to the Original Side of this High Court. In order to overcome this overlapping of jurisdictions, provisions of sections 16 and 17 of C.P.C. were made inapplicable under section 120 of C.P.C. so that these provisions may not come in the way of filing a civil suit or proceedings on the Original Side of this Court. Therefore, while entertaining a suit relating to immovable property emanating from the area of Saddar in Karachi having a value of more than three million rupees, the place of suing as determined under sections 16 and 17 of the C.P.C. becomes immaterial and is not to be considered as under section 7 of the Sindh Civil Court Ordinance 1962, the Original Side of this High Court becomes the place of suing. Section 120 of C.P.C. can be interpreted only in this manner and not in a manner that any suit of more than three million rupees in value, coming from any part of the territorial jurisdiction of this Court viz. the entire Province of Sindh can be entertained on the Original Side of this Court. If the interpretation as given to section 120 of C.P.C. by the learned counsel for the plaintiff is accepted then every suit of a value above three million rupees relating to any part of Sindh has to be entertained on the Original Side of this Court. Such an interpretation would defeat the very purpose that created original civil jurisdiction in this High Court for the Districts of Karachi. While interpreting section 120 of C.P.C., the meaning of the words 'in the exercise of its original civil jurisdiction' appearing in that section should not be lost sight of which clearly mean that place of suing is not to be determined by sections 16, 17 and 20 but by the provision which confer original civil jurisdiction on this High Court. Now original civil jurisdiction is conferred on this Court under section 7 of the Civil Courts Ordinance, 1962 which is limited only for the territorial limits of

Karachi. No other territory of this High Court comes within the ambit of the original civil jurisdiction prescribed under section 7 of the 1962 Ordinance. Therefore, if a suit does not fall within the ambit of original civil jurisdiction of this High Court then certainly the place of suing for such a suit is to be determined under sections 16 to 20 of Civil Procedure Code. What is actually meant by inapplicability of sections 16, 17 and 20 of C.P.C. to High Court under section 120 of C.P.C. is that High Court shall not apply these provisions to a suit if it comes under the ambit of section 7 of 1962 Ordinance i.e. sections 16, 17 and 20 of Civil Procedure Code shall not apply if a suit pertains to any part of the four Districts of Karachi and is valued at more than three million rupees. On the other hand, if a suit is filed in this Court which does not fall within the original civil jurisdiction of this Court i.e. it does not pertain to a dispute relating to any of the four Districts of Karachi or in not of a prescribed value then certainly the provisions of sections 16, 17 and 20 shall be attracted and the plaint shall be returned for its presentation to a Court of appropriate jurisdiction. Section 120 of Civil Procedure Code therefore only renders ineffective provisions of sections 16, 17 and 20 of C.P.C. to suits that can be entertained by this High Court in exercise of its original civil jurisdiction which is confined to civil suits and proceedings pertaining to the Districts of Karachi only and not for any other area falling within the jurisdiction of this High Court.”

7. The case of *Muhammad Naveed Aslam supra* was upheld by a learned Division Bench of this Court in the case with the same title, *Muhammad Naveed Aslam v. Aisha Siddiqui* (2011 CLC 1176) as follows:

“31. Though section 120, C.P.C. provides that sections 16, 17 and 20 shall not apply to High Court in exercise of its original civil jurisdiction but it does not mean that by virtue of this section the jurisdiction of original side of this court extended to all territories of Province of Sindh no matter the property in question is situated at Karachi or not. The jurisdiction of this Court at original side is only limited and confined to the districts of Karachi and if the arguments of the learned counsel for the appellants are accepted to be true, it will tantamount to the extension of original side jurisdiction of this Court to the entire Province of Sindh subject to its pecuniary limits of jurisdiction.

32. The non-applicability of sections 16, 17 and 20 read with Order XLIX, Rule 3 is only applicable and limited to the original side jurisdiction for the district of Karachi and when it is found that the property is situated outside the territorial jurisdiction of Karachi then sections 16 and 17 will automatically come into operation. The initial guiding principles for institution of various suits is provided under sections 16 to 19, C.P.C. whereafter section 20 has been

provided for other suits to be instituted where the defendant resides or cause of action arises.”

It is to be noted that while dealing with section 120 CPC, the learned Division Bench above had also addressed a similar provision contained in Order XLIX Rule 3 CPC. *Muhammad Naveed Aslam's* case was then followed by another Division Bench of this Court in *Shamshad Begum v. Syed Iftikhar Hussain Jafri* (2018 CLC 1795). The entire case-law on the subject was again discussed by a learned Single Judge of this Court in *Land Mark Associates v. Sindh Industrial Trading Estate Ltd.* (2018 YLR 2143).

8. Adverting now to the instant suit: given the relief sought herein, the suit is not of a nature that falls within the description of suits discussed in sections 16 and 17 CPC. This brings us to section 20 CPC which reads as follows:

“Sec. 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.”

Since some of the defendants i.e. the Defendants 2 and 3 are at Shikarpur and ‘each one of the defendants’ is not within the ‘local

limits' of the jurisdiction of this Court, clause (a) of section 20 CPC is not attracted. Clause (b) of section 20 CPC is also not attracted as the Court has not given leave to sue the Defendants 2 and 3 at Karachi, nor have said Defendants acquiesced to the institution of the suit against them at Karachi. It is clause (c) of section 20 CPC that is attracted, i.e. the suit is to be instituted in a Court within the local limits of whose jurisdiction the cause of action, wholly or in part, arises.

9. The undisputed facts of the instant suit are that notice dated 11-09-2018 inviting pre-qualification of contractors was issued by the University which has its only campus at Shikarpur, and for a project to be undertaken at Shikarpur. The pre-qualification process took place at Shikarpur, the tender documents were issued from and submitted to the University at Shikarpur, the bids were opened at the University campus at Shikarpur, and the contract was to be awarded at Shikarpur. In short, the dispute has no nexus with Karachi. Learned counsel for the Plaintiff attempted to argue that part of the cause of action arose at Karachi as a letter dated 06-05-2019 (page 121) intimating to the Plaintiff that it had pre-qualified for the project, was addressed to the Plaintiff at Karachi. However, the meeting in which the Plaintiff was declared pre-qualified had taken place at Shikarpur in the Plaintiff's presence (pages 113 to 119), and even thereafter, the remainder of the bidding process continued at Shikarpur where financial bids were eventually opened, and as per the Plaintiff, it emerged as the lowest bidder. A mere letter addressed to the Plaintiff at Karachi in the intervening period which was not any offer to a contract, is of no consequence.

10. In view of the foregoing, I have no hesitation in concluding that no part of the cause of action for this suit arose within the local limits of this Court at Karachi. Resultantly, section 120 CPC is not attracted. Under clause (c) of section 20 CPC it is the civil court at Shikarpur that has territorial jurisdiction to entertain the suit. The plaint shall therefore be returned under Order VII Rule 10 CPC while retaining a

copy for the purposes of record. Given the consequence of that as discussed in *Pakistan Telecommunication Company Ltd. v. Faizan Bibi* (PLD 2013 Sindh 80), the miscellaneous applications are to no effect here, and are disposed of with the observation that if need be those may be filed afresh in the suit instituted before the court having territorial jurisdiction.

SHABAN*

JUDGE