

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.

C.P.No.D-1470 of 2020.

DATE ORDER WITH SIGNATURE OF JUDGE

PRESENT:
MR. JUSTICE NADEEM AKHTAR
MR. JUSTICE ARSHAD HUSSAIN KHAN

1. For orders on office objection.
2. For orders on M.A. No.7440/2020.
3. For hearing of main case.

12-01-2021

Mr. Imamuddin Otho, Advocate for petitioner.

ARSHAD HUSSAIN KHAN, J. By means of this constitutional petition, filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner seeks following reliefs:

- A. To direct the respondents to pay to the petitioner Rs.256553/- for the tender works carried out by him.*
- B. Costs of the petition may be saddled upon the respondents*
- C. Any other relief (s) which this Honourable Court deems fit, just and proper in favour of the petitioner."*

2. The precise case of the petitioner is that, he is a Government contractor, having unblemished record at his credit. Further he was awarded certain tender works details whereof are mentioned in para No.3 of the memo of petition, which the petitioner after performing his part of contract has completed within specified time to the satisfaction of the Taluka Municipal Administration. Although during the construction work, the petitioner was paid an amount of Rs.37,00,000/- by the respondents, however, remaining amount of Rs.25,65,553/- is still outstanding against the Taluka Municipal Administration Sehwan Sharif, which is not being paid despite repeated requests. Hence, the petitioner having no other efficacious and alternate remedy has filed the present petition for recovery of his outstanding amount.

3. From the perusal of case, it clearly transpires that the petitioner seeks enforcement of contractual obligations arising out of the contract executed between the parties. It is now well settled that the contractual rights,

commitments, undertaking and obligations have to be enforced through Courts of ordinary jurisdiction, which should not be interfered with by the High Court while exercising its constitutional jurisdiction, especially in the matters arising out of a contractual obligation. In such like situation, the normal remedy to the law being a suit for contractual rights and obligations would be availed instead of filing petition under Article 199 of the Constitution. Reliance in this regard can be placed on the case of Zonal Manager, U.B.L. and another v. Mst. Perveen Akhtar [PLD 2007 Supreme Court 298].

4. Keeping in view the above legal position when this Court put the question of maintainability of the present petition, the learned counsel failed to satisfy the Court on this point. His only argument was that the petitioner has no adequate or alternate remedy under the law except, to seek his relief through Constitutional petition.

This Court in the case of Messrs SF Engineering Services through Proprietor v. Federation of Pakistan through Secretary, Water and Power, Islamabad and 4 others [PLD 2014 Sindh 378], while dealing with somewhat similar issue, *inter alia*, held as under:

"8. The petitioner wants implementation of contractual obligation for which the civil court is the most appropriate, adequate and efficacious remedy. In case of contractual obligation for resolution of disputed questions of facts the proper way to decide the controversy is to record evidence so that the rights and claims of the parties may be determined. The petitioner has approached this court for the recovery of dues and also asserted in the memo of petition that constitution petition is an adequate remedy under the law which is totally a misconceived notion. It is often seen which has become a common fashion and practice that to cure and remedy all the problems/sufferings, litigants use to file constitutional petitions, no matter, the petition is maintainable or not or equally efficacious and alternate remedy is already provided under the law. It is clear from the letter of the law that claim arising from contractual obligations require inquiry and evidence and it can only be decided by civil court which is most adequate and efficacious remedy. The writ jurisdiction cannot be exploited as sole solution for ventilating all miseries, distresses and plights. This extraordinary jurisdiction should not be misused to waste precious time of the court in fruitless exercise particularly when a huge backlog of pending cases are in docket almost in all courts. It is time and again seen that due to wrong approach to the wrong forum on misconception of law or wrong selection of forum, the actual remedy provided under the law becomes time barred and in that situation, the petition has to first cross the barrier of limitation for seeking relief and leaving himself at the mercy of the court to consider the sufficient cause for condonation of delay and then embark upon the merits of the case."

[Emphasis supplied]

5. In the present case, admittedly, the petitioner has not availed remedy by filing a suit for recovery, if any, before the proper forum and has approached this Court directly. Hence the relief sought for by the petitioner for recovery / payment

of his due amount under these proceedings cannot be granted in terms of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

6. For the reasons stated above, we find no justification for exercising discretionary and extraordinary constitutional jurisdiction of this Court in the matter in hand. Consequently, the writ petition being not maintainable stands dismissed in limine along with listed application. However, the petitioner may avail appropriate remedy, if available to him in accordance with law.

JUDGE

JUDGE

Tufail

