

IN THE HIGH COURT OF SINDH AT KARACHI

High Court Appeal No.210 of 2016

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Zulfiqar Ahmad Khan

Sohail Tayyab Ali.....Appellant.

Vs.

1. Technova Enterprises (Pvt.) Limited

2. Sui Southern Gas Company Limited...Respondents.

Dates of hearing : 27.01.2021, 02.02.2021 and 10.02.2021

Appellant in person.

Respondent No.1 through Mr. Muhammad Amin, Advocate.

Respondent No.2 through Mr. Farmanullah, Advocate.

J U D G M E N T

IRFAN SAADAT KHAN, J. The instant High Court Appeal (HCA) has been filed against the order dated 29.06.2016 passed by the learned Single Judge in respect of CMA Nos.349 and 6945 of 2015 filed by the present respondent No.1 in Suit bearing No.40 of 2015 and CMA No.2344 of 2015 filed by the present appellant in Suit bearing No.372 of 2015.

2. It is clarified that a Suit bearing No.40 of 2015 was filed by the present respondent No.1 against the present appellant and the respondent No.2. In the said suit CMA Nos.349 and 6945 of 2015 were filed under Order XXXIX Rules 1 & 2 CPC. Whereas a Suit No.372 of 2015 was filed by the present appellant against the present respondents No.1 & 2. In the Suit No.372 of 2015 a CMA No.2344 of 2015 was also filed under Order XXXIX Rules 1 & 2 CPC. The learned Single Judge after hearing all these three applications, in the above referred suits, allowed the interim

injunction in respect of the applications filed by the present respondent No.1 in Suit No.40 of 2015, whereas dismissed the application filed by the present appellant in Suit No.372 of 2015.

3. Briefly stated, the facts of the case are that the present appellant was the owner of the premises, C-386, measuring 8000 square meters. The appellant vide sale agreement dated 01.07.2014 sold out 2500 square meters of his land to the present respondent No.1 leaving in his hand 5500 square meters. It is the contention of the appellant that while selling out the area to the respondent No.1 he did not sell out the gas connection installed at the said premises bearing Consumer Number 8487341000 and still claims himself to be the owner of the said gas connection. It is also the contention of the appellant that since the respondent No.1 needed the gas connection for their business purposes, as they were engaged in the business of melting and smelting of non-ferrous metals for recycling the same, the appellant allowed the respondent No.1 to use the said gas connection. Subsequently when the appellant needed the gas connection for his own business, the respondent No.1 refused to hand over the gas connection to the appellant. Dispute then arose between the parties. It would not be out of place to mention that the appellant has issued a No Objection Certificate (**NOC**) dated 21.05.2014 to the respondent No.1, for use of the gas connection, and the respondent No.1 has got transferred the gas connection in their name and till to-date the gas bills are being issued by the respondent No.2 in the name of the respondent No.1. Due to the dispute between the parties in respect of the gas connection a Suit bearing No.40 of 2015 was filed by the present respondent No.1 against the appellant; whereas a Suit bearing No.372 of 2015 was filed by the present appellant against the respondents No.1 & 2. Since common questions were

involved, the suits were clubbed together and were taken up for hearing with each other.

4. It may also be noted that various Miscellaneous Applications, in the respective suits, were also filed by either side, which include injunction and other applications, so also contempt application. It is noted that on 12.04.2016 as many as eight (08) applications were fixed for hearing in Suit No.40 of 2015, whereas one application was fixed in Suit No.372 of 2015 before the learned Single Judge, who proceeded on all these applications. The learned Single Judge while deciding the applications in Suit No.40 of 2015 decided the CMA Nos.349 and 6945 of 2015 in favour of the plaintiff of the suit, whereas dismissed the CMA No.2695 of 2015 filed by the plaintiff against which admittedly no appeal was filed by the present respondent No.1. The learned Single Judge also disposed of CMA Nos.1698, 1699, 4262 and 12480 of 2015 filed in Suit No.40 of 2015 filed by the plaintiff in the said suit. However so far as contempt application bearing CMA No.11031 of 2015, filed by the plaintiff in the said suit is concerned, the same was kept pending. The learned Single Judge dismissed the CMA No.2344 of 2015 filed in Suit No.372 of 2015 by the plaintiff in that suit (appellant in the present appeal). It is against the allowing of the CMAs bearing No.349 and 6945 of 2015 in Suit No.40 of 2015 and dismissal of CMA No.2344 of 2015 in Suit No.372 of 2015 that the present HCA has been filed. It is an admitted position that further proceedings in the above referred suits are still pending.

5. Appellant Sohail Tayyab Ali is present in person. He submitted that no doubt he has sold out a portion of his property to the respondent No.1 and has given them the permission to use his gas connection by issuing a NOC but at no point of time he has sold out his gas connection to the

respondent No.1. He further admitted that no doubt he has given an undertaking /NOC dated May 21, 2014, but that undertaking was only with regard to the billing purposes and has never transferred the ownership rights, of the said industrial gas connection, to the respondent No.1. He stated that the said undertaking /NOC was given at the request of the respondent No.1 since they, being the manufacturer, require industrial gas connection for their business purposes in order to claim input tax adjustment and income tax deduction accruing on the said gas connection bill. The appellant stated that he helped the respondent No.1 so that they can claim adjustment of the taxes paid on the gas bill, which could only be claimed by a person having the bill in its name. He stated that at no point of time he relinquished his right or claim over the said gas connection.

6. The appellant further explained that when he wanted to start his own business he approached the respondent No.1 for return of the gas connection which, according to him, was given to the respondent No.1 for temporary use only but when the respondent No.1 refused to return back the gas connection to him the dispute between them arose. He stated that the respondent No.1 rather than returning back his gas connection filed a Suit bearing No.40 of 2015 claiming ownership rights on the said gas connection and thereafter, as a counterblast, he filed the Suit bearing No.372 of 2015 on the ground that the gas connection belongs to him, which may be returned to him by issuing directions to the said respondent No.1. He stated that previously the respondent No.1 were his tenants who were given a portion of area on rent vide tenancy agreement dated 30.12.2013. However subsequently he sold out a portion to them vide sale agreement dated 01.07.2014 and the respondent No.1 became the owners of the portion and hence they were legally required to obtain their own gas

connection and return the gas connection, given temporarily by him to them.

7. The appellant has also stated that the gas connection was installed in the portion owned by him and the respondent No.1 was only allowed, on temporary basis, to use the gas for their business purposes. In the end, the appellant stated that his business is suffering badly due to the non-availability of gas connection as only one industrial connection could be issued to a person on one industrial unit. According to the appellant when he has approached the respondent No.2 for transfer of connection, the same was declined by them on the ground that as per their rules and regulations only one industrial connection could be given on one industrial unit and since a gas connection has already been given on an industrial unit, which at present is in the use of the respondent No.1, hence they cannot legally give a second industrial connection on the same unit to the appellant; especially if viewed in the light of the NOC issued by him whereby he has relinquished his rights of ownership on the said industrial gas connection. The appellant has, therefore, prayed for setting aside of the impugned order dated 29.06.2016 to the extent of allowing the CMAs filed by the respondent No.1 and dismissing the CMA filed by him.

8. Mr. Muhammad Amin, Advocate, has appeared on behalf of the respondent No.1 and refuted the arguments of the appellant and stated that a portion of 2500 square meters was purchased by the respondent No.1 from the appellant. He stated that with the consent of the appellant the gas connection was also obtained from him as the respondent No.1 was engaged in the business of melting and smelting of non-ferrous metals, which require constant supply of gas connection. The learned counsel stated that it was the appellant who not only gave the connection to them

but also gave an undertaking /NOC that he has no objection if the bill is transferred in their name. He stated that not only the appellant allowed the respondent No.1 the transfer of billing but also took the responsibility that in case of non-payment of the dues, he will pay the same.

9. The learned counsel stated that it was on the basis of this undertaking /NOC that the respondent No.1 approached the office of the respondent No.2 who, after fulfilling the legal requirements, transferred the said gas connection in their name. According to the learned counsel for the respondent No.1, the appellant after some time, with a greedy notion, approached the respondent No.2 for transfer of the gas bill by writing a letter dated 05.12.2014 which was illegal since once after granting NOC and transfer of the bill in the name of the respondent No.1 the action of the appellant in claiming back the gas connection was malafide and with ulterior motives. The learned counsel stated that though the respondent No.1 tried to persuade the appellant that he had relinquished his rights from the said gas connection after issuance of the NOC and since the gas connection now is in the name of the respondent No.1, he should refrain from using unethical tactics in claiming back the gas connection but when it was found that the present appellant was not in a mood to withdraw from his illegal and uncalled for demand, a Suit bearing No.40 of 2015 was filed and the learned Single Judge quite rightly, after finding the matter highly contentious, granted interim injunction to the respondent No.1.

10. The learned counsel for the respondent No.1 stated that neither any application under Order XXXIX Rule 4 of the CPC was filed by the present appellant for withdrawal of stay nor he has proceeded in the suits so that true picture could emerge with regard to the claim of the respondent No.1 or the appellant, as the case may be. According to the learned counsel for

the respondent No.1 from the attitude of the appellant it is evident that the appellant is acting in a malafide manner just to usurp the gas connection, now legally owned by the respondent No.1, with ulterior motives as, according to the learned counsel, obtaining an industrial gas connection now a days is firstly a hill task and secondly requires heavy amount of security deposit. He, therefore, states that the HCA filed by the present appellant is misconceived which may be dismissed by imposing cost upon the appellant.

11. Mr. Farmanullah, Advocate, has appeared on behalf of the respondent No.2 and stated that the dispute primarily is between the respondent No.1 and the appellant. He stated that the respondent No.1 approached them along with the NOC of the appellant and they after fulfilling the legal and codal formalities transferred the gas connection in the name of the respondent No.1, in accordance with law, and even today the said gas connection is in the name of the respondent No.1 and the bills are being issued in their name. He in the end stated that whatever order is passed by this Court would be complied with in letter and spirit.

12. We have heard the appellant and the learned counsel for the respondents No.1 & 2 at considerable length and have also perused the record.

13. It is evident from the record that initially the appellant and the respondent No.1 entered into a tenancy agreement dated 30.12.2013 for a period of three years. It is also evident that in the tenancy agreement the appellant was under the obligation to provide uninterrupted gas supply to the respondent No.1, as the respondent No.1 was engaged in the melting and smelting of non-ferrous metals for recycling the same, which require

constant /uninterrupted supply of the gas. It is also noted that before culmination of tenancy the appellant and the respondent entered into a sale agreement with regard to the portion held by the respondent No.1 as a tenant. It is also an admitted position that the appellant gave a NOC dated 21.05.2014 for transfer of the billing and also gave an undertaking that in case the respondent No.1 fails to pay the bill then he would be responsible for the payment of the bill. It is also noted that the respondent No.1 has placed a security deposit of Rs.3,359,159/- with the respondent No.2 and has also furnished a bank guarantee of Rs.1,225,000/- to the respondent No.2 to secure the gas supply to them. The dispute arose between the parties when the appellant approached the respondent No.2 for transfer of gas connection again to him, which as per the respondent No.1 could not be done, since after issuance of NOC, furnishing of security deposit and the bank guarantee the appellant has relinquished his right or claim over the said gas connection and for all practical purposes it is now the respondent No.1 who is the owner of the said gas connection. It may also be noted that after the transfer of the gas connection in the name of the respondent No.1 till to-date all the bills have been issued by the respondent No.2 in the name of the respondent No.1 and the payment of these gas bills were made by the respondent No.1.

14. It is in this background that the respondent No.1, in order to preserve their right and interest in the gas connection, filed a Suit bearing No.40 of 2015. The appellant also upon knowing the fact that a suit has been filed by the respondent No.1 before the High Court also filed a counterblast Suit bearing No.372 of 2015, which suits are pending adjudication. It is also noted that a complaint was also lodged by the appellant with regard to gas leakage with the concerned authorities which interrupted the gas supply to

the respondent No.1. This complaint however was subsequently found to be false and fake. It may be noted that the present respondent No.1 filed a suit to secure their claim over the gas connection and the appellant has also filed a suit seeking directions to the respondents to return the gas connection upon which he claims the ownership. It may also be noted that after filing of the suits by both the parties the matter has become highly contentious and requires examination of record and evidences, which are to be led by the parties to enable the Court to come to the conclusion that whether under the given circumstances who is the owner of the said gas connection which, in our view, could only be decided after hearing the parties at some length, recording of evidences and examination of other factors necessary for reaching to a just conclusion in the said suits. It may also be noted that the piece of land purchased by the respondent No.1 has been transferred in their name. It would also not be out of place to mention that the gas connection was transferred in the name of the respondent No.1 some five to six months prior to the culmination of the sale between the parties, which took place in December 2014, whereas the NOC was issued in the month of May 2014. Since claims and counter claims have been made by both the parties in the instant matter, in our view, the learned Single Judge was quite justified in allowing the interim injunction application filed by the respondent No.1, since admittedly they were engaged in manufacturing process, whereas the appellant has only prayed that if gas connection is restored to him, he will be able to start some business, which clearly indicates that prima facie the balance of convenience was in favour of the respondent No.1, which is a primary and mandatory requirement for grant of injunction under Order XXXIX Rules 1 & 2 CPC.

15. It may further be noted that while dealing with the injunction application, in respect of any property in dispute, the Court may order grant of temporary injunction to restrain a party from creating hindrance in the said property as injunction is always an equitable relief which is granted by looking at the facts and circumstances of the said case. Injunction is granted when a prima facie /arguable case is made out for grant of injunction. In the instant case since the respondent No.1 was having the gas connection in its name and was engaged in the business of melting and smelting of non-ferrous metals for recycling the same, though we are informed that at present the said gas connection is non-operational, the matter signifies a triable case with regard to the determination of the ownership of the gas connection which requires leading of evidence by each party to prove their averments in the two pending suits. It may further be noted that in the instant matter the balance of convenience also seems to be in favour of the respondent No.1 as it was the respondent No.1 who was enjoying the gas connection since 2014 and by not granting temporary injunction there definitely would be a situation inconvenient to them, till the matter is finally decided. While granting an injunction application the factors which are to be considered being prima facie /arguable case, balance of convenience and the apprehension of irreparable loss. It is not necessary for a Court to minutely examine the issue of grant of temporary injunction as usually upon making out a prima facie /arguable case temporary injunction is granted. Attention is also drawn to Section 56(k) of the Specific Relief Act, 1877, which provides that injunction is not granted where there is no “personal interest” in the matter. Whereas in the instant matter, in our view, the respondent No.1 has been able to substantiate that they have “personal interest” in the matter, since the respondent No.1 has paid an amount of security of more than Rs.3 million and has also furnished a bank guarantee

of Rs.1,225,000/- to the respondent No.2. Thus, in our view, the above factors necessary for grant of injunction were available in this matter.

16. In view of what has been stated above, we are of the view that the learned Single Judge quite rightly granted ad-interim injunction to the respondent No.1 in the instant matter. The parties are directed to lead their evidence to support their stance so that the two suits pending before the learned Single Judge could be finally heard and disposed of in accordance with law. With these directions the instant HCA stands dismissed along with the listed application. Needless to state that our these findings are only with regard to the ad-interim stay granted by the learned Single Judge and should not have any bearing in respect of the final outcome of the two suits, which would be decided on their own merits in accordance with law.

JUDGE

JUDGE

Karachi:

Dated: .02.2021.

(Tahseen, PA)