

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.1541 of 2009

[Khawaja Tariq Siddiqv.....The Chairman, M/s. Karachi Electric Supply Corporation Ltd. & others]

Dates of Hearing : 27.09.2021 & 17.12.2021

Plaintiff : Plaintiff present in person.

Defendants : Ms. Sehar Rana, Advocate for defendant No.1 to 7 a/w Mr. Sameer Tayebaly & Ms. Falak Naz Fatima, Advocates.

Defendant No.8 is *ex parte*.

JUDGMENT

Zulfiqar Ahmad Khan, J:-This suit has been filed by the plaintiff for recovery of Rs.1,000,000,000 (rupees one billion) as damages.

2. It is stated in the plaint that plaintiff is one of the partners of Hilltop Hotel and aggrieved by the inaction and inaptness of the defendant No. 1 to 7. The plaintiff states that through several communications dated 06.01.2004, 03.07.2005 & 02.05.2006, defendant No. 1 to 7 were requested to install a bulk electric supply meter at the Hotel as number of individual meters were installed at the hotel as some of those meters were out of order, but no heed was paid to such requests of the plaintiff, however, on 21.05.2009 representative of the defendants made a raid at the hotel and on the following day lodged an FIR bearing No.07/2009 under Section 39 of the Electricity Act, 1910 alleging, inter alia, that the plaintiff was found stealing electricity. Plaintiff alleged that he was acquitted of the charge in the said FIR but in the meanwhile, the defendants started a campaign to defame the plaintiff's Hotel and published

news items regarding the said raid in various local newspapers, hence the plaintiff claimed damages against the defendants.

3. Having admitted the present cause, notices were issued to the defendants who in compliance whereof, filed their reply. The main stance of the defendants in their reply is that the plaintiff's Hotel was consuming electricity more than the sanctioned load and having observed the said anomaly on the part of the plaintiff's Hotel, the inspection team inspected the Hotel and found load of 84 KWTs, whereas, the hotel was sanctioned 22 KWTs, thus Hotel was using unauthorized load of 62 Kwts. It is further alleged in the written statement that *lis* before this Court is misconceived and liable to be dismissed.

4. It unfurls upon scanning the record that vide order dated 14.01.2013 the electricity of the Hotel was restored, therefore, the prayer clause (b) of the present cause became infructuous.

5. This Court on 11.01.2016 framed the following issues and on the same day matter was referred to the learned Commissioner for recording evidence. Issues framed by this Court are as under:-

1. Whether the suit has competently been instituted by the plaintiff?
2. Whether the plaintiff is authorized to institute the suit and sign on behalf of the partnership concern?
3. Whether the plaintiff is entitled for recovery of the amount as claimed in the plaint?
4. What should the decree be?

6. Plaintiff entered appearance in person having reiterated the contents of the plaint, introduced on record his grievance that he

belongs to a well-educated family as well as he is a law abiding citizen paying utilities charges to the different agencies from time to time. He next submitted that owing to the sad actions of the defendants, he suffered not only financially but also physically and emotionally. He further submitted that at the time of the raid no evidence was collected by the raiding party of the defendants and they malafidely mentioned in the FIR that 70 mm cable was found inside the premises of the Hotel which fact remained unproved by the said defendants before the learned Court adjudicating the said FIR and having examined pros and cons, the learned criminal Court acquitted the plaintiff of the charge. He further contended that owing the such actions of the defendants, he was defamed at the hands of the defendants, therefore, he is entitled for the damages.

7. Ms. Sehar Rana, Advocated the case of the defendant No.1 to 7 that the *lis* at hand is not maintainable on the ground that plaintiff claims to be one of the partners of the Hotel but neither he produced any partnership deed amid his testimony nor any authorization letter on behalf of the partnership concern/hotel management to claim damages on behalf of the Hotel. Her next stance was that plaintiff is not meeting the requirements of Order XXIX Rule 1 CPC, therefore, he is not competent to institute the present cause, therefore, the *lis* at hand be dismissed with compensatory cost. The last limb of the arguments of learned defence counsel was that the plaintiff could not produce any cogent material on record which manifests that he is entitled for a fixed amount of damages which are not permissible as such damages cannot be apportioned.

8. I have heard the arguments at great length and examined the record made so available.

9. In my considerate view, the Issue Nos. 1 & 2 are inextricably linked and are legal issues, therefore, it would be advantageous to discuss the same together. Plaintiff Khawaja Tariq Siddiq entered into witness box and during his testimony, introduced on record the factum of filing of the present cause and produced number of documents (available in evidence file from page 19 to 109), whereas, Mr. Omair Muhammad Farooq ventured into witness box on behalf of the defendant K-Electric. The plaintiff was put to the test of cross-examination upon his testimony and during the course of cross-examination, plaintiff went on to admit that he could not file partnership with the plaintiff, whereas, the plaintiff in the nomenclature and substratum of the plaint (para-1 of the memo of plaint) introduced himself being one of the partners of the Hotel establishment but failed to produce any authorization letter on behalf of other partners of the Hotel management authorizing him to sue the defendants on behalf of the Hotel. The plaintiff in these circumstances cannot sue the defendants owing to the lack of proper authorization by the management of the Hotel or its other partners which is the moot point in the case at hand. If the plaint is not filed by a duly authorized person, such a defect or disability cannot be overlooked or ignored if not cured at an early stage. The logic and sagacity of raising this objection at an early stage leads to a pathway that, in case the plaint is rejected on this ground under Order VII, Rule 11, C.P.C., then obviously the plaintiff should not be precluded from presenting a fresh plaint in respect of the same cause of action

(subject to the law of limitation). However, at this point in time, I have to be confined to the rigors and exactitudes of Order XXIX, Rule 1, C.P.C., which predominantly engrossed that in the suits by or against a corporation, pleadings must be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case. Under Order VI, Rule 14, C.P.C, every pleading must be signed by the party and his pleader (if any) provided that where a party to pleadings is by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf. While Rule 15 of Order VI, C.P.C. is germane to the verification of pleadings which clarifies that every pleading is to be verified on oath or solemn affirmation at the foot by the party or by one of the parties or by some other person to the satisfaction of the Court. In sequel, Order III, Rule 4, C.P.C. sheds light on the notion of recognized agents and pleaders and states that no pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognized agent or by some other person duly authorized by or under a power of attorney to make such appointment. In any case, the rigors of Order XXIX, Rule 1, C.P.C. as a result of non-compliance will obviously come into the play which is not simply a procedural requirement but in essence, a matter of dominant implication for juristic persons to set the law into motion including the requirement of appointing or engaging a recognized agent and pleader through a written document signed by such person

or by his recognized agent or by some other person duly authorized thereunder or under a power of attorney to make such appointment which cannot be ignored lightly and due to this negligence and nonconformity to the express provision, the plaintiff cannot institute the present *lis* against the defendants. The Apex Court in a recent case of ***Sui Northern Gas Pipelines Limited v. Noor CNG Filling Station (2022 SCMR 1501)*** elaborated Order XXIX Rule 1 CPC. The relevant constituent of above dictum is delineated hereunder to reach at just conclusion of the issues under discussion:-

“(a) Civil Procedure Code (V of 1908).

O. XXIX, R. 1. Appeal filed by Sui Northern Gas Pipelines Limited (SNGPL). Lack of proper authorization to file the appeal. Non-placement of a Board Resolution or power of attorney in Court. Effect. Dismissal of suit.

The rigors of Order XXIX, Rule 1, C.P.C. as a result of non-compliance will obviously come into the play which is not simply a procedural requirement but in essence a matter of dominant implication for juristic persons to set the law into motion including the requirement of appointing or engaging a recognized agent and pleader through a written document signed by such person or by his recognized agent or by some other person duly authorized thereunder or under a power of attorney to make such appointment which cannot be ignored lightly.

The Sui Northern Gas Pipelines Limited (SNGPL) ('the Company') is a public limited company incorporated under the erstwhile Companies Ordinance, 1984. Title of the filed subject appeal mentioned the appellants as three General Managers and one Managing Director of Company. Said appeal was filed without any Board Resolution of the Company authorizing the alleged four executives to file an appeal against the judgment and decree of the Trial Court on behalf of the Company. No Board Resolution was produced along with the memo of appeal to demonstrate that they were authorized to file the appeal and even the memo of appeal was simply signed by the Advocate for the appellants who must have engaged this counsel for preferring an appeal but, again, before engaging and authorizing an advocate for filing an appeal, there must be a clear authorization in the form of a Board Resolution or power of attorney to that effect. Neither any Board Resolution was produced, nor was any extract from the minute book of the Company produced to demonstrate any authorization through the Board of Directors of the Company, nor any indenture power of attorney to put on view any duly constituted attorney.

If the appeal was not filed by a duly authorized person, that defect or disability could not be overlooked or ignored if not cured at an early stage.

High Court had also taken a coinciding view and concurred with the Appellate Court findings that the appellants failed to sign the appeal, rather it was only signed by their Advocate without any party's affidavit, moreover, no Power of Attorney or resolution was produced. Petition for leave to appeal was dismissed and leave was refused.”

10. Plaintiff in para 17 of his memo of plaint, whereas, in para 13 of his affidavit-in-evidence introduced on record that the defendant No.1-7 published a news item in newspaper (Exh. P/5 available at page 47 of the evidence file), whereby, he was defamed. This takes me to the provisions of the Defamation Ordinance, 2002. Under Clause (bb) of Section 2 of the Ordinance, 2002, an expression “Court” means the District Court. In clause (d), expression “Newspaper” means a paper containing public news, intelligence or occurrences or remarks or observations or containing only, or principally, advertisements, printed for distribution to the public and published periodically, or in parts or members, and includes such other periodical works as the Federal Government may, by notification in the official gazette, declare to be newspaper. Sanguine to the controversy onboard, I consider it quite apt to reproduce Section 13 of the Ordinance, 2002 for the ease of convenience:-

“13. Trial of cases:- The District Court shall have the jurisdiction to try the cases under this Ordinance.”

11. On 01st October, 2002 the Defamation Ordinance, 2002 was enacted and such promulgation has made defamation actionable under Sections 3, 4 and 9. Once it is established that the libel has been committed, injury or damages to the reputation and goodwill is presumed but the remedy to raise such plea is vested by the learned District Judge under Section 13 of the statute. Upon appreciation of

provisions of the said statute, it becomes crystal clear that the jurisdiction of the Civil Court in respect of a suit for damages on the ground of loss of reputation and defamation is expressly barred by Section 13 of the Ordinance, 2002, in as much as the same confers exclusive jurisdiction upon the District Court to adjudicate upon the same. It is settled principle of law that special law excludes general law and where a special tribunal or Court has been established to hear and decide a dispute, which is contemplated by the special law, then the jurisdiction of the Courts constituted under the general law shall be ousted from exercising the powers of the same nature. It may be noted that Section 13 of the Ordinance, 2002, provided in unequivocal terms that the District Court “shall have the jurisdiction to try cases under the Ordinance”. The word “shall” used in Section 13 denotes the mandatory nature of the provision with regard to jurisdiction of the Court contemplated by the Ordinance, therefore, there is no cavil to the fact that the District Court has exclusive jurisdiction to try cases of defamation. In the case of *Pakistan Herald Publications (Pvt.) Limited and 2 others v. Karachi Building Control Authority (2012 CLD 453)* (a learned Division Bench Judgment authored by my Lord Mr. Justice Gulzar Ahmed as his Lordship than was) a similar view had been held and it is considered pertinent to reproduce the relevant constituent hereunder:-

“The Defamation Ordinance, 2002 on its reading shows that it is a special law made by Federal Government on the subject of defamation creating special remedies and also provide for specific Court for trial of cases and appeal. It has conferred jurisdiction for trial of cases under the Ordinance on the District Court”

“In such view of the matter, we do not think that jurisdiction with regard to District Court will have to be

read as provided in Sindh Civil Courts Ordinance, 1962 where the High Court has been conferred now the jurisdiction to hear the suits exceeding value of Rs.15 million as a principal civil Court of original jurisdiction. The Ordinance has provided District Court as Court of trial of cases under it, it will be the District Court and no other Court including the High Court and it is the appeal against final decision and decree of that Court which will be heard by High Court. We, therefore, find no illegality in the impugned order and same is therefore maintained and appeal is dismissed.”

12. The plaintiff may have a good case of malicious prosecution as he claims that he was acquitted of the charge after full fledged trial in FIR No.7/2009 lodged under Section 39 of the Electricity Act, 1910 by the learned trial Court vide judgment dated 22.05.2012 and the defendant No.1-7 impugned the said judgment of the learned trial Court in this Court by filing a Criminal Acquittal Appeal No.224 of 2012 which appeal was dismissed vide order dated 14.03.2013 but he does not possess any authorization on behalf of the Hotel to sue the defendants for damages and compensation as discussed *supra*.

13. In view of the above rationale and deliberation the issues under discussion are answered in **affirmation** and resultantly the *lis* at hand is dismissed.

Karachi
Dated:29.09.2022

JUDGE