

Judgment Sheet

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Rev. Application No.S-52 of 2019

Applicants : Sui Southern Gas Company Ltd. & others
through Mr. Mukesh Kumar G. Karara,
Advocate

Respondent : Manohar Lal s/o Mithoo Mal, through
Mr. Parmanand @ Prem Kumar, Advocate

Date of hearing : **04.12.2023 & 11.12.2023**

Date of Decision : **15.01.2024**

JUDGMENT

ARBAB ALI HAKRO, J.- Through this Revision Application under Section 115 of the Civil Procedure Code 1908 (“**the Code**”), the applicants have called into question the order dated 21.12.2018, passed by the Court of the learned Additional District Judge(H), Sukkur (“**the appellate Court**”). This order dismissed an application under Sections 151 and 148 of the Code, which was preferred by the applicants for waiving the cost of Rs.20,000/- imposed upon them upon the restoration/re-admission of the appeal.

2. Briefly stated, the facts of the case are that the respondent instituted a suit for Declaration and Permanent/Mandatory Injunction against the applicants. The respondent sought a declaration that the act of the applicants issuing extra unit charges amounting to Rs.40,000/- and changing the Gas meter without notice to the respondents was unlawful and illegal. The trial Court decreed the respondent's suit via a Judgment and Decree dated 10.3.2015. The applicants preferred Civil Appeal No.61/2015 before the appellate Court against the above Judgment and decree, which was pending adjudication before the appellate Court. However, it was dismissed on 30.8.2018, in default/for non-prosecution. The applicants filed an application under Order XLI Rule 19 of the Code for the re-admission

of the appeal by setting aside the order dated 30.8.2018. The appellate Court allowed the restoration/re-admission of the appeal subject to the payment of a cost of Rs.20,000/- via an Order dated 19.11.2018. Afterwards, the applicants moved an application under Section 151 of the Code before the appellate Court with the prayer to waive the condition of imposing a cost of Rs.20,000/-. This application was dismissed via the impugned order dated 21.12.2018.

3. At the outset, the learned counsel representing the applicants submits that the appeal of the applicants was dismissed in default/non-prosecution on 30.8.2018. Prior to this, the Gas (Theft Control and Recovery) Act, 2016 ("**Act of 2016**") was promulgated on 23.3.2016. According to Section 5 (7) of the Act of 2016, the appeal/proceedings would be transferred to this Court. Counsel contends that after the enactment of the above Act of 2016, the appellate Court had no jurisdiction to pass any order. He also argued that the decree was passed in respect of an amount of Rs.40,000/-; however, the appellate court imposed a cost of Rs.20,000/- on the restoration of the appeal, which is very harsh. Therefore, the impugned order is liable to be set aside.

4. Conversely, the learned counsel representing the respondent supported the impugned order and contended that when the Act of 2016 was promulgated, the suit of the respondent was not pending and had already been decreed; therefore, it has no retrospective effect. He contends that the entire procedure was already adopted before the ordinary Civil Court; therefore, the provision of the Act of 2016 is not applicable in the present case of the respondent.

5. I have heard the arguments of learned counsel for the parties who have reiterated their respective arguments and perused the available record.

6. The primary argument put forth by the learned counsel for the applicants centered on enacting the Act of 2016 on 23.3.2016. He contended that the respondent should have commenced fresh legal

proceedings under the aforementioned Act of 2016 in light of this new legislation being a special statute. Since the legal issue regarding the jurisdiction of the ordinary Civil Court has been raised, it becomes imperative to refer to Sections 2(i), 3, 4, 5, and 6(1) of the Act of 2016, which read as follows: -

"2. Definitions.-(1) In this Act, unless there is anything repugnant in the subject or context,--

(a)

(b)

(c)

(d)

(e)

(f)

(g)

(h)

(i) "Gas Utility Court means a Gas Utility Court established under section 3.

3. Constitution of Gas Utility Courts.---(1) The Federal Government may, in consultation with Chief Court concerned, and by notification in the official Gazette, establish as many Gas Utility Courts in a district as it may deem necessary for the purposes of this Act and appoint a Judge for each of such Courts from amongst the District and Sessions Judges in that district.

Explanation.---*For the purpose of this sub-section District and Sessions Judge includes Additional District and Sessions Judge.*

(2) Where more Gas Utility Courts than one have been established to exercise jurisdiction in the same territorial limits the Federal Government shall define the territorial limits of each such Court.

(3) Where more Gas Utility Courts than one have been established in the same or different territorial limits, the High Court may if it considers it expedient to do so in the interests of justice or for the convenience of parties or of the witnesses, transfer any case from one Gas Utility Court to another.

4. Exclusive Jurisdiction of Gas Utility Courts.----(1) A Gas Utility Court shall have exclusive jurisdiction with respect to all matters covered by this Act.

(2) The Court having jurisdiction under this Act shall be a Gas Utility Court having jurisdiction in the place in which the Gas Utility Company, consumer, gas producer or offender, as the case may be, is situated.

5. *Powers of the Gas Utility Court.*----(1) *Subject to the provisions of this Act, a Gas Utility Court shall,--*
- (a) *in the exercise of its civil jurisdiction have all the powers vested in a Civil Court under the Code of Civil Procedure, 1908, and*
 - (b) *in the exercise of its criminal jurisdiction try offences punishable under this Act and shall, for this purpose have the same powers as are vested in a Court of Session under the Code of Criminal Procedure, 1898 (Act V of 1898),*
- (2) *Notwithstanding anything to the contrary contained in this Act a Gas Utility Court shall not take cognizance of any offence punishable under this Act except upon a complaint made in writing by a person authorized in this behalf by a Gas Utility Company in respect of which the offence was committed.*
- (3) *Gas Utility Court shall in all matters with respect to which the procedure has not been provided for in this Act, follow the procedure laid down in the Code of Civil Procedure, 1908 (Act V of 1908) and the Code of Criminal Procedure, 1898 (Act V of 1898);*
- (4) *All proceedings before a Gas Utility Court shall be deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the Pakistan Penal Code, 1860 (Act XLV of 1860), and Gas Utility Court shall be deemed to be Court for the purposes of the Code of Criminal Procedure, 1898 (Act V of 1898).*
- (5) *Subject to sub-section (6), no court or authority shall have or exercise any jurisdiction with respect to any matter to which the jurisdiction of a Gas Utility Court extends under this Act.*
- (6) *Nothing in subsection (5) shall be deemed to affect,*
- (a) *the right of a Gas Utility Company to seek any remedy before any other court, tribunal or forum including official liquidator or Receiver that may otherwise be available to it under the law; or*
 - (b) *the powers the Gas Utility Company, or jurisdiction of any Gas Utility Court as is referred to in clause (a) to require the transfer to a Gas Utility Court of any proceedings pending before any such court immediately before the coming into force of this Act.*
- (7) *All proceedings pending in any other court, including suits for recovery shall stand transferred to, or be deemed to be transferred to, and heard and disposed of by the Gas Utility Court having jurisdiction under this Act, On transfer of proceedings under this sub-section, the parties*

shall appear before the Gas Utility Court concerned on the date previously fixed.

(8) In respect of proceedings transferred to a Gas Utility Court under subsection (7), the Gas Utility Court shall proceed from the stage which the proceedings had reached immediately prior to the transfer and shall not be bound to recall and re-hear any witness and may act on the evidence already recorded or produced before the Court from which the proceedings were transferred.

(9) The Gas Utility Court may, if it so requires, be assisted in technical aspects of the Natural gas sector involved in any case by an amicus curiae who has at least 10 years experience in the relevant field.

(10) Remuneration of the amicus curiae and the party or parties by whom it will be payable will be determined by the Gas Utility Court keeping in view the circumstances of each case.

6. Procedure for complaints and suits for default before Gas Utility Court----(1) Where a person is involved in an offence under this Act or where there are sums due or recoverable from any person, or where a consumer has dispute regarding billing or metering against a Gas Utility Company, a consumer or Gas Utility Company, as the case may be, may file a complaint or suit, as the case may be before a Gas Utility Court as prescribed by the Code of Civil Procedure, (Act, V of 1908) or the Code of Criminal Procedure, 1898 (Act V of 1898)."

7. Upon examining the aforementioned relevant provisions of the Act of 2016, it is evident that under Section 2(i), a Gas Utility Court is defined as a court established under Section 3. Section 3 stipulates that the Federal Government may, in consultation with the Chief Justice of the concerned High Court, establish as many Gas Utility Courts in a district as deemed necessary for the purposes of this Act. It may appoint a judge for each of these Courts from among the District and Sessions Judges in that district. Section 4 states that a Utility Court shall have exclusive jurisdiction with respect to all matters covered by this Act. As far as Section 5 is concerned, it provides that subject to the provisions of this Act, a Gas Utility Court shall have all the powers under the Civil Procedure Code, 1908, in the exercise of its civil jurisdiction. In the exercise of its criminal

jurisdiction, it can try offences punishable under this Act. For this purpose, it shall have the same powers as a Court of Sessions under the Criminal Procedure Code 1898. Subsections (7) and (8) of Section 5 stipulate that all proceedings pending in any other court, including suits for recovery, shall be transferred to the Gas Utility Court having jurisdiction under this Act. The Court shall proceed from the stage at which the proceedings had reached immediately prior to the transfer of jurisdiction and shall not recall and re-hear any witness, among other things. Section 6 outlines the procedure for filing a complaint in respect of offences and a suit for recovery, as the case may be, before a Gas Utility Court.

8. In the case under consideration, the timeline of events is crucial to understanding the applicability of the Act of 2016. The suit was filed on 20th April 2014, decreed on 10th March 2015, and an appeal against the decree was filed on 10th April 2015. All these events occurred prior to the promulgation of the Act of 2016 on 23rd March 2016. Given this chronology, it is evident that the suit filed by the respondent was decreed and the appeal was filed before the enactment of the Act of 2016. Therefore, the Act of 2016 does not have a retrospective effect on this case. This means that the Act cannot apply to or affect the rights, behaviours, or factual situations that existed before its enactment.

9. However, subsection (7) of Section 5 of the Act of 2016 provides that all proceedings pending in any other Court, including suits for recovery, shall be transferred to the “Gas Utility Court” having original jurisdiction. This provision is generally intended to consolidate and streamline the handling of such cases. But in this specific case, since the suit was already decreed and the appeal filed before the enactment of the Act, this provision does not apply to the appeals which are being proceeded by the ordinary Appellate Courts. Thus, the proceedings of the appeal would not be transferred to the Gas Utility Court. The terms “*All proceedings pending*” and “*heard and*

disposed of by the Gas Utility Court having jurisdiction under this Act” used by the legislature in Section 5(7) of the Act of 2016, expressly refer to the proceedings pertaining to the “original jurisdiction” of the “Gas Utility Court” and the said terms do not include the “appeal” or “appellate jurisdiction”. This distinction is significant because there is a difference between pending proceedings before the Court having “original jurisdiction” and an appeal before the “appellate Court” having “appellate jurisdiction”. Pending proceedings refer to ongoing legal processes that have not yet reached a conclusion, whereas an appeal is a process that takes place after a judgment has been rendered. Since the appeal was already filed before the Act was enacted, it would not be considered a “pending proceeding” under the Act. The remedy of appeal has been specifically provided under Section 13, of the Act of 2016, which reads:

“13. Appeal.—(1) *Any person aggrieved by any judgment, decree, sentence or final order passed by a Gas Utility Court may, within thirty days of such judgment, decree, sentence or final order, prefer an appeal to the High Court.*

(2) *The appellant shall give notice of the filing of the appeal by means of registered post with acknowledgement due or by courier in accordance with the provisions of Order XLIII, rule 3 of the Code of Civil Procedure, 1908 (Act V of 1908) to the respondent who may appear before the High Court to contest admission of the appeal on the date fixed for hearing.*

(3) *The High Court shall at the stage of admission of the appeal, or at any time thereafter either suo motu or on the application of the decree-holder, decide by means of a reasoned order whether the appeal is to be admitted in part or in whole depending on the facts and circumstances of the case, and as to the security to be furnished by the appellant: Provided that the admission of the appeal shall not per se operate as a stay, and nor shall any stay be granted therein unless the decree-holder has been given an opportunity of being heard and unless the appellant, whether appellant is Gas Utility Company or gas consumer, deposits in cash with the High Court an amount equivalent to the decretal amount inclusive of costs and in the event of a stay being granted for a part of the decretal amount only, the requirement for a deposit in cash or furnishing of security shall stand reduced accordingly.*

(4) *In case an appeal under sub-section (1) is admitted, it shall be decided within ninety days from the date of admission.*

(5) An appeal may be preferred under this section from a decree passed ex parte.

(6) No appeal, review or revision shall lie against an order accepting or rejecting an application for leave to defend, or any interlocutory order of the Gas Utility Court which does not dispose of the entire case before the Gas Utility Court.

(7) Any order for stay of execution of a decree shall automatically lapse on the expiry of six months from the date of the order whereupon the amount deposited in Court shall be paid over to the decree-holder or the decree-holder may enforce the security furnished by the judgment-debtor”.

Bare reading of Section 13 (1), of the Act of 2016 would show that: *“Any person aggrieved by any judgment, decree, sentence or final order passed by a Gas Utility Court may, within thirty days of such judgment, decree, sentence or final order, prefer an appeal to the High Court”.* The words *“any judgment, decree, sentence or final order passed by a Gas Utility Court”* are of much significance in respect of its application. The provision of Section 13(1) of the Act of 2016 shall only apply to the judgment, decree, sentence or final order passed by a *“Gas Utility Court”* in its original jurisdiction conferred under the Act of 2016 and shall not apply to the judgment, decree, sentence or final order passed by the ordinary *“Civil Court”* much before promulgation of the Act, 2016. Therefore, the application of the Act of 2016 has been explicitly excluded in respect of the *“appeals”* already preferred much before the promulgation of the Act of 2016.

10. The case of Burmah Oil Company Ltd v Lord Advocate [1965] AC 75 is a significant decision in British constitutional law. The case was raised in Scotland and decided ultimately in the House of Lords. In that case, the terms ‘prospective’ and ‘retrospective’ can be understood as follows: -

Prospective: This term refers to laws or actions that are intended to apply to future events. In the context of this case, a prospective application of the law would mean that any law passed after the events of the case would not affect its legal outcome.

Retrospective: This term refers to laws or actions that are intended to apply to past events. In the context of this case, the War Damage Act 1965 was passed retrospectively to exempt the British Government from liability for damage caused during war. This Act was passed after the House of Lords decided that the government was liable to compensate the Burmah Oil Company for destroying their oil fields during the Second World War. The retrospective application of this Act effectively overturned the decision of the House of Lords. In summary, while prospective laws apply to future events and do not change the legal consequences of past events, retrospective laws can change the legal consequences of past events, as demonstrated in the case of *Burmah Oil Company vs. Lord Advocate*.

11. In the case of **Messrs. Pakistan Telecommunication Company Ltd vs Collector of Customs, Karachi (2023 SCMR 261)**, the Supreme Court of Pakistan held as follows: -

“It is trite that, a new law, which deals with the procedure and does not affect the rights or liabilities of the parties, generally applies to all proceedings, pending as well as future, while a new law, unless expressly provided, which affects the rights or liabilities of the parties, being substantive in nature, is applied prospectively, and not retrospectively.”

[Emphasis supplied]

12. In view of the above discussion and exposition of the law, I am of the opinion that the Act of 2016 does not have a retrospective effect on the suit filed by the respondent and the subsequent appeal filed by the applicants due to the specific timeline of events. The provisions of the Act apply prospectively, not retrospectively, and therefore do not affect this case.

13. Turning to the merits of the case, it's crucial to note that the appellate Court, while restoring/re-admitting the appeal by granting the application under Order XLI Rule 19 of the Code, imposed a cost of Rs.20,000/- on the applicants. This decision, however, raises some questions about its severity and potential unwarrantedness under the

law. The decree challenged in the appeal involves a gas bill amounting to Rs.40,000/-. Therefore, the imposition of a cost of Rs.20,000/- by the appellate Court, which amounts to half of the disputed bill, can indeed be severe. This is because the cost imposed is disproportionately high compared to the disputed amount. It's important to remember that the purpose of costs is not to punish the unsuccessful party but to indemnify the successful party for the expenses necessarily incurred in the litigation process. Therefore, the principle of proportionality should be applied when determining costs. In this case, the cost of Rs.20,000/-, being half of the disputed amount, deviates from this principle, thus making it potentially unwarranted under the law. It's essential that the courts exercise their discretion judiciously while imposing costs to ensure fairness and justice.

14. For the foregoing reasons, the instant Revision Application is **allowed**. As a result, the impugned order dated 21.12.2018 is set aside. Consequently, the order dated 19.11.2018 is also set aside to the extent of the imposition of the cost of Rs.20,000/-. The record indicates that the appeal has been pending before the appellate Court since 2015. Therefore, I direct the appellate Court to dispose of the appeal within 15(fifteen) days from the receipt of a copy of this order and report compliance to this Court. This directive aims to expedite the resolution of the case, ensuring that justice is served promptly. The appellate Court is expected to adhere to this directive and prioritize disposing of this long-pending appeal.

JUDGE