

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Civil Appeal No.S-07 of 2023

Sui Southern Gas Company Ltd.

v.

Irshad Ali Bhutto and Another

Appellant : Sui Southern Gas Company Limited
through Mr. Abid Hussain Qadri,
Advocate.

Respondent No.1. : Irshad Ali Bhutto son of Bashir Ahmed
Bhutto. Nemo.

Respondent No.2. : Additional District Judge-II, Kandhkot.
Nemo.

Mr. Oshaq Ali Sangi, Assistant Attorney
General for Pakistan.

Mr. Abdul Waris Bhutto, Assistant
Advocate General, Sindh.

Date of Hearing : 19.01.2024

Date of Judgment : 01.02.2024

J U D G M E N T

JAWAD AKBAR SARWANA, J.: The Appellant, Sui Southern Gas Company Limited (“SSGC”), has filed this appeal against the Order dated 19.09.2023 passed by the learned Judge of the Gas Utility Court dismissing SSGC’s Application under Section 5 of the Limitation Act, 1908 and the Summary Suit, and Order dated 14.10.2023 dismissing SSGC’s Application under Order 9 Rule 4 r/w Section 151 CPC.

2. The background of this appeal is that on 22.05.2019, the Appellant, SSGC, submitted to Respondent No.1 (“Irshad Ali Bhutto” / “IAB”) a claim letter in the sum of Rs.449,000 for loss suffered by

SSGC based on a connected load, i.e. 36 MCF per month for the period from 05.02.2018 to 04.02.2019 due to an illegal gas supply detected at IAB's premises.

3. From 2019 onwards, SSGC continued to chase IAB to settle his dues for the next four years. When no progress was made to recover the arrears, on 09.12.2022, SSGC obtained the necessary approvals to initiate legal action against IAB; however, the Company still did not lodge any claim against IAB. Finally, on 01.09.2023, SSGC filed Summary Suit No.06/2023 against IAB for recovery of Rs.449,000 in the Court of Additional District Judge-II Kashmore at Kandhkot, exercising jurisdiction as the Gas Utility Court.

4. At the time of filing its Summary Suit before the Gas Utility Court, SSGC also filed an Application under Section 5 of the Limitation Act, 1908 for condonation of delay in filing the suit as four years had passed since SSGC had raised its claim against IAB on 22.05.2019. According to paragraph 11 of the Plaint, SSGC stated that the cause of action to file the suit accrued to the Plaintiff firstly on 04.02.2019 when the Plaintiff conducted a surprise survey and once again on 22.05.2019 when the Plaintiff submitted its claim / legal notice to IAB.

5. The Gas Utility Court, after hearing the parties, dismissed SSGC's Summary Suit on the grounds that the Company did not provide any sufficient cause for condoning the delay in filing the said Suit. In paragraph 3 of the affidavit in support of the Application under Section 5 of the Limitation Act, 1908, SSGC's authorized representative explained that the reason for not filing the claim earlier was that IAB had given false hope to SSGC that he would settle the claim and only declined to pay the arrears 15 days before the date of

SSGC filing its claim before the Gas Utility Court. SSGC did not provide any acknowledgement in writing from IAB, which could amount to extending the limitation period. In view of the same, presumably based on the assumption that the period of limitation for filing a suit for recovery of money is three years from the date when the payment becomes due, the learned Judge dismissed SSGC's application for condonation of delay for the reason that it did not find sufficient cause given in the said application explaining each and every day of delay in filing the summary suit.

6. According to the diary sheet filed by IAB in appeal, it appears that while dismissing SSGC's Application under Section 5 of the Limitation Act, 1908 after hearing the parties, the learned Judge on the same date also dismissed SSGC's Suit for non-prosecution. Accordingly, SSGC filed an Application under Order 9 Rule 4 read with Section 151 CPC to set aside/recall the Order dated 19.09.2023 dismissing SSGC's suit in default and to restore the same to its original stage. After hearing the Counsel, the trial court rightly assessed the legal position and dismissed the application. The Gas Utility Court observed that after the application under the limitation act had been dismissed on merit, nothing was left in the suit, and SSGC's claim was rightly dismissed.

7. The learned Counsel for the Appellant has not identified any defect in the impugned Orders except that he claims that IAB was involved in gas theft, and this bench should not allow IAB to be let off. The bench does not find SSGC's submission acceptable. SSGC should have acted in a timely manner, not slept over its rights, and taken an indolent attitude. SSGC had filed its claim before the Gas Utility Court under the Gas (Theft Control and Recovery) Act ("GTCARA"), 2016. The Gas Court, at the very inception, took notice

of the plaint being time-barred and took up SSGC's Application under Section 5 of the Limitation Act, 1908. GTCARA, 2016 is a special law to expedite the prosecution of cases of gas theft and other offences relating to gas as well as provides the procedure for complaints and suits for default before Gas Utility Courts. It may be noted that GTCARA, 2016 does not provide any specific period of limitation for filing a suit where there are sums due or recoverable from a consumer regarding billing or metering by a Gas Utility Company. Accordingly, where no period of limitation is provided under the special statute, and none is applicable under the Limitation Act, then Article 181 of the Limitation Act, 1908 prescribes that in such instances, the applicable period of limitation is three years from the date when right to sue accrues. In the present case, the right to sue commenced on 22.05.2019 when SSGC claimed its dues from IAB and expired three years from the said date on 21.05.2022. Thus, the suit filed by SSGC on 01.09.2023 was time-barred, and the Company will have to face its consequences and accept that its claim against IAB is now irrecoverable.

8. I do not find that the Judge of the Gas Utility Court has fallen into any error or passed any Order contrary to applicable law.

9. In view of the above, the impugned Orders dated 19.09.2023 and 14.10.2023 are proper and based on facts and law. They do not suffer from any illegality that calls for interference. Accordingly, this Appeal is dismissed, and the impugned Orders are hereby confirmed.

J U D G E