

IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA

1st Civil Appeal No.S-03 of 2024

Appellant : **Sui Gas Company Limited.**
Through Mr. Shakeel Ahmed Abro,
Advocate

Respondent : **Tajuddin Waqar Shaikh**
Through Mr. Gulsher Junejo, Advocate

For Government of Sindh: **Mr. Abdul Waris Bhutto, Asstt.A.G**

Date of hearing: **05-05-2025**

Date of Judgment: **14-05-2025**

JUDGMENT

Jan Ali Junejo, J;- This appeal is directed against the Order dated 28.11.2023 (hereinafter referred to as the “*Impugned Order*”) passed by the District Judge, Kamber-Shahdadkot @ Kamber (hereinafter referred to as the “*Trial Court*”), who dismissed the Summary Suit No: 11 of 2023, filed by the Appellant/Plaintiff against the Respondent/Defendant for the recovery of Rs:439,700/- U/S. 06 of the Gas (Theft Control and Recovery) Act, 2016.

2. Briefly, the facts of the case, as per the plaint, are that the Appellant, Sui Southern Gas Company Limited, filed a Suit for Recovery of Rs.439,700/- against the Respondent, alleging the gas theft. The Appellant claimed that during an inspection on 30.12.2021, the Respondent's gas meter was found to be tampered with, having a broken meter index and glass. The Appellant further stated that a joint gas load survey was conducted, and the meter was replaced on 14.01.2022. The meter was tested on 08.02.2022, in the presence of the Respondent, and found to be tampered. A First Information Report (FIR No.23/2022) was lodged against the Respondent. The Appellant's claim assessment committee determined a loss, and a claim letter dated 29.08.2022, for Rs.439,700/- was sent to the Respondent, which remained unpaid. The Appellant prayed for a judgment and decree for the recovery of the said amount, a declaration that the Respondent's denial of

payment was illegal, and for the costs of suit and any other equitable relief. The trial Court dismissed the suit in limine.

3. The learned counsel for the Appellant has argued that the impugned order is against the law and facts. It was contended that the trial Court failed to apply its judicial mind and erroneously dismissed the suit. The Appellant's counsel asserted that the acquittal of the Respondent in the criminal case does not bar the civil suit for recovery, relying on the principle that the standard of proof differs in civil and criminal proceedings. It was further argued that the suit is maintainable under the Gas (Theft Control and Recovery) Act, 2016, and the trial Court's order is unjustified. Lastly, the learned counsel prays for allowing the present Appeal.

4. Conversely, the learned counsel for the Respondent and the learned A.A.G argued in support of the impugned order. They contended that since the Respondent was acquitted of gas theft in the criminal case, the Appellant does not have a cause of action to file a civil suit for recovery of the same amount. They submitted that the acquittal judgment has attained its finality as it was upheld by this Court, and the civil suit was rightly dismissed in limine. Lastly, they pray for dismissal of the present Appeal.

5. I have carefully considered the arguments from both sides and perused the record, including the plaint. I find merit in the Appellant's contention that the judgment in a criminal case is not binding on civil matters. It is a well-established principle that the standard of proof in criminal proceedings (beyond a reasonable doubt) is distinct from the standard of proof in civil proceedings (preponderance of probability). It is a settled principle that the acquittal of an accused in a criminal case does not, in itself, preclude the institution and successful prosecution of a civil suit for the recovery of dues. Consequently, the findings of a Criminal Court are not determinative of the outcome in a Civil Court addressing related matters. The determinations rendered in criminal proceedings do not ipso facto dictate the adjudication of civil liabilities. This distinction is well-established in legal

jurisprudence and finds support in the authoritative pronouncement of the Honourable Supreme Court of Pakistan in ***Karachi Transport Corporation and another v. Muhammad Hanif and others (2009 SCMR 1005)***, wherein it was observed by the Honourable Apex Court that: “*All that needs to be said in the above context is that standards of appraisal of evidence in criminal and civil cases are altogether different and the findings of a Criminal Court would not bind a Civil Court*”.

6. In another case of ***Salman Ashraf v. Additional District Judge, Lahore and others (2023 SCMR-1292)***, the Honourable Apex Court has observed that “*Object of a civil proceeding is to enforce civil rights and obligations while that of a criminal proceeding is to punish the offender for the commission of an offence---Therefore, both the civil proceeding and criminal proceeding relating to one and the same matter can be instituted and ordinarily proceeded with simultaneously.*”

7. In the present case, the trial Court dismissed the suit in *limine* based solely on the acquittal of the Respondent in the criminal case, without considering the merits of the civil claim or adhering to the due procedure as laid down under Sections 6 & 7 of the Gas (Theft Control and Recovery) Act, 2016. In order to facilitate a clear understanding and detailed analysis of the legal framework, the relevant provisions, Sections 6 and 7 of the Act, 2016, are reproduced below in their entirety.

“6. Procedure for complaints and suits for default before Gas Utility Courts.—(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 a 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, 1908 (Act V of 1908) or the Code of Criminal Procedure, 1898 (Act V of 1898).

(2) The plaint shall be supported by a gas sales agreement or gas bill or such other documentation that evidences such contract or obligation. Copies of the plaint, statement of dues and other relevant documents shall be filed with the Gas Utility Court in sufficient numbers so that there is one set of copies for each defendant and one extra copy.

(3) The plaint, in the case of a suit for recovery instituted by a Gas Utility Company, shall specifically state.—

(a) the quantity of gas consumed or extracted by the defendant from the Gas Utility Company;

(b) the amounts, if any, paid by the defendant to the Gas Utility Company and the dates of payment; and

(c) the total dues relating to the supply, consumption or extraction of gas and all other dues by the defendant to the Gas Utility Company up to the date of institution of the suit.

(4) On a plaint being presented to the Gas Utility Court, a summons in Form No.4 in Appendix 'B' to the Code of Civil Procedure, 1908 (Act V of 1908) or in such other form as may, from time to time, be prescribed by rules, shall be served on the defendant through the bailiff or process server of the Gas Utility Court, by registered post acknowledgement due, by courier and by publication in one English language and one Urdu language daily newspaper, and service of summons duly effected in any one of the aforesaid modes shall be deemed to be valid service for purposes of this Act. In the case of service of the summons through the bailiff or process server, a copy of the plaint shall be attached therewith and in all other cases the defendant shall be entitled to obtain a copy of the plaint from the office of the Gas Utility Court without making a written application but against due acknowledgement. The Gas Utility Court shall ensure that the publication of summons takes place in newspapers with a wide circulation within its territorial limits”.

“7. Leave to defend.—(1) In any case in which the summons has been served on the defendant, the defendant shall not be entitled to defend the suit unless he obtains leave from the Gas Utility Court as hereinafter provided to defend the same and in default of his doing so, the allegations of fact in the plaint shall be deemed to be admitted and the Gas Utility Court may pass a decree in favour of the plaintiff on the basis thereof or such other material as the Gas Utility Court may require in the interests of justice.

(2) The defendant shall file the application for leave to defend within twenty-one days of the date of first service, provided that where service has been validly effected only through publication in the newspapers, the Gas Utility Court may extend the time for filing an application for leave to defend if satisfied that the defendant did not have knowledge thereof.

(3) The application for leave to defend shall be in the form of a written statement, and shall contain a summary of the substantial questions of law as well as fact in respect of which, in the opinion of the defendant, evidence needs to be recorded.

(4) The application for leave to defend shall also specifically state the following, where applicable,—

(a) the amount of gas supplied by the Gas Utility Company and consumed by the defendant, the amount paid by the defendant to the Gas Utility Company for such consumption and the dates of payments up to the date of institution of the suit;

(b) the amount of outstanding dues and other amounts relating to the supply and consumption of gas by the defendant to the Gas Utility Company up to the date of institution of the suit;

(c) the amount, if any, which the defendant disputes as payable to the Gas Utility Company and fact in support thereof;

(d) a statement specifically admitting or denying the documents relied upon in the plaint.

(5) The application for leave to defend shall be accompanied by all the documents which in the opinion of the defendant, support the substantial questions of law or fact raised by him.

(6) An application for leave to defend which does not comply with the requirements of subsections (3), (4) and, where applicable, subsection (5) shall be rejected, unless the defendant discloses therein sufficient cause for his inability to comply with any such requirement.

(7) The plaintiff shall be given an opportunity of filing a reply to the application for leave to defend in the form of a replication and such replication shall also specifically accept or deny any documents relied upon in the application for leave to defend.

(8) The Gas Utility Court shall grant the defendant leave to defend the suit if, on consideration of the contents of the plaint, the application for leave to defend and the reply thereto, it is of the view that substantial questions of law or fact have been raised in respect of which evidence needs to be recorded.

(9) In granting leave under subsection (8), the Gas Utility Court may impose such conditions as it may deem appropriate in the circumstances of the case, including conditions as to deposit of cash or furnishing of security.

(10) Where the application for leave to defend is accepted, the Gas Utility Court shall treat the application as a written statement, and in its order granting leave shall frame issues relating to the substantial questions of law or fact and subject to fulfillment of any conditions attached to grant of leave fix a date for recording of evidence thereon and disposal of the suit.

(11) Where leave to defend is granted and evidence is to be recorded, the parties may file affidavits in respect of the examination-in-chief of any witness and where such affidavits are filed, the Gas Utility Court shall give notice thereof to the other contesting parties and on the date fixed for recording evidence shall, subject to such modification as may be required for purposes of production and exhibiting of documents or otherwise in accordance with law, treat the affidavit as examination-in-chief and allow the contesting parties an opportunity for cross examination on the basis thereof.

(12) Where the application for leave to defend is rejected or where a defendant fails to fulfill the conditions attached to the grant of leave to defend, the Gas Utility Court shall forthwith proceed to pass judgment and decree in favour of the plaintiff against the defendant”.

8. Section 6 authorizes both consumers and Gas Utility Companies to file cases before Gas Utility Courts under applicable civil or criminal procedure laws, supported by relevant documents such as gas bills or service agreements. It outlines the procedural requirements for institution of the suits, including specific content to be included in the plaint, particularly for utility companies, and establishes methods for serving summons through personal delivery, postal or courier services, and newspaper publication. Section 7 governs the defendant's right to contest the suit by mandating an application for *leave to defend* within 21 days of service. This application must be accompanied by a written statement identifying legal or factual disputes and supported by relevant documents. Failure to file such an application, or to meet its requirements, allows the Court to treat the claims as admitted and pass a decree accordingly. The Court may grant leave to defend only if substantial questions of law or fact are raised, and may impose conditions such as the deposit of claimed dues. The Utility Court is also empowered to frame issues relating to such substantial questions, attach conditions to the grant of leave, and record evidence on those issues. In these circumstances, the approach adopted by the learned trial Court, in my considered view, is contrary to the spirit and intent of law. Consequently, the Impugned Order passed by the learned trial Court is unsustainable in law and cannot be upheld.

9. For the foregoing reasons, this appeal warrants acceptance. Consequently, the Impugned Order dated 28th November, 2023, passed by the learned District Judge Kamber-Shahdadkot @ Kamber in Summary Suit No: 11 of 2023, is hereby set aside. The suit is remanded to the learned trial Court to be decided afresh on its own merits, strictly in accordance with the procedure stipulated under the Gas (Theft Control and Recovery) Act, 2016, and in adherence to the principles of natural justice. Given the circumstances, the parties shall bear their respective costs incurred in these appellate proceedings.

JUDGE