

**ORDER SHEET**  
**HIGH COURT OF SINDH, KARACHI**

**Suit No.218 of 2011**

Date

Order with signature of Judge

For hearing of CMA No.9050/2011

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Lucky Enterprises Goods Forwarding Agency.....Plaintiff

Versus

M/s. Zeal Pak Cement Factory Ltd.....Defendant

Date of hearing 11.12.2012

Mr. Muhammad Ikram Siddiqui, Advocate for plaintiff

Mr. Akhtar Hussain, Advocate for defendant

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**Muhammad Ali Mazhar, J:** The plaintiff has filed this suit for recovery of money and prayed as under:-

- a. To pass the Judgment & Decree in favour of the plaintiff and against the defendant for sum of Rs.3,84,25,433/- (Rupees Three Crores Eighty Four Lacs Twenty Five Thousand Four Hundred Thirty Three) with interest/mark-up @ Bank from October, 2008.
- b. To pass Judgment & Decree directing the defendant to pay the income tax amounting to Rs.14,13,075/- to the income tax authorities, alternately if they do not do so, they may be directed to pay the said amount to the Plaintiff and thereafter same will be deposited with the income tax authorities.
- c. To award Damages Rs.1,00,00,000/- to the plaintiff.
- d. To pass restraining order against the Defendant his servant, employees, associates, agents, person or persons who are claiming through or under him from selling, mortgaging, alienating the Zeal Pak Cement Factory, its parts and material therein.

- e. To appoint Receiver to the Nazir of this Hon'ble Court of the property/Zeal Pak Cement Factory and order may be passed to attach the Zeal Pak Cement Factory before Judgment because it is apprehension that the Defendant may at any time remove the property/Zeal Pak Cement Factory and may run away from jurisdiction of this Hon'ble Court.
- f. Any other better relief may be deemed fit in the circumstances of the case.
- g. Cost of the suit may also be awarded to the Plaintiff.

2. The brief facts of the case are that the plaintiff is a sole proprietorship firm engaged in the business of supplying coal. The defendant issued a Purchase Order to the plaintiff for supply 200/300 tons of coal on daily basis from Lakhra. The plaintiff has also attached a letter issued by the defendant on 2<sup>nd</sup> August, 2008 through its Manager Purchase on its letter head. The plaintiff accepted the order and started supply of coal to the defendant's Cement Factory at Hyderabad. The plaintiff has also attached a certificate issued by Manager Admin., of the defendant on 29<sup>th</sup> September, 2008 verifying that proprietor of the plaintiff is supplying coal to the defendant. The claim of the plaintiff is that despite supply of huge quantity of coal, the defendant has failed to make the payment.

3. The defendant has filed this application under Order VII Rule 10 CPC (CMA No.9050/2011) in which it has been prayed that this

court has no territorial jurisdiction to try the suit thus the plaint is liable to be rejected or in alternate the same may be returned back to the plaintiff for institution in the court having territorial jurisdiction.

4. Mr. Akhtar Hussain, learned counsel for the defendant argued that the defendant's factory is situated at Hyderabad. It was further avowed that no cause of action has accrued at Karachi hence this court has no territorial jurisdiction to entertain this suit. He further argued that original civil jurisdiction conferred upon this court is limited for the territorial limits of Districts of Karachi and Sections 16, 17 and 20 C.P.C are not applicable. Learned counsel further argued that the plaintiff has filed this suit with mala fide intention and since this court has no jurisdiction to entertain the suit hence the plaint is liable to be returned for its institution before the competent court at Hyderabad. So far as other aspects of the case are concerned, learned counsel argued that annexure-A and B attached to the plaint are forged and fabricated documents. It was further contended that no agreement in writing was ever executed between the parties and the defendant has no privity of contract with the plaintiff. It was further contended that all payment vouchers were issued in the name of M/s. Ashiq & Company. Learned counsel also pointed out two agreements attached with the written statement dated 27<sup>th</sup> October, 2007 and 24<sup>th</sup> January, 2008 to show that the defendant has already outsourced the production

task to the contractor M/s. Ashiq & Company. The learned counsel was of the view that coal if any supplied by the plaintiff was supplied to the contractor and not directly to the defendant. In support of his arguments, learned counsel for the defendant referred to following case law:-

**(1) 2010 CLC (Karachi) 1226 (Ismat Asad v. Pakistan Oxygen Ltd. & another).** This judgment was authored by me in which I held that suit property was situated at place “R” and suit was filed at place “K” on the ground that advertisement for sale of suit property was also published in newspaper at place “K” and earnest money was also paid there. Validity. By reading Section 12 of Specific Relief Act, 1877, in conjunction with Section 16(a) and (d) CPC, it was clear that only the courts in whose territorial jurisdiction the suit property was situated could entertain and decide the suit. Mere publication of an advertisement to sell or alleged payment of token money could not give any cause of action to decide the suit for specific performance in which many reliefs were claimed including the declaration. Provisions of Order VII Rule 10 CPC were mandatory and adjudication by a court without jurisdiction was determination coram non iudice and not binding. When court lacked pecuniary jurisdiction or territorial jurisdiction, in such cases, the plaint must be returned for presentation to proper court and the court could not pass any judicial order except that of returning of plaint. Plaint was returned in circumstances.

**(2) PLD 2010 (Karachi) 261 (Muhammad Naveed Aslam & others v. Mst. Aisha Siddiqui & others).** In this case it was held that jurisdiction conferred on High Court under Section 7 of West Pakistan Civil Courts Ordinance, 1962 is limited only for territorial limits of Districts of Karachi and no other territory would come within its ambit. Provisions of Sections 18 and 19 CPC but not provisions of Sections 16, 17 and 20

thereof would apply to such suits and proceedings entertained by High Court at Karachi. Place of suing for other suits not falling within ambit of such jurisdiction would be determined under Sections 16 to 20 CPC. Such suits or proceedings, though valued at more than three million rupees and filed in High Court at Karachi, but not related to any part of Districts of Karachi, would be returned to plaintiff for its presentation before a Court of competent jurisdiction.

**(3) 2005 MLD (Karachi) 1506 (Murlidhar P. Gangwani (Engineer) v. Engineer Aftab Islam Agha & others).** In this case it was held that for examining question of maintainability of the suit with reference to or on analogy of the provisions of Order VII Rule 10 and 11 CPC, averments made in plaint are to be taken as a whole with presumption of correctness attached thereto. For determining question of territorial jurisdiction with reference to the cause of action, whether accrued wholly or in part, averments of plaint were to be read in conjunction with the relief sought by a party in the suit and such reading of plaint should be meaningful, rational to the controversy and not merely formal.

5. Conversely, Mr. Muhammad Ikram Siddiqui, learned counsel for the plaintiff argued that cause of action for filing the suit in hand was accrued at Karachi and Head Office of the defendant is also situated at Karachi. Learned counsel also referred to Paragraph No.5 of the plaint in which it has been alleged that whole transaction and discussions/negotiations regarding supply of coal between the plaintiff and the defendant took place at Karachi at Head Office of the defendant situated at PIC Towers, M.T Khan

Road, Karachi. He also referred to annexure-A and B and argued that both letters were issued by the defendant from their Head Office and in order to support his argument, the counsel also pointed out the address printed on Letter Head to show that Head Office of the defendant is situated at Karachi hence suit for recovery has been properly filed in this court. In rebuttal to the arguments relating to outsourcing of production task in pursuance of two agreements referred to by the defendant's counsel, the learned counsel for the plaintiff also referred to the agreement and argued that Clause No.5 of the first agreement clearly stipulates that coal will be arranged by first party and the first party referred to in the agreement is "Zeal Pak Cement Factory Ltd". He further argued that similar provision is mentioned in Clause-6 of 2008's agreement. Learned counsel for the plaintiff also referred to annexure-E of the plaint which is a summary of Lakhra coal supply sent by the plaintiff to the defendant which was duly received and acknowledged by the defendant. In support of his arguments, the learned counsel relied upon the following case law:

**1. 2012 CLC (Sindh) 507 (Haji Riaz Ahmed v. M/s. Habib Bank Ltd.).** The learned single judge held that original civil jurisdiction of High Court must also be regarded as extending to the situation where the defendant ordinarily resided, or worked for gain, at place "K". If a corporation had its principle office or head office at place "K", High Court at "K" would also have jurisdiction, and the same was regardless of whether the cause of action had accrued at place "K" or not. Any other view would necessarily result in a loss and curtailment of the Court's jurisdiction and that was not a result

that the law countenanced by applying section 120 C.P.C. to High Court. Head Office of defendant-bank was situated at place “K”, therefore, it necessarily followed that plaintiff could bring the suit at place “K” and file it on the original side of High Court, notwithstanding that cause of action had accrued entirely at place “P”. High Court declined to return the plaint to plaintiff, as the court had jurisdiction in the matter. Application was dismissed in circumstances.

6. Heard the arguments. It is well settled that for the purpose of determining the application under order VII rule 10 C.P.C., the contents of the plaint are to be taken on their face value. The question of return of plaint must be determined on the basis of allegations made in the plaint. The plaintiff's choice to sue the defendant is circumscribed by two conditions i.e., the place where cause of action accrued and the place where the defendant resides or carry on business or personally works for gain. Order VII rule 10 C.P.C gives the court a discretion to return the plaint at any stage of the suit for presentation to the proper court. A court which has no jurisdiction over a suit, cannot pass any judicial order in such a suit except the orders which the statute empowers it to pass. When a court finds that it has no jurisdiction to try the suit, it should return the plaint for presentation before the appropriate court having jurisdiction.



7. In the case in hand, the plaintiff has categorically mentioned in the plaint that entire discussions and negotiations regarding supply of coal took place at Karachi in Head Office of the defendant. The plaintiff also relied upon annexure-A and B and argued that both such letters were issued by the defendant from their Head Office and address of their Head Office at Karachi is mentioned on the letter head. Learned counsel for the defendant vehemently argued that both aforesaid letters are forged and fabricated. At this stage this cannot be decided whether annexure-A and B attached to the plaint are forged and fabricated documents which require evidence. Next question was raised that the defendant entered into an agreement with M/s. Ashiq Ali & Company for production. Learned counsel for the plaintiff pointed out relevant clauses of the agreements in which it is clearly mentioned that for the purpose of production, the coal is to be arranged by Zeal Pak Cement Factory Ltd. Learned counsel for the defendant relied on my own judgment in the case of Ismat Asad supra wherein I returned the plaint in exercise of powers conferred under order VII rule 10 C.P.C. The facts of the cited case are distinguishable as in that case, immovable property was situated outside the territorial jurisdiction of Karachi but in Rawalpindi and suit for specific performance was filed in this court. Keeping in view Sections 16 (a) and (d) C.P.C. it was held that for the recovery of immovable property or determination of any other right or interest, the suit should have been filed in Rawalpindi. He further relied upon case of Muhammad Naveed Aslam in which learned Single Judge held that original civil

jurisdiction of Sindh High Court at Karachi is limited only for territorial limits of districts of Karachi and no other territory would come within its ambit. Provisions of section 18 and 19 C.P.C but not provision of section 16, 17 and 20 thereof would apply to such suits. This judgment was challenged in the High Court Appeal and Divisional Bench of this court affirmed the order of learned Single Judge and being one of the members of the bench, I authored the judgment which is reported in 2011 CLC 1176. In the D.B.'s judgment, it was held that non-applicability of section 16, 17 and 20 read with Order 49 rule 3 C.P.C., is only applicable and limited to the original side jurisdiction for the districts of Karachi and when it is found that property is situated outside the territorial jurisdiction of Karachi, then section 16 and 17 will automatically come into operation. Initial guiding principle for institution of various suits is provided under section 16 to 19 C.P.C., whereafter section 20 has been provided for other suits to be instituted where the defendant resides or cause of action arises. Since in this case also immovable property in question or disputed was situated at Hyderabad and the claim of parties vice versa was correlated with the relief of declaration, injunction and possession, that's why yet again keeping in view the provision of section 16 C.P.C, the plaint was returned. The facts of above case are distinguishable.

8. The crux of arguments advanced by learned counsel for defendant is that factory of the defendant is situated at Hyderabad

and coal if any was allegedly supplied at the defendant's factory situated at Hyderabad, therefore, suit for recovery if any should have been filed in the competent court at Hyderabad which was appropriate and competent forum to decide the suit. As I already observed that claim of the plaintiff is that the entire negotiations for the deal took place at Karachi in the Head Office of the defendant and since Head Office of the defendant is situated at Karachi and cause of action is stated to have partly arisen at Karachi, therefore, this court has jurisdiction. Learned counsel for the defendant himself referred to the case of Murlidhar P. Gangwani in which learned division bench of this court expounded the guiding principle that for examining the question of maintainability of suit with reference to or analogy of provisions of order VII rule 10 & 11 C.P.C., averments made in the plaint are to be taken as a whole with presumption of correctness. It was further held that for determining the question of territorial jurisdiction with reference to the cause of action whether accrued wholly or in part, averments of plaint are to be read in conjunction with the reliefs sought by the party and such reading should be meaningful, rational to the controversy and not merely formal.

9. At this juncture, I would like to quote my another judgment rendered in the case of Pak Kuwait Investment Company reported in SBLR 2010 (Sindh) 1111 which was a banking suit and similar application was filed with the contention that banking suit should

have been filed in Lahore in which I held that for the purposes of order VII rule 10 C.P.C., and section 20 C.P.C., it is very much relevant to decide whether cause of action wholly or any part arose within the territorial jurisdiction of the court. It is also clear that all classes of suits can be filed in a court within local limits of whose jurisdiction the cause of action arose either wholly or any part. Term cause of action referred to every act which if traversed should be necessary for the plaintiff to prove in order to support his right to judgment and if not proved would give the defendant a right to judgment and for that purpose only the facts stated in the plaint are to be considered to determine whether those facts state cause of action or not, even a fraction of cause of action is a part of cause of action. In the same lines, learned Single Judge of this court decided the case of Haji Riaz Ahmed reported in 2012 CLC 507 in which it was held that original civil jurisdiction of High Court must be regarded as extending to the situation where the defendant ordinarily resides or works for gain. If a corporation has its principle office or head office at Karachi, High Court at Karachi would have jurisdiction regardless of whether cause of action accrued at Karachi or not.

10. So far as the allegation that the plaintiff has manipulated and forged few documents this aspect can only be decided after evidence and no definite finding can be given at this stage and preview of plaint adverting that no case of return of plaint is made out. In

consequence thereof, I feel no hesitation to hold that since the defendant's head office is situated at Karachi, the plaintiff's suit is maintainable and this court has ample jurisdiction to try and dispose of this suit.

11. As a result of above discussion, the application moved under order VII Rule 10 C.P.C. is dismissed.

**Karachi:**

**Judge**

**Dated.15.2.2013**