

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
SUIT No. 949 / 2016

DATE

ORDER WITH SIGNATURE OF JUDGE

For hearing of CMA No. 7205/2016.

06.12.2019.

Mr. Ch. Atif Rafiq Advocate for Plaintiff.
Mr. Ishrat Zahid Alvi Assistant Attorney General.
Mr. Farmanullah Khan Advocate for Defendant.

Listed application has been filed under Order 7 Rule 10 CPC on behalf of Defendant No. 2 for return of the plaint on the ground that this Court has no jurisdiction and it is only the courts at Lahore who have jurisdiction to adjudicate the matter.

Learned Counsel for the Plaintiff while confronted with this application has argued that an objection was also raised by the Court on 25.08.2016 and on 04.03.2019 an order was passed by overruling such objection as it is the case of the Plaintiff that insofar as prayer clause “E” & “F” are concerned, the Suit remains alive as it requires interpretation of the statutory notifications. He has further argued that this Court is competent to interpret any act, law or notification, as to its validity and Constitutionality, whereas, the Plaintiff’s case is that various notifications issued by the Government are not being adhered to, and implemented by Defendant No. 2 while issuing and awarding tenders in procurement through public money. According to him, this Court has the jurisdiction as the cause of action at the relevant time was alive when this Suit was filed, and the Plaintiff is justified to seek declaration in respect of prayer clause “E” & “F”; hence, the application is liable to be dismissed.

On the other hand learned Counsel for Defendant No.2 has argued that since the tender was opened and awarded at Lahore, this Court lacks jurisdiction.

I have heard both the learned Counsel and perused the record. It appears to be an admitted position that primarily the Plaintiff was aggrieved in respect of award of tender No. SN-3416/2015 which was issued and initiated by Defendant No.2 from Lahore. The Plaintiff as per the plaint participated in the tender and out of the 9 bidders the Plaintiff was the only local bidder; however, tender was not awarded to the Plaintiff. During pendency of this Suit admittedly, the tender has been awarded to someone else and stands concluded; hence, prayer to that extent regarding award of tender to the Plaintiff is no more alive and the Suit has become infructuous. The case of the Plaintiff rests upon and emanates from the tender in question and it would be advantageous to refer to Para Nos. 21 & 23 of the plaint, whereby, in respect of accrual of cause of action and invoking jurisdiction of this Court, the Plaintiff has made certain averments:-

“21. That the cause of action firstly arose on 12.12.2015 when public notice of the tender was issued; again arose on 30.12.2015 when public tenders were extended for Tender SN-3416/15; then on 14.1.2016 when the technical bid was opened and then on 23.2.2016 when the technical bid of the Plaintiff was accepted; then on 24.2.2016 when all the financial bids were opened and then on 21.3.2016 when the Plaintiff received LOI for item No. 17 only and thereafter on 08.04.2016 when the Plaintiff came to know that the purchase orders have been issued to the Defendant No. 3 for item No. 16 and 18 and it continues till this date.

23. That the contract has to be executed in Karachi and the manufacturing of the pipes forming subject matter of Tender SN-3416/15 are to be made in Plaintiff's factory within the jurisdiction of this Honourable Court; the bid bonds were executed by the banks in Karachi thus this Honourable Court has territorial jurisdiction.”

Perusal of the aforesaid paragraphs of the plaint clearly reflect that primarily, the cause of action which had prompted filing of instant

Suit was tender No.SN-3416/2015 and such tender has been awarded to someone else, whereas, even otherwise, if the tender would not have been awarded, this Court could not have assumed jurisdiction in the matter as the tender was advertised at Lahore by Defendant No.2, was participated by Plaintiff at Lahore, whereas, the Defendant No.2 is situated also at Lahore. Merely for the fact that Plaintiff is in Karachi and has participated in the tender, this Court cannot assume jurisdiction, until and unless the tender is awarded and some further progress is made by the Plaintiff in execution of the tender, as till such time the cause of action has not accrued within the territorial jurisdiction of this Court. In other words if the Plaintiff had been awarded the tender, and say some Bank or other Guarantee was furnished from Karachi; or alternatively, some supplies had been made and a dispute arose, then perhaps, and without prejudice to the right of Defendant No.2, this Court could have assumed jurisdiction. Insofar as prayer clause “E” & “F” are concerned, they now appear to be an academic exercise seeking interpretation of the notification and its non-implementation by Defendant No.2 and such an exercise cannot and must not be carried out by this Court while exercising Civil Jurisdiction under Section 9 CPC. This is notwithstanding the fact that ‘the Single Bench of the Sindh High Court, regardless of what jurisdiction it exercises, is a “High Court” and will always remain a High Court because it is a constitutional Court and is not a District Court¹. However, this exception is only applicable when there is an issue of an ouster clause in any statute barring jurisdiction of a Civil Court to entertain any case, and not otherwise. The interpretation or examining a law or notification could only be done by this Court when the cause of

¹ Searle IV Solution (Pvt.) Ltd., v Federation of Pakistan (2018 SCMR 1444)

action for such purposes has accrued within the territorial jurisdiction of this Court. A person coming to a Civil Court has to first establish its legal right and status as to such claim. Once this hurdle is crossed, only then the Court assumes jurisdiction. In this matter, since the cause of action accrued at Lahore when tender was advertised, and further when it was not awarded to the Plaintiff, there was no occasion to file instant Suit before this Court, merely for the fact that some additional prayer(s) have been made which involve assistance of other regulating authorities and the Federation of Pakistan. I am afraid, learned Counsel for the Plaintiff has not been able to satisfy on this point, as apparently such a jurisdiction, if at the most, vests in a Court exercising jurisdiction in terms of Article 199 of the Constitution and not when it is a Court exercising jurisdiction under section 9 CPC. This is dividing line between exercising such jurisdictions.

In this matter neither the cause of action had accrued within the territorial jurisdiction of this Court; nor admittedly, the cause of action is alive anymore, and therefore, this Court cannot assume jurisdiction to adjudicate upon prayer clause(s) "E" & "F" of the Suit.

In view of hereinabove facts and circumstances of this case, I am of the view that this Court lacks territorial jurisdiction in this matter and therefore, this application is allowed. Plaint is hereby returned for its presentation before the Court having appropriate jurisdiction. Office to retain copies of the plaint and its annexures at the cost of the Plaintiff before returning the same.

J U D G E

ARSHAD/