

ORDER SHEET
THE HIGH COURT OF SINDH, KARACHI
M.A. No.54 of 2021

Dated: Order with signature of Judge(s)

1. For Orders on CMA No. 6052 of 2022
2. For Hearing of CMA NO. 1724 of 2022
3. For Hearing of CMA No. 3990 of 2021
4. For hearing of Main Case

Date of Hearing : 3 May 2023, 4 May 2023, 10 May 2023 and 26 May 2023.

Petitioner : National Tiles Ceramics Limited through Mr Aziz Khan, Advocate.

Respondent No.1 : Nemo

Respondent No. 2 : Sui Southern Gas Company Limited through Nabi Nux Leghari and Mukesh Kumar

Respondent No. 3 : Nemo

Respondent No. 4 : Nemo

J U D G E M E N T

MOHAMMAD ABDUR RAHMAN, J. This Appeal is preferred under Section 13 of the Gas Theft Control & Recovery Act, 2016 as against the order dated 29 May 2021 passed by the District Judge Karachi (South) in Summary Suit No. 16 of 2022 whereby an application that had been maintained by the Appellant seeking Leave to Defend Summary Suit No. 16 of 2022 was dismissed.

2. The facts of this Suit are not in dispute. The Respondent has instituted a suit under Sub-Section (1) of Section 6 of the Gas Theft Control & Recovery Act, 2016 for the recovery of a sum of Rs. 80,122,000 (Rupees Eighty Million One Hundred and Twenty Two Thousand) from the Appellant bearing Summary Suit No. 16 of 2022 before the District Judge Karachi (South). The Suit was instituted by the Respondent on 7 February 2020 and notices were issued to the Appellant for 15 February 2020. The Appellant initially refused service whereafter notice was ordered to affected

through pasting and publication in a newspaper. On 24 March 2020 the Appellant received a copy of the notices and the matter was relisted for the filing of a written statement for 11 April 2020. From that date onwards until 28 September 2020 the matter was adjourned primarily on account of the a notification suspending work in the courts on account of the Covid 19 pandemic and finally on that date the Appellant did not file a Written Statement but instead filed an Application for Leave to Defend Summary Suit No. 16 of 2022 on 17 September 2020.

3. It is alleged by the Appellant that there was a misimpression created by the orders passed by the District Judge Karachi (South) wherein in the orders passed by that court it was noted that the matter was being adjourned for the filing of a Written Statement while the suit being summary in nature required an application for Leave to Defend to be filed within a period of 21 days as mandated by Sub-Section (2) of Section 7 of the Gas Theft Control & Recovery Act, 2016 and which reads as under:

“ ... (2) *The defendant shall file the application for leave to defend within twentyone 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.*”

While notice of the application was claimed by the Plaintiff on 24 March 2020 and on account of the Covid 19 Pandemic work of the Courts was suspended from 22 March 2020 until 3 August 2020, the District Judge Karachi (South) in Summary Suit No. 16 of 2022 was pleased to hold that even with such time being discounted the Leave to Defend application had been filed after 44 days and was therefore barred by a period of 21 days under Sub-Section (2) of Section 7 of the Gas Theft Control & Recovery Act, 2016 and proceeded to decree the suit as prayed with mark up at the prevailing rate set by the State Bank of Pakistan.

4. Mr. Aziz Khan began his arguments on behalf of the Appellants by stating that the reason for the delay in filing the application for leave to

defend was on account of the impression created by the court which had in its orders directed that a Written Statement should be filed and that no man should be prejudiced by a wrongful action on the part of the Court. Mr. Mukesh Kumar advanced arguments on behalf of the Respondent and stated that ignorance of the law was not an excuse and the Appellant must be prejudiced for not following the law. The matter was heard and adjourned for 10 May 2023 when on that date Mr. Aziz Khan took a further jurisdictional argument stating that the constitution of the court under the provisions of section 3 of the Gas Theft Control & Recovery Act, 2016 had been impugned in a Constitutional Petition before this Court and I should also await adjudication on that issue. He stated that the issue of the jurisdiction of this Court had been addressed in the decision reported as **Sui Southern Gas Company Limited vs. Messrs Data CNG Filling Station Larkana**¹ and in which it was held that a notification dated 2 May 2017 had been issued by the Federal Government and which had notified the constitution of the Gas Utility Court under Section 3 of the Gas Theft Control & Recovery Act, 2016 and has stated that the Gas Utility Court had the jurisdiction to act in both civil and criminal matters under that statute. He agitated that notwithstanding the judgement, until the decision by this Court in the Constitutional Petition this appeal should be adjourned. As I was not in agreement with keeping a matter pending indefinitely, I had thereafter reserved this matter for Judgement.

5. It seems that Gas Utility Court has been constituted under Section 3 of the Gas Theft Control & Recovery Act, 2016 and which reads as under:

“ ... 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.

¹ 2021 MLKF 568

(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."

It is apparent that under Section that the Federal Government has to constitute a Gas Utility Court by issuing a notification in the official gazette and which will exercise jurisdiction as stated in the Gas Theft Control & Recovery Act, 2016.

The Jurisdiction of the Gas Utility Court once constituted under the Gas Theft Control & Recovery Act, 2016 is clarified in Section 4 of the Gas Theft Control & Recovery Act, 2016 as under:

" ... 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."

(Emphasis is added)

As is apparent the matters covered by the Gas Theft Control & Recovery Act, 2016 are found in Section 6 of the Gas Theft Control & Recovery Act, 2016 which confers both civil and criminal jurisdiction on the Gas Utility Court as under:

" ... 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)."

6. It seems by a notification dated 2 May 2017 a Gas Utility Court was established in the following terms:

“ ... *"NOTIFICATION
Islamabad, the 2nd May, 2017*

*S.R.O. 293(I)/2017.----In pursuance of section (3) of the Gas (Theft Control and Recovery) Act, 2016 (XI of 2016), the Federal Government, in consultation with the Chief Justice of the High Court of under the said Act **to exercise the powers for trial of offences** under the said Act in their respective districts, namely:-*

<i>S.No.</i>	<i>District and Sessions Judges</i>
<i>(2)</i>	<i>(2)</i>
<i>1.</i>	<i>District and Sessions Judge, Karachi (South).</i>
<i>2.</i>	<i>District and Sessions Judge, Karachi (Central).</i>
<i>3.</i>	<i>District and Sessions Judge, Karachi (East).</i>
<i>4.</i>	<i>District and Sessions Judge, Karachi (West).</i>
<i>5.</i>	<i>District and Sessions Judge, Dadu.</i>
<i>6.</i>	<i>District and Sessions Judge, Hyderabad.</i>
<i>7.</i>	<i>District and Sessions Judge, Jamshoro.</i>
<i>8.</i>	<i>District and Sessions Judge, Kashmore.</i>
<i>9.</i>	<i>District and Sessions Judge, Larkana.</i>
<i>10.</i>	<i>District and Sessions Judge, Mirpur Khas.</i>
<i>11.</i>	<i>District and Sessions Judge, Shaheed Benazirabad (Nawab Shah).</i>
<i>12.</i>	<i>District and Sessions Judge, Sanghar.</i>
<i>13.</i>	<i>District and Sessions Judge, Sukkur.</i>
<i>14.</i>	<i>District and Sessions Judge, Tando Mohammad Khan.</i>
<i>15.</i>	<i>District and Sessions Judge, Thatta.</i>
<i>16.</i>	<i>District and Sessions Judge, Malir.</i>
<i>17.</i>	<i>District and Sessions Judge, Badin.</i>
<i>18.</i>	<i>District and Sessions Judge, Ghotki.</i>
<i>19.</i>	<i>District and Sessions Judge, Jacobabad.</i>
<i>20.</i>	<i>District and Sessions Judge, Khairpur.</i>
<i>21.</i>	<i>District and Sessions Judge, Matiari.</i>
<i>22.</i>	<i>District and Sessions Judge, Naushahro Firoz.</i>
<i>23.</i>	<i>District and Sessions Judge, Kamber at Shahdadkot.</i>
<i>24.</i>	<i>District and Sessions Judge, Shikarpur.</i>
<i>25.</i>	<i>District and Sessions Judge, Tando Allah Yar.</i>
<i>26..</i>	<i>District and Sessions Judge, Tharparkar.</i>

(Emphasis is added)

As is apparent the use of the expression “exercise the power for the trial of offences” as contained in the notification created some ambiguity as to whether the notification only constituted the Gas Utility Court for the purpose of only exercising its criminal jurisdiction or as to whether it also conferred the power on the Gas Utility Court to exercise its civil jurisdiction under Section 6 of that Act. The matter was considered by the Court wherein it was held that:

“ ... 10. Perusal of the aforesaid notification reflects that it has been issued under Section 3 of the 2016 Act in consultation with the Chief Justice of the High Court of Sindh and the Federal Government is pleased to confer the powers of the Judge of the Gas Utility Court under the said Act to exercise the powers for trial of offences under the said Act in their respective districts. **The use of the word "trial of offences" was relied upon by the learned Counsel for the respondent to establish that it is only the criminal jurisdiction, which has been conferred on the District Judge and not the civil jurisdiction.** Though, apparently, on the face of it, this contention appears to be attractive; however, one must not lose sight of the fact that it is Section 3 of the 2016 Act which has to prevail. Under Section 3, first a Gas Utility Court has to be established and once a Court is established, then the Court itself has been conferred jurisdiction, both civil and criminal by the Act itself under Section 5 *ibid*. **A Court already established under Section 3 does not require any notification for conferring powers for civil or for that matter criminal jurisdiction / matters. The Federal Government does not have the authority to bifurcate Section 3 *ibid*. Neither it has any power to make any stop-gap arrangements for conferring powers only for trial of offences; nor for any other purposes.** Moreover, as noted hereinabove, it is only required to establish the Court by a Notification under S.3 *ibid*, and that is to be done by appointing a Judge for each such Court from amongst the District and Sessions Judges. It does not require any other effort on the part of the Federal Government as it is not the intention of the legislature that some separate Courts would be established for or under the 2016 Act and separate and independent Judges would also be appointed. For all legal and practical purposes, the notification by itself can only be validated if it is issued under Section 3 by establishing the Gas Utility Courts. In fact, this is what the learned Registrar, High Court of Sindh had requested to the Secretary, Ministry of Law and Justice through his letter dated 28.03.2017; however, it seems that since the immediate worry for the Registrar was continuance of stop gap arrangement in respect of offences, bails and remand issue, therefore, the Ministry while issuing the notification dated 2.5.2017 has lost sight of the very explicit provision of Section 3 of the 2016 Act. If the intention of the Ministry is to confer jurisdiction only for trial of offences i.e. criminal jurisdiction, then the notification itself would be held to be illegal and without lawful authority as Section 3 does not confer any such powers upon the Federal Government to bifurcate the jurisdiction. **The only power it has, is to establish Gas Utility Courts and since this is a special law, a Gas Utility Court once established has both the jurisdictions i.e. civil as well as criminal and so also has the exclusive jurisdiction to try all such matters as are mentioned in the Act.** The jurisdiction as mentioned in section 5 *ibid* is independent and inherent of the Court once it is established under Section 3 and is not to be confused with the establishment of the Court under Section 3 of the 2016 Act. In fact, it even provides for transfer of all pending cases regarding recovery of the amount pursuant to alleged theft of gas.”

(Emphasis is added)

As can be observed my learned brother Muhammad Junaid Ghaffar, J has indicated that as the notification has been issued under Section 3 of the Gas Theft Control & Recovery Act, 2016 and the Gas Utility Court has been constituted thereunder, notwithstanding the use of the expression “exercise the power for the trial of offences” the Gas Utility Court on its constitution will exercise both its Civil and Criminal Jurisdiction as conferred on it by Section 4 read with Section 6 of the Gas Theft Control & Recovery Act, 2016. This is premised on the basis that the power that the Federal Government was exercising in issuance of the notification under Section 3 of the Gas Theft Control & Recovery Act, 2016 was to constitute the Gas Utility Court and as that section did not confer the authority on the Federal Government to limit the jurisdiction of the Gas Utility Court as such the use of the expression “exercise the power for the trial of offences” in the notification dated 29 May 2021 is quite clearly in excess of the Federal Government jurisdiction. However without reading down the statute, keeping in mind that he like me was adjudicating an appeal he did not strike read down the notification and instead simply upheld it ignoring the portion of that notification that was clearly void of Section 3 of the Gas Theft Control & Recovery Act, 2016 i.e. the words “exercise the power for the trial of offences”. The rationale given in this Judgement is to my mind flawless and I am inclined to follow it. I am therefore of the opinion that the District Judge Karachi South had, as per the notification dated 2 May 2017, the requisite jurisdiction to entertain Summary Suit No. 16 of 2022 in its capacity as a Gas Utility Court and no exception can be taken to order dated 29 May 2021 passed by the District Judge Karachi (South) in Summary Suit No. 16 of 2022 on this ground.

7. It remains to be seen as to whether the order sheet of Summary Suit No. 16 of 2022, wherein a direction is given to file a Written Statement as opposed to an Application for Leave to Defend should be construed as an

error by the court which had misled the Appellant into not filing the requisite application for Leave to Defend in time. I must admit that I am not inclined to agree, while clearly the order sheet called for a written statement to be filed, the title of the Suit reads as Summary Suit No. 16 of 2022 and should have alerted the Appellant that this was not a normal suit and applying the maxim "Ignorantia legis neminem excusat,"² I am inclined to hold that the fault lies with the Appellant. The Appeal must therefore fail.

8. For the foregoing reasons, I find no illegality or infirmity in the order dated 29 May 2021 passed by the District Judge Karachi (South) in Summary Suit No. 16 of 2022 dismissing an application that had been maintained by the Appellant seeking Leave to Defend Summary Suit No. 16 of 2022. The appeal is misconceived and is therefore dismissed along with all listed application with no order as to costs and with directions to the Office to return the Record and Proceedings of Summary Suit No. 16 of 2022 forthwith.

JUDGE

Karachi dated 25 August 2023.

² See *Sikander Hayat vs. Hasina Sheikh* PLD 2010 SC 19, *Muhammad Suleman vs. Shaukat Ali* 2009 SCMR 678; *Malik Umar Aslam vs. Sumera Malik* PLD 2007 SC 362; *Pakistan National Council of Arts through Director General vs. Azimul Waqar* 2001 SCMR 1561; *Wali Muhammad Kokhar vs. Government of Sindh* 2001 SCMR 912; *Bashir Ahmad vs. Muhamamd Sharif* PLD 2001 SC 228