IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Civil Misc. Appeal No.S-20 of 2023

Appellants:	Sub-Zonal Manager, SSGC, Matli, 2) Billing Officer/Supervisor Billing SSGC, Matli, 3) Chief Manager Billing, SSGC, Ground Floor, State Life Building Hyderabad, 4) Deputy Manager Billing, SSGC, Ground Floor, State Life Building Hyderabad, 5) Zonal Manager, SSGC, Badin, 6) Managing Director, SSGC Head Office, Hassan Square, near AG Office, Karachi through their attorney Masood Anwar Siddiqui son of Muhammad Anwer Siddiqui, Deputy Manager Legal Services, Regional Office SSGCL, Hyderabad. Through M/s. Barrister Kashif Hanif, Hemandas S. Sanghani and Barrister Ghazi Khan, advocates. Mr. Muhammad Faisal Khan (G.M. Legal), Syed Asad Abbas Naqvi (DGM Legal), Mr. Waseem Qazi, Deputy Manager (Legal) and Mr. Raja Love Kush, Deputy Manager (Legal) on behalf of Appellants/SSGC Limited. (present in person).
Respondents:	Noman Khan, 2) Abdul Ghaffar, 3) Ghulam Mustafa, 4) Mst. Nusrat, 5) Sajjad Ali, 6) Syed Mujtaba Amin Shah, 7) Muhammad Asif Raza, 8) Shoaib Ahmed, 9) Iftikhar Ahmed, 10) Sikandar Ali, 11) Fateh Muhammad, 12) Shahnawaz, 13) Arslan Akbar Talpur, 14) Aslam, 15) Zaheer Ahmed, 16) Hamid, 17) Ghulam Ali, 18) Muhammad Umar, 19) Masjid-e-Tooba through custodian/Mutawali, Shahzad son of Abdul Ghaffar Kashmiri, 20) Muhammad Waseem and 21) Wali Muhammad. Through Mr. Abdul Hameed Bajwa, advocate.
Date of hearing:	15-08-2025
Date of Judgment:	28-08-2025

JUDGMENT

Jan Ali Junejo, J. Through this appeal under Section 13 of the Gas (Theft Control and Recovery) Act, 2016, the appellants have assailed the judgment dated 19.04.2023 and decree dated 26.04.2023 (hereinafter referred as the

"Impugned Judgment and Decree") passed by the learned District Judge/ Gas Utility Court, Badin (hereinafter referred to as the "Trial Court") in *F.C. Suit No.01 of 2022* whereby the respondents' suit for declaration, settlement of accounts, mandatory and permanent injunctions was decreed *ex parte* against the Appellants.

2. The respondents/plaintiffs, instituted *F.C. Suit No.01 of 2022* against the appellants, alleging that in March 2021 they were granted domestic gas connections through contractor *M/s. Halepota & Co. (Contractor Code H-00218)*. They asserted that all formalities were duly complied with, including payment of demand notices, and domestic connections were installed at their residences. Each plaintiff was allotted specific customer and meter numbers, e.g., Plaintiff No.1 under Customer Nos.9599373692(5) & 5733720572(8), Plaintiff No.2 under Customer No.5865770514(9), and so on, for all twenty-one plaintiffs. The grievance pleaded was that the appellants, instead of charging domestic tariff (Rs.15–20 per unit, prevailing in Matli Town), issued bills at the exorbitant rate of Rs.111/- per unit — a rate even higher than the commercial tariff (Rs.71/- per unit). According to the plaintiffs, such excessive billing was illegal, mala fide, arbitrary, and beyond the sanctioned tariff, resulting in continuous financial loss since the installation of meters. Despite repeated requests for rectification, no action was taken, leaving the plaintiffs with no option but to approach the court. The reliefs claimed were:

a) *That this Honourable Court may be pleased to declare that suit Gas bill showing the meter Gas charges amounting with high rate of Rs.111/- per units are quite illegal, malafide, with high than actual rate Rs.15/- and are liable to be erased/ removed from the suit Gas Bills;*

b) *To issue Mandatory injunction against the defendants directing them to settle the account over the Gas Bills of plaintiffs, in respect of recovered amount with excess rate from installation and till to yet and issue monthly Gas bill to plaintiffs as per actual*

consumption and cost of the Gas Rs.15/- which is being recovered from consumer of Matli Town;

c) *To grant permanent injunction against the defendants by restraining from recovering of amount of bills issued with high rate than actual, from taking/removing/closing the Gas Meter from the house of plaintiffs directly or indirectly through themselves, their agents, servants etc. in any manner whatsoever;*

d) *Costs of the suit be borne by the defendants;*

e) *Other relief, which this Honourable Court may deem fit and proper in circumstances.*

The appellants entered appearance and filed an application under Order XXXVII Rule 3 CPC read with Section 151 CPC for leave to defend, but the same was dismissed on 04.01.2023. The appellants were thereby debarred from filing written statement. The matter was then fixed for ex parte proof. During *ex parte* proceedings, the attorney of the respondents, Shahzad son of Abdul Ghaffar special attorney for all plaintiffs/ respondents), recorded evidence through his affidavit-in-evidence (Exh.20/C) and produced:

- Copy of CNIC (Exh.20/A);
- Special Power of Attorney executed in his favour (Exh.20/B);
- Multiple original gas bills of plaintiffs showing inflated charges ranging from Rs.7,410/- to Rs.2,91,250/- (Exh.20/D to Exh.20/D-21);
- Comparative domestic bill of one neighbour, Mst. Maryam Nizamani, showing nominal charges of Rs.270/- (Exh.20/D-22).

No cross-examination was conducted due to appellants' debarment. On this unrebutted record, the trial court decreed the suit in favour of the respondents by the Impugned Judgment and Decree, holding that they were entitled to reliefs prayed. It is this judgment and decree which is under challenge in the present appeal.

3. Learned counsel for the appellants argued at length that the trial court exercised jurisdiction illegally by entertaining the matter in the form of an *F.C. Suit*. He contended that the Gas (Theft Control and Recovery) Act,

2016 is a self-contained special statute, and suits under it cannot be styled or tried as ordinary civil suits. Reliance was placed on the principle that special law overrides general law. He further submitted that under Section 6(2), it was mandatory for the respondents to annex the Gas Sales Agreement with the plaint, which they failed to do. Similarly, under Section 6(4), summons were required to be in Form-IV of Appendix B CPC, but ordinary summons were issued. He referred to unreported *Civil Rev. Appl. No. S.80 of 2017*, where such non-compliance was held to vitiate proceedings. On the issue of leave to defend, counsel argued that their application was filed within the statutory period, considering different dates of service upon various appellants, but the trial court dismissed it mechanically. He stressed that refusal of leave to defend, followed by treating the appellants as debarred, deprived them of the opportunity of cross-examination, violating their right to fair trial under Article 10-A of the Constitution. He also criticized the trial court's finding that Rs.15/- per unit was the correct rate, arguing that tariff determination lies exclusively within the domain of OGRA and the SSGC, and cannot be judicially fixed without evidence. In support, reliance was placed on *PLD 2024 SC 864*. Lastly, the learned counsel prayed for allowing the present Appeal.

4. Per contra, learned counsel for the respondents opposed the appeal and supported the impugned judgment. He submitted that the appellants were duly served but failed to file their defence in time; hence, the trial court rightly dismissed their leave application. He maintained that the plaintiffs had established through unrebutted evidence that excessive billing was carried out at Rs.111/- per unit while similarly placed consumers in the same locality were charged at Rs.15–20 per unit. The comparison with the bill of neighbour Mst. Maryam Nizamani (Exh.20/D-22) was cited as strong corroboration. He argued that once the evidence remained unrebutted, the

trial court had no option but to decree the suit. Lastly, the learned counsel prayed for dismissal of the present appeal.

5. I have carefully considered the arguments advanced by the learned counsel for the Appellants as well as the learned counsel for the Respondents, and have meticulously examined the material available on record with due care and caution. The constitution of the Gas Utility Court is provided under Section 3 of the Gas (Theft Control and Recovery) Act, 2016, whereas the jurisdiction to entertain suits and complaints is prescribed under Section 4 read with 6(1) of the said Act. For the purpose of clarity and a more comprehensive appreciation of the statutory framework, the relevant provisions, namely Sections 3, 4 and 6(1) of the Act, 2016, are reproduced herein below:

> *"3. Constitution of Gas Utility Courts.—(1) The Federal Government may, in consultation with Chief Justice of the High 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.*
>
> *(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".*
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> *"4. Exclusive jurisdiction of Gas Utility Court.— (1) A Gas Utility Court shall have exclusive jurisdiction with respect to all matters covered by this Act".*
>
> *"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)".

Sub-section (1) of Section 3 of the Gas (Theft Control and Recovery) Act, 2016 empowers the Federal Government, in consultation with the Chief Justice of the concerned High Court, to establish Gas Utility Courts in the districts. These courts are special forums constituted exclusively for adjudication of matters arising under the Act, and their Judges are to be appointed from amongst the District and Sessions Judges of the district concerned, a term which, by explanation, also includes Additional District and Sessions Judges. Sub-section (2) provides that where more than one Gas Utility Court is established in a district, the Federal Minister shall define the territorial limits of each such court. Sub-section (3) vests the High Court with supervisory powers to transfer cases from one Gas Utility Court to another, whether within the same district or across different districts, in the interest of justice or for the convenience of parties and witnesses. Section 4 further stipulates that Gas Utility Courts shall have exclusive jurisdiction with respect to all matters covered by the Act. This ousts the jurisdiction of ordinary Civil Courts, Criminal Courts, Consumer Courts, or any other forum in respect of disputes falling within the ambit of the Act. Section 6(1) delineates the nature of matters that may be brought before a Gas Utility Court, which include:

1. Offences under the Act (criminal jurisdiction);
2. Sums due or recoverable from any person (recovery actions);
3. Consumer disputes relating to billing or metering against a Gas Utility Company.

The provision further clarifies that proceedings may be initiated either by way of a complaint or by way of a suit, depending on the subject-matter of the dispute. The procedure to be followed is that prescribed under the relevant general law, namely:

- The Code of Civil Procedure, 1908 for civil disputes such as billing, recovery, or contractual claims; and
- The Code of Criminal Procedure, 1898 for criminal offences, including gas theft, tampering, or fraudulent consumption.

Thus, the legislative scheme clearly establishes Gas Utility Courts as exclusive and specialized forums, with jurisdiction circumscribed by the Act, ensuring that gas-related disputes are adjudicated under a uniform legal framework and not by ordinary civil or criminal courts.

6. A perusal of the record reveals that the trial court did not, at any stage of the impugned judgment, acknowledge that the matter was being tried as a "Gas Utility Court" within the contemplation of the Act, 2016, but instead erroneously entertained and proceeded with it as an "F.C. Suit". The Gas (Theft Control and Recovery) Act, 2016 does not envisage such nomenclature, being a special law with its own distinct procedural framework. The assumption of jurisdiction in this form was therefore contrary to law.

7. Since the appellants have specifically raised the contention that annexing the Gas Sales Agreement (GSA) with the plaint is mandatory, reliance having been placed upon Section 6(2) of the Act, 2016, it is considered expedient to examine and reproduce the said provision, which reads as follows:

> ***"(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".***

A plain reading of the aforesaid provision demonstrates that it contemplates the production of a Gas Sales Agreement, a Gas Bill, or any other documentation evidencing the contractual relationship or obligation between the parties. Hence, production of any one of these documents

would satisfy the requirement of compliance. Accordingly, mere non-production of the Gas Sales Agreement alone cannot, by itself, be a ground to non-suit the respondents. With regard to subsection (4) of Section 6 of the Act, 2016, it is considered appropriate to examine and reproduce the same as under:

> ***"(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".***

Section 6(4) of the Gas (Theft Control and Recovery) Act, 2016 prescribes a special and mandatory procedure for service of summons in suits before the Gas Utility Court. It mandates that summons be issued in Form No.4 of Appendix B to the CPC (or in any other form prescribed by rules) and served through multiple modes—bailiff/process server, registered post, courier, and publication in one English and one Urdu daily newspaper having wide circulation—while declaring that service by any one of the prescribed modes shall constitute valid service. In the case of service through the bailiff or process server, a copy of the plaint must accompany the summons. The evident legislative intent is to ensure expeditious yet fair notice, and being a special provision, strict compliance therewith is mandatory; failure to observe the prescribed procedure strikes at the root of jurisdiction and vitiates the proceedings. In the present case, it is an admitted position on record that the learned trial court did not issue

summons in accordance with Section 6(4) of the Act, 2016. Such non-compliance with a mandatory statutory requirement renders the impugned judgment and decree unsustainable and liable to be set aside on this ground alone.

8. The appellants' application for leave to defend was filed within the statutory timeframe, keeping in view the respective dates of service. The dismissal order, however, failed to take into account Section 7(2) of the Act, 2016, which governs the computation of limitation. Moreover, the trial court conflated the concept of *"ex parte"* proceedings with *"debarment"*, thereby depriving the appellants of their right to cross-examine the witnesses, which amounted to a violation of the principles of natural justice. Further, the Trial Court unilaterally determined that Rs.15/- per unit was the correct tariff, without any supporting evidence, technical material, or expert opinion. Determination of gas tariff lies within the exclusive domain of OGRA and the SSGC, and without expert assistance such determination was impermissible. Thus, the appellants' application for leave to defend ought to have been granted. It is also observed that the learned trial court adopted a procedure wholly alien to the procedure prescribed for summary suits under Order XXXVII of the Code of Civil Procedure, 1908, as well as to the provisions of the Gas (Theft Control and Recovery) Act, 2016. After dismissal of the application for leave to defend, the trial court did not strike off the defence of the appellants as provided by law. Instead, it proceeded to record ex parte evidence of the respondents, which was contrary to the prescribed procedure. If ex parte evidence was to be recorded, the appellants ought to have been afforded an opportunity to cross-examine the witnesses; denial of such opportunity is in clear contravention of the settled principles of natural justice. Reliance in this respect may be placed upon the dictum laid down by the Honourable Supreme Court of Pakistan in ***Police Department through***

Deputy Inspector General of Police and another v. Javid Israr and 7 others (1992 SCMR 1009), wherein it was held that: *"In the absence of any clear provisions in the Code of Civil Procedure prohibiting the appearance and taking part in the proceedings by the defendant, proceeded ex parte there can be no legal bar to allow him to defend his rights. It is the right of every defendant and also the principle of natural justice, to be given a chance of hearing before any order is passed against his interest. The rules of procedure are meant to advance justice and preserve rights of litigants and they are not to be interpreted in a way as to hamper the administration of justice. As such, in the absence of any clear prohibition in the scheme of civil procedure denying the defendant of his right to take part at any stage of the proceedings after the order of ex parte proceedings, he can appear and defend the suit if somehow his application for setting aside the ex parte proceedings does not succeed on account of his failure to show good cause for his previous non-appearance. It is, therefore, held that the defendant who had been proceeded against ex parte can take part in the subsequent proceedings as of right"*. Reference may also be made to the case of ***Muhammad Yousuf Bhindi and others v. Messrs A.G.E. & Sons (Pvt.) Ltd. and others (PLD 2024 SC 864)***, wherein the Honourable Supreme Court of Pakistan was pleased to observe that: *"It is also well settled that even if the proceedings are ordered ex parte the defendant may join proceedings at any subsequent stage and file an appropriate application for setting aside ex-parte order with good cause. A person nevertheless declared ex parte, continues as party to the proceedings and even can cross-examine the witnesses. If good cause is shown to the satisfaction of the Court to justify his previous absenteeism, the ex parte proceedings may be set aside by the Court and the defendant may then be restored to the position he held on the date when he was proceeded against ex parte. This rule invests the court with the wide-ranging potential discretion to allow the application if the defendant who was declared ex parte assigns good cause for previous absence"*. *Emphasis supplied.*

9. From the foregoing analysis, it clearly emerges that the impugned judgment and decree stand vitiated on multiple grounds. Firstly, the trial Court assumed jurisdiction by entertaining an 'F.C. Suit,' which is wholly inconsistent with the statutory scheme of the Gas (Theft Control and Recovery) Act, 2016. Secondly, there was non-compliance with the mandatory provisions of Section 6(4) of the Act regarding service of summons, which goes to the root of jurisdiction. Thirdly, the appellants' application for leave to defend, though filed within statutory time, was dismissed without proper consideration of Section 7(2) of the Act, thereby depriving them of their right to contest the claim. Fourthly, the trial court conflated "ex parte" with "debarment" and recorded evidence without affording the appellants an opportunity of cross-examination, which is contrary to the principles of natural justice and settled law. Lastly, the trial court unilaterally determined the gas tariff at Rs.15/- per unit without any technical evidence or expert opinion, despite the fact that tariff determination lies within the exclusive domain of OGRA and the utility company. The cumulative effect of the above findings demonstrates that the impugned judgment and decree suffer from illegality, material irregularity, and perversity, resulting in miscarriage of justice.

10. For the reasons discussed above, the present Misc. Appeal is allowed. Consequently, the impugned judgment dated 19.04.2023 and decree dated 26.04.2023 passed by the learned District Judge/Gas Utility Court, Badin in F.C. Suit No.01 of 2022 are hereby set aside. The matter is remanded to the learned Trial Court for a fresh decision strictly in accordance with law. In doing so, the trial court shall:

- Afford both parties full opportunity to file pleadings, lead evidence, and advance arguments;

- Decide the matter expeditiously, preferably within four months from the date of receipt of this judgment.

It is further directed that while deciding the case afresh, the learned trial court shall not be influenced by any observation made herein and shall adjudicate the matter independently on its own merits. The parties are left to bear their own costs.

JUDGE

Ahmed/Pa,