

**IN THE HIGH COURT OF SINDH, KARACHI**

Suit No. 1410 of 2013

Toyoshima &amp; Co. Limited

Versus

Shadman Cotton Mills Limited

Date of hearing : 30.03.2016  
Dated of Order : 30.03.2016

Plaintiff : Through Mr. Yousuf Ali Sayeed,  
Advocate.

Defendant : Through Mr. Muhammad Imran Malik,  
Advocate along with Mr. Masood Anwar  
Ausaf, Muhammad Ramzan and  
Ms. Munawara Badar, Advocates

**ORDER**

**Muhammad Faisal Kamal Alam, J:** Heard learned counsel for both the parties on the issue of territorial jurisdiction. Since this issue goes to the very root of the case, therefore, Mr. Muhammad Imran Malik, learned counsel representing the Defendant addressed his arguments and submitted that even the notices issued by the International Cotton Association Limited/Arbitration Tribunal at United Kingdom about the arbitration proceedings, at the Lahore address of the Defendant Company, viz. Shadman Cotton Mills Limited, A-401, 4<sup>th</sup> Floor, City Tower, main Boulevard, Gulberg, Lahore, Pakistan. He has referred various documents of the case file, filed with the Plaintiff to substantiate his arguments. The second segment of his argument was that when the instant cause was filed in this Court, even the process server report is evident of this fact that the office of Defendant Company was shifted to Lahore. It was next argued by Mr. Muhammad Imran, Advocate that Section 20 of the Code of Civil Procedure, 1908,

clearly mentions the conditions that in which Court a suit against a Defendant can be filed and the learned counsel has laid much emphasis on the words, “at the time of the commencement of the Suit”, as mentioned in Section 20 of the Code of Civil Procedure, 1908, (CPC).

1. Learned counsel for the Plaintiff has relied upon the following case law to augment his arguments\_

- (i). PLD 2008 Karachi Page-536 (relevant page-539)
- (ii). PLD 2002 Page-204 (relevant Page-208)
- (iii). 2002 MLD Page-1783 (relevant Page-1788)
- (iv). 2010 MLD Page-1015
- (v). 2011 CLC Page-294
- (vi). 1992 SCMR Page-1174
- (vii). 2007 SCMR Page-852
- (viii). 2008 CLC Page-852.

2. The gist of the afore referred case law is that the issue of territorial jurisdiction should be decided first. Consequently, I also intend to decide this question of territorial jurisdiction first before proceeding further in the matter.

3. The above case law specially the one handed down by the Hon’ble Supreme Court; 1992 SCMR Page-1174 has ruled, inter alia, that suit should be filed in that Court where a principal office or at least a sub-ordinate office of Corporation is located, against which an action is to be filed. At Page-1177, the Hon’ble Supreme Court while expounding Section 20 of the Code of Civil Procedure, 1908, in the light of the facts of the case, in which the successors in interest of Defendant Company had principal

office at Karachi and the contract was also negotiated at Karachi, has held, that the Courts at Karachi has jurisdiction to try the suit. As per learned counsel for Defendant, since presently the Defendant has neither any office in Karachi nor carrying out any business activity within the local jurisdiction of this Court, therefore, if at all, for the sake of arguments and without conceding to the case of Plaintiff, a proceeding of the nature is to be filed, the same should have been filed in the Lahore High Court and not in this Court.

4. Mr. Muhammad Imran, Advocate, has further addressed the Court that since no assets of Defendant is now in Karachi, therefore, any order / decree if passed, may not be executable. Learned counsel for the Defendant further argued that in terms of Sections 451 and 452 of the Companies Ordinance, 1984, the Plaintiff admittedly being a Foreign Company cannot maintain the instant suit, since it is not registered with Securities and Exchange Commission of Pakistan (SECP). In this regard, he has cited a Judgment reported in 2003 CLD Page-211 [(Messrs Aeroflot Russian International Airlines through Manager Versus Messrs Gerry's International (Private) Ltd)], handed down by a learned Division Bench of this Court, in which the finding of the learned Single Bench that the suit of the Appellant (which was originally the Plaintiff and a foreign corporate entity), held to be not maintainable, was not reversed by the Appellate Court. However, the Appeal was allowed on the ground that the Appellant subsequently fulfilled the requirements of Sections 451 and 452 of the Companies Ordinance, 1984, for maintaining the action within the jurisdiction of Pakistani Courts.

5. Mr. Yousuf Ali Sayeed, learned counsel representing the Plaintiff, while first controverting the above submissions has

invited the Court's attention to the presentment date of the Plaintiff, which is 08.11.2013. He then referred to his Statement dated 09.09.2014, where under, he has brought official documents of Defendant Company on record. The first document is a Management Notice of Annual General Meeting dated 8<sup>th</sup> November, 2013, that is, the same date on which the present case was presented. The next document is the Director's Report of December, 5<sup>th</sup>, 2013 and the last document is the Half Yearly Report containing another Director Report of February, 27, 2014 by Mr. Shahid Mazhar, the Chief Executive, who has filed the present pleadings / Written Statement on behalf of Defendant. In all these documents, the registered office of the Defendant's Company is shown to be situated in Karachi, though in the first two documents the registered Office address is mentioned as 201-202, Commerce Centre, Hasrat Mohani Road, Karachi-Pakistan, and in the last document, the same has been mentioned as 58, Al-Hamra Cooperative Housing Society, Block 7/8, Tipu Sultan Road, Off: Shaheed-e-Millat Road, Karachi-Pakistan. Even the last Director Report (of February 27, 2014) has been issued from Karachi. The Plaintiff counsel has next produced two documents, first one is the application by Defendant Company, which is of April, 27<sup>th</sup> 2015 to Karachi Stock Exchange, inter alia, informing them that the registered Office of the Defendant Company has been changed from Karachi to Lahore with effect from 13.02.2015. The second document is the order of Securities and Exchange Commission of Pakistan (SECP) dated 13<sup>th</sup> February, 2015, where under, the Defendant has been given permission to change their registered office from Karachi to Lahore. Interestingly, even in the above Application (of 27.04.2015), the address of the Defendant has been mentioned as "Room No. A 801-804, 8<sup>th</sup> Floor, Lakson

Square Building No.3, Sarwar Shaheed Road, Karachi-Pakistan.”

Both these documents are taken on record and marked as Appendix “I” and “I/1”

6. Mr. Yousuf Ali Sayeed, learned counsel while rebutting the issue of non-maintainability of the proceedings in terms of Sections 451 and 452 of the Companies Ordinance, 1984, has cited a judicial precedent of the Hon’ble Supreme Court and reported as 2001 SCMR Page-1877 (China Annang Construction Corporation through Project Manager Versus K.A. Construction Co. through Attorney), wherein their lordships have discussed in detail the above provisions and has held that those provisions of the Companies Ordinance, 1984, will be applicable only if a foreign company / entity establishes itself in Pakistan for doing business. It was further held that since the Appellant Company (in the cited case) did not establish itself in Pakistan, thus its case did not fall within the mischief of the above provision and consequently the findings of the High Court were set aside. The above pronouncement clarifies that a foreign company is not barred from seeking legal remedies by filing proceeding of the nature. It would be advantageous to reproduce the relevant portion of the above decision:

**“10. The argument when examined in relation to the provisions of sections 451, 452 and 456 of the Companies Ordinance is found to be of considerable force. It may be mentioned here that a Foreign Company has not been bound down by any provisions of the Companies Ordinance to establish in Pakistan a place of business. It is only when such a company decides to establish place of business in Pakistan that it is required to comply with the provisions of sections 451 and 452 of the Companies Ordinance, 1984 and submit**

***documents mentioned therein to the Registrar failing which it would incur the disability to file any legal proceedings by way of suit or take a defence by way of counter-claim in respect of any contract executed by it. There is nothing on the record that the appellant-corporation within the contemplation of the meaning of the expression “established” as discussed above had established place of business in Pakistan, therefore, its case did not fall within the mischief of these provisions as such it was not debarred from seeking legal remedies by filing suit and taking plea in defence of counter-claim, as such, the findings of the High Court are not sustainable.***

7. Addressing further the point of territorial jurisdiction, the Plaintiff’s counsel has placed reliance on a case law-2004 CLD Page-1023 (Cogetex S.A., A Company duly incorporated under the laws of Switzerland Versus Mayfair Spinning Mills Limited, A public limited Company incorporated under the Pakistan Companies Ordinance, 1984), which is the judgment of this Court, wherein, after discussing various aspects of the case vis-à-vis enforcement of an international Arbitral Award under the erstwhile statute (Protocol and Convention) Act (VI of 1937), it was held that the suit against the Defendant was maintainable, inter alia, as its registered Office was in Karachi.

8. Mr. Muhammad Imran Malik, learned counsel for Defendant in rebuttal has also placed on record a relevant page from Profile of Defendant Company, showing its registered Office at Lahore, that is, 2-E, Block-G, Mushtaque Ahmed Gurmani Road, Gulberg-2, Lahore, Pakistan; same is the address for its Head Office also. Learned counsel for Defendant has strenuously argues that this latest documentary evidence substantiate his submissions that at present the Defendant Company does not

exist in Karachi and hence, this Court lacks territorial jurisdiction in the matter. This document is also taken on record and has been marked as Appendix-I/2.

9. From the above un-rebutted documentary evidence as well as case law, one thing is abundantly clear that when the instant proceedings was filed / commenced, the registered Office of Defendant was situated in Karachi, therefore, it satisfies the conditions mentioned in Section 20 of the Code of Civil Procedure, 1908, and as laid down by the Hon'ble Supreme Court in its afore referred decision. Consequently, I hold only for the purposes of territorial jurisdiction that the instant proceedings is maintainable in this Court and any objection with regard to territorial jurisdiction as stated herein above is misconceived and merits dismissal.

Adjourned.

**JUDGE**

