



between January 2008 and July 2016, which amount is said to have been paid in full. It is submitted that despite such full payment, a bill was nonetheless issued on 06.08.2016 (Annexure "E" to the Plaintiff), reflecting a previous balance of Rs. 5,88,03,393/- and requiring payment of a total amount of Rs.6,51,85,770/- within the specified due date. He submits that consequently a legal notice of the same date (i.e. 06.08.2016) was issued to the Defendant No. 1 at the behest of the Plaintiff, which was received by the Defendant No.1 the very next day, as shown by the stamp on the face of the receiving copy that has been filed with the Plaintiff. He submits further that no reply was forthcoming from the Defendant No.1, and, instead, a bill for Rs.627,149/- (Annexure "D" to the Plaintiff) was issued on 19.08.2016, which he states was also paid in full.

Thereafter, as per the submissions of Plaintiff's counsel, on 06.09.2016 the Defendant No. 1 nonetheless proceeded to issue yet another bill which has been filed as Annexure "G" to the Plaintiff, wherein a previous balance of Rs. 6,60,88,210/- and total payable amount of Rs. 6,99,74,690/- were shown. He submits that it is these bills issued on 06.08.2016 and 06.09.2016 (Annexures "E" and "G" to the Plaintiff) that have been impugned in terms of the present Suit, which was filed on 10.09.2016 and points out that on 22.09.2016 this Court was to please pass an ad-interim Order that the defendant was not to disconnect gas supply to the plaintiff subject to the payment of Rs. 15,00,000/- and submission of title documents of the CNG Station as security of the amount remain outstanding. He submits that notwithstanding this order the functionaries of the Defendant No. 1 disconnected the supply of gas to the Plaintiff's CNG Filling Station on the very same day, due to which he has filed an Application for initiation of contempt proceedings as well as a further Application whereby he has prayed that gas supply be restored.

Learned counsel for the defendant No. 1 has denied the veracity of the arguments on behalf of the Plaintiff and submits that the majority of the bills filed by the plaintiff as Annexures "D-1" to "D-120" are in fact not a regular monthly bills, and instead are bills on account of recovery of GST or on account of part payments made by the Plaintiff from time to time towards settlement of the previous balance that was outstanding. He states that the Defendant No.1 supplied the Plaintiff with gas pursuant to

and in terms of a Contract for the Supply of Gas for Industrial Use, which he states is available as Annexure D-22" to the counter-affidavit to CMA 13051/16, and the monthly consumption of gas at the CNG Filling Station routinely ran into millions of rupees, payment of which was staggered at the customer's request, and part payments were permitted provided that the same were made in a timely manner and the total liability outstanding from time to time did not escalate beyond limit.

Learned counsel for the Defendant No.1 submits that only one regular bill is issued for each billing month, and, with reference to Annexure "D-120" to the Plaintiff, has submitted that the multiple payments shown in respect of calendar months are on account of part payments and do not serve to establish the absence of outstanding liability on the part of the Plaintiff. Learned counsel has invited attention to copies of certain bills filed by as Annexure "D-55", "D/55-A", and "D-56" to the Plaintiff, and submits that, along with Annexures "E" and "G" to the Plaintiff, these are some of the regular monthly bills. He has distinguished these regular monthly bills in form and substance from the other bills, which according to him relate to part payments or recovery of GST. Learned counsel points out that there are visible differences between the bills identified by him as regular monthly bills and those bills, such as Annexures "D-1", "D-2", "D-3", "D-4" and "D-7", etc, which according to him are on account of part payment or Annexure "D" and "D-5" etc, which are said to be on account of recovery of GST. He points out with reference to these specifically identified bills that whilst the regular monthly bills contain certain material particulars on account of consumption as well as the payment history and meter reading and quantity, these particulars are not present in the bills pertaining to part payment or those that relate merely to recovery of GST. He states that it is evident from the regular monthly bills that a previous balance has remained outstanding, as is reflected therein, and submits that the Plaintiff has made material representations of settlement in full on the basis of the bills relating part payment. He states further that, in fact, a substantial amount by way of previous balance remains outstanding, as reflected in the regular monthly bills, including the Annexures "E" and "G" to the Plaintiff which have been impugned in terms of the present Suit.

Learned counsel for the Defendant No.1 has also referred to the documents filed along with the Defendant No.1's counter-affidavit and submits that in light of these it is apparent that material misstatement have also been made by the Plaintiff as to the status of the CNG Station in as much as the same is not a sole proprietorship but is the business of a partnership firm, of which the Plaintiff is a partner, and that the other partners have disavowed the actions of the Plaintiff. He further submits that it is also apparent from the documents filed with the counter-affidavit that the supply of gas to the subject CNG Station have been disconnected on previous occasions and despite reconnection having been made following an acknowledgment of liability and undertaking of payment, various cheques that were issued from the account maintained under the account title of "Mehtar CNG Station" have nonetheless been dishonored on presentment.

From the respective contentions of the learned counsels of the learned counsels of the Plaintiff and the Defendant No.1 as well as perusal of the material on record referred to by them, it appears that whilst a certain element of doubt is cast on the narrative presented on behalf of the Plaintiff and his bona fides are thereby brought into doubt, the dispute inter se these contesting parties can only be effectively resolved once the issue of the Plaintiff's billing history is adjudicated on the basis of such evidence as may be led by the parties, including on the aspect of the quantum of the regular monthly bills and the actual payments that have been made. I am also cognizant of the ad-interim Order passed on 22.09.2012 and am of the view that, in the meanwhile, whilst moving forward in the matter it would nonetheless be just and proper in view of the balance of convenience and the prospect of loss that would be occasioned due to continued closure of the said CNG Station that the competing interests of the parties be balanced through the restoration of gas supply, provided equally that the position of the Defendant No.1 vis-a-vis the amount being claimed from the Plaintiff is adequately secured, as was envisaged in the said Order. In response to a specific query posed by me in Court during the course of arguments, learned counsel for the Defendant No.1 has candidly conceded that the said Defendant would be amenable to restoration of supply subject to provision of a bank guarantee to secure the amount of previous balance said to be

outstanding against the Plaintiff as well as payment of reconnection charges and an undertaking of payment of future dues. Learned counsel has also placed before me a judgment of the Honourable Supreme Court, reported at 2013 SCMR 478, as well as judgments of the Honourable Lahore and Peshawar High Courts, reported at 2007 YLR 217, 2012 YLR 1136 and PLD 2014 Peshawar 218, where similar interim arrangements by way of restoration or against disconnection have been put ordered on similar terms.

Learned counsel for the Plaintiff has submitted, however, that as the title documents of the CNG Station itself are not available for deposit, the Plaintiff has filed CMA 16278/16/2016 and desires to instead deposit the title documents of a commercial property bearing Plot No. 497-A, Jamshed Quarters, measuring 200 square yards. I am of the view that this would not serve to adequately safeguard the interests of the Defendant No.1 as such plot is not even the property of the Plaintiff and, even otherwise, it is unknown what competing claims/interests may exist in respect thereof. Furthermore, if such property is of adequate value and has been placed at the disposal of the Plaintiff to be furnished as security, it ought to then be possible for the Plaintiff to arrange a bank guarantee against the collateral of such property, if required.

Therefore, for the reasons stated herein above, it was ordered by me in Court on the date of hearing that the supply of gas to the CNG station of the Plaintiff be restored by the Defendant No.1, subject to:

- (a) the furnishing of an irrevocable bank guarantee for an amount equivalent to that shown as payable in Annexure-G to the Plaint (i.e. Rs.69,974,690/-),
- (b) payment of the applicable reconnection charges, if any, and
- (c) settlement by the Plaintiff, henceforth, of all current dues on account of supply of gas against the regular monthly bills issued by the Defendant No.1.

Furthermore, it was Ordered that the gas meter which was fitted at the CNG station, and which as per the contention of learned counsel of the

Plaintiff was removed by the functionaries of the Defendant No.1 at the time of disconnection, will be refitted/replaced as a corollary to reconnection and restoration of supply.

CMA 13051/16 and CMA 13511/16 were accordingly disposed of in the foregoing terms.

JUDGE