

IN THE HIGH COURT OF SINDH AT KARACHI  
C. P No.D-4089/2017

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DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)  
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**Before: Mr. Justice Irfan Saadat Khan  
& Mr. Justice Nazar Akbar**

Petitioners No.1&2 : Through Mr. Khalid Mehmood  
Siddiqui, Advcoate

Respondent Nos.1 : Through M/s. Moiz Ahmed &  
Rizwan Saeed, advocates.

Respondent No.2 : Nemo.

Respondent Nos. 3. : Ms. Naheed Parveen D.A.G

Date of hearing : 12.10.2017

Decided on : 24.10.2017

**ORDER**

**Nazar Akbar, J.** The petitioners through the instant petition have sought the following relief(s):-

- a) *Direct the Respondent No.1 to transfer the Plot in the name of Petitioner No.2.*
- b) *Refund the amount of Rs.175,518/- unfairly received by the KPT for change the name, though no such change is involved.*
- c) *Award any other relief which this Hon'ble Court may deem appropriate under the facts and circumstances of the case.*
- d) *Award costs and special costs.*

2. The brief facts of the case are that Respondent No.2 a private limited company was tenant / held lease of the premises bearing Plot No.65/1, Oil Installation areas, Kemari, Karachi admeasuring 4179 sq. Meters (the said plot) owned by Respondent No.1 (KPT) Petitioner No.1 had entered into some agreement of sale about the said plot with Respondent No.2 and since the agreement had arbitration clause, Petitioner No.1 on

difference with Respondent No.2 filed an **Arbitration Suit** No.1645/2013 before this Court under **Section 20** of the Arbitration Act, 1940 seeking directions by the Court to Respondent No.2 to file **Arbitration agreement** in Court. After two years in 2015 Petitioner No.1 filed an application under Order XXIII Rule 3 CPC and got the said Arbitration suit disposed of in terms of the compromise application.

3. The Board of Respondent No.1 by letter dated **03.10.2016** informed petitioner No.1 that the Board has restored/renewed/lease for 25 years in their name with effect from **15.8.2008** to **14.8.2033**. Then by a letter dated **14.11.2016** Petitioner No.2 informed Respondent No.1 that name of **Agro Trade (Pvt) Ltd.**, (Petitioner No.1) has been changed as **Agro Trade** (Petitioner No.2) and requested to change name of company as AGRO TRADE in the record of respondent No.1. In order to accede request of Petitioner No.2 Respondent No.1 requested them to provide information of the previous and existing company to appreciate that how the “change of name” of a duly incorporated company could be changed to a non-listed company for transfer of lease hold right in the property of a company. Respondent No.1 had simply demanded a clarification since petitioner No.1 and Petitioner No.2 for all legal intent and purpose are two separate legal entities, one is registered with SECP and the other is only Association of persons (AOP) meaning thereby it is not a limited company. The petitioners instead of fulfilling the requirement of Respondent No.1 has approached this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 for seeking direction to Respondent No.1 to transfer lease hold rights of petitioner No.1 to petitioner No.2.

4. We have examined the records filed by the petitioner and as well as para-wise comments of respondent No.1 and heard both the counsel.

5. The petitioners have not alleged breach of any statutory rules by respondent No.1. It is not even alleged that the respondent No.1 has acted in an illegal and unlawful manner in breach of any statutory duty by asking the petitioners to verify their status. Till date Respondent No.1 has not acted in any manner which could be termed as “not doing anything which otherwise respondent No.1 was required under the statutory rules to do (Article 199 (1)(a)(d) of the constitution). Constitutional jurisdiction of High Court cannot be invoked merely because the respondent is established under Karachi Port Trust Act, 1882. The petitioner while invoking constitution jurisdiction of High Court under Article 199 of the constitution is first required to identify which of the fundamental rights conferred by chapter-1 of part-II is sought to be enforced.

**199. Jurisdiction of High Court:-**(1) Subject to the Constitution, a High Court may, if it is satisfied that no other ‘adequate remedy is provided by law:-

(a) on the application of any aggrieved party, make an order;

(i) **directing a person** performing, within the territorial jurisdiction of the Court, by a person performing functions in connection with the affairs of the Federation, a Province **or a local authority**, to refrain from doing anything he is not permitted by law to do, **or to do anything he is required by law to do**; or

(ii) . . . . .

(b) . . . . .

(i) . . . . .

(ii) . . . . .

(c) on the Application of any aggrieved person, make an order giving such directions to

any person or authority, including any Government exercising any power or performing any function in, or in relation to, any territory within the Jurisdiction of that court as may be appropriate **for the enforcement of any of the Fundamental Rights conferred by Chapter-1 of Part-II.**

The petitioner in support of prayer clause (a) whereby direction is sought for Respondent No.1 to transfer the suit plot in the name of petitioner No.2, has not even alleged any illegality on the part of respondent No.1. It is not even claimed by the petitioners that such failure tantamount to denial of “any of the Fundamental Rights conferred by Chapter-1 of Part-II” by Respondent No.1. Similarly the prayer clause (b) whereby petitioners have claimed that an amount of Rs.175.518/- has been unfairly received by the KPT is also a question of fact. It definitely requires evidence and even otherwise constitutional jurisdiction cannot be invoked for refund of money paid by a private person to an institution or corporation. Learned counsel for the petitioner has not disclosed under what circumstances such an amount, if at all it was paid, it is liable to be refunded.

6. It appears to be a case of factual controversy whether the petitioners No.1 & 2 are two different entities or it is simply a change of name of petitioner No.1 (Private Limited Company) to the name of petitioner No.2 as claimed by the petitioners in their letter dated **14.1.2016** (annexure J/1). The petitioners have made a false assertion in their letter dated **14.1.2016** and have repeatedly attempted to abuse the process of Court to get leasehold right of suit plot transferred from one legal and juristic person to the name of another legal entity by falsely claiming that name of petitioner No.1 is changed to the name of petitioner No.2. In the first letter dated **10.4.2016 (annexure-B)** an impression

has been given that as per orders of Hon'ble High Court the petitioners have entered into an agreement for transfer of lease for another 25 years in the name of Agro Trade. The perusal of annexure A, B and C shows that High Court was not seized of any dispute for adjudication between petitioner No.1 and respondent No.2 for any judicial order / decision. Suit No.1645/2013 before High Court was an **Arbitration** application under **Section 20** of the Arbitration Act, 1940. It was Arbitration suit simply to refer the matter to the Arbitrator as the prayer in the said suit was as follow:-

- (a) To also direct the defendants to file the Arbitration Agreement in Court and to **refer the matter to Arbitration.**
- (b) To grant an injunction prohibiting the defendants from selling / transferring / assigning / renting sub-leasing or creating any third party rights, lien or interest or in any manner, changing the present status of the Plot No.65/1, Oil Installation Area, Keemari admeasuring 4179 square meters, till final disposal of the matter.

7. The petitioner has tried to influence respondent No.1 by falsely claiming his compromise with respondent No.2 as order of Court. He got the arbitration suit disposed of by misrepresentation. It was indeed misrepresentation before a single bench when an application for compromise was filed in arbitration suit under **Section 20** of the Arbitration Act, 1940. Once the differences were resolved outside the Court, suit No.1645/2013 for referring the matter to Arbitrator had become infructuous. However, instead of informing the Court that the suit has become infructuous, petitioner No.1 by misguiding the Court obtained a decree of Compromise as if it was a regular suit. Had it been brought to the notice of the Court that Suit No.1645/2013 was an Arbitration suit under **Section 20** of the Arbitration Act,

1940, the Court could have dismissed the suit without taking compromise on record. It is well settled law that suit under **Section 20** of the Arbitration is not a regular suit and Civil Court have no power to adjudicate on the issues between the parties when the court is seized of their application under **Section 20** of the Arbitration Act, 1940. In this context one may refer to the case law reported as Pakistan International Bulk Terminal Ltd., through Chief Finance Officer and other ..Vs.. Maqbool Asscoaites (Pvt.) Ltd., through Managing Director and others (**2014 CLD 773**) and relevant para-18 and 19 are reproduced.

18. *To appreciate the nature of proceedings and limited powers of a Court seized of an arbitration suit under section 20 of the Act, 1940 as distinct and different from the powers of civil court dealing with regular civil suit under section 9 of Civil Procedure Code, 1908, one may refer, to being with, to the case of Mohamed Abdul Latif Faruqi v. Nisar Ahmed and another reported in **PLD 1959 (W.P) Karachi 465**. In this case Mr. Justice Qadeeruddin Ahmed. (as he then was) while dealing with the question of limitation for filing an (suit) application under Section 20 of the Arbitration Act, 1940 has observed as under:-*

*“Before deciding what relief may be granted, I have to dispose of the last objection. Counsel for the defendant has brought to my notice no provision of law under which this “suit” can be said to be time-bared. This is a suit for purposes of number and registering it as such and therefore also for purposes of the comparatively more elaborate procedure which may be followed in it but it is not a suit for purposes of the Limitation Act. “Suit” is defined negatively in clause (10) of section 2 of the Act, but the expression “suit is otherwise clear as pointed by the Privy Council in Hansraj Gupta and others v. Official Liquidators of Dehradun (reported in ILR 54 All. 1067), that unless there be something to the contrary in the context it means a Civil proceeding instituted by the presentation of a plaint. An application made under section 20 of the Arbitration Act, 1940, is not a suit when it is presented and therefore no period of time, as is computable under section 3 of the Limitation Act for presentation of plaints can be applicable to it. The present suit thus is not time barred as a suit.”*

19. *This Court while relying upon the dictum laid down in **PLD 1959 (W.P) Karachi 465** and on other case-law on the same proposition time and again held that the*

*scope of the power conferred on the court under section 20 is merely limited to determination of the factum of a real dispute and no more as held by his lordship Mr. Justice Zafar Hussain Mirza in the case of Jamia Industries Limited v. Pakistan Refined Ltd. (PLD 1976 Karachi 644). Then in China Harbour Engineering Co. v. Water and Power Development Authority and others (2001 YLR 1781) it was held that “the proceeding sunder section 20 of the Act, 1940 is to be treated as a civil suit vide subsection (2) of section 20. It is not a full fledged civil suit in strict sense, it is legal proceedings with limited scope.” Similar views have been expressed in Manzoor Construction Co. Ltd v. University of Engineering and Technology, Taxila (1984 CLC 3347) and Messrs Time N Vision International (Pvt.) Ltd. v. Dubai Islamic Bank (PLD 2007 Karachi 278).*

8. In view of settled law quoted in para-19 reproduced above, the compromise filed in the suit No.1645/2013 was not without ulterior motive of using it as Court decree to influence respondent No.1 who was not even party to the said Arbitration suit. Petitioner No.2 in letter dated **20.12.2016** (para-2, para-6 of annexure-M) by referring to the orders dated **09.4.2015** in Suit No.1645/2013 has again attempted to unduly coerce Respondent No.1 by giving an impression that the High Court had ordered that the settlement may be made rule of Court (para-2) and that **“there is no such restriction in the Court order and the transfer in the name of Agro Trade is strictly in accordance with Court order”** (para-6). Though neither there was any Court order nor the Court orders were at all relevant.

9. Learned counsel for the petitioner has conceded before the Court that there was no Court order for respondent No.1. He also admitted that the two petitioners are two different legal entities. Even otherwise, the last page of petition carries two separate and different round seals. One of limited company and the other of a business “Associated Concern” being an Association of Persons (AOP). In presence of two juristic persons before the Court and

above discussed facts it is established beyond doubts that letter dated **14.11.2016** (annexure J/1) on the subject of request for change of name was a false statement of petitioner No.2 to respondent No.1 to obtain financial gain by both the petitioners and causing financial loss to respondent No.1. The petitioners willfully and with ulterior motive to earn financial benefit has attempted to misuse fraudulently obtained compromise decree and on their failure to get their motive served, they have invoked constitutional jurisdiction to obtain order of this Court for transfer of the suit plot from the name of petitioner No.1 to the name of petitioner No.2 as if it was their fundamental right.

10. In view of above facts and discussion, we are of the considered opinion that the petitioner have attempted to abuse the constitutional authority of this Court to coerce respondent No.1 to fulfill frivolous demand of petitioners. However, while dismissing this petition we must warn the petitioners to be very careful in future and any other attempt to misuse the process of Court by the petitioner would land them in serious problem. The petition is dismissed.

JUDGE

JUDGE

Karachi.  
Dated:24.10.2017

SM