

Order Sheet

IN THE HIGH COURT OF SINDH, KARACHI

Suit No. 2711/2016

Date	Order with signature of Judge
------	-------------------------------

FOR HEARING OF CMA 5487/2018

Date of Hg:
07.05.2018

Mr. Afaque Yousuf, Advocate for the Plaintiff.
Mr. Mustafa Lakhani, Advocate for Defendants.

ARSHAD HUSSAIN KHAN, J:- Through this application [CMA 5487/2018] under Order VII Rule 11 CPC read with Section 151 CPC., Defendants No. 1 & 2, seek rejection of plaint of the instant suit.

2. Relevant facts for deciding the instant application are that the plaintiff filed the present suit with the following prayers:-

- A) To direct the defendants No.1 & 2 to pay an amount of UAE Durham 7,00,000/- to the Plaintiff jointly or severally, which is outstanding against them in respect of salary and other benefits.
- B) To direct the defendant No.3, to ensure the recovery of the outstanding amount of 7,00,000/- UAE Durham of the Plaintiff from Defendants 1 & 2 and to take necessary actions and steps in this regard.
- C) Cost of the suit.

3. The case of the Plaintiff as stated in the plaint is that he was an employee of Defendant No.1 and was posted at Saif Zone, Sharjah, UAE, as Defendants 1 & 2 appointed him and offered basic monthly salary of 5000/- UAE Durham along with other allowances as per UAE Laws. However, the aforesaid two Defendants did not provide VISA to the Plaintiff and compelled him to purchase VISA from another company and as such due to compelling circumstances, the plaintiff obtained VISA from another company i.e. International Photo Supplies Corporation and after two years the said company pressurized the Plaintiff for cancellation of VISA as such the Plaintiff intimated Defendants 1 & 2, but they kept him on false hopes from one pretext to another and used delay tactics. It is stated that though the company

appointed him on monthly salary of 5000 UAE Dirhams but did not give the agreed monthly salary due to which the huge balance amount of salary is outstanding against the company. The Plaintiff, time and again, written letters to Defendants 1 & 3 but no fruitful result came out due to which he has received severe mental agony and discomfort. It is stated that the Plaintiff was facing starvation, he had no option except to return back to Pakistan and thereafter he intimated the high officials of the company and through his counsel sent two legal notices to defendants 1 & 2 dated 19.11.2012 and 16.1.2013 respectively but they did not respond the said legal notices to the Plaintiff, therefore, the plaintiff having no other alternate remedy except to approach this Court, filed the present suit.

4. The Defendants upon receiving summons and notices of the suit, filed the present application under Order VII Rule 11 CPC for rejection of the plaint on the grounds that (i) The suit is not maintainable before this Court, (ii) High Court has no territorial jurisdiction to entertain this Suit, (iii) No cause of action has been accrued to the Plaintiff against the Defendants, and (iv) The suit is time barred.

5. The plaintiff upon notice of the application filed his counter affidavit, wherein he has denied the allegations levelled in the affidavit in support of the listed application. It has been stated that application under order VII Rule 11 CPC is misconceived, the cause of action is apparent in the contents of the plaint and facts narrated therein; that the suit is within the time and the payment of Court fee was extended by this Court, therefore, the application is liable to be dismissed with compensatory costs.

6. Learned counsel for the Defendants during the course of arguments has reiterated the contents of application and affidavit in support thereof and prayed for rejection of the plaint of the suit. Learned counsel has contended that the present case is not maintainable before this Court as the plaintiff is claiming alleged salary and other benefits for which the Labour court is competent forum for redressal of such grievances. It is also contended that even otherwise, the claim of

the plaintiff is time barred inasmuch as the plaintiff has also failed to mention the alleged date on which the alleged cause of action, if any, for filing the present suit, accrued to the plaintiff. Further contended that this Court has no territorial jurisdiction to entertain the present suit as the plaintiff himself stated that cause of action accrued to the plaintiff at Sharjah U.A.E. It is also contended that plaintiff claims amount in UAE Dharams which cannot be allowed by this court. It is also contended that the present suit is not maintainable, its pendency and trial would have been merely an abuse of the process of the Court. Further contended that this Court can look into the averments contained in the plaint as well as its supporting documents for the purpose of deciding whether or not to reject the plaint under Order VII, Rule 11, C.P.C.

7. On the contrary, learned counsel for the plaintiff while reiterating the contents of the plaint has argued that the application is not maintainable in law and further for deciding the application, the Court has to look into the plaint only. He further contended that in the plaint the plaintiff has mentioned in detail the cause of action accrued to him for filing the present suit. Learned counsel while rebutting the arguments of defendants' counsel, submits that this Court has every jurisdiction to entertain and decide the present suit as, firstly, the defendants have not denied the claim of the plaintiff and further the defendants are carrying on their business in Pakistan as well, besides the plaintiff was offered job by the defendants in Pakistan. It is also argued that the suit is not time barred as after returning back to Pakistan the plaintiff continuously written letters to the defendants through himself as well as through defendant No.3, however, when the said efforts yielded no fruits the plaintiffs sent legal notices dated 19.12.2012 and 16.01.2013 to the defendants and subsequently, upon receiving no response of the same, filed the present suit. It is also argued that all the correspondences attached with the plaint substantiates the stance of the plaintiff. He has contended that the defendants have filed the present application just to protract the proceedings to disadvantage the plaintiff and as such the application is liable to be dismissed with compensatory cost.

8. I have heard the arguments of learned counsel for the parties, considered the material available on record.

9. The plaintiff filed the present suit, inter alia, against the Defendants for Recovery of his unpaid salaries and other benefits. Record reflects that defendant No.1 and 2 upon notice of the present case instead of filing written statement filed present application and seeks rejection of the plaint on several counts including jurisdiction of this court. As far as the plea of the defendant that this Court has no jurisdiction to entertain the present lis on two counts: Firstly, this Court has no jurisdiction to decide the issue of recovery of plaintiff's unpaid salaries and other benefits, if any, as the plaintiff for recovery of his salary and other benefits had to approach the Labour Court, which is the competent forum and not this Court, being a civil court, and as such present suit is not maintainable; Secondly, this Court has no territorial jurisdiction to entertain and decide the issue involved in the present case as the alleged cause of action accrued to the plaintiff in Sharjah UAE where he was employed and not in Pakistan.

10. For the purpose of civil jurisdiction, Section 9 of the CPC guide us, which reads as follows :-

“9. Courts to try all Civil Suits unless barred.— The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred or for which a general or special law is in force..

Explanation.— A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.”

[Emphasis supplied]

The right of the plaintiff to sue for recovery of amount towards his unpaid salary and other benefits, it is a civil right which could be enforced in the civil courts notwithstanding the fact that the dispute between parties are disputes, relating to the employee/worker of companies.

11. As regards the objection of territorial jurisdiction, Section 20 of CPC is the relevant provision which deal with the issue and it is

expedient to consider the legal effect of the said section which reads as under:-

“20. Other suits to be instituted where defendants reside or cause of action arises. --- Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction—

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

Explanation I.--- Where a person has a permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence.

Explanation II.--- A corporation shall be deemed to carry on business at its sole or principal office in Pakistan or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.”

In terms of Section 20 C.P.C, a suit may be filed in a Court within the local limits of which (a) the defendants are actually and voluntarily residing, carrying on business or personally working for gain at the time of commencement of the suit, or (b) any of the defendants, where there are more than one, actually or voluntarily resides, or carries on business or personally works for gain provided that in such cases leave of the Court is obtained or the defendants who are not within the Court's jurisdiction acquiesce or (c) where the cause of action wholly or partly arises. In the present case, the principal office of Swiss Specialty Chemicals (Pvt.) Limited (defendant No.1) is situated at Karachi and the defendants No.2 in the instant case reside and work for gain with defendant No.1 in Karachi, and whereas defendant No.3 is concerned, it also has existence in Karachi. Therefore, Section 20 C.P.C evidently apply to the facts of the present case. In the case of Nadeem Ghani v. United Bank Limited (2001 CLC 1904), this Court after examining

Section 20 C.P.C found to have jurisdiction to try the suit only because the Principal Office of United Bank Limited (defendant No.1) was situated in Karachi and the defendants Nos.2 and 3 in that case resided and worked for gain with defendant No.1 in Karachi, thus falling within the purview of Section 20 C.P.C. The fact that the Courts at Sharjah UAE may also have jurisdiction over the parties is not a valid reason to deny the jurisdiction of this Court. Reliance in this regard may be placed on the case cited as Dr. Raja Aamer Zaman Vs. Omar Ayub Khan and others (**2015 SCMR 1303**) in which this Court held that :-

“The Courts in Pakistan have always preferred a purposive rather than a literal interpretation of Statutory Instruments.”

In the present case, the defendant No.1 is a Pakistani based company, therefore, no useful purpose would be served by forcing the plaintiff to file recovery proceedings in Sharjah UAE. There can be no cavil with the fact that the Civil Courts at Karachi would have jurisdiction in this matter on the basis of the fact that the defendants are in Pakistan, despite the fact that the plaintiff was employed in the company of the defendant No.1 in Sharjah UAE or the cause of action took place outside Pakistan. It is a settled principle of private international law that the forum, which has the most real and substantial connection with the lis must exercise jurisdiction over it. When the plaintiff and the defendants are present in Pakistan then it is the courts in Pakistan which must assume jurisdiction. The primary consideration before the Court must be where the ends of justice in this case will be best served. The factors to consider in this regard are the convenience or expense and others, such as which law governs the relevant transactions, or the respective places of residence or business of the parties and finally where a decree would be most effective.

At this point, I would like to clarify that in the normal course of events the question of territorial jurisdiction would require the recording of evidence. In the case of Bank of Credits and Commerce and others v. Asrar Hassan and others (**2007 SCMR 852**) it is held:-

“...the High Court has rightly refrained from dilating on the question relating to the territorial jurisdiction and maintainability of the suit against the petitioners in Pakistan. This may be noted

that the question of fact or a mixed question of law and fact, cannot be effectively decided without recording the evidence and learned counsel for the petitioners has not been able to satisfy us that in the facts of the present case, the question relating to the jurisdiction of Courts in Pakistan to entertain the suit and adjudicate the claim of respondent against the petitioners is patently a question of law.”

12. With regard to objection that **no cause of has been accrued to the Plaintiff** is concerned, the perusal of the plaint of the present case reflects that the plaintiff has approached this court for recovery of his unpaid salaries and other benefits in respect thereof. The fact regarding employment of the plaintiff is not disputed by the defendants in the application. Furthermore, the plaintiff has specifically mentioned in the plaint that he was offered job by Defendant No.1, at Karachi and after his appointment he worked at Sharjah UAE where he was not paid complete salaries and other benefits, as agreed between the parties which forced the plaintiff to return back to Pakistan. After coming back to Pakistan he continuously written letters to defendants No.1 and 2 by himself as well as through defendant No.3, however, when the said efforts yielded no fruits the plaintiff sent legal notices dated 19.12.2012 and 16.01.2013 to the defendants and subsequently, upon receiving no response he has filed the suit present, which was presented on 08.04.2013, just after three months of sending last legal notice to the defendants, hence there arises no question that either no cause of action accrued to the plaintiff to file the present case or to mention/disclose cause of action in the plaint. It is also well-settled that where a cause of action is disclosed, the question as to whether the plaintiff will be able to prove it or not, is irrelevant for deciding an application for rejection of the plaint. In the present case facts agitated in the plaint cannot be decided without recording evidence.

13. Insofar as the objection regarding **limitation period** is concerned, again it is a mixed question of law and fact and can be decided after recording evidence and the right procedure and approach is to let the suit proceed to written statement and determine the matter either on framing preliminary issues or regular trial. It is well-settled that a plaint cannot be rejected in such cases without affording

opportunity to the parties to adduce evidence and without providing chance of hearing to them. This view expressed in the cases of Q.B.E. Insurance (International) Ltd. v. Jaffar Flour and Oil Mills Ltd. and others (**2008 SCMR 1037**), and Mst. Karim Bibi and others v. Zubair and others (**1993 SCMR 2039**).

14. It is also well settled that Order VII, Rule 11, C.P.C. edifies and expounds rejection of plaint if it appears from the statement made therein to be barred by any law or discloses no cause of action. The court is under obligation to must give a meaningful reading to the plaint. Even if the expression of the statement in the plaint is given a liberal meaning, documents filed with the plaint may be looked into with the aim of deciding whether the plaint discloses cause of action or not, the court has to observe the averments made in the plaint and the accompanying documents. The court has also to presume the facts stated in the plaint as correct and for the determination of any such application, court cannot look into the defence. Reliance in this regard can be placed in the case of Aroma Travel Services (Pvt.) Ltd., through Director and 4 others v. Faisal Al Abdullah Al Faisal Al-Saud and 20 others (**2017 YLR 1579**).

15. The upshot of the above is that the Defendants have failed to make out a case for grant of the instant application filed under Order VII, Rule 11 of C.P.C., which is hereby dismissed. The defendants are directed to file their written statements in the matter within four weeks' time.

Judge