

# IN THE HIGH COURT OF SINDH AT KARACHI

High Court Appeal No. 317 of 2018

**Present:**

Mr. Justice Irfan Saadat Khan  
Mr. Justice Adnan-ul-Karim Memon

Date of hearing: 05.10.2018

Appellant: Mussawar Ali through  
Mr. Aijaz Ali Bhutto, Advocate.

## **ORDER**

**ADNAN-UL-KARIM MEMON, J.** The Appellant impugned the Order dated 03.09.2018 passed by the learned Single Judge (Original Side) of this Court in Civil Suit No. NIL of 2018. (Re- Mussawar Ali vs. Province of Sindh & others) whereby suit filed by the Appellant was dismissed as not maintainable.

2. Brief facts of the case are that on 18.07.2018, Appellant filed Civil Suit No. Nil of 2018 with the following prayers:-

- 1) **To award the judgment and decree of declared by declaring that the action defendant No.2 and 3 is bad in the law, unlawful, illegal for which they are at all not competent to do so to grab the properties of innocent people in the name of providing job and collect money under the harbor and appreciation of their supervisory officials to provide jobs, on their names and have collected the amount of Rs. 1,02,00,000/- and declare that the plaintiff has sustained loss and damages by refunding and paying the amount to victims from his own pocket by selling his agricultural land as mentioned above and has sustained irreparable loss and damage and facing bankruptcy for which the defendant no. 2 to 3 are liable to be paid Rs. 1,02,00,000/- as Principle Amount which is also be declared to be recovered, whereas the amount of Rs, 2,00,00,000/- be declared to be paid as Damages by the defendant No. 03-04 and Rs. 200,00,000/- be declared paid by the supervisory officials of defendants/ official defendant as damages to the plaintiff.**
- b. **To award the judgment and Decree of specific performance of contract by directing the Respondent No. 3-4 to perform their contract Dated 31.01.2014 specifically and deposit the principle amount of Rs. 1,02,00,000/- and the amount of damages Rs. 2,00,00,000/- with the Nazir of this Honourable Court.**

- c. **To award the judgment and decree of Recovery of Rs. 1,02,00,000/- as and direct the defendant No. 03-04 to pay to plaintiff.**
- d. **To award the judgment decree of Damages Rs. 2,00,00,000/- be directed to pay by the defendant no. 03-04 in lieu of damages and caused loss and bankruptcy and Rs. 200,00,000/- to be directed to supervisory officials of defendants/ official defendants of Chief Minister Secretariat, to be paid to the plaintiff in lieu of loss, damage, bankruptcy to the plaintiff as the same blunder has been committed under the shadow of chief Minister Secretariat as per record provided by defendant no. 03-04, whereas the said entire amount be directed to be deposited with the Nazir of this Honorable Court.”**

3. The office of this Court (O.S) raised objection with regard to maintainability of the plaint/suit, and due to aforesaid objection, the office did not admit the plaint and marked it as Suit No. Nil of 2018 and the matter was placed before the learned Single Judge of this Court (O.S) for orders on office objection No.1. The learned Single Judge after hearing the learned counsel for the Appellant/Plaintiff dismissed the suit filed by the Appellant as not maintainable vide impugned order dated 03.09.2018 with the following observations:-

**“In view of such position, office objection is sustained and Suit stands dismissed as not maintainable along with pending applications, whereas, Plaintiff, if advised, may file an application for refund of the Court fee, which will be dealt with in accordance with law.”**

4. The Appellant claims that he paid certain amounts at various times to the Respondents 3 and 4 on behalf of different persons to secure Government jobs and appointment orders in their favour and in this regard an Agreement/Iqrarnama dated 31.01.2014 was executed between the parties.

5. Mr. Aijaz Ali Bhutto, learned counsel for the Appellant has contended that the appointment orders issued in favour of the beneficiaries were later on found fake thus the Respondents were called upon to explain their position either to ensure the appointment of the beneficiaries in Government service or refund the said amount to the Appellant but of no use, thus compelling the Appellant to institute a suit for Declaration, Specific performance of Contract, recovery and damages against them. Learned counsel emphasized that there was an Agreement duly signed by the Appellant and the Respondent No. 3 and 4 with regard to secure the aforesaid appointments in Government service on certain terms and conditions set-forth in the Agreement dated 31.01.2014, which needed to be enforced under the law; that the Respondents 3 and 4 recoiled from the Agreement/Iqrarnama and did not perform their duty as per the terms of the Agreement; that the learned Single Judge dismissed the suit of the Appellant on the basis of office objections regarding maintainability of the suit and failed to consider that appellant had a cause of action against the Respondents No.3 and 4 to institute the suit against them for recovery of the said amount and damages claimed by the Appellant: that the learned Single Judge has failed to appreciate that the appointment orders given to the beneficiaries were later on found to be fake for which the Respondents are liable to account for and cannot be absolved from their illegal actions; that the learned Single Judge erred in dismissing the suit of the Appellant on the office objections which were not sustainable; that the learned Single Judge has failed to appreciate that the suit

cannot be dismissed without recording evidence of the parties; that it was also ignored in the impugned judgment that the Respondent No. 3 and 4 were liable to pay / refund the admitted amounts of the Appellant under the Agreement; that the matter was required to be adjudicated by the learned Single Judge on merits rather than dismissal on technical grounds. Per learned Counsel the learned Single Judge in his findings in para No.2 of the Impugned Order erred in dismissing the suit without considering various aspects of the pleadings, which were sufficient to admit the plaint and to proceed the matter on merits; that the learned Single Judge in his conclusion held as under:-

**“I have heard the learned Counsel and perused the record. Perusal of the plaint reflects that the case as set up on behalf of the Plaintiff is to the effect that he paid various amounts to Defendants No. 3 & 4 on behalf of various persons to secure Government Jobs and Appointment orders. It is further stated that in certain cases appointment orders were issued but were found to be fake and on this Defendants were approached who have signed this Iqarnama. Learned counsel was confronted as to how specific performance is being sought of an agreement, which on the face of it, is a void agreement as it pertains to secure bribe and in turn offer Government Jobs and to this learned counsel has no satisfactory response except that the Plaintiff managed to arrange this money after selling his land and in fact has repaid the same to those whose jobs have been found to be fake. I am afraid this is no ground to justify maintainability of Suit in respect of an Agreement, which pertains to an illegal act, hence no specific performance can be ordered in such matters, which relief is otherwise discretionary and not binding on the Court.**

**In view of such position, office objection is sustained and Suit stands dismissed as not maintainable along with pending applications, whereas, Plaintiff, if advised, may file an application for refund of the Court fee, which will be dealt with in accordance with law.”**

He lastly prayed for setting aside the Impugned Order dated 03.09.2018 passed by the learned Single Judge of this Court hence the matter may be remanded to decide the lis between the parties on merits.

6. During the course of arguments, we put a query from the learned counsel of the Appellant that as to how the suit filed by the Appellant before the learned Single Judge of this court (O.S) was maintainable, in view of the void Agreement attached with the plaint? He in reply to the query has submitted that this is an admitted amount mentioned in the Agreement/Iqrarnama; therefore on the basis of this admission plaint was liable to be admitted and the matter needed to be preceded on merits. Be that as it may, we intend to decide this matter on merits.

7. We have heard learned counsel for Appellant and perused the material available on record.

8. We have gone through the Impugned Order dated 03.09.2018 passed by the learned Single Judge of this Court on Original Side. Firstly, we discuss the office objections with regard to maintainability of the Suit No. Nil of 2018 filed by the Appellant.

9. Upon perusal of Section 3 of the Limitation Act, it is provided that "**every suit instituted after the period of limitation prescribed thereof by the first schedule shall be dismissed, although limitation has not been set up as a defence**". Then, in explanation it is provided that "**a suit is instituted, in ordinary cases, when the plaint is presented to the proper officer**". Under Order IV, Rule 1, of the Code of Civil Procedure, it is provided that "**every suit shall be instituted by presenting a plaint to the Court or such officer as it appoints in this behalf**." Rule 2 of that Order provides that "**the Court shall cause**

***the particulars of every suit to be entered in a book to be kept for the purpose and called the register of civil suits. Such entries shall be numbered in every year according to the order in which the plaints are admitted***". Now in this case the plaint shows on face of it that the entire claim of the Appellant is based on a void Agreement/Iqrarnama and under the Sindh Chief Court Rules (OS) the office is competent to raise such objection regarding maintainability of the suit and place the same before the learned Single Judge (OS) for orders. Thus the objection raised by the learned counsel for the Appellant that office cannot entertain the objection is not sustainable under the law.

10. Foremost point involved in the present proceedings is with regard the powers of the court to either reject the plaint or dismiss the suit at any stage of the matter. To appreciate the aforesaid point of law, at this juncture it would be appropriate to carry out an analysis of Order VII Rule 11 of the Code of Civil Procedure 1908, the said provision is reproduced below:

- a) ***Where it does not disclose a cause of action;***
- b) ***Where the relief claimed is under-valued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;***
- c) ***Where the relief claimed is property valued; but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;***
- d) ***Where the suit appears from the statement in the plaint to be barred by any law***".

11. We have noticed that the Court is bound by the use of the mandatory word "**shall**" to reject a plaint if it "**appears**" from the statement in the plaint to be barred by any law. So the next

objection raised by the learned counsel on the aforesaid proposition is also not sustainable under the law.

12. We now need to examine the ground on the basis of which a Suit has been dismissed. We have examined the plaint and found that certain amount was agreed to be given to the private Respondents as per Agreement dated 31.01.2014 to procure Government job, which factum is disclosed in paragraph 2 and 3 of the plaint.

13. The vital questions that clinch the controversy in hand are as follows,

**(i) Whether the Appellant/plaintiff was entitled to enforce the agreement / contract dated 31.01.2014?**

**(ii) Whether the plaint of the Appellant/plaintiff is barred under the law and the suit of the Appellant is maintainable?**

14. Now, we dilate upon the aforesaid questions of law. We have noticed that under Section 21 of the Specific Relief Act, which provides that certain contracts cannot be specifically enforced. An excerpt of the same is reproduced below:-

21. **Contracts not specifically enforceable. The following contracts cannot be specifically enforced:-**

**(a) a contract for the non-performance of which compensation in money is an adequate relief;**

**(b) a contract which runs into such minute or numerous details or which is so dependent on the personal qualifications or violation of the parties, or otherwise from its nature is such, that the Court cannot enforce specific performance of its material terms;**

**(c) a contract the terms of which the Court cannot find with reasonable certainty;**

**(d) a contract which is in its nature revocable;**

**(e) a contract made by trustees either in excess of their powers or in breach of their trust;**

**(f) a contract made by or on behalf of a corporation or public company created for special purposes, or by the promoters of such company, which is in excess of its powers;**

**(g) a contract the performance of which involves the performance of a continuous duty extending over a longer period than three year from its date;**

**(f) a contract of which a material part of the subject-matter, supposed by both parties to exist, has before it has been made, ceased to exist.**

**And, save as provided by the {Arbitration Act, 1940}, no contract to refer {present or future differences} to arbitration shall be specifically enforced; {but if any person who has made such a contract} {other than an arbitration agreement to which the provision of the said Act apply} and has refused to perform it sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit.”**

15. It is noted that the Appellant approached this Court (Original Side) through Suit No. Nil of 2018 on 18.07.2018, which was objected by the office of this Court on the ground of maintainability of the suit and the same was upheld by the learned Single Judge of this Court. Prima-facie the contract/Iqrarnama dated 31.01.2014 does not appear to be enforceable under the aforesaid provision of law and therefore, no decree could be obtained on the basis of such an Agreement to procure Government job and its breach by



any of the parties cannot be enforced, being a void contract/Agreement.

16. To elaborate further on the issue involved in the present proceedings, it is expedient to refer Section 9 of the Civil Procedure Code, which confers general jurisdiction upon courts to try all suits of a civil nature. In order to appreciate the scope of Section 9 of CPC, the same is reproduced as under:-

**“(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.**

**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.”**

17. In the light of the preceding paragraph, we are of the considered view that Civil Courts are Courts of ultimate jurisdiction with regard to a Civil right, duty or obligation, unless the jurisdiction is either expressly or impliedly barred. Section 9 of the Civil Procedure Code only confers jurisdiction upon courts and does not grant a substantive right of action. The right of action is to be established by reference to the substantive law. In the present matter, Appellant has asked for enforcement of a contract/Agreement dated 31.01.2014, which prima-facie is a void contract, which as per the law cannot be enforced, for the simple reason that the Appellant through the aforesaid contract seeks to procure a Government job from the official Respondents on the basis of certain amount purportedly paid to the private Respondents, which is not permissible under the law. We are fortified by the decision rendered by the Honourable Supreme

Court of Pakistan in the case of Hameedullah and 9 others vs. Headmistress, Government Girls School, Chokara District Karak and 5 others [1997 SCMR 855]. The Honorable Supreme Court of Pakistan observed that donation of land for construction of school in consideration of employment, such Agreement being illegal and invalid thus, not enforceable under the law and the Petitioners could not be provided the job against the plot.

18. In view of the Judgment rendered by the Honourable Supreme Court as discussed supra, the Appellant cannot ask for the Government job in lieu of certain amount purportedly paid to the private Respondents under an Agreement, which is nullity in the eyes of law. The ratio of the judgment of the Honorable Supreme Court in the case of Hameedullah (supra) indicates with regard to policy of making appointment against the land grant amounts to the sale of public office for property which is against the Constitution, therefore the transaction between the parties in the civil proceedings cannot be termed as a legal transaction, which is completely illegal and against the public policy.

19. In the light of Judgment rendered by the Honorable Supreme Court of Pakistan in the case of Hameedullah (supra), we are of the considered view that such an Agreement/Iqrarnama dated 31.01.2014 executed between the parties is hit by Section 23 of the Contract Act, as well as Section 21 of the Specific Relief Act, which makes it void and illegal and thus cannot be enforced.

20. We have noticed that in the impugned order, the learned Single Judge has dealt with every aspect of the matter and has rightly concluded in the impugned Order that suit is not maintainable. The suit filed by the Appellant thus is not only barred by law but he has also failed to make out any case for interference of this Court.

21. In the light of above facts and circumstance of the case, the High Court Appeal No. 317 of 2018 filed by the Appellant is misconceived, and is dismissed along with listed application(s) in limine.

22. These are the reasons of our short order dated 05.10.2018, whereby, we have dismissed the instant High Court Appeal No. 317 of 2018.

Karachi  
Dated: 08.10.2018

JUDGE

JUDGE

**Shafi Muhammad P.A**