IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT: MR. JUSTICE SALAHUDDIN PANHWAR
SECOND APPEAL NO.68/2015

Appellant : M/s. K-Electric Supply Company Limited, through Mr. Ameeruddin advocate.

Respondents : Fayyaz Ahmed and others, In person.

Date of hearing : 17.10.2019.

Date of Judgment : 17.10.2019.

Date of reasons : 30.10.2019

J U D G M E N T

Salahuddin Panhwar-J, Appellant has challenged judgment dated 27th July 2015 passed by II-Additional District Judge Karachi Central in C.A. No.92/2012 whereby appeal of appellant was dismissed.

2. The facts of the case are that the respondent No.1 filed suit for damages on the plea that the appellants/KESC staff issued wrong bills in the months of January and February, 1998 of 55 units for Rs.69/-, 56 units for Rs.72/- and 503 units in March; and due to these wrong readings the appellants/defendants received approximately 50 paisa excess per unit on 503 units. Again the appellant /defendants issued an irregular bill of 1295 units for Rs.3420/- in the month of August 1998. Due to non-payment of illegal gratification, the respondent/plaintiff suffered irreparable loss and the appellants/defendants tortured the respondent/plaintiff continuously for sending illegal, unlawful and wrong bills. In the month of July, 2000, the respondent/plaintiff approached to the Honourable Wafaqi Mohtasib (Ombudsman). The appellants/defendants redressed the billing of last three months and shown Rs.420/- stand as credit in the month of September, 2000. Thereafter, the appellants/defendants issued a bill for Rs.6000/- including previous arrears of Rs.5040/48 in

the month of October, 2000 and another bill "for Rs.4600/- including previous arrears of Rs.4062/24 issued in the month of December, 2000. The respondent/plaintiff enquired wherefrom the arrears for Rs.5040/48 and Rs.4062/24 are showing though KESC redressed, the respondent/plaintiff billing and shown Rs.420/- as credit in the month of September, KESC Ref. No. ZCB/NKZ/2000/708 dated 13/9/2000 but there was no response by the appellants/defendants and they used to divert the attention from the actual facts in very technical way.

3. The learned Ombudsman issued findings with the following remarks:-

(i) The agency has failed to justify its action, hence the complainant be charged according to the reading for the dispute period,

(ii) The Managing Director of KESC should take disciplinary action for submitting wrong report by the Zonal Controller Billing.

4. The appellants/defendants transferred the amount which was recovered by wrong billing up to December 2000, the arrears disputed account and credited it to the respondent/plaintiff account in the month of January, 2001. After two years, the appellants/defendants transferred the same amount from disputed arrears to the respondent/plaintiff's account and recovered the same again in the billing month of January, 2003. It is an accounting trick played by the appellants/defendants staff and neither any relief was extended to the plaintiff by the defendants nor his problem was solved by them. In the month of April, 2003, the respondent/plaintiff send a written complaint to the Prime Minister's Complaint Cell, Islamabad and in reply of such complaint, the appellants/defendants wrote that "after giving due slab benefit your bill has been corrected and only

Rs.310/- are payable by you upto February, 2003 vide KESC ref. No. CM/C8/C-55/2003/272 dated 30/6/2003. The respondent/plaintiff again erred wherefrom the appellants/ defendants are showing Rs.310/- as outstanding. No proper response was given. The respondent/plaintiff moved a written complaint to the Ministry of Interior. The appellants/defendants on the complaint to Interior Minister replied *"After revision the bills there was only Rs.310/- outstanding against the consumer/plaintiff upto February, 2003. Moreover, the above named plaintiff/consumer cleared his dues upto November, 2003 vide KESC Ref No. CM/CS/C-55/2004 dated 26/01/2004"*. The appellants/defendants once again issued a bill of only 98 units. The respondent/plaintiff moved written complaint to the appellants/defendants at Head Office and in response the appellants/defendants issued a second bill of 454 units from meter reading 45927 to 46381 for Rs.2000/- along with previous arrears of Rs.485/- on 27/01/2005. Though last 2 bills were issued on the same reading and the bill was bearing some mistakes, which are that:-

(a) That the said bill was issued on meter reading 45927 to 46381 while last two bills were also issued on the same reading and the plaintiff was also paid the same amount.

(b) That the previous arrears of Rs.485/- was wrong and illegal. Alter protest of the plaintiff which was deleted.

(c) That the net amount of current bill of Rs.1419.66 is wrong. The correct calculation is Rs.1369.22.

(d) That the GST amount shown i.e. Rs.205/- and adjusted Rs.205.44. As per practice the same amount of Rs.205/- will be adjusted.

(e) During the wrong billing of these several months the plaintiff paid extra meter rent.

(f) That it is pertinent to mention here that it is not an irregular bill, neither Irregular Bill written on the forehead of the bill nor amount of last two bills was adjusted as per practice of KESC defendant staff.

5. The above mistakes were made willfully to harass and torture the respondent/plaintiff and created complication in the case for illegal gratification. Thereafter, the respondent/plaintiff received wrong bill on 27/01/2005 for Rs. 2000/- and he again moved written complaint to Head Office of the appellants/defendants and requested to explain some questions/points. In response of his application, the appellants/defendants issued a bill in the month of March, 2005 having two mistakes and wrote "It is to inform to you that billing was found quite in order up to the billing month of March, 2005" vide KESC Ref. No.ZCB/NKZ/AL 967188/05/06 dated 8/04/2005. Mistakes are as follows:

(i) In the month of March, 2005 arrears CR balance shown Rs.272.14 though in the last month after adjusting the billing amount CR balance Rs.776.83 was shown Rs. 504.69 shown less in the current bill.

(ii) An amount of Rs.760.34 was showing in arrears disputed account till February, 2005 and in the month of March, 2005, it is not shown. Where it has gone.

6. The respondent/plaintiff pleaded that he suffered willful harm and is entitled to damages and compensation to the tune of Rs.25,00,000/- also the respondent/plaintiff suffered several mental injuries and agony as well as financial losses from 1998 till today at the hands of appellants/defendants KESC staff.

The respondent No.1/plaintiff prayed as under:

(a) The defendants are running the plaintiff from post to pillar from the year 1998 under one pretext or the other, therefore, it is respectfully prayed that this Honourable Court may kindly be pleased to declare that the acts and conducts of the defendants are illegal, unlawful and unwarranted.

b) The acts and conducts of the defendants caused serious mental injuries as well as financial loss to the plaintiff, therefore, the defendants are jointly as well as severally liable to pay the damages of Rs.25,00,000/- (Rupees Twenty Five lacs only).

c) Costs of the suits.

d) Any other/further/better relief(s) which this Honourable Court may deem fit and proper under the circumstances of the case.

7. The appellants/defendants filed written statement wherein they denied all the allegations leveled against them. The respondents/defendants stated that the relief claimed by the respondent/plaintiff for the compensation of Rs.2.5 Million is time barred and without cause of action. The suit is not maintainable and no cause of action accrued to the respondent/plaintiff for filing this suit. It is stated that the allegation of illegal gratification from the consumers are fictitious, false and fabricated and increment in the rates of units after 300 units did not effect the respondent/plaintiff for the reason that the bills sent by the appellants/defendants on the average basis were always adjusted according to the actual reading of the meter/consumed units and slab benefit was extended during the said adjustment. The bills related to the period of 1998 to 2002 have no relevancy with the present case as the same does not constitute any cause of action in favour of the respondent/plaintiff and against the appellants/defendants being hopelessly time barred. It is further submitted that the Honourable Mohtasib has disposed of the complaint of the respondent/plaintiff with regard to the bills in question. The bills of the respondent/plaintiff upto February, 2003 has been corrected by the appellants/defendants after giving slab benefit and the respondent/plaintiff was informed about the said settlement. The letter dated 8/4/2005 is self-explanatory and the mistakes pointed out by the respondent/plaintiff in the bills in question are based upon misunderstanding regarding the billing system of the appellants/defendants. The respondent/plaintiff is trying to create false and concocted cause of action. The

respondent/plaintiff made several complaints to the New Karachi Billing Zone. The appellants/defendants denied for issuance of illegal bills to the respondent/plaintiff. The defendants prayed for dismissal of the suit with special cost.

8. In order to prove his case respondent/plaintiff had filed his Affidavit-in-evidence and examined himself at Ex.P. He produced documents as Ex.P/1 to P/50 and he was cross examined by learned counsel for the appellants/defendants. Thereafter, the learned counsel for the respondent/plaintiff closed the side; Iqbal Ahmed Qureshi, the authorized officer of the appellants/defendants examined himself who produced documents as Ex. D/1 and D/2 and was cross examined by learned counsel for the respondent/plaintiff and thereafter the learned counsel for the appellants/defendants closed their side. After hearing counsel for the parties, the learned trial Court decreed the suit of the respondent No.1/plaintiff to the extent the damages to the tune of Rs.3,00,000/- hence, appeal filed against that decree was dismissed as aforesaid.

9. Learned counsel for appellants argued that the impugned Judgment suffers from illegality and irregularity and is liable to be set aside; that appellate Court has failed to determine the material issues according to law; the learned trial Court had jointly discussed the Issue No. 1 and 2 in the impugned Judgment but failed to understand the point of limitation; the findings of the learned trial Court on Issue No.3 are vague; trial Court has illegally and unlawfully awarded damages to the respondent as there was no evidence of any damage and mental torture available on record; that trial Court has allowed the damages to the respondent only on the ground that the respondent has moved so many applications to different authorities which is against the settled principle laid down

by the superior Courts; that the learned trial Court has completely ignored the provision of law and material on record and passed the impugned Judgment without applying the judicial mind; that impugned Judgments may be set aside and the appeal filed by the appellants may be allowed in the interest of Justice. Learned counsel has referred the documents at page Nos.231, 235 and 289 of the file. The learned counsel for the appellants relied upon decisions reported as PLD 1975 SC 295, PLD 2006 KARACHI 621, 2007 SCMR 1821, 2008 YLR 206.

10. Respondent No.1 present in person relied upon the impugned Judgment and contended that the II-appeal filed by the appellant is illegal and improper and is liable to be dismissed and that impugned Judgment passed by the learned trial Court was based on evidence and liable to be upheld.

11. Heard and perused the available record. At the outset, it being material to add that a decision *normally* would not be disturbed in second appeal unless it is shown that decision is contrary to law or some material questions of law, materially effecting decision, were ignored. Reliance is placed on the case of ***M/s Anwar Textile Mills Ltd. v. Pakistan Telecommunication company Ltd.*** 2013 SCMR 1570 wherein it is observed as:-

> "15. Thus, by reading of this provision, it is apparent that the High Court will be justified to interfere with the decision of the lower Courts when it is contrary to law or failed to determine material issue of law or commits substantial error or defect in the procedure, which may have resulted in error or defect in the decision of the case on merits"

12. Perusal of the available record makes it clear that it is undeniable position that plaintiff/respondent had to approach to different authorities for complained *illegal* action of the appellant/defendant which included an ***investigation*** by Federal Ombudsman wherein it was recommended vide order dated

03.01.2001 as:-

> "In the light of the aforesaid facts the following action be taken in the matter:-
>
> a). **The agency has failed to justify its action**, hence the complainant be charged according to the reading for the disputed period.
>
> b). **The Managing Director K.E.S.C., should take disciplinary action** for submitting wrong report, by the Zonal Controller Billing.
>
> c). The compliance be reported within 30 days.

Further, it also came on record that even after such ***award*** the grievance of the plaintiff/respondent did not come to an end rather admittedly wrong billing was continued which may have been corrected on approaches. Such complained wrong actions again resulted in making the respondent / plaintiff to approach same *fora* i.e Ombudsman. Here relevant portion of judgment of appellate court, being relevant is referred, which reads as:-

> "The respondent/plaintiff has clearly mentioned in his plaint that he was continuously suffering from the behaviour of KESC since January, 1998 till April, 2006. The KESC was continuously issuing the wrong bill to the respondent/plaintiff and the respondent/plaintiff was trying to correct the said wrong bills but KESC employees/staffs were not hearing the respondent/plaintiff."

For such unjustified actions it would suffice to refer the case of *Province of Sindh v. Kabir Bokhari* 2016 SCMR 101 wherein it is observed as:-

> "10. … The Government and its department are bound to act justly and fairly with the citizens of the country and in case of illegal and unlawful conduct of the government and its officials of department any loss is caused to the citizen of this country, **same is appropriately be compensated**. This is a fundamental rule and also principle of equity. "

Such right of being compensated *legally* cannot be obtained without resort to available legal remedies, therefore, plea of the appellant/

defendant carries no weight that plaintiff / respondent had no cause of action. Further, at this point it would also be relevant to mention relevant portion of judgment of appellate Court which reads as:-

> '...One and most important reply of the respondent/plaintiff in this cross examination is that he admitted on the question of advocate for the appellants/defendants that "it is correct to suggest that I had suffered from mental torture and losses due to the electricity bills". This admission is sufficient for decreeing the present suit because the advocate for the appellants/defendants had himself got admitted reply from the mouth of the respondent/plaintiff."

13. Besides, issuance of wrong meter reading bills from 1998 to 2006, is not disputed by the K.E.S.C., hence, they can't come with the plea that plaintiff/respondent had not suffered mental agony by the acts of their officials.

14. It may well be added here that proofs of the suffering and agony cannot be demanded in shape of ***'written documents'*** but may well be proved by circumstances. The plaintiff/respondent did establish the continuity of wrong actions on the part of the appellants/defendants as well his approaches for redressal therefore, in such an eventuality the department legally cannot take an exception to prove *bona fide* of its actions. The burden whereof *(proving bona fide)* was upon appellant and a failure in that regard would always burden it (appellant) to bear consequences. The failure thereof would burden them to compensate the aggrieved. At this point, a referral to case of *Malik Gul Muhammad Awan v Federation of Pakistan* 2013 SCMR 507 wherein it is detailed as:-

> "3. .....So far as the conduct of respondent-officials with reference to the incident in question is concerned, the same was found to be untenable and there are concurrent findings that those functionaries had taken the law in their hands with motives other than bona fides. However, awarding of damages is discretionary and the said discretion has to be exercised in the light of the evidence led qua the extent of damages suffered by a party.

Petitioner claimed damages to the tune of Rs.81.82 Million but it has concurrently been found that petitioner failed to substantiate the claim to the said extent by cogent evidence. In the circumstances , a duty is cast on the court. In *Sufi Muhammad Ishaque v. The Metropolitan Corporation, Lahore through Mayor* (PLD 1996 SC 737), it was held as under:-

> *"Once it is determined that a person who suffers mental shock and injury is entitled to compensation on the principles stated above, the difficult question arises what should be the amount of damages for such loss caused by wrongful act of a party. There can be no yardstick or definite principle for assessing damages in such cases. The damages are meant to compensate a party who suffers an injury. It may be bodily injury loss of reputation, business and also mental shock and suffering. So far nervous shock is concerned, it depends upon the evidence produced to prove the nature, extent and magnitude of such suffering, but even on that basis usually it becomes difficult to assess a fair compensation and in those circumstances it is the discretion of the Judge who may, on facts of the case and considering how far society would deem it to be a fair sum, determine the damage. The conscience of the Court should be satisfied that the damages awarded would, if not completely, satisfactorily compensate the aggrieved p arty."*

The question of awarding quantum was also attended by the learned trial court as against claimed damages of Rs.25,00,000/- an amount of Rs.300,000/- has been awarded.

15. Further, as regard question of limitation, the perusal of the record shows that question regarding ***limitation*** was not only framed but was attended. Relevant portion of judgment of appellate Court on such point reads as:-

> "From the perusal of evidence, it also appears that the respondent/plaintiff was facing hardship by the hands of the appellants/defendants since 1998 to 2006 on account of wrong billings. The advocate for the appellants/defendants argued that the suit is not maintainable and time barred but he has not mentioned or relied any relevant section of law to prove that under what provision of the law, the suit is not maintainable and time barred?
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> The advocate for the respondent/plaintiff has relied

upon the Article 22 and 28 of the Limitation Act which is showing that the time period for filing a suit is one year. It is further mentioned in the Article 22 that the date of limitation will be started when the injury is committed and the date of the distress. The advocate for the respondent/plaintiff also argued that the respondent/plaintiff is continuously visiting the office of the authority of KESC and he was also filing applications to the other authorities for redressal of his grievance but all in vain, therefore, his time period will be started from the year 2006 when the respondent/plaintiff become dishearten and hopeless from all the forums then he filed this suit before the trial Court, therefore, the suit of the respondent/plaintiff is maintainable and not time barred."

16. *Prima facie*, there appears no illegality in the impugned judgments and decrees of the Courts below. The absence thereof would always be sufficient for dismissal of ***second appeal***, hence by short order dated 17.10.2019 instant second appeal was dismissed, these are the reasons for that order.

Imran/PA **J U D G E**