IN THE HIGH COURT OF SINDH, KARACHI

Revision Application No.90 of 2017
Revision Application No.91 of 2017

Present: ***Mr. Justice Nazar Akbar***

Applicant : Ms. Shama Parveen,
Through Mr. Sikandar Ali Shaikh, Advocate

Versus

Respondent No.1 : M/s. Sui Southern Gas Company Limited.
Through M/s. Asim Iqbal and Farmanullah, Advocates.

Respondent No.2 : IXth Additional District Judge Karachi East.

Respondent No.3 : Mr. Akhtar, G.M Billing, SSGCL.

Respondent No.4 : Mr. Mushtaq Ali Bhutto, DGM Recovery, SSGCL.

Respondent No.5 : Mr. Ismail Dilwas, Zonal Manager Defence Clifton Zone, SSGCL.

Respondents No.3, 4 & 5 through M/s. Asim Iqbal and Farmanullah, Advocates.

Date of hearing : **10.01.2020**

Date of Decision : **10.01.2020**

JUDGMENT

NAZAR AKBAR J:- By this common judgment I intend to dispose of above two Revision Applications bearing Civil Revision Nos.90/2017, and 91/2017 filed by applicant (Shama Parveen) against the consolidated judgment in Civil Appeal Nos.49 and 50 of 2013 passed by the learned IXth Additional Sessions Judge, East Karachi, whereby Civil Appeal No.49/2013 filed by the applicant was dismissed and Civil Appeal No.50/2013 filed by Respondent No.1 was allowed and the judgment dated **04.12.2012** whereby Suit No.839/2008 was partly decreed in favour of the applicant was set aside.

2. To be very precise, the facts of the case are that the applicant/ plaintiff filed a suit against Respondents/defendants before the trial Court disputing sui-gas bill issued by Respondent No.1 for the month of October, 2005 amounting to Rs.18,160/- including arrears of Rs.17,902/- and current bill of Rs.256/- through customer No.2129430000(5) for sui-gas facility provided at the house of applicant/plaintiff. The applicant on receipt of the said bill immediately approached the respondents through letter dated **01.01.2006**, Respondent No.4 in response thereof gave an evasive reply through letter dated **23.01.2006**. As the Respondents failed to redress her grievance, the applicant on **26.4.2006** filed complaint to the Registrar Oil and Gas Regulatory Authority (OGRA) and to avoid harassment she paid sum of **Rs.3,491/-** through pay order dated **19.08.2006**. Thereafter gas supply of the applicant was disconnected by the Respondents. The applicant sent legal notice to the Respondents which was replied by them on **04.08.2007** and on **06.02.2008** a meeting was held between attorney of applicant and Respondents wherein the Respondents have admitted erroneous billing and have asked the appellant to pay sum of Rs.3000/- as arrears and Rs.2165/- as current bill which were paid by her through pay order dated **08.02.2008** and the subsequent bills for the month of February and March, 2008 were also cleared by her through pay orders. In the month of **April 2008** the Respondents deliberately did not send monthly bill and some officials of Respondents department on **08.4.2008** appeared at her house and threatened to disconnect the supply of gas and also used filthy language against the son of applicant. Finally on **25.04.2008** the Respondents again disconnected gas supply, therefore, the applicant filed suit for declaration, injunction accounts and damages.

3. On receipt of Notices/Summons Respondents filed written statement and denied the allegations leveled by the appellant in the plaint. They further stated that the suit is not maintainable and hit by the principles of double jeopardy and resjudicata. Respondents No.3,4&5 have stated that they are simply officials of SSGC and have nothing personal in the matter and have been unnecessarily joined in the suit with malafide intention to cause harassment.

4. Learned trial Court framed as many as 9 issues, recorded evidence of the parties and after hearing learned counsel partly decreed the suit of the applicant to the extent of general damages amounting to only **Rs.25,000/-** by judgment and decree dated **04.12.2012** and **16.01.2012** respectively. Against the said judgment and decree both the parties have filed separate Civil Appeals No.49 and 50 of 2013, which were consolidated and Civil Appeal No.49/2013 was declared as leading appeal. Appeal No.49/2013 filed by the appellant was dismissed as barred by law by referring to **Section 11, 12 and 13** of the Oil and Gas Regulatory Authority Ordinance, 2002 (OGRA Ordinance, 2002) and, appeal No.50/2013 filed by the Respondents was allowed by order dated **28.01.2017**. The applicant has preferred the above two Revision Applications against the order of appellate Court.

5. I have heard learned counsel for the parties and perused the record.

6. It is contended by the learned counsel for the appellant that the question of maintainability had separately been decided by the trial Court before recording evidence when an application under **Order VII Rule 11 CPC** filed by the respondents was dismissed. He further contended that after dismissal of application under Order VII Rule 11 CPC the Respondents No.3, 4 & 5 again raised the question

of maintainability of the suit, through an application under **Order 1 Rule 10 CPC** for dropping the proceeding against them. It was also dismissed by order dated **23.07.2009** in the following terms:-

> *By this order I intend to dispose off an application of the defendants under Order 1 Rule 10 CPC R/W Section 151 CPC dated 08.11.2008, C.A to the same filed by the plaintiff.*
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> ***With intend to keep the memories fresh, I would like to express my views which I have already been expressed, while deciding application U/O VII Rule 11 CPC filed by the defendants dated 5.9.2008 and order was passed thereon by this court dated 8.10.2008.*** *In that order in second last para this court has already observed that the* ***instant suit is also for damages and the plaintiff has claimed damages jointly and severally from the defendants for allegations leveled against them, in the body of plaint and the same relief is consequential relief in this suit.*** *Therefore, plaint was not rejected. Now by instant application the defendants wants to delete the names of defendants can not be allowed.*
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> *The application stands disposed off with above observations.*

The respondents, he further contended have not preferred any appeal against the above order of dismissal of their said two applications though both were dealing with the question of maintainability of suit. He has also contended that OGRA Ordinance, 2002 does not bar filing of suit for damages against the Respondents. The appellate Court, therefore, was not supposed to frame point No.1 that whether the suit before the trial Court was maintainable or not. The appellate Court while setting aside decree has failed to examine the impugned judgment on the question of damages awarded by the trial Court.

7. Learned counsel for the Respondent in rebuttal has supported the judgment of the Appellate Court, he has also referred only to the provision of OGRA Ordinance, 2002 reproduced by the Appellate Court in the impugned judgment. However, after going through the judgment he has not been able to point out that how the claim of damages could be barred by OGRA Ordinance, 2002. Learned counsel for the Respondent at the bar has not been able to dispute the correctness and propriety of the findings of damages of only Rs.25,000/- given by the trial Court in para-7 of the judgment, which is reproduced below.

> *The plaintiff has averred that despite fact that she was paying regular bills but the defendants malafidely shown non-payment for reasons best known to them and further they exercised great humiliation and derogations by disconnecting gas supply without any notice to her. She further averred that the Acts of defendants caused adverse effect to her reputation and integrity. Therefore plaintiff prayed for damages as Rs.29,00,000/- jointly and severally from defendants on this account. During arguments learned advocate for defendants argued that plaintiff has not stated single word about damages in his evidence nor he (she) produced any document in evidence to prove the fact of mental tortures. The affidavit in evidence of plaintiff Ex-P shows in Para No.26 and 27 the plaintiff has deposed about the averments made by her in plaint. Therefore it is not correct that plaintiff has not deposed single word on this issue. Though the plaintiff has not produced any document to show that as to whether she received any physical and mental agonies due to the acts of the defendants, but it is fact that the plaintiff must have received blows to her respect and reputation within society. These actions of defendant fall within category of general damages and they need not to be proved by strike evidence as they arise by inference of law. It has been held by Hon'ble High Court of Sindh in a reported case Muhammad Rafiq Memon……Versus……Hakim Ali (2010 CLC -1957) that:-*
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> > *SUIT FOR DAMAGES-------Mental torture and loss of reputation, claim for---Compensation, determination of---Criteria stated.*
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> > *There is no yardstick or definite principle for assessing damages in such like cases and it becomes difficult to assess a fair compensation. In these circumstances, it is the discretion of Court, who may, on facts of each case and considering how far society would deem to be a fair sum, determine the amount to be awarded to a person, who has suffered such a damage. The general*

> *damages are those, which the law will imply in every violation of legal right. They need not to be' proved by strict evidence as they arise by inference of law, even though no actual pecuniary loss has been or can be shown. The vital canon followed by the judicial mind in such cases is that the conscience of the Court should be satisfied that the damages awarded would, if not completely, satisfactorily compensate the aggrieved party, however, adequate care should be taken in this regard while dilating on the quantum of award and the Courts' should be vigilant to see that the claim is not fanciful or remote; the award should never arise to be reflective of lavish generosity and must also obviously not dwindle down to be an indicator of abstemic parsimony, but the court should give the 'aggrieved party what is considered in all the circumstances a fair and reasonable compensation for his loss.*

Learned counsel for the Respondent has not even able to point out that the case law cited by the trial Court while awarding Rs.25,000/- was not relevant or distinguishable.

8. The perusal of the impugned judgment shows that except the prayer for damages to the extent of very meager amount of Rs.25,000/- has been decreed by the trial Court and all other dispute between the parties which were covered by the OGRA, Ordinance have not been decided by the trial Court in favour of the applicant. The contention of the learned counsel that all issues have been settled before the OGRA Authorities and the case of applicant was hit by principle of double jeopardy and resjudicata is misconceived. Even if the proceeding before OGRA Authorities were creating a kind of resjudicata, the admitted legal and factual position is that neither Authority under OGRA, Ordinance 2002 have ever dealt with the question of damages nor such question was even raised before them and therefore, to declare that suit was not maintainable on such grounds at least to the extent of damages claimed by the applicant was contrary to law and facts.

10. In the given facts and circumstances of the case to meet the ends of justice, the judgment and decree of the trial Court to the extent of award of damages is restored. The impugned orders in Appeal Nos.49, and 50 of 2013 passed by the appellate Court were set aside and reversed by short order dated **10.01.2020** and these are the reasons for the short order.

J U D G E

Karachi,
Dated: .01.2020

Ayaz Gul