

IN THE HIGH COURT OF SINDH KARACHI

Suit No. 308 of 2021

[M/s Forel International Trading & others versus Waqas Ahmed Jat & others]

Plaintiffs : M/s Forel International Trading & others through Mr. Khawaja Shams-ul-Islam, Advocate.

Defendants 1-5 : Waqas Ahmed Jat & others through Mr. Anwar Kamal, Assistant Attorney General for Pakistan alongwith Mr. Waqas Ahmed Jat, Enquiry Officer, FIA.

Defendants 6-10 : Nemo.

Date of hearing : 21-04-2021, 03-05-2021 & 25-05-2021.

Date of Decision : 14-10-2021

ORDER

Adnan Iqbal Chaudhry J. - This order decides the maintainability of the suit.

2. Per the plaint, the Plaintiff No.1 is a registered partnership firm; the Plaintiffs 2 to 5 are its partners; and the other Plaintiffs are employees of the Plaintiff No.1; all of whom are trading in tea under the umbrella of the Plaintiff No.1. The Defendants 1 to 5 are the Federal Investigation Agency [FIA], its officers and the Federal Government; while the Defendants 6 to 9 are banks where the Plaintiffs maintain bank accounts.

3. The FIA issued various notices to the Plaintiffs under section 160 CrPC requiring their attendance in an Inquiry No. 14/2017 alleging that transactions in their bank accounts raised suspicions of *hawala/hundi* and money laundering. Per the Plaintiffs, they were cooperating in the inquiry. However, the FIA then issued an order under section 5(5) of the FIA Act, 1974 to freeze certain bank accounts of the Plaintiffs which prompted them to file this suit. The Plaintiffs prayed for declarations that the Inquiry offended their Fundamental Rights; that the notices under section 160 CrPC and

the freezing of their bank accounts were *malafide* and without jurisdiction; for an injunction to set-aside the freezing order; and for damages for loss caused to business, to reputation and for mental anguish as a result of FIA's inquiry.

4. Since the relief sought in the suit was against criminal proceedings, the jurisdiction of this Court to decide such matter was questioned by orders dated 11-02-2021 and 23-02-2021, which orders also confronted learned counsel with section 56(e) of the Specific Relief Act, 1877 which prohibits an injunction to stay proceedings in a criminal matter.

5. Pending hearing of the matter, the FIA registered FIR No. 07/2021 dated 18-05-2021 against some of the Plaintiffs and others, alleging that the accused had opened fake bank accounts to route transactions over Rs. 3 billion which were offences under the PPC and also scheduled offences under the Offences in Respect of Banks (Special Courts) Ordinance, 1984. The Plaintiffs who were accused, then surrendered before the Special Court under said Ordinance and were granted interim pre-arrest bail. In view of the intervening FIR, Mr. Shamsul Islam, learned counsel for the Plaintiffs dropped the prayers against the FIA Inquiry, but pressed the prayer for injunction for setting-aside the order under section 5(5) of the FIA Act whereby the bank accounts of the Plaintiffs were freezed, and the prayer for damages.

6. Learned counsel for the Plaintiff relied on *Abbasia Cooperative Bank v. Hakeem Hafiz Muhammad Ghaus* (PLD 1997 SC 3) and *Searle IV Solution v. Federation of Pakistan* (2018 SCMR 1444) to submit that the general jurisdiction of the civil court is never ousted where the act of the authority complained of is without jurisdiction. However, that argument could have been examined had the suit been brought to try a matter "of a civil nature" within the meaning of section 9 CPC. The suit in hand is against an action taken by an investigating agency during a criminal inquiry, i.e. the freezing of the Plaintiffs' bank accounts under section 5(5) of the FIA Act, 1974.

7. Sub-section (5) of section 5 of the FIA Act, 1974 provides that the order of the FIA directing the owner or any person in possession of the property under investigation not to transfer the same, i.e. the freezing order, is “subject to any order made by the Court having jurisdiction in the matter.” The FIR was presented before the Special Court constituted under the Offences in Respect of Banks (Special Courts) Ordinance, 1984 [ORBO]. Apparently, the Special Court has taken cognizance of the matter and the Plaintiffs have also surrendered before that court for pre-arrest bail. Therefore, as the matter presently stands, the freezing order passed by the FIA under section 5(5) of the FIA Act is subject to the orders of the Special Court.

8. Section 7 of the ORBO then stipulates :

“7. Transfer of property void. (1) After a Special Court has taken cognizance of a scheduled offence alleged to have been committed by an accused person, such person or any relative of such person or other person on his behalf shall not, without the previous permission in writing of the Special Court, transfer, or create a charge on, any movable or immovable property owned by him or in his possession, while proceedings are pending before the Special Court, and any transfer of, or creation of charge on such property without such permission shall be void.

(2) Any person who transfers, or creates a charge on, any property in contravention of subsection (1) shall be punishable with rigorous imprisonment for a term which may extend to three years and shall also be liable to fine.”

Thus, while placing a restriction on the transfer of both movable and immovable property of an accused, section 7 of the ORBO also confers jurisdiction on the Special Court to grant permission for such transfer. The bank accounts of the Plaintiffs would be ‘movable’ property within the meaning of section 7 of the ORBO. The ORBO being special law, the power to lift the freezing order of the Plaintiffs’ bank accounts lies exclusively with the Special Court.

9. Similar to the power of the FIA under section 5(5) of the FIA Act, 1974, the Chairman NAB under section 12 of the National Accountability Ordinance, 1999 [NAO] is also empowered to pass a freezing order in respect of the property of an accused. And, similar to the jurisdiction of the Special Court under section 7 of the ORBO to regulate movement of the properties of an accused, the Accountability Court too exercises such jurisdiction under sections 13 and 23 of the NAO. In *National Accountability Bureau v. Zahida Sattar* (PLD 2001 Karachi 256), the NAB had appealed an order of a learned single Judge of this Court whereby suits for declaration of title were held to be maintainable by the ostensible owners of properties which had been arrayed as *benami* properties of an accused facing a NAB Reference before the Accountability Court notwithstanding that the Chairman NAB had passed a freezing order of such properties under section 12 of the NAO. The learned Division Bench dismissed the suits not only on the ground of section 56(e) of the Specific Relief Act, but also for the reason that the suits amounted to usurp the exclusive jurisdiction of the Accountability Court under section 13 of the NAO which in any case also envisaged a remedy for the ostensible owners. This judgment of the Division Bench was then upheld by the Supreme Court in *Zahida Sattar v. Federation of Pakistan* (PLD 2002 SC 408) where it was observed that:

“12. The question arises whether a Civil Court is vested with the jurisdiction to entertain a suit to try an issue which is subject-matter of a criminal charge for which an accused is being tried in a Criminal Court under special law i.e. NAB Ordinance. The answer to this question revolves around the decision on the question whether the Civil Court can try a criminal charge which is exclusively triable by a criminal Court under the special law. The answer cannot be, but in the negative. If it had been a dispute between the real owner and the ostensible owners who were alleged to be the benamidars arising from denial of latter's right for former, certainly it would have been a dispute of civil nature and only the Civil Court could take cognizance of the same under section 9, C.P.C. which provides that a Civil Court shall (subject to the provisions herein contained) have jurisdiction to try all suits of civil nature except the suits of which their cognizance is either expressly or impliedly barred. In a case where accused holder of public office is being tried for accumulation of wealth acquired by him by illegal and corrupt practices by misusing his official

capacity in the name of his spouses and other relatives, the dispute is not of a civil nature between two private parties, for there is no dispute between the accused i.e., the alleged real owner and his other relative spouses i.e. ostensible owners/alleged benamidars regarding title qua properties in question inter se which could be decided as a dispute of civil nature by the Civil Court.

13. The trial of Issue No.2 framed in these suits by the Civil Court would amount to trial of a criminal charge by the Civil Court which is subject-matter of criminal proceedings the cognizance of which has been taken by the Court of exclusive jurisdiction created under the special law; therefore, it can safely be held that jurisdiction of the Civil Court stands expressly or impliedly barred from entertaining the suits.”

10. As in the case of *Zahida Sattar*, a decision in the instant suit would necessarily entail a determination whether the transactions in the bank accounts of the Plaintiffs were unlawful, a question falling squarely within the exclusive jurisdiction of the Special Court under the ORBO which is presently seized of FIR No. 07/2021. Therefore, the jurisdiction of this Court to grant relief against the freezing of the Plaintiffs’ bank accounts is impliedly barred. As regards the prayer for damages, that is essentially for malicious prosecution. Assuming that a suit for such damages can circumvent the bar of section 8 of the FIA Act, 1974, the cause of action for such a suit will only arise if and when the prosecution against the Plaintiffs fails. For said reasons, the plaint is rejected under Order VII Rule 11 CPC.

JUDGE

Karachi
Dated: 14-10-2021