

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 2022 of 2016

DATE

ORDER WITH SIGNATURE OF JUDGE

1. For orders as to maintainability of this Suit vide courts order dated 19.9.2016.
2. For orders on CMA No. 14709/19 (U/S 151 CPC)
3. For hearing of on CMA No. 13121/16.
4. For hearing of on CMA No. 17170/16.
5. For Examination of Parties/Settlement of Issues.

12.12.2019.

Mr. Haseeb-ur-Rehman, Advocate for Plaintiff.

Mr. Khalil Ahmed Siddiqui, Advocate for Defendant.

1. This matter has been listed for orders as to maintainability of this Suit pursuant to Order dated 19.09.2016 and today both learned Counsel have been heard.

Learned Counsel for the Defendant submits that pursuant to Distributorship Agreement, a relationship was established between the Plaintiff and Defendant; however, in view Article 21 of the Distributorship Agreement, the parties had agreed that jurisdiction in respect of all facts concerning the Agreement in question is Abu Dhabi, UAE; hence this Court has no jurisdiction. He further submits that the Defendant also resides in UAE. In support he has relied upon the cases reported as **2013 YLR 2769 (Messrs Pakistan State Oil Company Ltd. through Business Manager and 4 others v. Malik Hadi Hussain and another)**, **1987 SCMR 393 (State Life Insurance Corporation of Pakistan v. Rana Muhammad Saleem)** and **1998 SCMR 1239 (Standard Insurance Co. v. Pak Garments Ltd.)**.

On the other hand, learned Counsel for the Plaintiff submits that the breach of the Agreement has occurred within the territorial jurisdiction of this Court, whereas, the Defendant has dishonored and failed to perform the Agreement, which has resulted in losses to the Plaintiff and for such purposes this Suit has been filed and this Court has jurisdiction. According to him the Defendant based on the same

cause of action has also filed a Suit before this Court, therefore, this Suit may also be taken up with the Suit of the Defendant.

I have heard both the learned Counsel and perused the record. It is not in dispute that the parties entered into some Distributorship Agreement and the Plaintiff was appointed a Distributor for Pakistan and Afghanistan in respect of supply and sale of Fertilizer by the Defendant. Article-21 of the Agreement provides as under:-

“Article 21: APPLICABLE LAW AND JURISDCITION

The law of the United Arab Emirates exclusively applies to this Agreement, Jurisdiction for all facts concerning this Agreement in Abu Dhabi, United Arab Emirates. This clause shall not preclude any party from obtaining interim relief from a Court of competent jurisdiction.”

Though in view of the aforesaid provision, it has been provided that the law of the United Arab Emirates exclusively applies to this Agreement, whereas, jurisdiction for all facts concerning this Agreement is Abu Dhabi, UAE; however, at the same it has been further provided that this Article/Clause *shall not preclude any party from obtaining interim relief from a Court of competent jurisdiction*. The above clause clearly reflects that the parties have not agreed for any exclusive jurisdiction of a particular Court i.e. UAE. At the same time, they have agreed that at least for the purposes of interim relief, the parties can approach the Court of competent jurisdiction. In this matter admittedly, part of the cause of action has accrued within the territorial limits and jurisdiction of this Court as some defective supply is alleged by the Plaintiff. The Plaintiff's further case is that certain commission(s) were required to be paid on supplies made to some other Companies in Pakistan, which has not been paid, therefore, it cannot be said that parties with consent agreed to have a particular Court for jurisdiction of resolution of all disputes and in my view, they have also agreed that any of the two or more Courts, having jurisdiction, can be approached. In these facts, the case law relied upon by the learned Counsel for the Defendant is distinguishable inasmuch as in this matter, agreement is not in respect of any one of the two Courts exclusively. It is true that if two or more Courts have jurisdiction to try a suit, and if parties have mutually agreed that in case of a dispute only one or specified Court is to be

approached for any relief, then the parties must approach the said Court; however, in this case this restriction is not absolute; rather it is open for the parties to approach any of the Court (albeit for an interim relief). Therefore, on this fact of the matter, the Plaintiff cannot be non-suited at this point of time when he is also seeking interim relief by way of various interlocutory applications. It is needless to state that in absence of a Suit, no applications for an interim relief can be entertained by this Court, resultantly, the Suit is also to be entertained and for that the parties have agreed upon.

It is also pertinent to state and clarify, that if the Agreement had no such clause as above regarding interim relief from the Court of competent jurisdiction, even then, dismissal of the entire Suit is not the correct approach. Reliance in this regard may be placed on the case reported as ***Muhammad Irfan Ghazi v IZO (SPA) and 4 others*** (2017 CLC 1697), wherein a learned Division Bench of this Court after going through the entire case law, (including the cases relied upon by the Defendants Counsel) has come to the following conclusion.

13. However, the learned Single Judge in the impugned order while dismissing the Suit of the appellant has partly agreed by a decision of another learned Single Judge of this Court in the case of ***Raaziq (Supra)***, to the extent that...*Forum selection clause cannot be held against public policy or arbitrary in nature as the presumption of law is that the parties were oblivious to their relative convenience or inconvenience at the time of entering into a contract....however,* has differed with regard to the final conclusion drawn in the case of ***Raaziq (Supra)***, ..*that the proper course is to stay the proceedings in the Suit*, and has been pleased to dismiss the Suit as not maintainable, as according to the learned Single Judge under CPC, the Suit is either to be proceeded with or the plaint is to be rejected or returned, but cannot be kept pending as stayed. The learned Single Judge has further went on to hold that...*Once a lis is brought to a file of the Court, the law provides mechanism for disposal thereof which in no way could include an order of staying proceedings for an indefinite period*, and has been pleased to hold that the Suit is not maintainable before this Court. However, with respect and humility at our command, we do not subscribe to such reasoning as already discussed hereinabove, (See Para 8 & 11), and additionally for the reason that the same besides being in direct conflict with the observations of the Hon'ble Supreme Court in the case of ***M. A Coudhry (Supra)***, (*which either was not brought to the knowledge of the learned Single Judge, or otherwise escaped attention*), also confirms the view that parties to an agreement cannot oust jurisdiction of a specific Court, which otherwise vests in it, and likewise cannot confer jurisdiction in a Court which is lacking. The same is not permissible in law, hence cannot be approved by this Court, as we are of the considered view, that by staying the proceedings, the Court retains its jurisdiction as well as respects the agreement between the parties as being permissible to choose a forum of their convenience to settle the dispute. Whereas, by dismissing the Suit as not maintainable, the Court will be ousting

itself from the lawful jurisdiction it has, as undoubtedly, in the instant matter as well as in dealership agreements of like nature, notwithstanding that they have been signed outside Pakistan, there is always a likelihood, that a part of the cause action accrues within the territorial jurisdiction of this Court, (*like, supply of substandard goods, breach of any part of letter of credit opened in Pakistan, claims and returns of inventories by local purchasers and so on and so forth*).

In view of hereinabove facts and circumstances of this Court, I am of the view that this Court has jurisdiction to adjudicate the matter, and therefore, the objections raised by the Court vide order date 19.9.2016 is overruled. However, at the time of settlement of Issues, an issue may be framed in respect of the maintainability of the Suit, which shall be adjudicated on the basis of evidence led by the parties.

2 to 5. Adjourned.

J U D G E

Ayaz P.S.