

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit Nos. 22 of 2011, Suit No. 23 of 2011,
Suit No. 24 of 2011 and Suit No. 25 of 2011

Date	Order with signature of Judge
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Suit No. 22 of 2011

JS Global Capital Limited

Versus

Mrs. Ayesha Danish Monnoo & Another

1. For orders on Commissioner report dt. 18.5.2023.
2. For hearing of CMA No.12635/2020.

Plaintiff : Through M/s. Muhammad Akram Javed,
Salman Iqbal Bawany & Khalid Javed
Siddiqui, Advocates.

Defendants : Through M/s. Wasif Riaz & Dr.
Muhammad Tahir, Advocates.

Date of hearing : 11 September 2023 & 2 March 2024

Suit No. 23 of 2011

JS Global Capital Limited

Versus

Shabbir Ahmed & Another

1. For orders on Commissioner report dt. 12.11.2022.
2. For hearing of CMA No.12634/2020.
3. For hearing of CMA No.474/2113.

Plaintiff : Through M/s. Muhammad Akram Javed,
Salman Iqbal Bawany & Khalid Javed
Siddiqui, Advocates.

Defendants : Through M/s. Wasif Riaz & Dr.
Muhammad Tahir, Advocates.

Date of hearing : 11 September 2023 & 2 March 2024

Suit No. 24 of 2011

JS Global Capital Limited

Versus

Amna Humayun Shaikh & Another

1. For orders on Commissioner report dt. 18.5.2023
2. For hearing of CMA No.12636/2020.

Plaintiff : Through M/s. Muhammad Akram Javed,
Salman Iqbal Bawany & Khalid Javed
Siddiqui, Advocates.

Defendants : Through M/s. Wasif Riaz & Dr.
Muhammad Tahir, Advocates.

Date of hearing : 11 September 2023 & 2 March 2024

Suit No. 25 of 2011

JS Global Capital Limited

Versus

Aalia Sheraz Danish Monnoo & Another

1. For orders on Commissioner report dt. 18.5.2023.
2. For hearing of CMA No.12637/2020

Plaintiff : Through M/s. Muhammad Akram Javed,
Salman Iqbal Bawany & Khalid Javed
Siddiqui, Advocates.

Defendants : Through M/s. Wasif Riaz & Dr.
Muhammad Tahir, Advocates.

Date of hearing : 11 September 2023 & 2 March 2024

ORDER

MOHAMMAD ABDUR RAHMAN, J. By this Order I will be deciding:

- (i) CMA No.12635 of 2020 that has been maintained in Suit No.22 of 2011;
- (ii) CMA No.12634 of 2020 that has been maintained in Suit No.23 of 2011;

- (iii) CMA No.12636 of 2020 that has been maintained in Suit No.24 of 2011; and
- (iv) CMA No.12637 of 2020 that has been maintained in Suit No.25 of 2011.

each under Order VII Rule 10 of the Code of Civil Procedure, 1908, seeking for the Plaint of each of the Suits to be returned to the Plaintiff to be presented in a Court of appropriate jurisdiction.

2. Each of the suits are maintained before this Court by a common Plaintiff seeking recovery of amounts that were purportedly owing to it by the Defendants on Equity Trading Accounts maintained by each of the Defendants with the Plaintiff. The basis of the contract in each of the suits is an Account Opening Form and which has standard terms and conditions appended to that form. There is no dispute that the Defendants have signed those forms and who also do not dispute the terms of those contracts. It seems that on account of a debit balance occurring on each of the Equity Trading Accounts and which were not being settled by the Defendants, the Plaintiff has instituted each of these suits for recovery of those amounts.

3. On the question of jurisdiction, the Plaintiff claims that each of the Suits can be presented within the territorial jurisdiction of this Court on the ground that the Equity Trading Account and CDC Sub-Account of the Defendants was maintained by the Plaintiff at Karachi, the transaction of sale and purchase of shares were "effectuated" in Karachi, the payments that would be made to the Defendant No.1 were made at Karachi and all the transactions involving the shares of Defendant No.1 were traded at the Karachi Stock Exchange at Karachi.

4. Conversely, Mr. Wasif Riaz who appeared on behalf of the Defendants, while relying on Section 20 of the Code of Civil Procedure, 1908, contends that this Court lacks jurisdiction as while the head office of the Plaintiff is located at Karachi it also has another office based at Lahore and Islamabad and on the basis of which this Court cannot assume jurisdiction. He also contends that each of the Defendants are residing at Lahore and that as each of them signed the Account Opening Form signed at Lahore hence the cause of action had accrued at Lahore and not within the territorial jurisdiction of this Court.

5. I have heard both Mr. Wasif Riaz and Mr. Mr. Waqas Hussain and have perused the record.

6. The territorial jurisdiction of a Court to entertain a Suit under Section 9 of the Code of Civil Procedure, 1908 is generally determined by Section 16, 17, 18 and 20 of the Code of Civil Procedure, 1908 and which read as under:

“ ... 16. Subject to the pecuniary or other limitations prescribed by any law, suits;

(a) for the recovery of immovable property- with or without rent or profits;

(b) for the partition of Immovable property;

(c) for foreclosure, sale or redemption In the case of a mortgage of or charge upon immovable property,

(d) for the determination of any other right to or Interest in immovable property;

(e) for compensation for wrong to immovable property,

(f) for the recovery of movable property actually under distraint or attachment;

shall be instituted in the Court within the local limits of whose jurisdiction the property is situated, or, in the case of suits referred to in clause (c), at, at the place where the cause of action has wholly or partly arisen: -

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate or, in the case of suits referred to in clause (c), at the place where the cause of action has wholly or partly arisen) or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

Explanation.- In this section "property" means property situate in Pakistan.

17. Where a suit is to obtain relief respecting, or compensation for wrong to immovable property situate within the jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate: -

Provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such Court.

18.-(1) Where it is alleged to be uncertain within the local limits of the jurisdiction of which of two or more Courts any immovable property is situate, any one of those Courts may, if satisfied that there is ground for the alleged uncertainty, record a statement to that effect and thereupon proceed to entertain and dispose of any suit relating to that property, and its decree in the suit shall have the same effect as if the property were situate within the-local limits of its jurisdiction:

Provided that the suit is one with respect to which the Court is competent as regards the nature and value of the suit to exercise jurisdiction.

(2) Where a statement has not been recorded under subs section (1), and an objection is taken before an appellate or revisional Court that a decree or order in a suit relating to such property was made by a Court not having jurisdiction where the property is situate, the appellate or revisional Court shall not allow the objection unless in its opinion there was, at the time of the institution of the suit, no reasonable ground for uncertainty as to the Court having jurisdiction with respect thereto and there has been consequent failure of justice.

19. Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on

business, or personally works for gain, within the local limits of the jurisdiction of another Court, the suit may be instituted -at the option of the plaintiff in either of the said Courts.

Illustrations

(a) A, residing in Karachi, beats B in Quetta. B may sue A either in Quetta or Karachi.

(b) A, residing in Karachi published in Quetta statements defamatory of B. B may sue A either in Quetta or in Karachi.

20. Subject to the limitations aforesaid, every suit shall be in a Court within the local limits of whose jurisdiction.

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either of the Court is given, or the defendants who reside, or carry on business, or personally work as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

Explanation I.- Where a person has- a one place and also a temporary residence shall be deemed to reside at both places in action arising at the place where he residence.

Explanation II.-A corporation shall be deemed to carry on business at its sole or principal office in Pakistan or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

Illustrations

(a) A is a tradesman in Lahore. B carries on business in Karachi. B, by his agent in Lahore, buys goods of A and requests A to deliver them to the Pakistan International Airways. A delivers the goods accordingly in Lahore. A may sue B for the price of the goods either in Lahore where the cause of action has arisen or in Karachi where B carries on business.

(b) A resides at Murree, B at Lahore, and C at Karachi. A, B and C being together at Bahawalpur B and C make a joint promissory note payable on demand, and deliver it to A. A may sue B and C at Bahawalpur, where the cause of action arose. He may also sue them at Lahore, where B resides, or at Karachi, where C resides; but in each of these cases, if the non-resident defendant objects, the suit cannot proceed without the leave of the Court."

These provisions were interpreted by the Supreme Court of Pakistan in the decision reported as **Muhammad Ramzan (Deceased) vs. Nasreen Firdous**¹ and wherein it was held that:

" ... 5. In respect of the municipal law of Pakistan, in order to address the first question as to the applicable substantive law, the provisions of sections 16 to 20 of the C.P.C. are relevant. It will be determined whether the appellants' suit before the Civil Judge in Lahore was competently filed under the laws of Pakistan in relation to the property situated in England. In terms of section 16, C.P.C., such suits, in **so far as they relate to immovable property, are to be instituted before the Court within whose territorial jurisdiction the property is situated.** Section 16 ordains:-

¹ PLD 2016 SC 174

"16. Suits to be instituted where the subject matter situate.-- Subject to the pecuniary or other limitations prescribed by any law, suits---

(a) for the recovery of immovable property with or without rent or profits,
 (b) for the partition of immovable property,
 (c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,
 (d) for the determination of any other right to or interest in immovable property,
 (e) for compensation for wrong to immovable property,
 (f) for the recovery of movable property actually under distraint or attachment, shall be instituted in the Court within the local limits of whose jurisdiction the property is situate, or in the case of suits referred to in clause (c) at the place where the cause of action has wholly or partly arisen:

Provided that a suit to obtain relief respecting or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or, in the case of suits referred to in clause (c) at the place where the cause of action has wholly or partly arisen or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

Explanation.-- In this section "property" means property situate in Pakistan." (emphasis added (sic))

It may be noted that the proviso contained in section 16 prescribes that a suit may also be filed before a Court within the local limits of which the defendant resides, carries on business or works if the relief sought can be obtained entirely through his personal obedience. We may take this opportunity to dispel a commonly held perception that this proviso applies to all the categories of suits provided in subsections (a) to (f) of section 16. It is stressed that the language of the proviso is very clear and it does not apply to suits for determination of a right to, or recovery of immovable property.

Be that as it may, from the clear and unambiguous language of the explanation of section 16, there remains absolutely no doubt that the property(ies) which falls within the purview of the section are those which are situated in Pakistan and thus the Pakistani Courts shall have the sole and exclusive territorial jurisdiction in respect thereto. In other words, as per the mandate of law, the territorial jurisdiction of Pakistani Courts has been limited, restricted and circumscribed only to such property(ies) which are situated within the territorial boundaries of Pakistan. It may be pertinent to mention here that where a word/expression has been defined in the statute, it is settled law of interpretation that such word/expression has to be given the same meaning until and unless the assignment of such meaning would be patently in conflict with the express text of the said provision or would destroy the spirit and object of the provisions of law in which such expression/word appears or shall lead to an absolute absurdity. This principle is no less true for the explanation added to a particular section which (explanation) in law is a guideline for the purposes of explaining the true intent, object, purpose, letter and spirit of such a provision by the legislature itself, with the obvious consequence that the legislature means and intends to leave little room and opportunity for any misinterpretation and misapplication of the said section and would desire that the scope of the section should be construed in the manner as has been explained by the statute.¹ Thus, it is clear that the Pakistani Courts as per the explanation shall only have the jurisdiction with respect to the property(ies) which are subject matter of the suit and falls within the territorial domain of Pakistan.

Such interpretation of the relevant provisions of the C.P.C. are duplicated in the Indian Jurisprudence as will be illustrated by briefly

making reference to a few cases on the question of jurisdiction of courts to try suits pertaining to property situate outside the respective State.

In the case of Premchand v. Hiralal (AIR 1928 Nagpur 295) while interpreting section 16, C.P.C., the learned judge agreed with the lower court which held that it had no jurisdiction over the movable or immovable property situated at Shahdole (outside British India). The learned Judge stated that:-

"It seems to me very clear that the lower Court is right. The question is concluded by S.16, Civil P.C., as regards immovable property. The explanation to that section states that the word 'property' used therein means property situated in British India Our Courts are governed by the Civil Procedure Code, and they cannot deal with immovable property situated where that Code does not run."

6. Having considered the provisions of section 16, we feel it is expedient to make reference to sections 17 to 19 of the C.P.C. which also deal with the territorial jurisdiction of Pakistani Courts. It may be stated that section 16, as per the interpretation given to it above, is the main and pivotal section which prescribes for the territorial jurisdiction of the courts in Pakistan (i.e. the courts of plenary civil jurisdiction) and this section, as mentioned, has limited its jurisdiction only to the property(ies) which are situated in Pakistan with the obvious legal consequence that the property(ies) outside Pakistan are expressly excluded from the purview of jurisdiction of Pakistani Courts as a whole. Sections 17 to 19 when read and construed in the context of the subject matter jurisdiction are basically supplemental provisions to section 16 and in fact and law, cater for a situation once the threshold of section 16 vis-à-vis the jurisdiction of Pakistani Courts is crossed; it is then that if the Pakistani Courts have jurisdiction over the subject matter, that it should be settled and determined as to which court within Pakistan shall have the jurisdiction in the given circumstances of the case to try a suit of a particular nature. But for the application of these sections (17 to 19 C.P.C.) it is essential that firstly the jurisdiction should vest in the Pakistani Courts in terms of section 16. In other words, Section 16 is not only a threshold section for the conferment of jurisdiction to the Pakistani Courts but it is the portal through which the plaintiff has to enter for the purposes of entering into the city of jurisdiction of different courts in Pakistan. If, as per the mandate of law, such door is closed upon a plaintiff because the property, subject matter of a suit, is not within the limits of Pakistan, then such litigant is barred and precluded from invoking the jurisdiction of any other court of the country in terms of sections 17 to 19. In the context of the above, if a judgment is required, reference can be made to a case reported as Yusuf Abbas and others v. Mst. Ismat Mustafa and others (PLD 1968 Karachi 480) (see paragraph 19 thereof).

With respect to section 18, C.P.C., it may be added that even if the property was situate in Pakistan (which is not the case in the present matter), section 18, C.P.C. will ipso facto be inapplicable for the very reason that there is no uncertainty as to the respective jurisdiction of the courts in England in the instant case since the property in question lies within the territorial jurisdiction of England.

In a similar vein, section 19 C.P.C is applicable only to suits for compensation for wrong to the person or movable property. It further applies to torts committed within Pakistan. The instant case has no nexus with the law of tort.

7. We will now consider whether the present matter falls within the purview of section 20, C.P.C. Learned counsel for the appellants while relying upon section 20 of the C.P.C. contends that the courts below fell in error in refusing to exercise the jurisdiction with respect to the property(ies) situated in Pakistan because of the reason that the cause of action had arisen to the appellants in Pakistan as the deceased had passed away in Pakistan and in support of the contention has relied upon Yusuf Abbas's case (supra). Therefore, it seems expedient to consider the legal effect of the said section which reads as under:-

"20. Other suits to be instituted where defendants reside or cause of action arises.--Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction--

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

Explanation I.--- Where a person has a permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence.

Explanation II.--- A corporation shall be deemed to carry on business at its sole or principal office in Pakistan or, in respect of any cause of action arising at any place where it has also subordinate office, at such place."

Ordinarily, section 20 C.P.C. is to be read with and subject to the limitations prescribed in section 16, C.P.C., however, since section 16, C.P.C. does not apply in relation to property situated abroad, section 20, C.P.C. will have to be read independently in the present case.

In terms of section 20, C.P.C., a suit may be filed in a Court within the local limits of which (a) all the defendants were actually and voluntarily residing, carrying on business or personally working for gain at the time of commencement of the suit, or (b) any of the defendants, where there are more than one, actually or voluntarily resides, or carries on business or personally works for gain provided that in such cases leave of the Court is obtained or the defendants who are not within the Court's jurisdiction acquiesce or (c) where the cause of action wholly or partly arises. The record of the present case clearly illustrates at the very least that at all times, all the main contending defendants Nos. 1 to 8 were residing, carrying business or working outside Pakistan. This assertion is further supported by the fact that the address provided for the defendants Nos.1 to 8 is that of England and it is nowhere suggested that the defendants have at any time been residents of Pakistan or carried on business in Pakistan, or worked in Pakistan. Therefore, section 20(a) C.P.C. evidently does not apply to the facts of the given case.

Moving on to consider whether the present case falls within section 20(b), C.P.C., let it be said that if it is the case that at least one of the defendants permanently resides, carries on business or works in Pakistan, then, as necessitated by subsection (b), leave of the court had to be obtained which was not done in the present matter. Furthermore, the defendants clearly did not acquiesce in relation to jurisdiction over the property situated in England as the jurisdiction of Pakistan in relation to the property in England is firmly disputed in the written statement of the defendants Nos. 1 to 9.

Finally, subsection (c) does not help the case of the appellants since the question of jurisdiction of the Pakistani Courts in relation to the property in Pakistan forms part of a separate cause of action than that in relation to the property situated in England. The factum of the distinct location of the properties alone gives rise to two separate causes of action.

The Supreme Court of Pakistan has made it clear that the provisions of Section 16, 17 and 18 of the Code of Civil Procedure regulate a *lis* in respect of immovable property and which on account of this suit being a suit for recovery of an amount owing would therefore clearly not be applicable. Section 19 of the Code of Civil Procedure, 1908, as has also been clarified by the Supreme Court of Pakistan, regulates a “wrong to a person or property” and would relate to a cause of action premised on an action in tort and as such would also not be applicable for determining the jurisdiction of this court regarding this suit. It would therefore fall on this Court to determine its jurisdiction in terms of Section 20 of the Code of Civil Procedure, 1908.

7. Clearly if one is to apply clauses (a) and (b) of Section 20 of the Code of Civil Procedure, 1909, as the Defendants admittedly do not reside within the jurisdiction of this Court, the suit would not be maintainable. However as each of the circumstances indicated in that Section are independent one of the other, if the Plaintiff is able to show that the “*cause of action, wholly or in part*”, arose within the jurisdiction of this Court to bring the *lis* within the perimeters of Clause (c) of Section 20 of the Code of Civil Procedure, 1908, then each of the suits would be maintainable. To be able to answer this question one is to consider what a “cause of action” is? The expression has been defined by this Court as the “bundle of facts” which if proved by a Plaintiff would entitle the Plaintiff to a judgment in its favour.² As such I have to see whether any of “the facts which would entitle the Plaintiff to a judgment in its favour” occurred within the jurisdictions of this Court. It is admitted that each of the Defendants opened Equity Trading Accounts with the Plaintiff, however each of the Defendants contend that the forms were signed at Lahore. While the Plaintiff contends that its principal place of business is at Karachi, the Defendants conversely contend that the Plaintiff also has offices at Lahore and Islamabad. What is however been contended by the Plaintiff is that each of these accounts are in fact ledgers and which indicate monies of the Defendants and which are credited or debited to that account by the Plaintiff as and when any amount was earned or paid out by the Defendant on various share transactions. As per the Plaintiff, the transactions that occurred on the basis of which any amount was earned or paid out by the Defendant was earned on transactions that occurred at the Karachi Stock Exchange at Karachi and that each of the accounts of the Defendant reflecting the amounts earned or paid out were maintained at Karachi. Hence, each portion of the liability that accrued on

² See *Ahmed Nawaz Jagirani vs. Sindh Industrial Trading Estate Ltd.* 2017 CLC 40; *Haji Hafeezuddin and others vs. Lucas Service Pakistan Ltd.* PLD 2000 Karachi 58;

each individual transaction occurred at Karachi. To my mind this is correct and while considering an application under Order 7 Rule 10 of the Code of Civil Procedure, 1908 I am bound to consider the contents of the Plaint to be true unless good cause can be shown otherwise. I am therefore of the opinion that a portion of the cause of action did arise within the jurisdiction of this Court and hence the Plaintiff could maintain these Suits before this Court. Each of the Applications are therefore misconceived and cannot be sustained.

8. For the aforesaid reasons, I am of the opinion that as a portion of the cause action in each of these suits arose within the territorial jurisdiction of this Court, these suits are maintainable. Consequentially, CMA No.12635 of 2020 that has been maintained in Suit No.22 of 2011; CMA No.12634 of 2020 that has been maintained in Suit No.23 of 2011; CMA No.12636 of 2020 that has been maintained in Suit No.24 of 2011; and CMA No.12637 of 2020 that has been maintained in Suit No.25 of 2011 are each dismissed with no order as to costs.

JUDGE

Karachi dated 9 March 2024