

IN THE HIGH COURT OF SINDH AT KARACHI

Suit 2003 of 2022 : Time Press (Private) Limited vs.
Sui Southern Gas Company & Others

For the Plaintiff/s : Mr. Khawaja Shamsul Islam, Advocate

For the Defendant/s : Ms. Alizeh Bashir,
Assistant Attorney General of Pakistan

Mr. Ghazi Khan Khalil, Advocate
Mr. Ameer Nausherwan Adil, Advocate
Mr. Abdul Hakeem Junejo, Advocate
Mr. Syed Kumail Abbas Naqvi, Advocate
Mr. Zeeshan Ahmed, Advocate
Mr. Abdul Razzaque, Advocate

Mr. Ammar Saleem Butt
(Manager (Legal) SSGC)
Mr. Raja Love Kush
(Deputy Manager Legal SSGC)

Date/s of hearing : 13.11.2024

Date of announcement : 15.11.2024

ORDER

Agha Faisal, J. The question before this Court is whether prosecution and adjudication of gas theft, encompassing proceedings of criminal and civil nature, and matters ancillary and related thereto could be entertained by this Court in exercise of its original civil jurisdiction, hence, ousting the fora designated by the Gas (Theft Control and Recovery) Act 2016 (“Act”).

Pertinent facts

2. On 27.01.2022, FIR 7 of 2022 was registered at Police Station SSGC District East Karachi upon serious allegations of gas theft taking place at the plaintiff’s premises. Several meters, regulator and burner etc. were taken into custody. On 04.02.2022 another meter was removed from the plaintiff’s premises for the purpose of testing. The aforementioned FIR culminated in a criminal proceedings and in addition thereto civil proceedings, being Special

Suit 15 of 2023¹, for recovery were also initiated by SSGC against the plaintiff. The respective proceedings are being contested by the plaintiff.

3. Notwithstanding the foregoing this suit was instituted by the plaintiff in the original civil jurisdiction of this court. SSGC filed an application under Order VII rule 11 CPC, being CMA 7631 of 2023, seeking rejection of the plaint on the ground of being barred by law; *inter alia* the Act. It is this application that shall be determined herein.

Respective arguments

4. The crux of the plaintiff's case articulated before the Court is that the meter taken away on 04.02.2022 does not feature in the FIR, hence, is extraneous to the dispute. SSGC's lead counsel insisted that there is only one issue and that is massive gas theft; in respect whereof criminal and civil proceedings are pending. Therefore, any recourse available to the plaintiff is pursuant to the Act and before the concerned gas utility court.

Gas (Theft Control and Recovery) Act 2016

5. The preamble of the Act enunciates that it has been promulgated to prosecute cases of gas theft and other offences relating to gas and to provide for a procedure for expeditious recovery of amounts due, value of gas, fines, penalties and other outstanding amounts payable and sums due to gas utility companies and for matters ancillary and related thereto. It is apparent that the ambit contemplates criminal and civil proceedings and section 4 thereof confers exclusive jurisdiction in such respect upon gas utility courts. Sections 5 and 6 deal with the power and procedure of gas utility courts. The proviso to section 29 caters for interim relief. Finally section 31 explicates that the provisions of the Act shall have overriding effect notwithstanding anything to the contrary contained in any other law for the time being in force.

Scope of determination

6. There is no cavil to the fact that criminal and civil proceedings are pending between the parties with respect to the allegation of gas theft and even in so far as the civil proceedings are concerned leave to defend application/s etc. have been filed. Therefore, determination of this application

¹ Gas utility court.

would be premised upon whether the Act places a bar on these proceedings and also whether parallel civil proceedings could be entertained.

Law regarding rejection of complaints

7. It is settled law that the question of whether a suit was likely to succeed or not was irrespective of whether or not the plaintiff ought to have been rejected². It is often seen that while a plaintiff could not have been rejected, however, a suit was dismissed eventually for a variety of reasons. The seminal edict with respect to the evolution of law of rejection of complaints is perhaps the *Florida Builders case*³ wherein the Supreme Court demarcated the anvil upon which the decisions in such matters ought to be rested⁴. The Supreme Court concluded that the rejection of the complaint was merited *inter alia* when the suit appeared to be barred by law and the import of the word *appear* was deciphered to mean that if *prima facie* the court considered that it *appears* from the statements in the complaint that the suit was barred, then it should be terminated forthwith. The complaint, coupled with the submissions of the learned counsel, shall be subjected to the anvil so illumined by the Supreme Court.

² *Al Meezan Investment Management Company Limited & Others vs. WAPDA First Sukuk Company Limited & Others* reported as PLD 2017 Supreme Court 1.

³ Per Saqib Nisar J in *Haji Abdul Karim & Others vs. Florida Builders (Private) Limited* reported as PLD 2012 Supreme Court 247.

⁴ Firstly, there can be little doubt that primacy, (but not necessarily exclusivity) is to be given to the contents of the complaint. However, this does not mean that the court is obligated to accept each and every averment contained therein as being true. Indeed, the language of Order VII, Rule 11 contains no such provision that the complaint must be deemed to contain the whole truth and nothing but the truth. On the contrary, it leaves the power of the court, which is inherent in every court of justice and equity to decide or not a suit is barred by any law for the time being in force completely intact. The only requirement is that the court must examine the statements in the complaint prior to taking a decision.

Secondly, it is also equally clear, by necessary inference that the contents of the written statement are not to be examined and put in juxtaposition with the complaint in order to determine whether the averments of the complaint are correct or incorrect. In other words the court is not to decide whether the complaint is right or the written statement is right. That is an exercise which can only be carried out if a suit is to proceed in the normal course and after the recording of evidence. In Order VII, Rule 11 cases the question is not the credibility of the plaintiff versus the defendant. It is something completely different, namely, does the complaint appear to be barred by law.

Thirdly, and it is important to stress this point, in carrying out an analysis of the averments contained in the complaint the court is not denuded of its normal judicial power. It is not obligated to accept as correct any manifestly self-contradictory or wholly absurd statements. The court has been given wide powers under the relevant provisions of the Qanun-e-Shahadat. It has a judicial discretion and it is also entitled to make the presumptions set out, for example in Article 129 which enable it to presume the existence of certain facts. It follows from the above, therefore, that if an averment contained in the complaint is to be rejected, perhaps on the basis of the documents appended to the complaint, or the admitted documents, or the position which is beyond any doubt, this exercise has to be carried out not on the basis of the denials contained in the written statement which are not relevant, but in exercise of the judicial power of appraisal of the complaint.

No case of first impression

8. The case is essentially of gas theft and it has criminal and civil ramifications. The very preamble of the Act states that it shall govern both and matters ancillary and related thereto. This point is also driven home by the Supreme Court in *Mardan Ways*⁵ and the *OGRA case*⁶. A similar view was also taken by a Division bench of this High Court in the *SSGC case*⁷ and by the Islamabad High Court in *SSGC vs. OGRA*⁸.

Application to present circumstances

9. Plaintiff's learned counsel has sought to extricate the issue of the one subsequent meter, taken for testing, from the overarching gas theft matter. Respectfully, this Court expresses its inability to concur. The removal of meters, regulator, burner etc. are integral to the gas theft issue. The latter meter is stated to have been taken away in pursuance of the same objective and any assessment report with respect to the functionality thereof does not disprove or otherwise the allegation of gas theft. Be that as it may, opining in such regard is eschewed as this determination is with respect to the forum of adjudication, hence, care is being taken so that no aspersion is cast on merit.

10. The Act has overriding jurisdiction over the relevant proceedings and all matters ancillary and related thereto. Whether the fourth meter is part of the FIR or not does not take away from the preponderant observation that it is a constituent of the gas theft issue or in the very least a matter ancillary or related thereto. Therefore, the law is clear that the fora of exclusive jurisdiction is that demarcated vide the Act.

Commentary on recent proceedings

11. The matter for return of the last meter was escalated by the plaintiff in criminal proceedings and upon unfavorable outcome the matter was taken up by this Court in appeal⁹. The appeal was dismissed and the Court specifically maintained that *the return of the meter in question is not part of the proceedings emanating from FIR 07 of 2022 and apparently, it is an independent action for which the appellant is at liberty to contest the same by*

⁵ Per *Amin ud din Khan J* in *Mardan Ways SNG Station vs. GM SNGPL* reported as 2022 SCMR 584.

⁶ Per *Ayesha A. Malik J* in *OGRA vs. SSGC* reported as 2023 SCMR 908.

⁷ Per *Muhammad Junaid Ghaffar J* in *SSGC vs. Province of Sindh (CP D 288 of 2020 Hyderabad)* order dated 01.06.2023.

⁸ Per *Mohsin Akhtar Kayani J* in *SSGC vs. OGRA* reported as *PLD 2021 Islamabad 378*.

⁹ Criminal Appeal 560 of 2022 order dated 27.10.2022.

*approaching the authorities and after lab test procedure, if any action is taken by the authorities, the appellant would be competent to challenge the same before the competent forum*¹⁰. No rationale could be articulated before this Court as to why the gas utility court was not approached in the pending civil proceedings to redress the grievance.

12. It is seen that the immediate remedy, albeit interim, sought by the plaintiff is restoration of supply; return of a meter without restoration of supply would appear to be bereft of benefit. The relevant civil proceedings are pending before the gas utility court and the plaintiff is stated to have already entered an appearance therein. The proviso to section 29 of the Act caters for interim restoration, however, subject to deposit. While this Court cannot sanction parallel proceedings of an overlapping nature, however, without prejudice thereto no case could be made out to consider the apparent indirect attempt to obtain interim restoration of supply without the security mandated by the Act in such regard.

Conclusion

13. In view of the foregoing, it is the deliberated view of this Court that the present grievance of the plaintiff could not be adjudicated in this civil suit; in view of overriding exclusive jurisdiction conferred upon the gas utility court per the Gas (Theft Control and Recovery) Act 2016, as interpreted by the binding edicts cited supra. It suffices to conclude the requirements to be borne in mind for rejection of a plaint have been satisfied. Therefore, CMA 7631 of 2023 is allowed and the plaint is hereby rejected per Order VII rule 11(d) CPC¹¹.

Judge

¹⁰ Per Mr. Ghazi Khan Khalil, the competent forum is the Gas Utility Court in Special Suit 15 of 2023.

¹¹ 11. Rejection of plaint. The plaint shall be rejected in the following cases:

...

(d) where the suit appears from the statement in the plaint to be barred by any law.