

P L D 2013 Peshawar 9**Before Miftah-ud-Din Khan and Mrs. Irshad Qaiser, JJ****Messrs NEELAB CNG FILLING STATION through Managing Director---Appellant****Versus****MANAGING DIRECTOR, SUI NORTHERN GAS PIPELINE LTD. and 4 others---Respondents**

R.F.A. No.480 of 2010, decided on 3rd October, 2012.

Khyber Pakhtunkhwa Consumers Protection Act (VI of 1997)---

----S. 3---Civil Procedure Code (V of 1908), S. 9 & O.VII, R.10---Civil courts, jurisdiction of---Maxim "ubi jus ibi remedium (where there is a right, there is a remedy)---Applicability---Plaintiff filed suit assailing excessive bill sent by gas authorities---Trial Court returned the suit under O. VII, R., 10 C.P.C. to seek remedy before Consumer Court---Validity---Maxim "ubi jus ibi remedium" (where there is a right, there is a remedy) was a fundamental principle of law---Any person having a right had corresponding remedy to institute suit in court, unless jurisdiction of court was barred---By virtue of provision of S.9 C.P.C., Civil Courts were granted general jurisdiction to try all suits of civil nature---Wherever object of proceedings was the enforcement of civil rights, a Civil Court had jurisdiction to entertain suit independently of statute unless its cognizance was either expressly or impliedly barred---Section 3 of Khyber Pakhtunkhwa Consumers Protection Act, 1997, was in addition to and not in derogation of the provision of any other law for the time being in force and the same did not oust jurisdiction of Civil Court---Trial Court had misconceived the matter and wrongly presumed that with establishment of Consumer Court, their jurisdiction over some matters had been ousted---High Court set aside order passed by Trial Court and remanded case for decision afresh---Appeal was allowed accordingly.

1988 PCr.LJ 39 ref.

Muhammad Yasir Khattak for Appellant.

Ghulam Shoaib Jally for Respondents.

Date of hearing: 3rd October, 2012.

JUDGMENT

MRS. IRSHAD QAISER, J.---Appellant has assailed the judgment/order dated 22-10-2010 of the learned Civil Judge-VI, Peshawar, whereby he returned the plaint under Order VII, Rule 10 of the C.P.C.

2. Brief Facts of the case are that Messrs Neelab CNG Filling Station/plaintiff/appellant through its Managing Director brought a suit for declaration against the respondents in the Court of the learned Civil Judge, Peshawar, alleging that the claim of the Sui Gas estimated bills from April, 2009 to October, 2009 based on presumption issued by the respondents being in excess against the real consumption is liable to be declared without lawful authority with a prayer of permanent injunction restraining the defendants from demanding the amount shown in the impugned bills and disconnecting the supply from the premises. The appellant also asked for the temporary injunction in the same tone. The respondents filed written statement and also filed an application under Order VII Rules 10/11 of the C.P.C. for dismissal of suit. Replication on behalf of the appellant was also filed. The learned trial Court while observing that since vide Notification No.SO (JUDL) HD/3-71/05 dated 7-6-2005, separate Consumer Courts have been established to adjudicate upon such matter, therefore, the Court has no jurisdiction to entertain the same. He allowed the application of the respondents, vide order dated 22-10-2010 and the plaint was returned under Order VII Rule 10 of the C.P.C. for presentation before the proper forum. The

appellant aggrieved with the order dated 22-10-2010 of the learned trial Court filed the present Regular First Appeal under section 96 of the C.P.C. with a prayer that the impugned order may be set aside and the Court be directed to decide the case on its own facts and merits.

3. Learned counsel appearing on behalf of the appellant contended that the learned trial Court while passing the impugned order ignored the arguments advanced by the learned counsel for the appellant with regard to material available on record, hence the impugned order is liable to be set aside. The learned counsel next contended that where the impugned order is based on misreading and non-reading of evidence, the learned trial is, therefore, acted against law and facts.

4. As against that, the learned counsel appearing on behalf of the respondents contended that where the suit has been filed with mala fide intention just to avoid payment of gas bills by getting injunction from Courts, it is required to be dismissed with heavy costs.

5. Now the question for determination of this Court is that whether the Civil Court has the jurisdiction to entertain the disputes involving such like matters or not? The maxim "Ubi jus ibi remedium" (where there is a right, there is a remedy) is fundamental principle of law. Any person having right has a corresponding remedy to institute suit in a Court unless the jurisdiction of the Court is barred. By virtue of the provision of section 9 of C.P.C., Civil Courts are granted general jurisdiction to try all suits of civil nature. In other words, wherever the object of proceeding is the enforcement of civil rights, a Civil Court has jurisdiction to entertain the suit independently of Statute unless its cognizance is either expressly or impliedly barred. Reference is made to 1988 PCr.LJ 39.

6. In the present case the learned trial Court returned the plaint under Order VII, Rule 10 of the C.P.C. to the appellant on the ground that Consumer Court is competent to entertain such disputes in order to settle the matter. Section 3 of the N.-W.F.P. Consumers Protection Act, 1997 is produced as under:-

"3. Act not to supersede other laws:--The provisions of this Act shall be in addition to and not in derogation or supersession of any other law for the time being in force."

The provision of section 3 of this Act shall be in addition to and not in derogation of the provision of any other law for the time being in force. This provision of law does not oust the jurisdiction of Civil Court.

7. The learned District and Sessions Judge, Peshawar, in the meeting of Bar Bench Liaison Committee held in his chamber on 2-11-2010 had also removed the ambiguity by giving reference to the relevant provision of law that the provision of the N.-W.F.P. Consumers Protection Act, 1997 shall be in addition to and not in derogation or supersession of any other law for the time being in force. He further observed "some of the Civil Judges have misconceived the matter and they presumed that with the establishment of Consumer Court their jurisdiction over some matters has been ousted which is not correct". In view of the above position, the remand of the case has become inevitable.

8. For the reasons discussed above, we while allowing the appeal, set aside the impugned order and remand the case back to the learned trial Court for decision afresh with the direction to avoid inconvenience of the litigants and delay in disposal of cases as the matter is well within the jurisdiction of the Civil Courts. As minor controversy is involved in this case, let it be decided as early as possible.

MH/369/P Case remanded.

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