JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

F.A.O. NO.32 OF 2023

ABDUL SAEED

VERSUS

Mrs. NASEEM KHATTAK HUMAYUN *and others*

Appellant by	:	**Mr. Muhammad Ramzan Chaudhry, Advocate.**
Respondent by	:	**Mr. Sajjad Muhammad Durrani, Advocate.** (For Respondents No.1 to 3)
		Syeda Muneeza Fatima, Advocate. (For Respondent No.4)
Date of Hearing	:	**25-01-2024.**

SAMAN RAFAT IMTIAZ, J.:-

1. Through this appeal the Appellant [Abdul Saeed] has assailed the Order dated 31-03-2023 ("**Impugned Order**") passed by the learned Additional District Judge, West-Islamabad ("**Trial Court**") whereby the Application under Section16 and Order VII, Rules 10 and 11, CPC filed by the Respondents No.1 to 3 [Mrs. Naseem Khattak Humayun, Mrs. Yasmin Haider Jaber, and Mrs. Nadira K.M.A. Khan *alias* Mamoni K. Mohsin Khan] and Application under Order VII, Rules 10 and 11, CPC filed by the Respondent No. 4 [Securities & Exchange Commission of Pakistan] were allowed and the plaint filed by the Appellant was returned under Order VII, Rule 10, CPC for presentation before the proper Court.

2. The brief facts necessary for disposal of the instant appeal are that the Appellant filed a Suit for Specific Performance and Permanent and Mandatory Injunction (**"Subject Suit"**) against the Respondents before the Trial Court on account of the alleged refusal to perform under the Agreement to Sell executed in respect of shares of Shahi Beverages (Pvt.) Limited ("**Company**") held by the Respondents No. 1 and 2.

3. The Respondents No.1 to 3 filed an Application under Section 16, Order VII, Rules 10 and 11, CPC alleging that the Subject Suit is

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barred on account of failure to deposit balance sale consideration; for misjoinder of parties; and for non-deposit of proper stamp duty. The Respondent No.4 also filed separate Application under Order VII, Rule 10 and 11, CPC claiming that since the registered office of the Company is situated in Peshawar the Trial Court is *coram non judice*. The learned Trial Court vide the Impugned Order allowed both the Applications and the plaint in the Subject Suit was returned under Order VII, Rule 10, CPC for presentation before the proper forum. Being aggrieved of the Impugned Order the Appellant instituted the instant appeal.

4. The learned counsel for the Appellant submitted that the Agreement to Sell dated 20-11-2019 ("**Agreement**") was executed by the Appellant with the Respondents No.1 and 2 in Islamabad in respect of 34966 paid up shares constituting 14% of the paid up capital of the Company of which specific performance was sought by the Appellant in the Subject Suit. He submitted that the plaint has been returned under Order VII, Rule 10, CPC on the ground that the registered office of the Company is situated at Peshawar. He highlighted that the place of execution of the Agreement was Islamabad and as such argued that the civil courts in Islamabad have territorial jurisdiction whereas the learned Trial Court has erroneously held that mere execution of the Agreement in Islamabad is not sufficient to conclude that cause of action has accrued in Islamabad. He relied upon *Province of Punjab Vs. Messrs Muhammad Tufail and Company,* PLD 2017 SC 53; *National Highway Authority Vs. Messrs Put Sarajevo General Engineering Company,* 2012 CLC 463; *Ravi Glass Mills Limited Vs. I.C.I. Pakistan Powergen Limited,* 2004 YLR 2503; *Messrs Businet International (Pvt.) Ltd. Vs. Messrs Aramex International (Pvt.) Ltd.,* 2001 CLC 104; *WAPDA Vs. Mian Ghulam Bari,* PLD 1991 SC 780; *Messrs Brady & Co. (Pakistan) Ltd. Vs. Messrs Sayed Saigol Industries Ltd.,* 1981 SCMR 494; and *Sh. Imam Ali Vs. Ch. Muhammad Shafi,* PLD 1956 Lahore 341.

5. The learned counsel for the Respondents No.1 to 3, on the other hand, submitted that the Impugned Order is in accordance with Section 20, CPC as the Agreement is for sale and purchase of shares of the Company whose registered office is admittedly in Peshawar. Furthermore, the Respondents No.1 to 3 neither reside nor carry on any

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business in Islamabad and that it is only the attorney of Respondent No.2 who resides in Islamabad, as such the Impugned Order does not suffer from any infirmity.

6. The learned counsel for the Respondent No.4 submitted that the civil court jurisdiction is ousted as the subject matter of the Agreement falls within the jurisdiction of Company Court. She relied upon *Dr. Omar Masood and another Versus Syed Amir Hussain Naqvi and another,* 2019 CLD 931.

7. Arguments advanced by the learned counsel for the parties have been heard and record examined with their assistance.

8. The Subject Suit was filed for the specific performance of an Agreement the subject matter of which is not immovable property and as such the application filed under Section 16, C.P.C., by the Respondents No. 1 to 3 was misconceived. Nor is Section 19, C.P.C. relevant as the Subject Suit was not for compensation for wrong done to person or movable property. Thus, jurisdiction would be determined as per Section 20, CPC. The arguments submitted on behalf of the parties before this Court were also in reliance of Section 20, CPC and Section 5 of the Companies Act, 2017 **("Companies Act")** therefore, there appears to be no dispute with regard to the applicable provision of law.

Section 20, CPC

9. Under Section 20, CPC suit may be instituted where the defendants reside or where they carry on business or where the cause of action, wholly or in part, arises. Thus, as observed in *MCB Bank Limited Versus Adeel Shahbaz Steel Mills and others,* 2023 CLD 655, the registered office of the defendant or residential address is not the sole basis for establishment of jurisdiction especially where cause of action arises in a different location. The Lahore High Court specifically noted in *MCB Bank Limited (Supra)* that one of the places where cause of action may accrue is the location of the execution of a contract. Similarly, in the cases of *Zaib Cold Storage and Ice Factory through Sole Proprietor and another Versus Messrs Pakistan Industrial Leasing Corporation Limited*, 2006 CLD 67 and *Bankers Equity Ltd. versus Iqas Weaving Mills (Pvt.)*

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Ltd., 2001 CLC 169 it was recognized that since execution of agreement at Lahore/Karachi was admitted, jurisdiction of the Courts at Lahore/Karachi could not be denied.

10. Granted that in such cases, the parties had also agreed by way of such agreements to the jurisdiction of the courts at the location of the execution of the agreements whereas no such agreement has been made by the parties before this Court. However, as observed in *Tahir Tariq Textile Mills (Pvt.) Ltd. versus N.D.F.C. through Chairman*, 2001 YLR 846 parties cannot by consent confer jurisdiction upon a Court that it otherwise is not possessed with. Therefore, Courts in *Zaib Cold Storage and Ice Factory* and *Bankers Equity Ltd. (Supra)* would not have upheld the provision in the agreements providing jurisdiction in Lahore/Karachi unless such Courts were otherwise also possessed with jurisdiction of the subject matter. The only reason why the Courts in the said cases were possessed with jurisdiction was due to the execution of the agreements within their jurisdiction. I am also fortified in my view by the judgments rendered in *Faqir Muhammad Vs. Pakistan*, 2000 SCMR 1312 and *Messrs Businet International (Pvt.) Ltd. Vs. Messrs Aramex International (Pvt.) Ltd.*, 2001 CLC 104.

11. Of course, it is possible for more than one court to have jurisdiction such as in the instant case where the Courts within whose jurisdiction the Respondents/Defendants reside or carry on business or where the registered office of the Company is situated are also possessed with jurisdiction in addition to the Court within whose jurisdiction the subject agreement was executed. However, since the parties have not agreed to the exclusive jurisdiction of any such Court, the Subject Suit could be instituted in any Court having jurisdiction including where the agreement was executed. Therefore, the observation of the learned Trial Court in the Impugned Order that mere execution of agreement in Islamabad is not sufficient for conclusion that cause of action in Islamabad is not legally tenable.

Section 5 of the Companies Act, 2017

12. Coming to the judgment relied upon by the Respondent No.4, with utmost respect I disagree with the judgment of *Dr. Omar Masood (Supra)*

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whereby jurisdiction of civil courts was found to be barred in respect of suit for specific performance of an agreement for transfer of shares in view of sub-section (2) of Section 5 of the Companies Act. Section 5 of the Companies Act is reproduced herein below:

> ***5. Jurisdiction of the Court and creation of Benches.—****(1) The Court having jurisdiction under this Act shall be the High Court having jurisdiction in the place at which the registered office of the company is situate.*
>
> ***(2) Notwithstanding anything contained in any other law no civil court as provided in the Code of Civil Procedure, 1908 (Act V of 1908) or any other court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Court is empowered to determine by or under this Act.***
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> *(3) For the purposes of jurisdiction to wind up companies, the expression registered office means the place which has longest been the registered office of the company during the one hundred and eighty days immediately preceding the presentation of the petition for winding up.*
>
> *(4) There shall be, in each High Court, one or more benches on permanent basis, each to be known as the Company Bench, to be constituted by the Chief Justice of the High Court to exercise the jurisdiction vested in the High Court under this Act:*
>
> *Provided that Benches constituted under the Companies Ordinance, 1984 (XLVII of 1984), shall continue to function accordingly unless otherwise notified by the respective Chief Justice of the High Court: Provided further that provisions of section 6 shall be effective from the date of notification by the Chief Justice of the respective High Court within one hundred and eighty days from the date of the commencement of this Act.*
>
> *(5) There shall be a Registrar to be known as "Registrar of the Company Bench" duly notified by the Chief Justice of the respective High Court who shall be assisted by such other officers as may be assigned by the Chief Justice of the respective High Court.*
>
> *(6) The Registrar of the Company Bench shall perform all the functions assigned to it under this Act including all ministerial and administrative business of the Company Bench such as the receipt of petitions, applications, written replies, issuance of notices, service of summons and such other functions or duties as may be prescribed under section 423.*
>
> *(7) The Chief Justice of the respective High Court, if deemed appropriate, may also establish a secretariat in each Company Bench of the respective High Court in such form and manner to provide secretarial support and to perform such functions as may be prescribed under section 423.* [Emphasis added]

13. For purposes of the question before this Court it may be seen that Section 5 provides that no civil or any other court shall have jurisdiction in respect of any suit or proceeding in respect of any matter which the High Court (having jurisdiction in the place where the registered office of the company is situated) is empowered to determine by or under the Companies Act. In order to justify its holding that the Court under

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Section 5 of the Companies Act is empowered to determine a suit for specific performance of an agreement for transfer of shares by or under the Companies Act, this Court in *Dr. Omar Masood (Supra)* referred to the provisions of the Companies Act that provide the mechanism for transfer of shares and the consequences of refusal to transfer by the company. Consequently, it was held that *all* matters relating to title or transfer of shares of a juristic person incorporated under the Companies Act shall be dealt with by the court vested with jurisdiction under Section 5 of the Companies Act.

14. The provisions containing the mechanism for transfer of shares are encompassed in Sections 74 to 80 of the Companies Act. An examination the said provisions reveals that they pertain to the procedure to be adopted by the transferor/transferee for registration of transfer of shares with the company; the circumstances in which transfer of shares may be refused by the Board of Directors of the company; and restrictions upon transfer of shares by member of private companies, etc. In case of refusal to register a transfer by the company, the remedy has been provided for in terms of Section 80 *ibid*. Thus, it may be noted that such provisions deal with the relationship between the transferor/transferee *vis-a-vis* the company and not between the transferor and the transferee *inter se*. In other words the provisions deal with the steps to be taken by the transferor or the transferee *vis-a-vis* the company in order to give effect to their agreement for transfer of shares. They come into operation when the transferor and the transferee wish to register the transfer of shares from one to another in accordance with their agreement. However, a dispute between the transferor and the transferee with regard to their agreement to transfer shares or refusal by the transferor to give effect to the agreement to sell shares is not covered under such provisions.

15. Similarly, Section 126 of the Companies Act which has also been referred to in the judgment in *Dr. Omar Masood (Supra)* deals with rectification of register of members. The said provision only pertains to rectification for any fraudulent entry or omission of the name of any person in the register of, *inter alia,* members or if default or unnecessary delay is made in entering the fact of a person having become or ceased to

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be a member thereof. On the other hand, no allegation has been made in the Subject Suit that is covered under Section 126 *ibid*.

16. Thus, none of the provisions relied upon in the case of *Dr. Omar Masood (Supra)* pertain to the subject matter of the Subject Suit which was filed on account of the alleged refusal of the Respondent No.1 and 2 to perform under the Agreement to sell the shares held by them in the Company. Even otherwise, it is important to recall that in order for the jurisdiction of the civil courts to entertain any suit or proceeding to be barred under Section 5(2) of the Companies Act, it is not sufficient for the matter involved in such suit or proceeding to be covered under the Companies Act. The Court under the Companies Act must be empowered to determine the matter involved in a suit or proceeding for civil court jurisdiction to be ousted.

17. In this regard it may be noted that the mechanism of registration of transfer of shares on the application of the transferor or transferee with the company is covered under Sections 74 to 80 of the Companies Act. Yet the remedy in case of refusal by the company to register a transfer lies with the Respondent No. 4 in terms of Section 80 *ibid* and not with the Court under Section 5 of the Act. Therefore, simply because certain aspects of transfer of shares are covered under the Companies Act it cannot be held that *all* matters relating to title or transfer of shares of a juristic person incorporated under the Companies Act shall be dealt with by the court vested with jurisdiction under Section 5 of the Companies Act.

18. Therefore, in my humble view civil court jurisdiction is ousted only in respect of suits or proceedings which involve a matter which the Court under Section 5 of the Companies Act is empowered to determine. It is reiterated that the controversy between the parties involved in the Subject Suit is a dispute regarding an agreement for the sale of the shares by Respondents No.1 and 2 to the Appellant due to which the Appellant is seeking specific performance of the Subject Agreement. There is no provision in the Companies Act which empowers the Court as defined therein to exercise jurisdiction in respect of disputes between parties to a share purchase agreements and therefore jurisdiction of civil courts under

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Section 5 is not barred in respect of such disputes. Enforcement of a contact for sale/purchase of shares is covered under the Specific Relief Act, 1877. I am fortified in my view by the judgments rendered in *National Investment Trust Ltd. Versus Lawrencepur Woolen and Textile Mills Ltd.*, 2002 CLD 527.

19. In light of the foregoing, the instant Appeal is hereby **allowed,** the Impugned Order is hereby set aside and the Application under Section16 and Order VII, Rules 10 and 11, CPC filed by the Respondents No.1 to 3 and Application under Order VII, Rules 10 and 11, CPC filed by the Respondent No. 4 are dismissed. Resultantly, the Subject Suit shall be deemed to be pending before the learned Trial Court who shall proceed with the same in accordance with law.

(SAMAN RAFAT IMTIAZ)
JUDGE

Announced in open Court on this 14th day of February, 2024.

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Approved for Reporting
Blue Slip added.

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