JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

R.F.A. No.148 of 2016
M/s Interman Trading FZE Dubai
Versus
Oil & Gas Development Company and others

Date of Hearing:	26.10.2023
Appellant by:	Mr. Abdul Rehman Sheikh, , Advocate.
Respondent by:	M/s Jawad Hussain Adil and Sufian Akram, Advocates for respondent No.1.

MIANGUL HASSAN AURANGZEB, J:- Through the instant regular first appeal the appellant, M/s Interman Trading FZE Dubai, impugns order and decree dated 12.07.2016 passed by the Court of the learned Civil Judge, Islamabad, who while deciding the appellant's application for interim injunction, rejected the plaint in the suit for specific performance of the contract dated 14.06.2013.

2. The record shows that on 14.06.2013, the appellant and respondent No.1 had entered into a contract for the "Design, Fabrication, Inspection, Testing, Supply, Start-up and Commissioning of Hot Oil Heater Package" (**"Contract"**). The Contract documents included the Conditions of Contract-Appendix I. Clause 24.2 of the said Conditions of Contract provided *inter alia* that the disputes between the parties to the Contract are to be settled by arbitration.

3. Pursuant to the terms of the Contract, the appellant had furnished a performance guarantee for 10% of the Contract price. After disputes and differences developed between the parties, the appellant, on 18.02.2016, filed a suit for specific performance of the Contract against respondent No.1 before the Court of the learned Civil Judge, Islamabad. Along with the said suit, the appellant filed an application for interim injunction to

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restrain respondent No.1 from encashing the performance guarantee.

4. Learned counsel for the appellant does not know whether the performance guarantee for an amount of US Dollars 1,127,000/- furnished by the appellant has been encashed or not. Vide ad-interim order dated 18.02.2016, the learned Civil Court had restrained respondent No.1 from taking any adverse action against the appellant in respect of the Contract. Subsequently, vide order dated 12.07.2016, the learned Civil Court while deciding the appellant's application for interim injunction, rejected the plaint in the suit. The sole ground on which the plaint was rejected was that the appellant had the alternative remedy of filing a complaint under the provisions of the Oil and Gas Regulatory Authority Ordinance, 2002 (**"the OGRA Ordinance"**), which according to the learned Civil Court, had an overriding effect on any other rule or regulation.

5. We are of the view that the ground on which the plaint in the appellant's suit was rejected suffers from a misconception. The learned Court below did not appreciate that the relationship between the appellant and respondent No.1 was to be governed by the terms of the Contract. The learned Civil Court also erred by holding that respondent No.1 was a company "being run under a special law in the shape of OGRA Ordinance." Respondent No.1 is a company incorporated under the provisions of the erstwhile Companies Ordinance, 1984, and can enter into contracts for construction and supply of equipment with third parties. True, Section 11 of the OGRA Ordinance gives the right to an interested person to file a written complaint to OGRA against a licensee for the contravention of any provision of the OGRA Ordinance or any rule or regulation made thereunder, but the learned Civil Court has not identified the contravention of any such provision as to give respondent No.1 the right to file a complaint before OGRA. The allegation made by the appellant as to breach of the Contract by respondent No.1

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does not *ipso facto* amount to the contravention of any provision of the OGRA Ordinance or any of the rules and regulations made thereunder. Since we do not find the ground on which the learned Civil Court rejected the plaint in the appellant's suit to be sustainable in law, the instant appeal is partly allowed; the impugned order and decree dated 12.07.2016 to the extent of rejecting the plaint in the appellant's suit is set-aside; and the matter is remanded to the learned Civil Court for further proceedings.

(SAMAN RAFAT IMTIAZ)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 01.11.2023.

(JUDGE)

(JUDGE)

Ahtesham*

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