JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

C.R.No.345 of 2016
SNGPL and another
Versus
M/s Mak Gas CNG Station

Date of Hearing: 16.05.2017
Petitioners by: Ch. Hafeez Ullah Yaqoob, Advocate,
Respondent by: Mr. Tariq Mehmood, Advocate.

MIANGUL HASSAN AURANGZEB, J:- Through the instant civil revision petition, the petitioners, impugn the judgment and decree dated 27.06.2016, passed by the Court of the learned Additional District Judge, Islamabad, whereby the petitioners' appeal against the judgment and decree dated 30.01.2016, passed by the Court of the learned Civil Judge, Islamabad, was dismissed. Vide the said judgment and decree dated 30.01.2016, the learned Civil Court decreed the respondent's suit for declaration and permanent injunction. The learned Civil Court held that the charges claimed by the petitioners in the gas bill issued to the respondent in May 2013 were unjustified and incorrect. Furthermore, the petitioners were directed to recalculate the disputed bill and, thereafter, reissue the correct bill to the respondent. The petitioners were also directed to restore the respondent's gas connection after the respondent makes payment against the corrected bill.

2. Learned counsel for the petitioners submitted that the learned Courts below concurrently erred by decreeing the respondent's suit; that the learned appellate Court did not appreciate that the learned Civil Court did not have jurisdiction to adjudicate upon the suit; that the jurisdiction of the learned Civil Court was barred in view of Sections 6 and 43 of the Oil and Gas Regulatory Authority Ordinance, 2002 ("the OGRA Ordinance"); that if in the respondent's view the gas bill issued to the respondent was not correct, it should have filed a complaint before Oil and Gas Regulatory Authority ("OGRA") in accordance with the OGRA Ordinance and the Complaint Resolution

Procedure for Natural Gas, Liquefied Petroleum Gas and CNG Regulations, 2003 ("the 2003 Regulations"); that the learned Civil Court at Islamabad did not have the territorial jurisdiction to adjudicate upon the suit; that the respondent's gas meter was installed at Rawalpindi; and that the learned Courts below while passing the judgments impugned did not consider the evidence produced by the petitioners. Learned counsel for the petitioners prayed for the civil revision petition to be allowed and for the impugned judgments passed by the learned Courts below to be set-aside. In making his submission, learned counsel for the petitioners placed reliance on the law laid down in the case of Samina Anwar Ullah Khan Vs. General Manager, SNGPL, Lahore (PLD 2012 Lahore 554), Zahid Raza Khan Vs. Provincial Government and N.W.F.P. (2015 CLC 699), and M/s Sui Southern Gas Company Ltd. Vs. Arbab Najeeb Ullah (PLD 2015 Balochistan 110).

3. On the other hand, learned counsel for the respondent submitted that the impugned judgments and decrees are strictly in accordance with the law; that the petitioners have not pointed out any misreading or non-reading of evidence by the learned Courts below; that no jurisdictional error was committed by the learned Courts below in decreeing the respondent's suit; that the respondent operates CNG Filling Station at Rawalpindi; that the gas meter installed by the petitioners at the respondent's CNG Station was defective due to which a complaint was lodged by the respondent before the petitioners; that the defective meter was subsequently replaced by the petitioners; that for November 2009, the respondent received a gas bill which included an amount of Rs.1,129,068/- as arrears; that the respondent raised a dispute with the petitioners over the amount in the gas bill; that since this dispute could not be resolved, the respondent instituted the suit for declaration and permanent injunction; that the respondent received bill during the month of October, 2012, for an amount of Rs.6,380,940/-, which was payable on 22.10.2012, whereupon the respondent protested that arrears amounting to Rs.5,945,120/- was not adjusted; that the respondent agreed to deposit 40% of the outstanding bill; that consequently, the

respondent deposited Rs.2,720,000/-; that despite the said payment, the petitioners disconnected the respondent's gas meter; that subsequently, a bill of Rs.8,544,180/- was issued to the respondent; and that the learned Court below were correct in declaring charges claimed by the petitioners in the gas bill of May 2013 issued to the respondent to be unjustified.

4. Learned counsel for the respondent also submitted that prior to the filing of the civil suit, the respondent had approached OGRA by filing a complaint; that since no response was received from OGRA, the respondent filed the civil suit; that after the institution of the civil suit, OGRA informed the respondent that since the respondent had instituted a civil suit, its complaint could not be entertained; and that now the petitioners cannot assert that the suit was barred due to the existence of an alternative remedy. Learned counsel for the respondent prayed for the civil revision petition to be dismissed.

5. I have heard the contentions of the learned counsel for the contesting parties, and have perused the record with their able assistance.

6. Now, it is not disputed that the respondent is a CNG Filling Station, operating in Rawalpindi, and that on 02.05.2009, the respondent had complained to the petitioners about the malfunctioning of the gas meter installed at the respondent's premises. During this period, the respondent continued to carry out his business operations. The petitioners did not install a new gas meter until September, 2009. For the month of November, 2009, the respondent received a gas bill which included arrears amounting to Rs.1,129,068/-. The gas bills paid by the respondent until January 2011 were partially adjusted by the petitioners against the said arrears. As the dispute between the petitioners and the respondent could not be resolved, the respondent instituted a suit for declaration and permanent injunction on 26.03.2011, praying for the arrears in the respondent's gas bill to be declared as unjustified.

7. In July 2012, the respondent reported leakages in gas at the respondent's premises to the petitioners. The petitioners repaired the gas leakage, but the gas meter was not replaced or repaired.

For the month of August 2012, the respondent received a gas bill of Rs.5,945,120/- (which included arrears amounting to Rs.1,099,990/-). The respondent disputed this gas bill. For the month of October 2012, the respondent received a gas bill of Rs.6,380,940/- This gas bill was also disputed by the respondent. Subsequently, the respondent deposited Rs.2,720,000/- as 40% of the gas bill. All gas bills received by the respondent for September 2011 to March 2013, included arrears, the respondent would make payment against the monthly gas bills but not the arrears. In the month of February 2013, the petitioners disconnected the gas supply to the respondent. Subsequently, the respondent was issued a gas bill amounting to Rs.8,544,180/- which contained arrears as well as late payment charges.

8. The learned Civil Court after framing the issues and recording *pro and contra* evidence, decreed the respondent's suit in terms mentioned in the first paragraph of this judgment. The petitioners' appeal against the judgment and decree of the learned Civil Court was also dismissed.

9. The ground on which the learned counsel for the petitioners laid stress was that in view of the Complaint Resolution Procedure for Natural Gas, Liquefied Petroleum Gas, and CNG Regulations, 2003, ("the 2003 Regulations"), the respondent could have initiated a Complaint Resolution Procedure by submitting a complaint to OGRA.

10. From the documents brought on record by the respondent, it appears that on 02.02.2011, the respondent had submitted a complaint to OGRA. The respondent was not called for hearing until 22.08.2013 by OGRA. By then the respondent had already instituted the civil suit before the learned Civil Court. OGRA's letter No.OGRA-8(2)C-485/2011, dated "September, 2011" shows that a complaint was indeed submitted by the respondent to OGRA on 02.02.2011. OGRA's response to the said complaint was that since the respondent had already filed the suit before the learned Civil Court, OGRA could not decide the matter. Regulation 4(d) of OGRA's Resolution Procedure Regulation, 2003 provided that *"no action shall be taken on anonymous complaints or any such complaints which on the date of its filing is pending or earlier*

decided by any Court of law or Tribunal." **Now, the complaint was filed by the respondent on 02.02.2011 whereas the civil suit was filed on 26.03.2011. Therefore, OGRA could not have turned down the respondent's complaint dated 02.02.2011. Although, jurisdictional objections could be taken at any stage of the proceedings, but this is not a case where a plaintiff without availing the alternative remedy under the law, instituted a civil suit. In this case, the respondent did file a complaint before OGRA, but having not received any response for over a month and half, a suit was instituted. After the institution of the suit, OGRA informed the respondent that since the civil suit was pending, the respondent's complaint before OGRA was disposed of without taking any action. Therefore, in such circumstances, the respondent could not be compelled to re-agitate his grievances before OGRA.**

11. Vide judgment dated 28.11.2016, passed by this Court in R.S.A.No.22/2016, titled "Muhammad Azam Khan Niazi, Vs. General Manager, SNGPL, Islamabad", this Court had held that a civil suit (regarding any of the matters over which a complaint could be filed before OGRA in terms of the said Regulations), would be barred under Order VII, Rule 11 of the Code of Civil Procedure, 1908. The case at hand is clearly distinguishable because the respondent/plaintiff had filed a complaint regarding "billing and over charging" and "connection and disconnection of service" with OGRA. The reason why the documents, showing that the respondent had filed a complaint before OGRA, were not exhibited, because no specific issue was framed as regards the jurisdiction of the learned Civil Court being barred in view of the alternative remedy available to the respondent under the 2003 Regulations.

12. Nothing much was said about the misreading and non-reading of evidence as regards the impugned judgments and decrees passed by the learned Courts below. The learned Civil Court has simply directed the petitioners to recalculate the respondent's gas bill within a period of forty-five days. The petitioners' reluctance to carry out this recalculation is not understandable. The respondent's grievance is also that although

the respondent furnished bank guarantee for an amount of Rs.2.2 Million, the same was not taken into consideration while issuing the disputed gas bill. The respondent also claims that an amount of Rs.2,637,000/- paid through a cheque by the respondent to the petitioners was not deducted from the gas bill. The respondent asserts that gas supply to the respondent was restored upon payment of Rs.4,37,000/- which amount was also not deducted from the disputed bill. The respondent also insists that the calculation of the disputed gas bill had to be carried out in accordance clause 16 of the Gas Supply Contract between the petitioners and the respondent. It is within the realm of possibilities that as a consequence of the recalculation (as directed by the learned Civil Court) the petitioners may arrive at the same figure as before. However, for the petitioners to simply say that they will not even take any steps for recalculation, makes their conduct inequitable.

13. Although the respondent/CNG Station is located at Rawalpindi, it was not disputed that the disputed gas bills were issued to the respondent from Islamabad. Therefore, the learned Civil Court at Islamabad did have the jurisdiction to adjudicate upon the matter.

14. In view of the above, this petition is dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2017

(JUDGE)

Sultan*

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