JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
(JUDICIAL DEPARTMENT)

R.F.A. No. 35/2018.

M/S S.K. PVT. LTD.

Vs.

SNGPL & OTHERS.

R.F.A No.89/2018.

M/S GASCO 2000 CNG STATION.

VS.

SNGPL THROUGH ITS GENERAL MANAGER, ISLAMABAD, E TC.

R.F.A. No. 143/2018.

WAQAS AMJAD.

Vs

M/S SNGPL THROGH GENERAL MANAGER, ISLAMABAD AND ANOTHER.

Appellants by:	M/s Abu Zar Salman Khan Niazi and Wasim Abid, Advocates. (in R.F.As. No. 35, 86, 88 & 89/2018) Mr. Sajid Khan, Advocate. (In R.F.A.No. 143/2018)
Respondents by:	Ch. Hafiz Ullah Yaqub and M. Aslam Korai, Advocates. (For Respondents in all cases)
Date of Decision:	**10.06.2020.**

SAMAN RAFAT IMTIAZ, J:- Through this single judgment, I intend to decide the above mentioned R.F.As as similar questions of law and facts are involved.

RFA No.35 of 2018.

2. The necessary facts as per the Memo of Appeal and the complaint are that M/s S.K. (Pvt.) Limited (hereinafter referred to as the **"Appellant No. 1**") and the Respondent No.1 (Sui Northern Gas Pipelines Limited) signed an Agreement for

supply of Natural Gas to different CNG Stations of the Appellant No. 1. According to the Appellant No. 1, the Respondent No.1 as per the said Agreement can charge Gas Calorific Value (GCV) between 950-1000 British Thermal Units (BTUs) whereas the Respondent No.1 has charged GCV at above 1000 BTUs in the bills issued from 2012-2014. The Appellant No. 1 has paid the bills under protest.

3. However, being aggrieved of such overcharging the Appellant No. 1 filed a suit for Declaration, Permanent & Mandatory Injunction and Recovery of Undue Excessive Amounts on the basis of wrong GCV before the learned Additional District Judge//Judge Gas Utility Court, Islamabad-West **("Gas Utility Court")** praying *inter alia,* for a declaration that charging GCV in excess of 1000 BTUs through the impugned bills is unlawful and for refund of the excessive GCV charged along with interest. The Respondents contested the suit by filing their Written Statement whereby they raised a preliminary objection for lack of jurisdiction.

4. The learned Gas Utility Court after hearing the parties rejected the Appellant's Plaint under Order VII, Rule 11 C.P.C., vide the Impugned Judgment and Decree dated 29.03.2018 (**"Impugned Judgment and Decree No. 1"**). Hence, the present appeal has been preferred for setting aside the Impugned Judgment and Decree No. 1.

RFA No.89 of 2018.

5. The necessary facts as per the Memo of Appeal and complaint are that M/s GASCO 2000 CNG Station, Rawalpindi (herein after referred to as the **"Appellant No. 2")** is operating CNG Stations at different locations. In September 2007, the Appellant No. 2 discovered that three particular GASCO 2000 CNG Stations were recording higher billing and therefore applied to the Chief Engineer of the Respondents for flow proving on site and also paid a sum of Rs. 60,000/- in the account of the Respondents on 25.09.2007 under the orders of the department as charges for conducting Flow Proving Tests. However, instead of checking Flow Proving onsite, the Respondents replaced the meters with new ones and checked the old meters arbitrarily in their own laboratories and then imposed various amounts as penalties. No report of the Flow Proving test was shared with the Appellant No. 2 who was simply informed that flow proving tests were conducted by Respondents and no irregularity has been found.

6. The Appellant No. 2 filed suit for Declaration, Perpetual and Permanent Injunction before the learned Gas Court for declaring the penalty amounts in respect of the various gas stations of the Appellant No. 2 in the bills for the month of November, 2008 and shown therein as rebate/adjustment contrary to the law and procedure on the subject, arbitrary, fanciful, illegal, null & void; perpetual injunction in respect of recovery of the disputed amounts and penalties and against disconnection of gas supply to the Appellant's CNG Stations without flow proving along with mandatory injunction to conduct onsite flow proving. The Appellant further sought redemption of surcharge and correction of pending disputed bills according to the actual gas consumed at the gas stations of the Appellant.

7. The Respondents contested the suit by filing their Written Statement. The learned Court rejected the plaint under Order VII Rule 11 C.P.C. vide Judgment dated 04.07.2018 (**"Impugned Judgment and Decree No. 2"**). Hence, the present appeal has been preferred for setting aside the Impugned Judgment and Decree No. 2.

RFA No.143 of 2018.

8. The necessary facts as per the Memo of Appeal and complaint are that Waqas Amjad (hereinafter referred to as the **"Appellant No. 3"**) is running his business under the name and style of "Waqas CNG" station and is a consumer of the Respondents (Sui Northern Gas Pipelines, Islamabad). On 03.12.2008 the gas meter at the said CNG station was blocked due to some technical fault. On complaint by the Appellant No. 3 in this regard, some officials of the Respondents visited the site and reported that the meter is not working. The CNG station of the Appellant No. 3 remained closed from 04.12.2008 to 18.12.2008. After laborious efforts of the Appellant No. 3, ultimately on 19.12.2008 the officials of the Respondents replaced the gas meter with a new one and after that the Appellant No. 3 resumed his business at the CNG station. During this entire period no one from the Respondents side raised any allegation of theft against the Appellant No. 3 and on 19.12.2008 at the time of replacement of the meter, the Senior Supervisor of the Respondents, remarked that "*Meter is Sealed"* & "*Meter Block, Gas was not passing*".

9. According to the Appellant No. 3, the gas used in the month of December, 2008 amounted to Rs.3.276 million but the Respondents sent bill of Rs.54.118

million including estimated bill for the period with effect from 04.12.2008 till 18.12.2008. The Appellant No. 3 applied for correction of the bill, which was accepted and revised bill was issued which was deposited by the Appellant No. 3. But in the month of January, 2009, the Respondents included the estimated amount again. This matter went back and forth till the billing month of March, 2009 when the Respondents refused to correct the bill upon which the Appellant filed W.P.No.2081/2008 before this Honorable Court on 20.04.2009 whereby injunctive order was granted by restraining the Respondents from recovering any amount except the current bill. The Respondents started threatening the Appellant for forcible recovery of the said amount without any legal or moral justification hence, the Appellant approached the competent Court of Law i.e. the learned Senior Civil Judge, Islamabad. Later on the matter was entrusted to the Gas Utility Court vide order dated 25.02.2017. For purposes of jurisdiction, the matter has been valued at Rs. 1000/- by the Appellant No. 2.

10. The Respondents contested the suit by filing their Written Statement whereby they raised an objection for lack of jurisdiction. The learned Court rejected the plaint under Order VII, Rule 11, C.P.C., vide Impugned Judgment and Decree 18.07.2018 ("**Impugned Judgment and Decree No. 3**"). Hence, the present appeal has been preferred for setting aside the Impugned Judgment and Decree No. 3.

Submissions of the parties

11. The learned counsel for the Appellants submitted that the subject matter of the complaints filed by the said Appellants before the learned Gas Court were issues of overbilling based on overcharging of GCV; penalties; and estimated bill amount due to stoppage of meter, which as such fall within the scope of Section 6 of the Gas Act by virtue of the definition of "Consumer" and "Sums Due" as per sub-sections (b) and (o) of Section 2 of the Gas Act read with Section 4 which provides for exclusive jurisdiction and sub-section 5 of Section 5 which provides the powers of Gas Court. They further submitted that question of alternate remedy is misconceived as Gas Utility Court is a special tribunal and even otherwise it is settled law that where there are two special laws the one later in time prevails over the earlier law by virtue of which the Gas Act would prevail over the OGRA Ordinance. They relied upon M/s Sui Southern Gas Company Limited versus Oil

and Gas Regulatory Authority, *PLD 2021 Islamabad 378*, *Sui Northern Gas Pipeline Limited, (SNGPL) versus Director (Legal), President Secretariat (Public) Aiwan-e-Sadar Islamabad and others,* PLD 2018 Islamabad 51, *Bahoo Dying Industries (Private) Limited versus Sui Northern Gas Pipelines Limited and others,* PLD 2021 Lahore 186 and *Sui Southern Gas Company Ltd. Versus M/s DATA CNG Filling Station, Larkana*, 2021 MLD 568 [Sindh (Larkana Bench)].

12. On the other hand, the learned counsel for Respondents submitted that the Impugned Judgments are based on a correct appreciation of relevant laws and facts and that only a civil court can give declaration under Section 42 of the Specific Relief Act, 1877 and that even otherwise the correct forum was OGRA. He contended that in any event R.F.As. under Section 96, C.P.C., are incompetent and not maintainable as an appeal has been provided for under Section 13 of the Gas (Theft Control and Recovery) Act, 2016 **("Gas Act")**, where under the Appellant is required to give notice of filing of the appeal, which has not been complied with by the Appellants. He relied upon *G.M. SNGPL versus Qamar Zaman and others*, 2021 SCMR 2094, *M. Azam Khan Niazi versus G.M. SNGPL, Islamabad*, 2019 CLC 1998 [Islamabad], *Sahibzada Nisar Ahmed versus SNGPL*, 2021 CLC 851, *M/s SSGCL versus Arbab Najeeb Ullah*, 2015 PLD 110 Balochistan, and *Anjum Niaz Chaudhry versus M.D. SNGPL*, 2011 MLD 1402 Lahore.

13. I have heard the arguments submitted by the respective learned counsel and considered the same in light of the record as well as the written arguments submitted by the Appellants and the Respondent.

Preliminary Objection

14. It is noted first and foremost that an objection has been raised by Respondent in its written arguments that the instant appeals are not maintainable as they have been filed erroneously under Section 96, C.P.C., despite provision of appeal under the Gas Act against any judgment, decree or final order passed by a Gas Utility Court to the High Court. Moreover, no notice of filing of such appeal was served as provided under sub-section 2 of Section 13 of the Gas Act, whereby the Appellant is required to give notice of filing of the appeal by means of registered post with acknowledgment due or by courier in accordance with the provisions of Order XLIII, Rule 3, C.P.C.

15. In view of the foregoing, it is appropriate to deal with this preliminary objection first. In this regard I took guidance from the case of *Coca Cola Beverages Pakistan Limited versus Echo West International (Pvt.) Limited*, 2016 MLD 1077, the relevant portion of which is reproduced here-in-below:-

> *"6. First and foremost question in the present case is that whether this appeal is maintainable or not, because according to version of learned counsel for the respondent, notice as required under Order XLIII, Rule 3 of the Code of Civil Procedure, 1908, which is mandatory under the law, has not been given to the respondent. In this regard it is observed that when the appeal has been admitted for regular hearing and the respondent's side has put appearance before this Court, it would be presumed that provision of law has been met with.* ***In this regard reliance is placed on Salahud Din's case 1997 SCMR 414, wherein it has been held that, 'Respondents being duly represented before High Court before admission of appeal, object of serving notice on respondents under O. XLIII, R.3, C.P.C. before filing of appeal was fully met and, therefore, appellant could not have been non-suited in appeal on such ground'.*** *Even in Hafiz Muhammad Abrar and another's case 2012 YLR 2471-Lahore, it has been observed by this Court that, 'Once appeal had been admitted, the same could not be dismissed for non-compliance of the provisions of O. XLIII, R.3, C.P.C.---****Objection as to non-service of notice under O. XLIII, R.3, C.P.C. was only available up to the preliminary stage of hearing of the appeal---Such objection could not be entertained when the respondents to the appeal appeared and contested the same'.*** *Similar view has been adopted in Syed Saqlain Abbas' case 2012 CLC 945-Lahore, wherein it has been observed that, 'O. XLIII, R.3----Appeal against an interim order---Non-service of notice of appeal on respondent prior to its filing---****Appearance of respondent's counsel in response to court's notice---Effect---Objection regarding non-service of such notice became immaterial'.*** *...Even in Malik Maqsood Asghar and 5 others' case 2008 CLC 1150-Lahore, it has been maintained, 'Lack of service of notice in terms of O. XLIII, R.3, C.P.C. was of no legal significance after admission of appeal and the same should not be dismissed for non-compliance with the provisions of O. XLIII, R. 3, C.P.C .'. Therefore, the arguments of learned counsel for the respondents in this regard, regarding maintainability of the appeal in hand, have no force to be considered."* [Emphasis added]

16. A similar provision is provided in sub-section 2 of Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001, whereby notice in accordance with the provision of order XLIII, Rule 3, C.P.C., is to be given by the appellant to the respondent. In this context a Division Bench of the Honorable Lahore High Court in the case of *United Bank Limited versus M/s Khawaja Radio House*, 2004 CLD 1609 held that requirement of notice is directory and not mandatory as no consequences have been provided entailing dismissal of the appeal on account of failure to give such notice. It was also noted that no prejudice had been shown to have caused to the Respondents. As such the objection was held to be redundant. In the case of *Muhammad Afzal versus Mubarak Ali Anjum*, 1997

MLD 769 a Single Bench of the Honorable Lahore High Court observed that while it is correct that in some judgments notice under Order XLVIII, Rule 3, C.P.C. is held to be mandatory, however, this aspect of the case was not noted in the preliminary hearing and the appeal proceeded from next date and the respondent entered appearance to contest the appeal after service of notice from court. The dismissal of appeal at that stage on the ground of absence of notice was held to be not required in a number of judgments by holding that sufficient compliance has been made and as such the technical objection in this regard was overruled. Similarly the Honorable Sindh High Court in the case of *Sindh Industrial Trading Estate versus Noorani Enterprises,* 1996 CLC 570 held that because Rule 3 of Order XLIII C.P.C., neither implies negative language nor contemplates the consequence of invalidity upon noncompliance, the inescapable conclusion is that the requirement of notice under Order XLIII, Rule 3, C.P.C. cannot be termed mandatory or absolute. The Court further held that failure to satisfy the requirement of the prescribed notice may be visited by dismissal of appeal, however where justice so required the party at the fault may be relieved of the pains of dismissal.

17. In light of the principles enunciated in the afore mentioned cases, it is observed that notice was given by this Court in the instant case on 12.04.2018 whereby the Impugned Judgment and Decree was suspended subject to furnishing of an unconditional bank guarantee equal to the disputed amount and parawise comments were called for. The advocate for the Respondent entered appearance on 11.09.2020. Thereafter the learned counsel for the Respondents has been putting in appearance before this court and even submitted their arguments on 24.05.2022 but no such objection was raised and as observed above the objection has been made for the first time by way of written arguments submitted after the matter was reserved for judgment. Therefore, as per the case law mentioned in *Coca Cola Supra* including judgments from the Honorable Supreme Court of Pakistan mentioned therein whereby it has been held that where respondents are duly represented before the High Court before admission of appeal object of serving notice on Respondents under Order XLIII Rule 3 C.P.C. before filing of appeal was fully met and appellant could not have been non-suited on such ground and that such objection was only available up to the preliminary stage and the same could not be entertained when the respondent appeared and contested the same. In

view of the foregoing non service of notice under Section 13(2) of the Gas Act, in my opinion, is immaterial.

18. Therefore, in the facts and circumstances of the instant case and in light of the relevant case law discussed herein above I do not consider the failure to given notice in compliance of Section 13(2) of the Gas Act to be fatal as no such objection was taken by the Respondents at the preliminary stage and despite noncompliance they entered appearance and contested the matter on merits nor has any prejudice been shown to have been caused to them on account of such noncompliance. It is also well settled that merely wrong mention of the section will not make the appeal incompetent. Reliance is placed on *Safia Bibi versus Aisha Bibi*, 1982 SCMR 494; *Jane Margrete William versus Abdul Hamid Mian*, 1994 SCMR 1555; and *Olas Khan versus Chairman, NAB*, PLD 2018 SC 40. Therefore in the said circumstances the instant appeal is treated as an appeal under Section 13 of the Gas Act.

Jurisdiction under the Gas (Theft Control and Recovery) Act, 2016:

19. Coming to the merits of the case, careful perusal of the Impugned Judgments shows that the learned Gas Utility Court, in reliance of the preamble of the Gas Act and based on similarities noted between the procedure provided therein and summary suits under Order XXXVII, C.P.C., came to the conclusion that the Gas Act has been designed for the recovery of outstanding dues from the consumer by the Gas Utility Company. As such, the provision of complaint in sub-section (i) of Section 6 of the gas Act whereby disputes regarding billing or metering may be brought by a consumer against a Gas Utility Company before the Gas Court were found to be contradictory to the heading of Section 6. The conclusion reached by the learned Gas Court to resolve the said contradiction was to hold that a consumer can only file a suit for recovery of amounts against a Gas Utility Company in the Gas Utility Court whereas complaints regarding determination, approval, modification, revision of tariff etc., fall within the purview of Section 11 of the Oil and Gas Regulatory Authority Ordinance, 2002 (**"OGRA Ordinance"**). As such, the complaints filed by the Appellants were rejected by the learned Gas Court pursuant to Order VII, Rule 11, C.P.C., vide the Impugned Judgments.

20. Before I consider such conclusions, let us first consider sub-section (1) of Section 6 of the Gas Act which is reproduced here-in-below:-

> *"6. Procedure for complaints and suits for default before Gas Utility Courts.—(1) Where a person is involved in an offence under this Act or where there are sums due or recoverable from any person,* ***or where a consumer has a dispute regarding billing or metering against a Gas Utility Company, a consumer or Gas Utility Company, as the case may be, may file a complaint or suit, as the case may be, before a Gas Utility Court*** *as prescribed by the Code of Civil Procedure, 1908 (Act V of 1908) or the Code of Criminal Procedure, 1898 (Act V of 1898).* [Emphasis added].

21. A bare perusal of sub-section 1 of Section 6 of the Gas Act shows that a consumer may file a complaint against the Gas Utility Company before a Gas Utility Court if he has a dispute regarding billing or metering. It is undisputed that all of the Appellants in the matters before this Court fall within the definition of 'consumer' as defined in the Gas Act and that the Respondent is undoubtedly the 'Gas Utility Company'. Now I shall see whether the types of claims raised in the instant matters fall within the scope of disputes as envisaged under Section 6 of the Gas Act.

22. It may be seen that in the case of RFA 35/2018, the Appellant No. 1 has disputed the Gas Calorific Value ("GCV") as calculated by the Respondents claiming that the same has resulted in overcharging by way of the bills served upon the Appellant No. 1 in 2012 to 2014 due to which declaration and refund has been prayed for. While the Respondent has disputed such claim of overcharging in its written statement, it has not been denied therein that GCV is a component/vital factor in calculation of bills for gas consumer. A dispute between a consumer and a Gas Utility Company with regard to any component which is necessary for the calculation of "sums due" as defined in the Gas Act under sub-section (o) of Section 2 thereof would essentially be a billing dispute. Since the Respondent has not denied that GCV is such a component, I am of the opinion that the dispute raised in RFA 35/2018 falls within the scope of dispute regarding billing, which is covered under Section 6 of the Gas Act and as such Gas Court has exclusive jurisdiction in respect of the same by virtue of Section 4 of the Gas Act. Therefore, the conclusion reached in the Impugned Judgment and Decree No.1 by the learned Gas Utility Court is found to be erroneous.

23. Similarly in the case of R.F.A. No. 89/2018, the Appellant No. 2 therein has disputed the imposition of penalties in the bills issued to its various CNG stations for the month of November, 2008 which according to the Respondents were imposed due to delay in paying arrears on time. As such declaration that such penalties are illegal and permanent injunction against recovery thereof along with ancillary relief against disconnection on such pretext has been sought. Whether or not arrears existed and penalties imposed were legitimately imposed in the relevant bills on account of such failure constitutes dispute regarding billing. As observed above, any dispute regarding billing is within the scope of Section 6(1) of the Gas Act. Therefore, the Gas Court erred in rejecting the complaint vide the Impugned Judgment and Decree No. 2.

24. As far as R.F.A. No. 143/2018 is concerned the Appellant has objected to the amount of the estimated bill for the period between 04-12-2008 and 18-12-2008 during which time the meter installed at the Appellant's site was blocked. The term, "meter" has been defined in sub-section (l) of Section 2 of the Gas Act to mean an instrument that measures gas delivered to consumers for consumption. Bare perusal of Section 6 (1) of the Gas Act shows that the dispute regarding metering against a Gas Utility Company comes within the domain of Gas Utility Court. Since the dispute raised by the Appellant in this case pertains to the estimated bill during the malfunctioning of meter, such dispute squarely falls within the exclusive jurisdiction of the Gas Court. Therefore, in this case too, the Gas Court erred in rejecting the complaint vide the Impugned Judgment and Decree No. 3

25. Insofar has the question of alternate remedy under the OGRA Ordinance is concerned, the jurisdiction under Section 11 of the OGRA Ordinance has been discussed in detail in *M. Azam Khan Niazi (Supra).* The takeaway from the said case is that Section 11 caters to complaints pertaining to contravention of the OGRA Ordinance or of any rules or regulations thereunder. In exercise of the rule making powers conferred under Section 42 of the OGRA Ordinance, OGRA has made the Complaint Resolution Procedure [for Natural Gas, Liquefied Petroleum Gas (LPG), Compressed Natural Gas (CNG) and refined oil products] Regulations, 2003, which provide a mechanism for any person including a gas consumer to submit applications/complaints with OGRA against a licensee/gas utility company

on any of the stipulated matters including but not limited to billing and overcharging, metering, connection and disconnection of service, etc. However, the matter in the said case pertained to the year 2006 which was prior to the promulgation of the Gas Act and constitution of Gas Utility Courts. Whereas, Section 31 of the Gas Act provides that its provisions shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force. As such, the Gas Act has an overriding effect on the OGRA Ordinance and any regulations made thereunder. I am fortified by the judgment rendered by this Court in the case of *M/s Sui Southern Gas Company Limited versus Oil and Gas Regulatory Authority and others*, PLD 2021 Islamabad 378.

26. In any event, in case a Court lacks jurisdiction, it can at the most return the plaint pursuant to Order VII, Rule 10, C.P.C. However, a Court lacking jurisdiction cannot reject the plaint under Order VII, Rule 11, C.P.C. In this regard, the following discussion from the case of Sui Southern Gas Company Limited Vs. Messrs Data CNG Filling Station Larkana, 2021 MLD 568, is quite relevant to the case at hand:

> *"6.* ***Insofar as order of rejection of plaint under Order VII, Rule 11, C.P.C. is concerned, again the same even otherwise does not have any merits even if one goes with the presumption that the learned Judge had no jurisdiction in the matter. From where does Order VII, Rule 11 (d) [where the suit appears from the statement in the plaint to be barred by any law] comes into effect. Lacking jurisdiction cannot be equated with a plaint being barred in law.*** *It is not for the litigant to confer or establish jurisdiction on a Court. As soon as the notification was placed on record, it was for the Court to see that whether if had jurisdiction or not. But under no circumstances, it could be said by burdening the litigant that his plaint is barred in law. And even it is so, then under what law it is barred? Both issues are diagonally opposite and cannot be equated as has been done in the impugned order.* ***The impugned order appears to be without proper appreciation of the provisions of Order VII, Rule 10 and Order VII Rule 11, C.P.C.*** *It may be observed that an application under Order VII, Rule 11, C.P.C., can only be entertained by Court having jurisdiction in the matter, as it is only the Court which otherwise has jurisdiction which can reject the plaint on the ground that it is barred in law. If the Court has no jurisdiction to adjudicate a matter on merits, then that Court cannot exercise such jurisdiction to reject the plaint on the ground that it is barred in law.* ***The Court lacking jurisdiction can only exercise the powers under Order VII, Rule 10, C.P.C., for returning the plaint for its presentation before the appropriate Court having jurisdiction*** *and not to exercise powers for rejection of the plaint. In the case reported as Samsonite IP Holdings S.a.r.l. v. Famous Brands (Pvt.) Limited (2019 CLD 1060), I had the occasion to dilate upon this issue and the following observations are relevant: -*
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> > *"Notwithstanding this, at the very outset, I had also confronted the learned Counsel for the Defendant as to how both these applications under Order VII, Rules 10 and 11, C.P.C. are maintainable simultaneously, to which the learned Counsel for the Defendant failed to respond satisfactorily. It needs to be appreciated that an application under Order VII, Rule 11, C.P.C. can only be entertained by a Court of competent jurisdiction. It is settled law that a plaint can only be rejected by a Court which otherwise has jurisdiction to entertain the Suit/plaint and decide the entire lis on its merits, and if during such proceedings, an application has been filed by the Defendant for rejection of the plaint on the grounds so mentioned under Order VII, Rule 11, C.P.C., the Court having such*

> *jurisdiction can decide the application either way. However, once it is pleaded on behalf of the defendant that the Court has no jurisdiction and plaint be returned under Order VII, Rule 10, C.P.C., then perhaps, this Court is of the view that no application can be filed and entertained under Order VII, Rule 11, C.P.C. by the same Court. By filing such application, the Defendant submits to the jurisdiction of the Court and waives the objections to that effect, and therefore, cannot press upon an application under Order VII, Rule 10, C.P.C. for return of the plaint in view of these observations, I am of the view that both these applications do not merit any consideration at the present moment and are liable to be dismissed and it is so ordered accordingly."*

27. Therefore, I hold that the Impugned Judgments and Decrees No. 1, 2 and 3 are liable to be set aside as the disputes raised by the Appellants in RFAs 35, 89, and 143/2018, being issues of overbilling based on overcharging of GCV; penalties; and estimated bill amount due to stoppage of meter, fall within the scope of sub-section (1) of Section 6 of the Gas Act and as such are within the exclusive jurisdiction of the Gas Court by virtue of Section 4 of the Gas Act.

28. In view of the foregoing, RFAs 35, 89, and 143/2018 are **allowed**, the Impugned Judgments No. 1, 2 and 3 are hereby be set aside and the matters are remanded to the Gas Utility Court to decide on merits strictly in accordance with the law.

(SAMAN RAFAT IMTIAZ)
JUDGE

Announced in the open Court on 25.07.2022.

JUDGE

Adnan

Approved for Reporting
Blue Slip added.