

2016 C L C 1425

[Islamabad]

Before Miangul Hassan Aurangzeb, J

Ms. NAMOOS ZAHEER----Appellant

Versus

AZFAR HUSSAIN and another----Respondents

FAOs Nos.6 and 7 of 2016, decided on 3rd February, 2016.

(a) Civil Procedure Code (V of 1908)---

---S. 20(c)---Term 'cause of action'---Connotation---Term 'cause of action' means every fact which, if traversed, would be necessary for plaintiff to prove in order to support his right to a judgment of Court---Cause of action is bundle of facts which are necessary for plaintiff to prove in order to succeed in suit.

(b) Civil Procedure Code (V of 1908)---

---S. 13 & O.VII, R.10---Return of plaint---Territorial jurisdiction---Judgment of foreign jurisdiction---Defendants were residents of place "K" who were owners of a flat situated at place "L" in a foreign country---Plaintiff was tenant in that flat where both the parties had some dispute and appeared before a Court of competent jurisdiction and a judgment had already been passed by that Court of foreign jurisdiction---Plaintiff filed suit at place "I" seeking recovery of improvements carried out by her in the flat during the period it was in her possession as tenant---Plea raised by plaintiff was that cause of action had accrued to parties at place "I"---Suit filed by plaintiff was returned by Trial Court for filing the same before Court of competent jurisdiction---Validity---Plaintiff defended action brought by defendants against her before foreign Court at place "L" without making any objection to its jurisdiction---By doing so, plaintiff took a chance of an order in her favour but later on she could not take exception to jurisdiction when order of foreign Court had gone against her---Plaintiff could not assert that Civil Court at place "I" had jurisdiction over the matter which had been agitated by her in her counter claim before that foreign Court---Defendants resided way beyond the territorial jurisdiction of Trial Court at place "I" and provisions of O.VII, R.10, C.P.C. stood attracted in the matter---Trial Court, under O.VII, R.10, C.P.C. was obligated to return the plaint at any stage of the suit for presentation in the Court in which the suit should have been instituted---When Court lacked territorial jurisdiction, plaint had to be returned at the earliest---Trial Court could exercise such power suo motu and needed not wait for defendant to appear and

file an application for return of plaint, which on the face of it was liable to be returned---Cause of action or any part of it did not arise within the jurisdiction of Civil Court at place "I"---High Court declined to interfere in the order passed by Trial Court as the same did not suffer from any legal infirmity---Appeal was dismissed in circumstances.

Dr. Atta Muhammad Panwar v. Faisal Mughal 2011 CLC 981; Louise Anne Fairley v. Sajjad Ahmed Rana PLD 2007 Lah. 300; Munawar Ali Khan v. Marfani & Co. Ltd. PLD 2003 Kar. 382; Shaligram v. Daulat Ram AIR 1967 SC 739; Sheo Tahal Ram v. Binaek Shukul AIR 1931 All. 689; Fazal Ahmad v. Abdul Bari PLD 1952 Dhaka 155; Ghulam Ahmad v. Sarosh Rattani Wadia PLD 1959 W.P. Kar. 624 Farokh Homi Irani v. Nargis Farokh Irani PLD 1963 (W.P.) Kar. 567; Karam Chand Leal and another v. Mehdi Hassan 1984 CLC 1941 and Pak Arab Nurseries v. Habib Bank Limited, 2005 CLC 1639 ref.

Aimal Khattak for Appellant.

ORDER

MIANGUL HASSAN AURANGZEB, J.-- Since the First Appeal from Order No.06/2015 ("FAO No.6/2016") and the First Appeal from Order No.07/2015 (FAO No.07/2016") arise out of the same set of facts, I propose disposing them of by a common judgment. The appellant and the respondents in both the appeals are the same persons.

2. FAO No.6/2016 has been filed by the appellant, Ms. Namoos Zaheer, against the order dated 18-12-2015 passed by the Court of the learned Civil Judge, Islamabad, whereby the plaint in the appellant's suit for damages against the respondents was returned for want of territorial jurisdiction.

3. FAO No.7/2016 has been filed by the appellant, Ms. Namoos Zaheer, against the order dated 17-12-2015 passed by the Court of the learned Civil Judge, Islamabad, whereby the plaint in the appellant's suit for declaration and permanent injunction against the respondents was returned for want of territorial jurisdiction.

4. The two respondents/defendants (Mr. Azfar Hussain and Mrs. Nasreen Hussain) in the said suits are residents of Karachi. The suit for damages primarily relates to the recovery of an amount expended on improvements and other allied expenditures allegedly carried out by the appellant/plaintiff on Flat No.19, Nottingham Terrace, London, NW1 4QB, United Kingdom ("the Flat"), which she occupied for a period of six years as a tenant.

5. The respondents admittedly owned the Flat, and the appellant occupied it for about 6 years in her capacity as a tenant. The appellant vacated the Flat on 30-11-2013 and claims that the rent payable to the landlords had to be off set against the improvements carried out by her on the Flat.

6. It is pleaded by the appellant that respondents filed a claim for recovery of arrears of rent before the County Court at London, and were able to obtain an ex parte order on 28-10-2015 for an amount of 31,415/-, along with judgment debt, legal costs and interest, against the appellant.

7. The appellant is of the view that even though the property where the appellant resided as a tenant and carried out improvements is located at London; and the respondents reside in Karachi, the Civil Court at Islamabad nonetheless had territorial jurisdiction to adjudicate upon the appellant's civil suits on account of the fact that the cause of action accrued to the appellant at Islamabad.

8. Learned counsel for the appellant did not dispute the fact that the respondents reside at Karachi. As per the grounds taken in the memo of the appeals, the appellant feels that the Civil Court at Islamabad has jurisdiction over the matter, because when the action for recovery was instituted by the respondents against the appellant before the County Court at London, the appellant was residing at Islamabad. Additionally, it has been pleaded that as the respondents would have instituted proceedings at Islamabad for the utilization of the judgment passed by the County Court at London, propriety demanded that the relief against such proceedings be sought from the Civil Courts at Islamabad. The appellant also feels that as she has suffered mental distress and reputational loss in Islamabad, the Civil Court at Islamabad had the jurisdiction to adjudicate upon the civil suits. Furthermore, the learned counsel for the appellant argued that even though the expenses that the appellant seeks to recover were incurred over the Flat in London, she was in Islamabad when the said expenses became disputed or recoverable, therefore, the courts in Islamabad had the jurisdiction to try the suit for recovery of damages.

9. The learned counsel for the appellant contended that as the impugned orders passed by the learned Civil Court were very brief and did not contain reasons, the same were liable to be set aside and the civil suits instituted by the appellant should have been subjected to full fledged trials in which the issue regarding territorial jurisdiction of the learned Civil Court should also have been framed and decided.

10. Learned counsel further submitted that it was a settled principle of law that the debtor must seek the court of the creditor. Therefore, he was of the view that in all cases except for immovable property, the cause of action accrues at places where the appellant/plaintiff resides or carries on its business. He further submitted that as there was a debt payable to the appellant by the respondents, the appellant could sue the respondents wherever in the world the appellant took residence.

11. The learned counsel for the appellant candidly admitted that the appellant had submitted to the jurisdiction of the County Court at London by not taking any objection to its jurisdiction, and by contesting the action instituted by the respondents by filing a defense or counter-claim. He, however, took a contradictory stance by submitting that the proceedings in London were not before a court of competent jurisdiction. He further submitted that as the respondents owed a debt to the appellant under a contract for personal services, the appellant was well within her rights to file a suit for recovery against the respondents at Islamabad. To buttress his submissions, he placed reliance on the case of *Dr. Atta Muhammad Panwar v. Faisal Mughal*, reported as (2011 CLC 981).

12. I have heard the arguments of the learned counsel for the appellant with interest and keenness and also perused the documents filed by the appellant along with her appeal.

13. The record annexed by the appellant along with her appeal shows that the respondents instituted an action (Claim No.A02YP983) on 28.10.2015 against the appellant before the County Court at London for declaration and recovery of unpaid rent etc. The appellant contested the said action by not just filing her detailed defense but also a counter-claim. The appellant's defense and counter-claim annexed to this appeal show that the appellant did not object to the jurisdiction of the County Court at London to adjudicate upon the respondents' claim. The appellant contested the claim on merits and also pursued her counter-claim. The proceedings before the County Court at London culminated in an inter-party order dated 28.10.2015, whereby a declaration was given that the arrears of rent owned by the appellant to the defendants amount to 28,175/-. It was also declared that the appellant was entitled to off set the amount of her deposit, which was 1,625 from the arrears of rent. The net result was that the respondents were given a money judgment in the sum of 26,550/- plus interest @ 2% on the arrears in the total sum of Pounds 2,210.56/- up to 16.10.2015 and continuing thereafter at the judgment debt rate. This shows that the appellant's counter-claim was allowed to the extent of 1,625/-. The pleadings are silent on whether the appellant challenged the order dated 28.10.2015 passed by the County Court at London before a higher forum in England.

14. On 17.12.2015, a suit for declaration and permanent injunction was instituted by the appellant against the respondents before the learned civil court. The prayer-clause of this suit is reproduced herein below:-

"WHEREFORE, it is most respectfully prayed that following decrees may please be passed in favour of the Plaintiff and against the Defendants:

1. Declaration to the effect that the ex parte Order dated 28.10.2015, passed by the County Court London, United Kingdom, is against the Rules of Natural Justice; not based on merits; is a product of fraud and mis-representation; and, illegal, void and ineffective upon the rights of the plaintiff.

2. Permanent Injunction restraining the Defendants from presenting the ex parte Order dated 28.10.2015, for execution before any court in the Pakistan or the Reciprocal Territory and further utilizing the said Order for instituting any further legal proceedings or harassing the Plaintiff based on the said order in any manner whatsoever.

3. Costs."

15. Vide order dated 17.12.2015, the learned civil court returned the plaint in the suit for declaration and permanent injunction. The said order is reproduced herein below:--

"Perusal of file shows that neither defendants reside nor cause of action accrued in Islamabad, therefore, the plaint is hereby returned to plaintiff for its presentation before a competent forum. Office/Ahmad is directed to return the plaint in original along-with its annexure to the plaintiff as per procedure. He is further directed to retain copy of the plaint along-with annexure and this order and consigned the same to record room after its due completion."

16. Thereafter, the appellant, on 18.12.2015, instituted the suit for recovery of damages against the respondents before the Court of Civil Judge, Islamabad, praying for the following relief:-

"WHEREFORE, it is most respectfully prayed that a decree for recovery of amount to the tune of 26,835 (Great Britain Pounds, equivalent to Pakistani Rupees at the rate prevalent at the time of passing of the Decree) may please be awarded in favour of the plaintiff against the defendants, along with interest;

A money decree to the tune of 36,000/-(Great Britain Pounds convertible into Pakistani Rupees at the rate prevalent at the time of passing of the Decree) as reasonable compensation/ remuneration for the services rendered to the defendants over the six years of her occupancy and management of the flat by the plaintiff; and,

Damages to the tune of Rs.20 Million for mental agony, torture and stress suffered by the plaintiff at the hands of the defendants over the past two years may please be awarded in favour of the plaintiff. Costs may also be awarded."

17. Vide order dated 18.12.2015, the learned civil court returned the plaint in the suit for recovery of damages. The said order is reproduced herein below:-

"Present: learned counsel for plaintiff

At the very outset it appears that neither the defendants are residents of Islamabad nor the cause of action accrued in Islamabad, therefore, the plaint is hereby returned to plaintiff for its presentation before a competent forum. Office/Ahmad is directed to return the plaint in original along-with its annexure to the plaintiff as per procedure. He is further directed to retain copy

of the plaint along-with annexure and this order and consign the same to record room after its due completion."

18. It is the said Orders dated 17.12.2015 and 18.12.2015, which have been impugned in both the appeals by the appellant. These orders shall hereinafter be referred to as "the Impugned Orders". The learned Civil Court returned the plaint in the suits on two grounds: Firstly, that the defendants were not residents of Islamabad, and secondly, that the cause of action had not accrued at Islamabad.

19. I intend to confine myself to determining whether the learned civil court was justified in returning the plaint on the grounds mentioned in the impugned orders.

20. Section 20 of the Code of Civil Procedure, 1908 ("C.P.C.") enacts the general rule regarding the forum for suits relating to movable property and personal actions. Under Section 20, C.P.C. every suit shall be instituted in a Court within the local limits of whose jurisdiction, the defendant, or each of the defendants resides or carries on business at the time of commencement of the suit; or where any of the defendants, where there are more than one, at the time of the commencement of the suit resides or carries on business, with the leave of the Court; or where the cause of action wholly or in part arises.

21. As regards the first ground taken in the impugned orders for returning the plaint, the appellant has expressly admitted that the respondents reside at Karachi. The memo of addresses of parties in both the suits and appeals also show the respondents as residents of Karachi.

22. As regards the second ground, it needs to be determined whether the cause of action accrued to the appellant at Islamabad or not. The present case has to be examined with reference to Clause (c) of Section 20 of the Code. The expression 'cause of action' has not been defined in C.P.C. However, it has been consistently held that 'cause of action' means every fact which, if traversed, would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, a bundle of facts which are necessary for the plaintiff to prove in order to succeed in the suit.

23. As mentioned above, the civil suit instituted by the appellant on 18.12.2015 before the learned civil court at Islamabad is primarily for the recovery of 26,835/-allegedly expended under various heads by the appellant on carrying out refurbishments and improvements on the Flat in London, and for the recovery of Rs.20 million as damages for mental agony, torture and stress suffered. In the counter-claim filed by the appellant against the respondents before the County Court at London, exactly the same amount has been claimed against the respondents under the same heads. The appellant has enhanced her claim in the civil suit before the learned civil court by claiming the additional Rs.20 million.

24. The civil suit instituted on 17.12.2015 is stated to be for "declaration and

permanent injunction read with section 13 of the Civil Procedure Code, 1908", with the prayer reproduced earlier in this judgment. This is in the nature of an anti-suit injunction seeking to prevent the respondents from presenting the order dated 28-10-2015, passed by the County Court at London before any court in Pakistan or any reciprocating territory for enforcing the said order. The appellant also seeks to have the said order dated 28-10-2015 declared void, illegal, against the rules of natural justice, not based on merits, a product of fraud and misrepresentation, and ineffective upon the rights of the appellant. Throughout the suit, the appellant has referred to the order dated 28-10-2015, passed by the County Court at London, as an "ex parte" order.

25. Now, as the appellant rented the respondents' Flat in London; the refurbishment and improvement works were carried out in London; the agreement for letting the Flat was executed between the appellant and the respondents on 26-10-2007 at London; the appellant occupied the respondents' Flat for a period of about six years; the counter-claim for the recovery of 32,445/- (26,835/- on account of refurbishments and improvements, and 5,000/- as damages) was filed by the appellant against the respondents before the County Court at London; the appellant contested the claim filed by the respondents before County Court at London on merits; and the respondents reside at Karachi. These facts, which are apparent from the documents annexed by the appellant to her appeals, cumulatively considered, establish that Islamabad had no nexus with the dispute between the appellant and the respondents, other than the fact that the appellant is presently residing at Islamabad.

26. Learned counsel on behalf of the appellant submitted that as the respondents owe a debt to the appellant; and on account of the fact that the appellant is presently residing at Islamabad, the said debt would be payable by the respondents at Islamabad, hence, the cause of action accrued to the appellant within the local limits of the learned civil court at Islamabad. Whether the respondents owe a debt to the appellant or not has already been adjudicated by the County Court at London. I have again to repeat that the appellant did not object to the jurisdiction of the County Court at London to adjudicate upon the respondents' claim against the appellant. The appellant voluntarily submitted to the jurisdiction of the said Court and also filed her counter-claim against the respondents. Having failed to get a favourable judgment, the appellant has decided to take another shot at the respondents by labeling them as 'debtors' and suing them in a forum most convenient to her. The 'debt' that the appellant's claims is owed to her by the respondent is what has already been adjudicated against her by the County Court at London. Regardless of the judgment passed by the County Court at London, the appellant chooses to call herself a 'creditor'. It is not fair to simply jettison a judgment rendered by a foreign court after an inter-parte proceeding in which the appellant fully and voluntarily participated.

27. At this juncture it is pertinent to reproduce hereinbelow that observations made by the Hon'ble Lahore High Court in the case of Louise Anne Fairley v. Sajjad Ahmed Rana reported as PLD 2007 Lahore 300, the Hon'ble Lahore High Court held as follows:--

"To my mind, the principle, which is squarely applicable to the case in hand, is

of "judicial comity". In this behalf, it is held that Pakistan is not a pariah, rather a responsible State and is a part of a civilized community of Nations; the Judiciary of this country is fully established and institutionalized and is one of the most important organs of the State. The interaction of a State as a whole with other Nations undoubtedly is based upon the mutual respect and confidence and this stands true for the judicial organs as well. Now when the world has squeezed into a global village, it has become expedient that the principles of comity should be strictly applied, adhered and resorted to all the levels of the State institutions. Upon the above principle, the court of one jurisdiction, subject to the condition that the orders does not contravene any domestic law of the country, should give the effect to the judicial decisions of the Courts of another State, as a matter of deference and mutual respect even if no obligation exists to do so. This should be based upon the willingness on part of the judiciary of one civilized State to grant privilege and respect to the orders of the foreign jurisdiction; it is the matter of mutual accommodation, shown to the orders of each other, especially which are passed in the proper exercise of jurisdiction; this respect is founded and structured upon the rules of courtesy, civility, affability, amity, consideration, gesture of goodwill and good fellowship to the orders passed by the Court of the other country and this is exactly one of the rule in my mind on account of which, I am constrained to hold that as in this case, the orders were passed by the Scottish Courts within the proper exercise of jurisdiction and the respondent No.1, has not been an upright, fair, honest man, rather in removing the child, is guilty of showing disrespect and has violated the Court's orders, besides breaching his own undertakings, and has obtained the custody in a wrongful manner, therefore, this petition is competent within the ambit of Article 199 of the Constitution of Islamic Republic of Pakistan and section 491, Cr.P.C."

28. At the time when the action was brought against the appellant by the respondents before the County Court at London, the appellant knew or ought to have known that if she submitted herself to the jurisdiction of the Court in England, the judgment or decree passed in such proceedings would hold consequences for her. She did not stay away or object to the jurisdiction of the foreign court and felt the necessity not just to defend the claim against her, but also to file a counter-claim against the respondents.

29. The appellant, thus, can be held to have voluntarily and effectively submitted to the jurisdiction of the County Court at London by not raising any objection to the jurisdiction of the County Court at London to adjudicate upon the respondents' claim; by contesting, on merits, the action instituted by the respondents before the said foreign court; and by filing her detailed defense and counter-claim.

30. In the case of *Munawar Ali Khan v. Marfani & Co. Ltd.* reported as PLD 2003 Karachi 382, the Hon'ble Division Bench of Sindh High Court held as follows:--

"When a defendant appeared before a foreign Court only to protest against assumption of jurisdiction he cannot be assumed to have voluntarily submitted to such jurisdiction. Nevertheless, when he also takes up defences on merits a

clear submission can be inferred. Similarly when he applies to have a default judgment set aside and appeals as to merits of the claim such appeal would normally amount to submission to jurisdiction. Nevertheless, if the appeal or application is merely premises upon a jurisdictional issue it would not be treated as submission."

31. In the case of *Shaligram v. Daulat Ram* reported as (AIR 1967 SC 739), it has been held that a person who appears in obedience to the process of a foreign Court and applies for leave to defend the suit without objecting to the jurisdiction of the Court when he is not compellable by law to do so must be held to have voluntarily submitted to jurisdiction of such Court.

32. In the case of *Sheo Tahal Ram v. Binaek Shukul* reported as (AIR 1931 All. 689), it has been held by the Allahabad High Court, at Paragraph 25 of the judgment, as follows:--

"It is clear that even a judgment of a foreign Court will be considered to be binding if the defendant submitted to the jurisdiction of such Court. What amounts to a submission to the jurisdiction of a foreign Court is a question of some nicety in many cases. Where in answer to a summons issued by a foreign Court the defendant appears and contests the suit, without raising any question as to jurisdiction, there is no doubt that he submits to the jurisdiction of that Court."

33. In the cases of *Fazal Ahmad v. Abdul Bari* reported as (PLD 1952 Dhaka 155), *Ghulam Ahmad v. Sarosh Rattani Wadia* reported as PLD 1959 W.P. Karachi 624, *Farokh Homi Irani v. Nargis Farokh Irani* reported as (PLD 1963 (W.P.) Karachi 567) and *Karam Chand Leal and another v. Mehdi Hassan* reported as (1984 CLC 1941, Karachi), it has been, inter alia, held that where a party does not submit to the jurisdiction of the foreign court, the foreign judgment is not binding on such a party. In the instant case, the facts are other way round. While the action/suit was pending in the English Courts, the appellant in response to personal service, appeared and filed her defence and counter-claim. The mere fact that she allowed the suit and her counter-claim to be heard inter-parte and decreed against her would amount to her submitting to the jurisdiction of the County Court at London.

34. As regards the contention of the learned counsel for the appellant that the proceedings before the County Court at London were not before a court of competent jurisdiction, I am of the view that a person who institutes a suit or a counter-suit in a foreign Court and claims a decree, in personam cannot after the judgment is pronounced against him, say that the Court had no jurisdiction which he invoked and which the Court exercised, for it is well recognized that a party who had submitted to the jurisdiction cannot afterwards question it. The appellant defended the action brought by the respondents against her before the County Court at London without making any objection to its jurisdiction. By doing so, the appellant took a chance of an order in her favour. It is now not right that she should take exception to jurisdiction when the order of the foreign court has gone against her, and assert that the learned

civil court at Islamabad had jurisdiction over the matter which had been agitated by her in her counter-claim before the foreign court.

35. As regards the appellant's civil suit for declaration and permanent injunction, reference to which has been made hereinabove, I am of the view that the appellant could not preempt the respondents and thwart or obstruct their legal right to institute proceedings, under Sections 13, C.P.C., before the court of competent jurisdiction in Pakistan, by filing such a suit. The respondents, have, till date, not sought the enforcement of the order of the foreign court by any instituting proceedings in Pakistan. The appellant will be at liberty to resist and defend such proceedings as and when they are instituted, by relying on the six clauses set out in Section 13, C.P.C. to off set conclusiveness and binding nature of the foreign judgment.

36. In the case of *Pak Arab Nurseries v. Habib Bank Limited*, reported as (2005 CLC 1639), the plaintiff had filed a suit for declaration and permanent injunction before the High Court of Sindh praying for a foreign judgment, in favour of the defendant, to be declared as null and void and of no legal effect; as having been obtained fraudulently through manipulation and by presenting false statements and accounts before the foreign court. Furthermore, it was prayed that the defendant be restrained from taking any action whatsoever against the plaintiff on the basis of the foreign judgment. A claim for payment of money was also made by the plaintiff against the defendant. On a preliminary objection to the maintainability of the suit, the Hon'ble High Court made reference to Section 13, C.P.C., and held that it does not confer jurisdiction upon a Court to declare a foreign judgment illegal on the ground of fraud. Furthermore, at Page 1642 of the said judgment, it was held as follows:-

"4. However, a foreign judgment can be used by the plaintiff in support of his claim or defendant as his defence. The foreign judgments under section 44-A(1) are executable if the judgments are passed by the Court of United Kingdom or any reciprocating territory of the countries having reciprocal arrangements with the Government of Pakistan. For that purpose the Government is required to issue notification mentioning the names of the countries and the Courts of such countries. As such foreign judgment can be produced as an evidence in proof of facts as mentioned in provisions of section 13, C.P.C. Thus section 13 of C.P.C. does not confer jurisdiction upon the Court to entertain a suit to declare the foreign judgment illegal on the ground of fraud. Therefore, the foreign judgment cannot be declared illegal on the ground of fraud, by this Court. Thus this Court has no jurisdiction to entertain the suit on such plea."

37. I am not inclined to take a view different from that taken by the learned Single Judge of the Hon'ble High Court of Sindh. As the learned author Judge (the Hon'ble Mr. Justice Rehmat Hussain Jaffery) subsequently rose to grace the Hon'ble Supreme Court of Pakistan, the said judgment deserves the respect and reverence.

38. One of the essential prerequisites for an anti-suit injunction is that the defendant,

against whom the injunction is sought, should amenable to the personal jurisdiction of the court. As the respondents reside way beyond the territorial jurisdiction of the learned civil court at Islamabad, the provisions of Order VII, Rule 10, C.P.C., stood attracted in the matter. Order VII, Rule 10, C.P.C. obligates the court to return the plaint at any stage of the suit for presentation in the court in which the suit should have been instituted. When the court lacks territorial jurisdiction, as in the instant case, the plaint ought to be returned at the earliest. The court can exercise this power suo motu and need not wait for the defendant to appear and file an application for the return of plaint, which on the face of it is liable to be returned.

39. In view of the above, I have no hesitation in holding that the cause of action or any part of it did not arise within the jurisdiction of learned civil court at Islamabad. Consequently, it is held that Impugned Orders, passed by the learned civil court, do not suffer from any legal infirmity. Although, the Impugned Orders are not detailed orders, this by itself cannot be a ground to set them aside because they are otherwise justified and in accordance with the law.

40. Before parting with the judgment, It must be borne in mind that, till date, the respondents have not brought the order dated 28-10-2015, passed by the County Court at London for enforcement to Pakistan. Now, Section 13 of the Code provides that except for six circumstances mentioned therein, a foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between the parties under whom they or any of them claim litigating under the same title. Section 2(5), C.P.C. defines a "foreign Court" to mean a Court situate beyond the limits of Pakistan which has no authority in Pakistan and is not established or continued by the Federal Government, and Section 2(6) C.P.C. defines a "foreign judgment" as the judgment of a foreign Court. The County Court at London and the order dated 28-10-2015, passed by the said Court squarely falls within the definition of the "foreign Court" and "foreign judgment" as defined in the C.P.C. In considering whether a judgment of a foreign Court is conclusive, the Courts in Pakistan will not inquire whether conclusions recorded by the foreign Court are supported by the evidence, or are otherwise correct, because the binding character of the judgment may be displaced only by establishing that the case falls within one or more of the six clauses of Section 13, C.P.C. and not otherwise. These six clauses are set out hereinbelow:-

- (a) where it has not been pronounced by a Court of competent jurisdiction;
- (b) where it has not been given on the merits of the case;
- (c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognize the law of Pakistan in cases in which such law is applicable;
- (d) where the proceedings in which the judgment was obtained are opposed to natural justice;

(e) where it has been obtained by fraud;

(f) where it sustain a claim founded on a breach of any law in force in Pakistan.

41. Before the said order dated 28-10-2015, passed by the County Court at London can be enforced in Pakistan, it has to pass each of the six tests mentioned above. The observations made in this judgment regarding the appellant's submission to the jurisdiction of the County Court at London were necessary in determining whether the learned civil court at Islamabad exercised its jurisdiction correctly in returning the plaint. However, any observations made in this judgment shall not come in the way of the appellant to resist or object to legal proceedings instituted by the respondents in Pakistan for the enforcement of the order dated 28-10-2015, passed by the County Court at London in Claim No.A02YP983, in Pakistan. Furthermore, a court hearing such a matter shall also not be influenced by any observations made herein.

42. The Impugned Orders passed by the court of Civil Judge, Islamabad, returning the plaint in the suits are sustained. In the given facts of the case, there was no reason to proceed with the suits on merits. The appeals are accordingly dismissed with no order as to costs.

MH/30/Isl. Appeals dismissed.

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