

P L D 2012 Peshawar 92

Before Qaiser Rashid Khan, J

ZAIR ALI---Petitioner

versus

**CHIEF ENGINEER (FATA) WORKS AND SERVICES DEPARTMENT, PESHAWAR
and 3 others---Respondents**

Civil Revision No.288 of 2007, decided on 25th November, 2011.

Constitution of Pakistan---

----Art. 247(7)---Civil Procedure Code (V of 1908), O. VII, R.10---Specific Relief Act (I of 1877), S.54---Suit for injunction---Return of plaint---Plaintiff was awarded a contract for widening and construction of road which was situated in tribal territory---Plaintiff satisfactorily completed the work up to fifty per cent as per required specification and payment was made to the plaintiff in respect thereof---Som^e Notables and Tribal Elders of the locality, demanded 15% as "Qaumi Commission" from the plaintiff, who filed suit against said demand---Defendant resisted the suit and filed application before the Trial Court under O. VII, R.10, C.P.C. for return of plaint on the ground that the civil court lacked jurisdiction to entertain and adjudicate upon the issue in question as it pertained to Tribal territory---Said application had been concurrently accepted---Validity---Civil court had absolutely no jurisdiction in the matter---Even the jurisdiction of High Court in view of the bar contained under Art.247(7) of the Constitution in the matter^s hailing from Tribal areas had been excluded---All the matters were out

of the domain and jurisdiction of the court and fell squarely within the jurisdiction of the Political Authorities, where a proper hierarchy was available to attend to such dispute---Both courts below had rightly entertained the application of the defendants for return of the plaint to the plaintiff under O. VII, R.10, C.P.C., through the impugned orders, which warranted no interference and were accordingly upheld.

PLD 2002 SC 526; 1991 SCMR 2400 and PLD 1997 Pesh. 132 rel.

Sarwar Khan Kundi for Petitioner.

Sanaullah Khan Shami, D.A.G. for Respondents.

Date of hearing: 25th November, 2011.

JUDGMENT

QAISER RASHID KHAN, J.---Petitioner/plaintiff, namely, Zair Ali, being aggrieved of the concurrent judgments and decrees dated 18-4-2007 and 28-6-2007 passed by the learned Civil Judge-I Tank and learned Additional District Judge Tank respectively, whereby application of the respondents/defendants for return of plaint under Order VII Rule 10, C.P.C. to the petitioner was accepted, has assailed the same through the instant revision petition.

2. Concise facts of the case are that the petitioner was awarded a contract for widening and black topping of road from Saam to Qareeb Koroona in lower Kanigurram, Tehsil Laddah, South Waziristan Agency, by the respondents vide letter dated 20-10-2004. Accordingly, he carried out the work and satisfactorily completed the same up to fifty per cent as per the required specification, whereafter the respondents after spot inspection made payment to him to the tune of Rs.53,46,513. Meanwhile, some notables and tribal elders of the locality demanded 15% as 'Qaumi Commission' from the petitioner who resisted the same on every forum including before the respondents/defendants but in vain and resultantly the tribal elders were not letting him to do the construction work on the site which constrained him to file the suit in hand.

3. The respondents Nos. 1, 3 and 4 jointly resisted the suit by filing written statement while respondent No.2 offered independent written reply. Meanwhile, the respondents submitted an application before the trial court under Order VII, Rule 10, C.P.C. for return of the plaint to the petitioner on the ground that the civil court lacked jurisdiction to entertain and adjudicate upon the issue in question as it pertained to tribal territory. The petitioner hotly contested the said application by furnishing written reply but the learned trial court accepted the application and directed the petitioner to approach the proper forum. Feeling aggrieved, the petitioner filed an appeal which too met the same fate vide orders mentioned above hence this revision petition.

4. Learned counsel for the petitioner vociferously criticized the impugned orders of the courts below on the grounds that the same are based on mis-reading and non-reading of evidence. He argued that the agreement between the parties was signed and executed in settled area, i.e. district Tank and thus the matter in issue could be agitated before the civil court there. He urged that the office of the respondents/ functionaries too is situated within the settled area and, therefore, the civil court has got the jurisdiction to handle and determine the controversy on merits. His next submission was that since the cause of action arose at Tank, therefore, in view of section 20(C), C.P.C., the jurisdiction vested with the civil court at Tank and, as such, the impugned orders of the courts below are liable to be set aside.

5. On the other hand, the learned Deputy Advocate General representing the

respondents/defendants refuted the submissions of the learned counsel for the petitioner and defended the impugned orders of the courts below on the ground that since the dispute in question arose from a matter located in tribal area, therefore, the civil court at Tank had no jurisdiction to entertain and dilate upon the controversy.

6. I have carefully gone through the record of the case and anxiously considered the arguments of the learned counsel for the parties.

7. From the bare perusal of the plaint, it is crystal clear that the petitioner/plaintiff was awarded contract for widening and construction of road from `Saam' to `Lower Kanigurram', Tehsil Laddah, South Waziristan Agency which is undoubtedly situated in tribal territory. In such matters, the civil court has got absolutely no jurisdiction. Even the jurisdiction of this court in view of the bar contained under Article 247(7) of the Constitution of Islamic Republic of Pakistan, 1973, in the matters hailing from tribal area has been excluded. Reference in this context may advantageously be made to **PLD 2002 Supreme Court 526, 1991 SCMR 2400 and PLD 1997 Peshawar 132** which have settled the law regarding jurisdiction of courts in relation to the tribal area. Except for the execution of the contract in settled area at Tank, the entire subject-matter of the contract pertains to the tribal territory, like the petitioner is not bound to pay 15% Qaumi commission to the tribal elders, the respondents are bound to provide security to the petitioner and to settle his dispute vis-a-vis the payment of commission and also to initiate proper legal proceedings against the people who had stopped the construction work undertaken by the petitioner on the road in the tribal territory. All these matters are out of the domain and jurisdiction of the courts and fall squarely within the jurisdiction of the political authorities where a proper hierarchy is available to attend to such disputes.

8. For the reasons stated above, both the courts below have rightly entertained the application of the respondents for return of the plaint to the petitioner under Order VII, Rule 10, C.P.C. through the impugned orders which warrant no interference and are accordingly upheld.

9. Resultantly, I find no merit in this revision petition which is hereby dismissed with no order as to costs.

H.B.T./63/P

Petition dismissed.