


Announced
27.07.2021


Muhammad Adeel Anwar,
Civil Judge Ist Class,
(Special Court for commercial cases)
Lahore.

ORDER
30.07.2021

Present: Learned counsel for plaintiffs Azhar Maqbool Advocate.
Learned counsel for the defendants Muhammad Hamza
Advocate.

By way of this single order, I would like to decide the question
of maintainability of the present suit, which has been questioned by the


Muhammad Adeel Anwar
Civil Judge Ist Class,
(Special Court for Commercial Cases)
Lahore,

learned counsel for the defendants asserting therein that this suit cannot be maintained before the civil court. It is next contended by the learned counsel for defendants that the matter is with regard to the shares of the parties and plaintiffs intend to incorporation of shares of his deceased father. It is lastly argued that the matter falls within the purview of the Company Judge in the light of Sec. 5 of the Companies Act 2017, therefore, the plaint may kindly be dismissed as non-maintainable.

2. On the other hand, learned counsel for the plaintiffs argued that the suit is maintainable before the civil court and it is the only Civil Court who can determine the ownership/shares in the Company.

3. I have heard arguments and gone through the available record.

4. Record shows that the plaintiffs have filed the suit for declaration with consequential relief. According to the content No.3 of the plaint, plaintiffs' shares in the Private Limited Company titled Al Halal Paper Mills are as under:-

(i) Mazhar Abbas Al-Makkey	40,200
(ii) Mr. Uzma Mazhar Abbas Al-Makkey	26,800
(iii) Humayun Sultan	40,200
(iv) Mrs. Sadia Humayun	26,800
(v) Mehboob Ali	8,500
(vi) Mrs. Abida Mehboob	9,500
(vii) Miss Fatima Sadaf	9,500
(viii) Ali Murtaza	9,500
(ix) Hassan Mehmood Babri	9,500
(x) Nauman Mustaffa	6,750

Adil
Muhammad Adil Anwar
Civil Judge 1st Class
(Special Court for Commercial Cases)
Lahore. SECP.

The same shares are available in Form-A filed before the

Mu
(Spec

Ali Murtaza etc Vs. Mazhar Abbas etc

The plaintiff has approached the SECP to settle down the outstanding issues between the parties who recommended them to settle the matter of share holdings from the court. The whole plaint of the plaintiff is revolved around the shareholders in the Private Limited Alhalal Paper Mills. Lastly, plaintiffs have prayed that this court may kindly be decreed that the plaintiffs are holding 80% shareholders/ownership in the private limited company.

5. After going through the contents of the plaint, it is quite obvious that the matter between the parties is with regard to the determination of the share holdings in the private limited company. It is the claim of the plaintiffs that they had invested a huge amount after set up the private company in the last 21 years, therefore, they are entitled to hold 80% shares of the project. The matter for determination of the share holding and dispute among the share holders can only be addressed by the SECP and Company Judge.

6. Keeping in view of the Sec. 5 (2) of the Companies Act 2017, the jurisdiction of the Civil Court is expressly barred to entertain the matters of the Companies in respect of the dispute among the share holders. Sec.5(2) of Companies Act 2017 is reproduced as under:-

"5. Jurisdiction of the Court and creation of Benches.— (1) The Court having jurisdiction under this Act shall be the High Court having jurisdiction in the place at which the registered office of the company is situate.


(2) Notwithstanding anything contained in any other law no civil court as provided in the Code of Civil Procedure, 1908 (Act V of 1908) or any other court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Court is empowered to determine by or under this Act."

7. Before proceeding further, Sec. 126 of Companies Act 2017 power of the court to rectify the Register is also reproduced as under:-

"126. Power of Court to rectify register.—(1) If—

(a) the name of any person is fraudulently or without sufficient cause entered in or omitted from the register of debenture-holders of a company; or

(b) default is made or unnecessary delay takes place in entering on the register of members or register of debenture-holders the fact of the person having become or ceased to be member or debenture-holder;


Muhammad Adeel Anwar
Civil Judge 1st Class,
(Special Court for Commercial Cases)
Lahore.

the person aggrieved, or any member or debenture-holder of the company, or the company, may apply to the Court for rectification of the register

(2) The Court may either refuse the application or may order rectification of the register on payment by the company of any damages sustained by any party aggrieved, and may make such order as to costs as it in its discretion thinks fit.


(3) On any application under sub-section (1) the Court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or debenture-holders or alleged members or debenture-holders, or between members or alleged members, or debenture-holders or alleged debenture-holders, on the one hand and the company on the other hand; and generally may decide any question which it is necessary or expedient to decide for rectification of the register.

(4) Where the Court has passed an order under sub-section (3) that prima facie entry in or omission from, the register of members or the register of debenture-holders the name or other particulars of any person, was made fraudulently or without sufficient cause, the Court may send a reference for adjudication of offence under section 127 to the court as provided under section 482.

8. From plain reading of Sec. 126 of the Companies Act 2017, it is evident that it is the only Company Judge who may pass the order to rectify the Register of the Company in respect of the shares and its enhancement.

9. In nut shell, there is no denial to this fact that plaintiffs have sought declaration to the extent of their enhancement of share holders in the Companies as per the prayer clause and other contents of the plaint. This matter can only be resolved by the Judge having jurisdiction under the Companies Act 2017, which is Hon'ble Company Judge. So, in these circumstances, this court being lacks jurisdiction to entertain this suit. The plaint of the plaintiffs is returned u/o VII Rule 10 CPC to file the suit before the proper forum i.e Company Judge for their claim, if he desired so. Reader of this court is directed to enter the particulars of the suit in a register kept in the court for this purpose and hand over the plaint to the plaintiffs after proper endorsement and other documents be consigned to the record room, after its due completion.

Announced
30.07.2021


Muhammad Adeel Anwar,
Civil Judge Ist Class,
(Special Court for commercial cases)
Lahore.

جسٹس محمد آdeel انوار
سیول جج اول کلاس
(مخصوص عدالت کے لیے تجارتی کیسوں کے لیے)لاہور