

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
H.C.A. No.224 of 2018

Date	Order with signature of Judge
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Fresh Case:

1. For order on office objection/reply as at A.
 2. For order on CMA No.2030/2018 (Exemption).
 3. For hearing of main case.
 4. For order on CMA No.2031/2018 (Stay).
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20.08.2018

Ms. Pooja Kalpana, Advocate for Appellant.

Mr. Khalid Rajpar, Advocate for Respondent.

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Instant High Court Appeal arises against the impugned order dated 10.08.2018, passed by the learned Single Judge of this Court in Suit No.824/2018, whereby pursuant to judgment passed by the Hon'ble Supreme Court of Pakistan in Civil Appeal No.1171 of 2017 (and other connected matters), appellant has been directed to deposit 50% of the disputed amount with the department, learned Single Judge has been pleased to pass following order: -

“.... Accordingly Nazir is directed to seek encashment of 50% of the two utilized amounts i.e. Rs.54,12,34,147/- (50% = 27,06,17,074/-) and Rs.10,63,98,482/- (50% = Rs.5,31,99,241/-) from the concerned Bank(s) immediately and pay the same to respective Collectorates. If the Plaintiff as requested intends to make for cash payment of the said amount instead of encashment of Bank Guarantee, the same shall be paid to the Department through respective Collectorates and necessary receipt be placed before the Nazir, who shall then seek appropriate orders from the Court before encashment. However, Nazir shall seek encashment within a maximum of 5 days from the date of this order, in any case.”

On 16.8.2018, when this matter was taken up for hearing, learned counsel for appellant has requested for short adjournment to seek instructions from his client regarding withdrawal of suit No.824/2018 and on his request, the matter was adjourned for today's date.

Mr. Khalid Rajpar, Advocate has shown appearance, files vakalatnama on behalf of the respondent, which is taken on record, and submits that impugned order has been passed pursuant to the judgment of the Hon'ble Supreme Court in Civil Appeal No.1171/2017 (and other connected matters), wherein, appellant was also party, therefore, appellant is bound to comply with the order passed by the learned Single Judge pursuant to the judgment of the Hon'ble Supreme Court as referred hereinabove.

It has been further stated that appellant has filed an application for withdrawal of the suit, however, with the condition to allow the appellant to pursue the petition, which according to learned counsel for respondent, has been filed before this Court in addition to the suit and the instant appeal, to circumvent the judgment of Hon'ble Supreme Court whereby the petitioners and other parties, who have already availed remedy of filing suit before the learned Single Judge of this Court, have been directed to deposit 50% of the disputed amount and in case of any default, suit shall not be maintainable.

While confronted with hereinabove factual and legal position, which has emerged in the instant case, learned counsel for the appellant has submitted that since the appellant does not want to proceed with the suit filed before the learned Single Judge and has also filed an application for withdrawal of suit, therefore, such condition of depositing 50% of the disputed amount is not applicable to the case of appellant. It has been further stated by the learned counsel that appellant has a right to withdraw the suit at any point of time in terms of Order 23 Rule 1&2 CPC, whereas, his application for withdrawal of suit has already been filed, however, no order has been passed by the learned Single Judge on such application. Per learned counsel, appellant will not press instant High Court Appeal, provided that learned Single Judge may be directed to pass appropriate order on the application filed by the appellant, whereas, the impugned order passed by the learned Single Judge be not implemented till disposal of the application of the appellant.

Learned counsel for the respondent submits that objections have already been filed on behalf of the respondent on the application of the appellant, as, according to learned counsel, the entire exercise is aimed towards frustrating the judgment of Hon'ble Supreme Court and to deprive Tax Authorities from the legitimate amount of duties and taxes by filing frivolous proceedings despite of the fact that alternate remedy is available to the appellant, however, submits that he will raise all such objections before the learned Single Judge at the time of hearing of the application filed by the appellant seeking withdrawal of suit.

We have heard the learned counsel for the respective parties and perused the record, which reflects that the impugned order has been passed pursuant to the judgment of Hon'ble Supreme Court of Pakistan dated 27.6.2018. It will be advantageous to reproduce the relevant findings of the Hon'ble Supreme Court as contained in Para 18, which reads as follows: -

“18. For the forging reasons, while allowing these appeals, it is held and directed as under:

- (1) the adverse orders / actions by the Assessment Officers / Customs Authorities cannot be said to be beyond jurisdiction and thus fail to circumvent the bar to jurisdiction of civil courts imposed under section 217(2) of the Customs Act;*
- (2) the single Bench of the Sindh High Court, regardless of what jurisdiction it exercises, is a “High Court” and will always remain a High Court because it is a constitutional Court and is not a District Court.*
- (3) Section 217(2) ibid only bars the cognizance of suit(s) filed under the civil jurisdiction exercised by the civil courts and this bar cannot be extended to include the exercise of the same jurisdiction by the Single Bench of the Sindh High Court at Karachi;*
- (4) allowing special jurisdiction to the Sindh High Court, while the same is not available to other Provinces, does not violate the provision of Article 25 of the Constitution;*
- (5) the suits of the appellants filed before the Single Bench of the Sindh High Court at Karachi are maintainable.*
- (6) despite the fact that the Single Bench of the Sindh High Court at Karachi can take cognizance of any suit arising out of an action / order of the tax authorities / Customs Officers, such jurisdiction must be sparingly exercised and the suits must be expeditiously decided within the period of one year or less; and*

(7) the suits, which are already pending or shall be filed in future, must only be continued / entertained on the condition that a minimum of 50% of the tax calculated by the tax authorities is deposited with the authorities.

Prima facie, it appears that maintainability of the suit has been subjected to deposit a minimum of 50% of the tax calculated by the tax authorities, whereas, in the case of appellant, according to learned counsel for respondent, only bank guarantee has been furnished before the Nazir of this Court as per assessed value of duties and taxes and no amount has been deposited before the tax authorities. Since the learned counsel for appellant has candidly stated that she will not press instant High Court Appeal, provided that direction may be issued to the learned Single Judge to pass appropriate order on the application seeking withdrawal of the suit, we would restrain from making any observation as to the merits and consequential withdrawal of the suit at this stage of the proceedings and would dispose of instant High Court Appeal as not pressed alongwith listed applications, however, with direction to the learned Single Judge, who may pass appropriate order on the application filed by the appellant after hearing both the parties in accordance with law, within a period of two weeks from the date of hearing of such application. However, the same shall not be beyond the period of four weeks and till then the impugned order may not be implemented.

Instant High Court Appeal stands disposed of in the aforesaid terms.

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