

**IN THE HIGH COURT OF SINDH, KARACHI**

Present

**Mr. Justice Aqeel Ahmed Abbasi**

**Mr. Justice Aziz-ur-Rehman.**

Const. Petition No. **D – 3834** of 2017

Arshad Hussain.....Petitioner

Const. Petition No. **D – 3835** of 2017

Anwar Hussain.....Petitioner

Const. Petition No. **D – 3836** of 2017

M/s. Excel Tex Industries Pvt. Ltd .....Petitioner

Versus

Province of Sindh and others..... Respondents

Dates of hearing : 19.02.2018

Date of Order : 19.02.2018

M/s. Malik Naeem Iqbal & Malik Altaf Javed, advocates for the petitioners.

Mr. Ghulam Shabbir Shah, Additional Advocate General Sindh.

**ORDER**

1. In the aforesaid Constitution Petitions, common relief has been sought by the petitioners against the respondents, whereas, the petitioners have sought for a declaration from this Court to the effect that the petitioners are entitled to receive outstanding liability against the respondents in respect of contractual obligations.

3. While confronted with hereinabove factual and legal position, as stated by the learned Additional Advocate General with regard to maintainability of instant petitions in view of recent orders already passed by this Court under similar facts and circumstances of the case, learned counsel for the petitioners could not submit any reasonable explanation, however, contended that since the claims of the petitioners has not been disputed by the respondents, therefore, respondents may be directed to make payment of the outstanding amount to the petitioners within a reasonable period of time.

4. We have heard the learned counsel for the petitioners as well as learned Additional Advocate General Sindh and perused the record and the orders already passed by this Court on the subject, copy of which have already placed on record. similar order has been passed today in C.P.No.D-1192/2018 in the case of Illahi Bux Ansari v. Province of Sindh & others, whereby, similar petition has been dismissed for being not maintainable. We are of the considered opinion that the claim of the petitioners regarding performance of contractual obligations, and determination of the fact that complete supply of the material has been made by the petitioners to the respondents as per contract, requires evidence, which exercise cannot be undertaken under Article 199 of the Constitution. Constitutional jurisdiction of High Court(s) under Article 199 of the Constitution can be invoked only in exceptional circumstances, when there is no alternate officious remedy is available to an aggrieved party. The relief sought through instant petitions could have been agitated by the petitioners by

approaching the respondents at relevant time or by filing proceedings before the proper Court of civil jurisdiction in order to seek declaration and recovery of amount pursuant to contractual obligations, which remedy has not been availed by the petitions, whereas, no explanation to this effect has been offered by the learned counsel for the petitioners, except that respondents have not disputed the claim of petitioners.

5. Accordingly, by respectfully following the earlier decisions of this Court, we are not inclined to entertain the claims of the petitioners for the recovery of amount pursuant to some contractual obligations, therefore, dismiss instant petitions for being not maintainable alongwith listed applications. However, before parting with this order, we may observe that the official respondents shall examine the request of the petitioners for the release of the outstanding amount(s), which according to the petitioners, has been admitted by the respondents in their comments, and after proper scrutiny, verification and audit of the accounts, shall process the same in accordance with law without being influenced of dismissal of instant petitions in the aforesaid terms. Petitioners are also at liberty to file any other proceedings including civil suit(s) for the recovery of amount before the proper forum/Court of civil jurisdiction, if so advised, in accordance with law.

**J U D G E**

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A.S.

