

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Suit No.2119 of 2016

DATE

ORDER WITH SIGNATURE OF JUDGE

For hearing of CMA No.13896/16 (U/O 39 Rule 1 & 2 CPC)

05.03.2019.

Mr. Ovais Ali Shah, Advocate for Plaintiff.
Mr. Iqbal M. Khurram, Advocate for Defendant.
Mr. Osman A. Hadi, Assistant Attorney General.

An objection has been raised by the learned Counsel for Defendants in respect of lack of jurisdiction of this Court as the impugned Office Order dated 04.06.2016 has been issued by the Model Customs Collectorate at Quetta. While confronted learned Counsel for the Plaintiff submits that the Plaintiff has, in addition, also impugned Letter dated 22.01.2015 issued by Defendant No.2, who is the Collector of Customs (Export) at Karachi; hence Suit is competent before this Court.

I have heard both the learned Counsel on this aspect of the matter. Perusal of the prayer clause though reflects that Plaintiff has also impugned letter dated 22.01.2015 issued by Defendant No.2; however, such Letter is only passing an information to the Collector of Customs Quetta, and cannot be a reason or justification for being aggrieved in any manner. Moreover, the interim order obtained on 07.10.2016 very clearly reflects that the grievance of the Plaintiff is only in respect of Office Order dated 04.06.2016, which according to the Plaintiff is in violation of the Customs Rules governing the subject controversy. There is no mention of any grievance of the Plaintiff as against Defendant No.2 in the said order; whereas, as already observed, the letter dated 22.01.2015 does not give rise to any cause of action to

invoke jurisdiction of this Court. It appears that Plaintiff has impugned such letter so as to justify invoking jurisdiction of this Court and to obtain interim orders. It is settled principle of law that in such matters it is to be seen that what is the main relief which is being sought by the plaintiff and admittedly the main relief in the instant matter is setting aside of office order issued by defendant No.3 and merely for the fact that some information has been passed on by defendant No. 2, no cause of action can be claimed to have accrued within the territorial jurisdiction of this Court. A learned Division Bench of this Court in the case reported as ***Murlidhar P. Gangwani (Engineer v. Engineer Aftab Islam Agha and others (2005 MLD 1506)*** has been pleased to observe as under:-

“Indeed, it is elementary principle of law that for examining the question of maintainability of the suit with reference to or on the analogy of the provisions of Order VII, rules 10 and 11 C.P.C., the averments made in the plaint are to be taken as whole and with presumption of correctness attached thereto. But at the same time, it is also pertinent to mention that A for determining the question of territorial jurisdiction with reference to the cause of action, whether accrued wholly or in part, the averments of the plaint are to be read in conjunction with the relief sought by a party in the suit and such reading of plaint should be meaningful, rational to the controversy and not merely formal. With these broad principles in mind, when the averments of the plaint In Suit No.427 of 2004 are perused, it is not difficult to conclude that the main relief sought in the suit is relief of declaration with reference to the Notification dated 15-12-2003 issued by the defendant No.2, to the effect that it is void ab initio illegal and violative of fundamental rights of the appellant as well as violative of the provisions of section 16-A of the Societies Registration Act and the other reliefs sought in the plaint are only consequential to such main relief of declaration. Keeping in view this position when the facts relating to the cause of action, as stated in the plaint, are carefully examined, the only possible just and logical conclusion is that for such reliefs no cause of action or any part thereof has accrued to the appellant within the territorial jurisdiction of this Court, as the office of respondent No.2, the Issuing Authority of notification dated 15-12-2003, is at Punjab, the person nominated as administrator of respondent No.4 through this notification is resident of Punjab and the Notification has also been issued and implemented in Punjab. Moreover, the facts stated in para. 19 of the plaint relating to the alleged illegal exercise of powers by respondent No.1, allegedly disturbing the working of Karachi Centre on the basis of impugned Notification have not been questioned or challenged in the present suit so as to conclude that part of cause of action has accrued to the appellant within the territorial jurisdiction of this Court. The observations of the Honourable Supreme Court of Pakistan in the case of *Ilaji Abdul Malik (supra)* that the essential factor for the determination of jurisdiction for the purpose of entertaining the suit would be judged from the contents of the plaint and the dispute subject-matter of suit and not from the consequences flown from the suit, are quite apt to fortify this view.”

In view of hereinabove discussion filing of Suit before this Court does not appear to be a correct approach as admittedly the Office Order, by which the Plaintiff is aggrieved, has been issued by the Collectorate at Quetta, and therefore, in view of dicta laid down by the Hon'ble Supreme Court in the case of ***Sandalbar Enterprises (Pvt.) Ltd. v. Central Board of Revenue and others*** reported as **(PLD 1997 Supreme Court 334)**, whereby, it has been observed that *We may observe that it has become a common practice to file a writ petition either at Peshawar, or Lahore, or Rawalpindi or Multan etc. to challenge the order of assessment passed at Karachi by adding a ground for impugning the notification under which a particular levy is imposed. This practice is to be depreciated. The Court is to see, what is the dominant object of filing of the writ petition. In the present case, the dominant object was not to pay the regulatory duty assessed by a Customs official at Karachi; this Court lacks jurisdiction in this matter, and therefore, the Plaint is hereby returned in terms of Order VII Rule 10 CPC to the Plaintiff for its presentation before the Court having appropriate jurisdiction. Office to act accordingly.*

J U D G E