ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 2008 of 2016

DATE	ORDER WITH SIGNATURE OF JUDGE

Plaintiffs: **Fateh Jeans Limited & 4 others**
Through Mr. Mansoor Ali Ghanghro, Advocate.

Defendant No.4: **Board of Investment**
Through Mr. Atir Aqeel Ansari, Advocate.

Defendants No.5 to 9: **Fateh Industries Limited & others**
Through Mr. Muhammad Salim Mangrio, Advocate.

Defendant No.10: **National Bank of Pakistan,**
Through Mr. Aijaz Shirazi, Advocate.

For hearing of:

1. **CMA No.14734/16 (U/O 39 Rule 4 CPC)**
2. **CMA No.14735/16 (U/O VII Rules 11 CPC)**
3. **CMA No.14736/16 (----------do----------)**
4. **CMA No.14737/16 (----------do----------)**
5. **CMA No.13002/16 (U/S 94 CPC and Order 39 Rule 1 & 2 CPC)**
6. **CMA No.13003/16 (----------do----------).**

Dates of Hearing: **6.9.2018, 13.09.2018, 06.02.2019, 27.02.2019 & 27.03.2019.**

Date of Order: **09.05.2019**

O R D E R

Muhammad Junaid Ghaffar J. This is a Suit for Declaration, Injunction and Damages, through which the Plaintiffs seek a prayer for passing of a judgment and decree to the effect that they are entitled to 1/3rd of US $ 28,827,333.34 of Sea Freight Compensation Operation amount which is to be received by Defendants Nos. 5 to 9 from the Russian Federation and presently being held by Defendant No.10 as a Garnishee amount. Applications at Serial No.5 & 6 are injunction applications of the Plaintiffs; whereas, Application at Serial No.1 is under Order 39 Rule 4 CPC filed on behalf of the Defendants No.5 & 6 and Applications at Serial Nos. 2,3 & 4 have been filed by various Defendants

under Order VII Rule 11 CPC for rejection of the Plaint. Through this order, the injunction applications as well as the application under Order 39 Rule 4 CPC are being decided.

2. Precise facts as stated are that *Fateh Group* being one of the premier manufacturing and trading institutions was engaged in barter trade with the then **"USSR"** and after its collapse in 1991, the Group suffered various losses and for such purposes through its various Companies, Suits were filed before this Court and certain funds of the then Russian Federation were attached by orders of this Court in Suit Nos.484/2003, 901/2006 and 902/2006 vide Orders dated 23.09.2003 and 12.07.2006 respectively. It is the case of the Plaintiff in this Suit that after split in the family and group, there were certain arrangements between the parties and one such arrangement was to the effect that upon receiving the claim under Freight Compensation Operation, it would be distributed equally amongst the three families, which formed the *Fateh Group*. It is alleged that some of the Defendants have made an attempt to substitute the name of the actual claimants i.e. Fateh International with their Company before the Board of Investment and the Government functionaries to make a claim in respect of Freight Compensation already received by the Government of Pakistan and intend to deprive the Plaintiffs from such amount. This is averred on the basis of a purported Settlement Agreement dated 28.6.2011.

3. Learned Counsel for the Plaintiffs has referred to Agreement dated 28.06.2011 and has contended that the same pertains to a settlement of various assets and the mode of distribution of the same, most of which have been acted upon by the parties; however, the one component of such settlement in respect of Sea Freight Compensation is being avoided and has rather been admitted to be received directly by the Defendants to the exclusion of the Plaintiffs; whereas, the Settlement Agreement stipulates that 33% of the Sea Freight Compensation would be given to Roshan Ali Group i.e. the Plaintiffs; hence instant Suit. In support of his arguments that this Agreement has been acted upon in various respects, he has referred to compromise applications filed in various pending proceedings including Suits and Judicial Company petitions and has contended that this clearly establishes the bonafide and genuineness as well the existence of the Agreement in question. According to him, the

two witnesses of the said Agreement namely Mr. Suleman Chotani and Abdul Waheed have come before this Court and have sworn their affidavits in support thereof, which further establishes the genuineness and correctness of the Settlement Agreement. Per learned Counsel, the Plaintiffs acting bonafidely have transferred various properties to other members of the group pursuant to such settlement and in support he has referred to such documents placed on record. He has further contended that now when this Sea Freight Compensation amount is about to be received after various meetings held in Islamabad with the Board of Investment and respective Ministries, the Defendants have attempted to exclude the Plaintiffs from potential recipients of the said freight amount, which is in violation of the Settlement Agreement between the group families. Learned Counsel has also referred to the written statement of Defendant No.2 and has contended that the amount of Freight Compensation is available, and therefore, the Plaintiffs are entitled for an injunction. In support of his contention he has relied upon the cases of ***Messrrs Nagina Films Ltd. v. Usman Hussain and others*** reported as **1987 CLC 2263**, ***Muhammad Yaqoob Sheikh v. Election Tribunal (Multan Bench)*** reported as **2013 CLC 1512**, ***The President v. Mr. Justice Shaukat Ali*** reported as **PLD 1971 SC 585**, ***Engr. Inam Ahmad Osmani v. Federation of Pakistan and others*** reported as **2013 MLD 1132**, ***Jehan Khan v. Province of Sindh and others*** reported as **PLD 2003 Karachi 691** and ***Messrs M.A. Khan & Co. through Sole Proprietor Muhammad Ali Khan v. Messrs Pakistan Railway Employees Cooperative Housing Society Ltd. through Principal Officer/Secretary, Karachi*** reported as **2006 SCMR 721**.

4. On the other hand, learned Counsel for the private Defendants No.5 to 9 has contended that the plaint in this matter has been filed and affidavit has been sworn only by Plaintiff No.3, which is in violation of Rule 75 of the Sindh Chief Court Rules (Original Side); hence cannot be entertained. Per learned Counsel, the contesting Defendants vehemently deny execution of any such Settlement Agreement, which is now being relied upon by the Plaintiffs; whereas, the said Agreement purportedly is between some Companies of the Groups; however, it is neither signed by the Company nor there is any authorization on behalf of the Company to enter into any such Agreement. Learned Counsel has then referred to the signatures purportedly mentioned on the Settlement Agreement and has

referred to plaint in Suit No.1412 of 1999, which according to him has also been filed by the same gentleman namely Rauf Alam; but according to him both signatures do not tally; therefore, the Agreement in question is a forged document. Per learned Counsel the case, as set up by the Plaintiffs, is to the effect that all 11 clauses of the purported Settlement Agreement have been acted upon; however, only one out of these is left, then how this was done, has not been explained; whereas, according to him none of the previous litigations between the parties disclose any such facts, which have now been agitated through instant Suit. He has further argued that some statement has been relied upon by the Plaintiffs purportedly given in favour of the Agreement by Muhammad Arif Ghaba; however, per learned Counsel he is not a witness to the Settlement Agreement; hence the same cannot be relied upon. Learned Counsel has then referred to J.M No. 09/2010, which was settled and withdrawn pursuant to Order dated 26.07.2011 and according to him, if that be the case, then this Settlement Agreement, which is purportedly dated 28.06.2011, ought to have been mentioned and brought on record in that litigation. He has further argued that all previous litigations were settled between the parties including J.M No. 58/2009, J.M No. 17/2010, J.M No. 12/2010 and J.M No. 02/2010 vide Order dated 26.07.2011 and in none of these proceedings, the Plaintiff have mentioned or disclosed any such Settlement Agreement and its consequences. Per learned Counsel the argument that Plaintiffs have acted upon all clauses of the Settlement Agreement by transferring various properties, does not *ipso facto* establishes the credibility of the Agreement as such transfers were in fact done pursuant to the settlement made in respect of various litigations and has go nothing to do with the purported Agreement being pressed upon by the Plaintiffs. He has further argued that the claims available with the Federation of Pakistan and received from the Russian Federation are in the name of the individual Companies, i.e. Defendants No.5 & 6, which had exported the goods to the Russian Federation and are entitled to receive such compensation, if any, whereas, even otherwise the individual companies and their share cannot be made part of any purported private settlement between the parties i.e. the Directors itself. According to him the Agreement in question is a forged document and is an afterthought on the part of the Plaintiffs; whereas, even if the same is accepted as a valid document, it could only be in respect of the claim of the Companies and

not the Directors and other Plaintiffs. Learned Counsel has then argued that the Companies in question are Public Limited Companies and pursuant to Section 234 of the Companies Ordinance 1984 read with Vth Schedule, the amounts, which are now being claimed should have been shown as receivable in the financial statements of the Company. Learned Counsel has referred to the balance sheets for various years and has contended that no account receivable has been shown, and therefore, no case is made out as to any amount receivable even by the Companies. On the other hand, he has referred to the balance sheets of Defendants No.5 & 6 and has contended that these companies have continuously shown such amount as being receivable in the annual reports, which clearly reflects that the amount in question, is not due to the Plaintiffs as is being claimed; but to the Companies i.e. Defendant No.5 & 6. Per learned Counsel the balance sheets of the Public Companies are public documents and have never been challenged by the Plaintiffs or anyone else. In support of his contention he has relied upon the cases of ***Anjum Rashid and others v. Shehzad and others*** reported as **2007 CLD 1210**, ***Sh. Muhammad Saleem v. Saadat Enterprises*** reported as **2009 CLD 390**, ***Ehtesham Ghazi v. Izharuddin and another*** reported as **2001 YLR 526**, ***Messrs Syed Bhais (Pvt.) Ltd. through Director v. Government of Punjab through Secretary Local Government and 3 others*** reported as **PLD 2012 Lahore 52**, ***Shaikh Muhammad Anwar v. Shaikh Muhammad Iqbal and another*** reported as **1984 CLC 103**, ***Fazal Rahim v. Messrs Al-Wajid Town*** reported as **1994 MLD 126** and ***S.M Shafi Ahmed Zaidi through Legal Hiers v. Malik Hassan Ali Khan (Moin) through Legal Heirs*** reported as **2002 SCMR 338.**

5. Learned Counsel for Defendant No.4 i.e. Board of Investment has contended that firstly the Russian Federation is not a party to this Agreement being relied upon by the Plaintiffs; whereas, the amount, if any, would be paid in the pending Suits to the Decree Holders and cannot be claimed by the Plaintiffs through an attachment order in this Suit. Per learned Counsel, in essence, the injunction application has though been filed under Order 39 Rule 1 & 2 CPC; however, it is an application for attachment before judgment in terms of Order 38 Rule 5 CPC and the parameters for grant of such an application are materially different as against an injunction application. He has further argued that in terms of Section 14 of The State Immunity Ordinance, 1981, funds of

a Sovereign State cannot be attached; whereas, as of today, the amount is also in dispute as there are various claimants before the Government Authorities and it is yet to be crystallized as to what amount is to be paid to Defendants No.5 to 9; and therefore, the applications are liable to be dismissed.

6. Insofar as the learned Assistant Attorney General is concerned, he has contended that there is no claim against Federation in the present Suit; whereas, this pertains to a private family dispute. However, according to him the amount available with the Federation of Pakistan could not be attached as it belongs to various other parties as well and is not exclusively for the benefit of Defendants No.5 to 9.

7. I have heard all the learned Counsel and perused the record. Plaintiff has filed this Suit for Declaration, Injunction and Damages and has sought the following relief(s):-

a) An injunction restraining the Garnishee, Defendant No. 10, from releasing the amounts retained in accordance with the orders of this Honorable Court in Suit No. 901 of 2006 and Suit No. 902 of 2006.

b) Judgment and Decree to the effect that the Plaintiffs are entitled to one third of US$ 28,827,333.34 of Sea Freight Compensation Operation amount which are to be received by Defendant Nos. 5 to 9 from the Russian Federation / Government of Pakistan and such funds are held by the Garnishee, Defendant No. 10 in Pak Rupees equivalent to PKR 3,463,123,562/- (as per paragraph 20 above).

c) Judgment and Decree to the effect that any Agreement between Defendant No. 1 to 4 and Defendants No. 5 to 9 shall be without legal effect without the involvement and consent of the Plaintiffs.

d) Costs.

e) Any other or further relief deemed fit by this Honorable Court.

8. Through CMA No. 13002/2016 at Serial No.5 under Order 39 Rule 1 & 2 CPC read with Section 94 and Section 151 CPC, it has been prayed on behalf of the Plaintiff to restrain Defendants No.1 to 9 from entering into any Agreement amongst themselves violating the rights of the Plaintiffs. Insofar as CMA No.13003/2016 at Serial No.6 is concerned, this again is an application under the same provisions, through which an order is sought to restrain Defendant No.9, the Garnishee, from releasing the funds held by it in compliance of the orders of this Court in Suit Nos.901 & 902 of 2006 till disposal of these proceedings. CMA

No.14734/2016 at Serial No.1 has been filed under Order 39 Rule 4 CPC for recalling of the ad-interim orders passed on 27.09.2016 and thereafter. The precise case of the Plaintiffs for the present purposes is premised on a purported Settlement Agreement dated 28.06.2011, which according to the Plaintiffs was entered into by Plaintiffs No.1 & 2 (Roshan Ali Group) with Defendant No.5 and 6 (Jan Alam Group) whereby, according to the Plaintiffs, the families within *Fateh Group* settled the process of separation of the Group and distributed various assets amongst themselves in the mode and manner, as mentioned in the said Agreement. It is their further case that all other clauses of the Amicable Settlement have been acted upon except Clause-11 of the Agreement, which reads as under:-

> "1. RA group will be entitled of 33% of sea freight compensation net amount (after deducting the expenses."

9. The above amount of Sea Freight Compensation has been or is supposed to be received by Defendant No.5 (Fateh Industries Limited) & Defendant No.6 (Fateh Sports Wear Limited) from Defendant No.1 through Defendants No. 2, 3, 4 & 10 and as per the Plaintiffs' averments, they are entitled for 33% of the said receivable amount, which has, or is to be received. On 27.09.2016, an ad-interim order was passed in the terms that in the meantime, the Defendant No.10, the Garnishee, was restrained from releasing the amount in question without associating and settlement of the claim of Plaintiffs No.1 & 2. Thereafter, on 31.3.2016, the ad-interim order was modified to certain extent which is not relevant for the present purposes, whereas, on 7.6.2017, it was further modified by directing official defendants to release the amount in question to the extent of 77% being payable to Defendant Nos5 & 6; however, vide order dated 17.8.2018 in HCA No.293/2017, by consent, it was set-aside with directions to this Court to decide all pending applications. Now for the present purposes insofar as the injunction applications are concerned, I am neither required; nor the case is to that effect that receivable amount is owed to Plaintiffs, as it appears to be an admitted position and as disclosed in the Plaint as well as prayer clause that this amount, if received, will be in the account of Defendants No. 5 & 6, as these were the Companies, which at the relevant time were engaged and under contract with Defendant No.1 through export of their

goods to the then Russian Federation; with an exception that perhaps certain amount is due to Plaintiff No.1 as well. The Plaintiffs case is that such Exports were under the *Fateh Group* or *Fateh International*, and hence it is of the owners of the Group and not of the individual companies. For the present purposes, this Court is to decide that whether on the basis of purported Agreement (being denied by private Defendants) any injunction of permanent nature could be granted or not. And for that it is of more importance to first examine the Settlement Agreement, its contents and its authenticity and thereafter to determine as to whether a prima facie case is made out and balance of convenience lies in favour of the Plaintiffs and whether any irreparable loss would be caused to them, if the injunctive relief is declined.

10. The Counsel for private Defendants has raised various objections on this very document and the first and foremost is that the Agreement in question has admittedly not been signed on behalf of Plaintiff Nos.1 & 2, which are Public Companies and in absence of any such authorization of the said Companies, no Agreement could be entered into. Similarly, again there is no authority or a resolution on record on behalf of the other Group Companies i.e. Defendants No.5 & 6 as no authority has been placed on record or even disclosed in the Settlement Agreement, which could bind the Companies. There is another very serious objection, which has been raised and it is in respect of the signatures of Defendant No.7 Mr. Rauf Alam on this Settlement Agreement. In support of this contention, Counsel appearing on behalf of Defendant No.7 as well as other private Defendants has contended that the purported signatures on the Settlement Agreement on behalf of Defendants No.5 & 6 being that of Mr. Rauf Alam are vehemently denied, and in support thereof, learned Counsel has referred to Plaint of Suit No.1412 of 999 available as Annexure "A" to the counter affidavit of Plaintiff No.3 to his application under Order VII rule 11 CPC bearing CMA No. 14735/2016. According to the learned Counsel this document has been placed on record at Page-347, Part-2 onwards by the Plaintiffs themselves. On perusal of the same by this Court, it clearly reflects that the signatures of Mr. Rauf Alam, the Plaintiff No.4 in Suit No. 1412 of 1999 is dissimilar and distinct and upon a bare look, does seems to be disparate and discrepant from the purported signatures on the Settlement Agreement dated 28.06.2011 placed at page-71 of this Suit. A naked eye can also observe the difference / dissimilarity in the signatures, and therefore, I am of the

view that for the present purposes, at this injunctive stage of the proceedings, this does not support the case of the Plaintiffs in any manner; rather, reflects negatively on their case and is adversarial to their stance. Another objection, which also requires mentioning and discussion is to the effect that the Plaintiffs in support have placed on record statement as well as affidavit of one Muhammad Arif Ghaba available at page 883 of Part-2, which in Para-5 states that *I am a witness of this Settlement Agreement and the same was signed in my presence by the parties*. However, perusal of the Agreement itself reflects that Muhammad Arif Ghaba is not a witness to this Agreement as the said Agreement has been witnessed by two other persons; hence any reliance on this affidavit and statement does not appear to be justified, and is rather again reflecting negatively, causing suspicion on the veracity of the said Agreement for the present purposes. It further appears that there were various proceedings pending in respect of dispute(s) between the parties i.e. owners of the *Fateh Group* (including but not limited to Plaintiffs and private Defendants) and not all but perhaps majority of such proceedings were compromised and disposed of / withdrawn through an order dated 26.07.2011 passed in J.M Nos. 02, 12, 17, 09 & 25 of 2010. Perusal of such orders reflects that these proceedings were withdrawn by the parties on the basis of a compromise reached between them. Such orders are dated 26.07.2011 and in these orders as well as the settlement mentioned in these proceedings, there is no mention of the present Settlement Agreement, which according to the Plaintiffs was executed on 28.06.2011. Now, if for the sake of arguments, it is accepted that a Settlement Agreement was in existence on 28.06.2011, then why, while compromising and settlement of the pending proceedings in the above J.Ms on 26.07.2011, no such disclosure was made in respect of this Settlement Agreement, nor the same was brought to the notice of the Court, more specifically clause-11 thereof, which is now being pressed upon. At least there ought to have been such an exception recorded in these proceedings. It is also noteworthy to observe that all these proceedings were against the Group Companies, including Defendant No.5 & 6. J.M.09/2010 was against Defendant No.5, which was disposed of by way of a compromise and the contents of the said application do not mention any such settlement agreement or its contents; but were in respect of various properties. This stance in the said proceedings does not support the stance of the Plaintiffs before this Court in the instant

matter. Similarly, J.M.17/2010 was against Defendant No.6, and was withdrawn in view of the compromise in J.M.09/2010. Therefore, insofar as these two Group Companies are concerned, there was no further grievance of the Plaintiffs on 26.07.2011, and therefore, the very existence of the Settlement Agreement dated 28.6.2011, on that very date was of no concern for the Plaintiffs; hence, now any reliance on the same for seeking an injunctive relief amounts to a complete turnaround and a summersault. At least for the purposes of an injunctive relief, they have a very weak case, whereas, this also creates suspicion and doubts as to the validity and existence of the Agreement itself. It further appears that Plaintiffs No.1 & 2 are Public Unlisted Companies and it is an admitted position that while finalizing their annual accounts and financial statements for the year 2011, the amount in question, as is now being claimed by the Plaintiffs No.1 & 2, has not been shown in their account receivable. Such fact has been admitted by the learned Counsel for the Plaintiffs, who has argued that though the amount is not mentioned in the financial accounts for the year 2011; but they have been shown in the accounts of 2012. However, I am not impressed with such line of arguments for the reason that the Settlement Agreement is dated 28.06.2011 and if the accounts were closed on 30.06.2011; or thereafter, then as a matter of fact as well as law, the amount receivable ought to have been disclosed in the financial accounts for the year 2011 and not in the subsequent year for 2012. This again creates serious doubts as to the claim of the Plaintiffs and rather goes against them when they say that it has been shown in the accounts for the year 2012. All in all, the Plaintiffs have not been able to make out a case on the basis of above discussion so as to grant any interim relief to them pending final adjudication of the Suit, which in my view requires them to lead evidence and discharge the burden so as to get any orders in favor from the Court.

11. It is also very strange and surprising to note that when Suit Nos.901 and 902 of 2006 were filed before this Court, the stance of Defendant No.5 & 6 (the Plaintiffs of these Suits) was that the amount in question belongs to these Companies and is not of anyone else including the *"Fateh Group"*. And the plaints in these two Suits were filed and sworn by the Affidavits of Plaintiffs No.3 (**Mr. Mohsin**) in this Suit, who at the relevant time was a Director and shareholder of the said Companies. Now after having settled / sold the shareholding to Defendant Nos.7 to 9 and

their family, this does not lie in the mouth of the same person to take another or altered stance. In Para 8 of the plaint of Suit No.901 of 2006 filed by Defendant No.5, it is stated (by Plaintiff No.3 herein) *"that the Embassy of Pakistan at Moscow vide its Fax Message No.Econ-4/2002 dated 26.06.2003 forwarded the draft Agreement, received by them from Defendant No.1, in its English translation to Defendant No.2 in which also the claim of the Plaintiff (***Fateh Industries Limited***) was acknowledged and confirmed*". Similarly in Para 13 again it is stated *"that the purpose of sending the new Agreement for initialization was to confirm the break-up of the claims of Fateh which showed the entitlement of the Plaintiff and as such, a letter bearing No.3(23)/2000-CARs dated 04.05.2006 was addressed by Defendant No.2 to the Ambassador, Embassy of Defendant No.1 at Islamabad requesting the Defendant No.1 to forward the corrections to the Defendant No.1 in order to avoid any ambiguity at any later stage*". This is enough to discard the contention of the Plaintiffs as is being raised through listed applications, at least for the present purposes.

12. Notwithstanding the above, it is also a matter of record that in fact the Plaintiffs through listed applications are not seeking a relief which is germane to the underlying principles for grant of injunction as postulated under Order 39 Rules 1 & 2 CPC; rather their claim is more of an attachment order before judgment. The amount being claimed is already a matter of adjudication in various Suits pending before this Court as stated in para No.4 of the Plaint, and is perhaps under attachment in those Suits. Now what the Plaintiffs through this Suit by means of the Settlement Agreement, want that the said amount be attached and not released to private Defendants till such time this Suit of theirs is decided. I am afraid such type of an order cannot be passed in terms of the provisions under which the listed applications have been filed. They are yet to establish their claim, and are merely relying on an alleged Agreement of Settlement which is being denied by the private Defendants. For an order of attachment before judgment, there are stringent requirements which are to be met as compared to grant of an injunctive relief, whereas, I am of the view that the Plaintiffs have even failed to make out a case for an injunctive relief in terms of Order 39 Rule 1 & 2 CPC; hence, it would be too far-fetched to argue and seek a relief of attachment before judgment on the basis of the said facts. The provisions of Order 38 C.P.C. are preventive and not punitive in nature, therefore while exercising such powers, Courts are always required to see that firstly a case is made out for passing of such an order, and if so,

then how and in what manner it is going to affect the party against whom such severe order is being sought. The Courts ought to be more vigilant and careful in such a situation when an attachment order is prayed for, and must not pass such an order merely because of some distant apprehension and without any prima facie substance or material brought before the Court. Such orders are a rarity, whereas, the Court has to be cautious in passing an order for attachment before judgment; and must look into all factors before passing such an order. The object of power conferred by Order XXXVIII, rule 5, C.P.C., is to secure' performance of decree likely to be passed and not to ' coerce' its performance before judgment[1]. A learned Single Judge of this Court in the case of ***Muhammad Ather Hafeez Khan v SSangyong & Usmani JV*** (**PLD 2011 Karachi 605**) had the occasion to dilate upon the provisions of Order 38 CPC, after a thread bare examination of the entire case law on the subject. In that Suit the facts were more or less similar inasmuch as the Plaintiff was seeking attachment of certain amount belonging to Defendant lying with Karachi Port Trust, and the precise ground was that the Defendant being a foreign Company would run away with the said amount before any judgment and decree could be passed in favor of the Plaintiff. The learned Judge was pleased to discard such contention. It would be advantageous to refer to the relevant findings contained in Para 9 and 10 which reads as under;

> 9. Inextricably linked to the issue treated in the last paragraph is of course, the requirement that the defendant must also have the necessary "intent", i.e., to obstruct or delay execution of any decree against him. No hard and fast rule can be laid down as to what would constitute the necessary "intent" or how it would be determined, nor would it be desirable to do so. Much would depend on the facts and circumstances of the case. In some cases, the very facts constituting the removal (or proposed or attempted removal) may be such as lead irresistibly to such a conclusion-res ipsa loquitur, as it were. In others, something additional may need to be adduced by the plaintiff. However, one point is clear. An order of attachment before judgment obviously curtails the undoubted right of a person to deal with his property as he deems appropriate. The object of such an order is preventive and not punitive. The plaintiff must therefore make out a clear case that the ingredients of Rule 5 are applicable. If there is a doubt or ambiguity, then the benefit must go to the defendant. Thus, unless the necessary "intent" can be made out with reasonable clarity from the relevant facts objectively considered, an order of attachment ought ordinarily to be regarded as inappropriate.
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> 10. When the foregoing principles are applied to the facts and circumstances of the present case, I am clear that a case for attachment before judgment has not been made out. It may well be the case that the defendant will remit the retention money, e.g., as demanded by it in its letter of 17-3-2011, out of the country. But that is only to be expected

[1] Encyclopedia Britannica Inc. v Pak American Commercial Ltd. (1997 CLC 2003)

> given that it is a foreign entity. The plaintiff has not, in my view, been able to show that such a remittance, even if made, would be with the necessary "intent", i.e., in order to defeat or obstruct any decree (on the basis of any award) that the plaintiff may eventually obtain in his favour. The purpose behind Order XXXVIII is not to guarantee to a plaintiff that there will always be an asset available in the jurisdiction to satisfy his claim, should he ultimately succeed in his action. That is not the function or duty of a court of law. The purpose behind Order XXXVIII is to ensure that a defendant does not abuse the process of the court, in the sense that he is able, pending adjudication of the claim against him, to make himself judgment-proof. That his acts, undertaken in the normal course, may for all practical purposes have such an effect is also not sufficient; it must be shown that he acted with intent to bring about such an effect. The plaintiff's case, on the basis of the record as presently available, does not reach the required threshold….."

13. In view of hereinabove facts and circumstances of this case I am of the view that Plaintiffs prayer in the listed applications which is based on a purported Settlement Agreement does not merits consideration for passing of an injunction, which otherwise is in respect of some other proceedings as they intend to seek a restraining order against The Garnishee i.e. Defendant No.10. Plaintiffs have failed to make out a prima facie case and to establish balance of convenience in their favour; whereas, no irreparable loss will be caused to them; rather, the Defendants would be seriously prejudiced, if the injunctive relief is granted any further. In view of such position, Applications bearing CMA No.13002 of 2016 (at Serial No.5) and 13003 of 2016 (at Serial No.6) are dismissed. Whereas, CMA No. 14734 of 2016 has become infructuous in view of the above order and is accordingly dismissed as infructuous. Rest of the applications are deferred.

14. Injunction applications of the Plaintiffs are hereby dismissed.

Dated: 09.05.2019

Judge

Ayaz P.S.