ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Suit No.542/2007

Date	Order with signature of Judge

Date of hearing: 14.1.2008

Allied Services
Plaintiff : through Mr.Khalid Daudpota Advocate.

City District Government
Karachi Defendant : through Mr.Manzoor Ahmed Advocate.

ORDER

KHALID ALI Z. QAZI.J.- CMA No.673/2007 This is an application under Order 39 rule 1 & 2 filed by the plaintiff seeks orders restraining the defendants from dispossessing the Plaintiffs or removing their vehicles, equipments, machineries, oil pump, service station and bus bodies from the following terminals or making other arrangements for dispossessing the plaintiffs till hearing and disposal of the suit.

Brief facts of the case requisite for disposal of this application is that the Plaintiffs are a registered Partnership Firm doing business in the name and style as Allied Services having office at 94-A, Gulgasht Colony, Multan and have branch office at Super Highway, adjacent KDA Asphalt Plant. The defendant No.1 are local Government and defendant No.2 is their concerned office/department dealing with local transport as Transport Communication Department (T.C.D.) at Karachi. The defendant No.1 being local Government to solve the chronic problem of transport and to facilitate the population and development of the city announced a scheme 'Urban Transport Scheme (U.T.S.) with rules for Karachi and offered package to the experienced people and transporters to operate the buses that were leased on the ratio of 30/70 equity basis with subsidy on markup as under:-

i) Mark up / subsidy on AC buses: Share of C.D.G @ 9% and rest of Mark up as share of transporter.

ii) Subsidy on Non-AC buses: Share of C.D.G @ 6% of the Mark up and rest is shared by transporter.

2. Mr. Khalid Daudpota learned counsel for the Plaintiff stated that offer being reasonable accepted the same and entered into an agreement with defendants to operate buses on various routes and as such

Plaintiffs at one stage obtained 52 buss plus 13 buses under process of fabrication (total 65 vehicles) from various financing institutions on rental lease of markup from banks started plying on different routes of the City District Government. Learned counsel further stated that vide condition No.2 of 'Bus Financing Agreement', it was agreed that subsidy share of 9% on A/C buses would be paid by defendants for payment to the financing company. The defendants in terms of agreement also provided two terminals to Plaintiff on rent one at Gulshan-e-Maymar of Super Highway adjacent to 'Asphalt Plant' and other at 'ST-6-H, Korangi Karachi for parking the buses and their maintenance, and rent to be adjusted from the amount and operation of buses under UTS by them as per written agreement. Learned counsel stated that Plaintiffs supplied defendants with certificate from lessors with details of buses operated time to time and claim of due markup share payable by defendants as per agreements, several approaches were made and ultimately Plaintiffs wrote final notice dated 30.11.2006 and provided again details of markup according to their contract.

3. Learned counsel stated that defendants after getting the agreement entered and the reasons known to them neither paid share of subsidy to the Plaintiffs nor to their financing institutions and showed their inability to provide due facilities of subsidy. Learned counsel states that non-payment of their share caused the Plaintiffs to suffer huge losses and to move towards defaulter causing them to become responsible for losses.

The reason of damages and losses stated above is only due to non-payment of share by defendants to the financing institutions from whom Plaintiffs obtained vehicles on rental and lease basis and put to run on incomplete roads, resultantly financing institutions cancelled the contracts and snatched the vehicles and demanded huge amount towards rental installments and penal amount for non-payment including filed cases for prosecution under criminal proceedings and criminal act due to non-encashment of cheques. Learned counsel further stated that all consequences and reasons were only due to defendants as they failed to pay their share of subsidy to the Plaintiffs. The Plaintiffs were compelled to such extent that it become impossible to handle with problem and their huge amount paid as token money, security amount, installments so far paid with heavy rate and mark up, difference of original value and force sale of vehicles by the banks including penalties thereon, Plaintiffs' entire

business went into total loss except some business is left on which the lessors have also claimed damages and return of the units.

4. Mr.Khalid Daudpota learned counsel stated that the defendants are only responsible to this effect, as they have failed to pay their share of subsidy as per agreement. Learned counsel further stated that had it been paid in time as per agreement Plaintiffs would have not suffered losses and damages and that the Plaintiffs are put to irreparable losses to their business and reputation. The Plaintiffs filed four C.Ps bearing Nos.1305/05, to 1308/05 before this Court for directions to the defendants for payment of the share and the same are pending. In Const. Petitions the financing companies have also put pressure and claim on the ground that the contract of payment of ratio share is between Plaintiff and defendants therefore they are not ready to give adjustment though the interim orders are passed. Learned counsel further states that so far the number of cases are filed in different Courts i.e. bearing Suit No.150/2006 before Banking Court No.IV by Saudi Pak, Suit No.132/2006 before Banking Court No.IV by Crescent Leasing, Suit No.27/2006 before Banking Court No.I by KASB Bank and Suit No.67 before Banking Court No.I by KASB Bank and two Criminal Complaints bearing Nos.2/2006 and 29/2006 are also filed before Banking Court No.II and due to non-payment has put the partners in trouble by getting bails and trials.

5. Learned counsel contended that defendants played very clever game with the Plaintiffs specially and public in large and financing institutions and dodged the public whereby announced the scheme and played with innocent people and Plaintiffs by their investment of huge amount. It is further stated that by now an amount of more than Rs.1,25,99,463/- is outstanding till submission of bill plus future share due against the defendants jointly and severally as per Schedule besides damages. The defendants on one hand have not paid their share of subsidy and on other hand are demanding with threats to vacate the rented premises of Terminals on false grounds stating that they will forcibly occupy the terminals and put other buses inside at any cost by trespass.

6. Learned counsel stated that the Plaintiffs made the defendants very clear that their demand is not only illegal but against the contract / tenancy and principles of justice and equity as subsidy contracted should be paid by them and till the same is decided they should

prevent themselves from any illegal action or demand of eviction of terminals, which the Plaintiffs, have occupied under written contract and are in use thereof. Learned counsel further states that Plaintiffs also made them clear that such act will destroy their entire business as well as career of partners and cannot be compensated which and consequences shall only be upon them. None of the leasing company in Pakistan is ready to give assistance or lease on any condition and cost as reputation of the Plaintiffs is damaged due to defendants only and their policy.

7. Learned counsel stated that inspite of request defendants have forcibly put their unserviceable heavy machineries in the premises of terminals and are trying to bring more machineries and vehicles which they have contracted with other people and will take possession by illegal way hence making efforts of trespass into the premises. Defendants' intention is also evident and supported from publication of meeting held by defendant No.2 through their officers to occupy the terminals. The defendants have their right to have their premises but not forcibly as threatened by the officers of defendants without settlement of account and payment of outstanding dues. Plaintiffs are still doing business and have some buses left and are still ready to cooperate in the scheme and using the premises for the purposes it has been obtained under a written agreements. Learned counsel stated that it is also to be mentioned that defendants in their budget for 2005-2006 have shown to the public the title and account displaying Plaintiffs' buses in budget volume IV.

8. Learned counsel further contended that defendants on demand from Plaintiffs verbally agreed that their grievance has been forwarded to the authorities and that soon approval is received they will give adjustment. Learned counsel states that such payment and approval has not reached destination till date. The Plaintiffs have suffered following losses apparently due to non-payment of the share of subsidy as per agreement.

i) Share of subsidy on buses plied so far is Rs.83,28,048/- undisplutedly as per arbitrarily changed from Rs.1,25,99,463.

ii) Amount payable to the financing companies Rs.85,00,000/- due to non-payment of subsidy share showing plaintiffs as defaulters.

iii) Security deposit with financing amount paid by plaintiff to lessors and loan granting companies and banks tentatively to the extent of Rs.4,46,40,000/-.

iv) Damages to the business Rs.15,00,00,000/-.

v) Salaries and compensation of Rs.20,00,000/- paid to employees who were removed from service due to snatching of buses for non-payment of installments share / subsidy.

vi) Damages to the firm and its partners individual and jointly as declared defaulters due to defendants as no one is now ready to finance the Plaintiffs in their business valued to Rs.10,00,00,000/- .

9. Learned counsel contended that Plaintiffs inspite of above have requested the defendants to release the amount of subsidy even as revised by them so that they should be able to keep claimants' mouth shut till further arrangements are made but defendants paid no head to the request resultantly Plaintiffs are brought to last breath for any mishap. Learned counsel vehemently urged that defendants may not to dispossess the Plaintiffs out of the premises of terminals without due process of law.

10. In reply to the arguments of Mr.Khalid Daudpoto Mr.Ali Azam learned counsel for the defendant contended that plaintiffs do not have any prima facie case nor balance of convenience lies in their favour and they shall not suffer any irreparable loss, if the listed application is dismissed.

11. Learned counsel for the defendant urged that relief claimed are barred under section 42 and 56 of Specific Relief Act. The plaintiff cannot avail remedy from two different forums of this Hon'ble Court by filing C.Ps as mentioned by the plaintiff in para 11 of the plaint and also filed present suit on the same cause of action, therefore, suit of the plaintiff is liable to be dismissed. Learned counsel further contended that claim of Branch Office, adjacent to defunct KDA Mechanical Workshop / Asphalt Plant at Super Highway is false, as rental agreement was made, purely on temporary basis and the premises was given to the plaintiffs for parking of buses of route No.UTS-17 & 20, which are no more in operation since long, rather the plaintiff has suspended the operation due to the reason best known to them. Learned counsel states in view of the above, the agreement termination notice was served upon the plaintiff by defendant No.2, as the premises was allocated to the plaintiff for the very purpose which was not

being served by the plaintiff. Learned counsel states that moreover, the claim for any other purpose, like branch office is illegal and malafide.

12. Learned counsel has contended that according to Rental Agreement, the premises at Super Highway, adjacent to Mechanical Workshop / Asphalt Plant and at Sector ST-6-H, Korangi were provided to the plaintiff for parking of the UTS Buses on temporary basis / as an interim measure. Learned counsel further states that it was agreed by the plaintiff that the premises will be vacated, as and when required by the defendants as per agreement, in no way, the rent was adjustable, rather, according to Clause-1 of the agreement, it was payable @ Rs.1,000/- per bus per month, by 10th day of every succeeding month, which was never paid by the plaintiffs to the defendants. Learned counsel contended that initially, the plaintiff submitted the case of reimbursement of subsidy on loan markup on 05.09.2005 (actual date of letter is 23.08.2005, which was delivered in this office after 13 days). The case was returned back on 12.10.2005, advising to resubmit the same in conformity to the existing rules and regulations. Thereafter, the plaintiff again resubmitted the case on 30.11.2006 (actual date of letter is 22.11.2006, which was received in this office after 8 days), after a lapse of more than 13 months, which was returned back to the plaintiff on 15.01.2007, for attending some more observations. Learned counsel states that reply of the same is still awaited. Learned counsel states that it may interestingly be noted from the dates of correspondence that how serious the plaintiff is, in getting the share of subsidy moreover, the plaintiffs have not done their job nor they have been completed required formalities and there is nothing wrong on the record of the answering defendant and there is no question of causing any harm to the plaintiff by the defendant and the action of the plaintiff in para under reply being false and misconceived are denied.

13. Learned counsel stated that matter for non payment of share subsidy as clarified above and there is no fault on the part of the answering defendant and the plaintiff is responsible for the same as mentioned in the above paragraph. It is however, submitted that payment of rental installments was the prime responsibility of the plaintiff, which have to be paid promptly / on time, through the income from operation of buses and that the defendant has nothing to do with all the affairs of payments of installments to the financial institutions. Learned counsel states that plaintiffs never submitted the claims of subsidy according to the procedure

laid down in the scheme and in conformity to the existing rules and regulations. The Department has asked twice to submit the claims as per rules which is still not submitted. Learned counsel states that had it been submitted accordingly, the share of subsidy would have been paid long time back.

14. Learned counsel states that CP Nos. 1305/2005, 1306/2005, 1307/2005 and 1308/2005 mentioned in this para, are not related to the suit in question, which is related to the damages being claimed by the plaintiff due to cancellation of rental agreement and notice issued for vacation of the mechanical workshop / asphalt plant of the CDGK given to the plaintiff on temporary basis for parking their buses, while, the above mentioned CPs are related to the claims of subsidy being asked by the plaintiff. Learned counsel further submitted that plaintiff cannot avail two forums of this Hon'ble Court by filing CPs alongwith suit simultaneously, therefore, the suit of the plaintiff is liable to be dismissed. Learned counsel stated that the Urban Transport Scheme (UTS) is a join venture of CDGK & GOS and is very much transparent. The scheme for introducing large size buses under UTS was conceived by the defendants on the decision of Sindh Cabinet and subsequently advertised through Print Media and the proposals received were scrutinized and finally routes were allocated to the UTS Companies for the Urban Transport Operation. The issue of share of subsidy has been clarified above. It is further stated that the said premises is Workshop / Asphalt Plant of the CDGK and the permission to park the buses / agreement was made on purely temporary basis for operation for the routes terminating in the nearby areas. Learned counsel urged that since, the operator has already withdrawn / terminated the services for the area, therefore, due to non operation of their fleets, the concerned Department has cancelled the route permits also and now there is no justification for holding back the premises. It is further contended that the premises is meant for workshop and as such the facility is badly needed for the recently created Municipal Services Group of Offices of CDGK, for keeping their newly purchased costly equipments, machineries and vehicles etc, therefore, the defendants having the lawful right and ownership of the premises issued notice. Learned counsel states that however, the question of threatening does not arise at all, as mentioned by the plaintiff.

15. Mr. Ali Azam learned counsel for the defendant stated that the premises were allocated for the parking of buses on purely temporary

basis. Learned counsel further states that since the plaintiff has withdrawn the services and moreover the route permits are also cancelled by the concerned Department, therefore, holding of premises, through deceptive intentions, without any valid and justified reason, is not only violation of land use but also an act of depriving the banofide users from their rights of using the premises for genuine purpose. Issuing notice, terminating rent agreement and adopting to takeover the premises for the newly created Office of the Municipal Services in no way comes into the purview of illegal actions mentioned by the plaintiff. Learned counsel contended that most of the buses of the plaintiffs have been re-possessed by the banks / financial institutions and presently no bus is being parked in the Mechanical Workshop / Asphalt Plant premises at Super Highway. Learned counsel states that the other terminus in Sector ST-6-H, Korangi, which is also in possession of the plaintiffs may be used for parking of their buses, if any. Learned counsel further stated that the route being operated by the plaintiff at present have no links with the premises adjacent to Mechanical Workshop / KDEA Asphalt Plant at Super Highway. Learned counsel states that additionally, notice for termination of rental agreement with the plaintiffs has already been served and by virtue of the same, the City Government have the rights to use the premises for keeping the valuable and expensive machineries, equipments and vehicles of their newly created Municipal Services Offices and utilizing the Premises properly and to make the said office more functional in an effective manner.

16. Learned counsel stated that the plaintiffs as per agreement, have to vacate the premises. Learned counsel further contended that the plaintiffs have to settle the dues accumulated to the tune of Rs.17,67,700/- upto 31.12.2006, in respect of service charge / route premium, which have never been paid in addition to utilities' charges etc, despite many notices / reminders dated 26.10.2004, 8.11.2006, 27.12.2006 and 11.1.2007, issued to the plaintiffs time to time. Learned counsel further the rental charges in respect of depot at Asphalt Plant, Scheme-33, Super Highway and the terminus at Sector 6-H Korangi, Industrial Area have been accumulated to the tune of Rs.19,03,000/- and both these premises are still in the possession of the plaintiffs to date hence the total accumulated liability comes out to Rs.36,70,700/-. The plaintiffs have been served upon the notices to vacate the Super Highway premises only, while according to another agreement, a terminal in Sector 6-H, Korangi Industrial Area is still in possession of the plaintiffs and there is sufficient space for parking of alignment i.e. UTS-3, if

operative, as according to our recent surveys, no buses of the plaintiffs company are being operative, at present. The Urban Transport Scheme is still functioning and that is why provision in the budget is being made. The matter regarding payment of subsidy is in process and the companies who have submitted their cases properly as per laid down procedures will be entitled to get the adjustments accordingly. Learned counsel further states that the subsidy case of the plaintiffs could not be processed / sent for arranging payments due to their non-submission of case in proper way, as yet.

17. Learned counsel stated that the defendants have no concern with all the financial implications / claims made by the Plaintiffs, except the one which is reimbursement of subsidy share. The subsidy case of the plaintiffs could not be processed / sent for arranging payments due to non-submissions of case in proper way, as yet. It is further contended that it is the plaintiff who has not fulfill the requirements and there is no fault on the part of the answering defendant, therefore, plaintiff himself is responsible for the loss or damages as alleged by him. Learned counsel states that the plaintiff has not paid rental payment according to the agreement executed between plaintiff and defendant CDGK. Learned counsel urged that for the sake of brevity the contents of written statement may be treated as part and parcel.

18. It is well settled that relief of injunction is discretionary and Court is not bound to grant it in every case and it is not to be granted unless the Court is satisfied as to its real need. The discretion is to be exercised in accordance with reason and sound judicial principles. Court while dealing with application for grant of injunction has to look and to assess all the circumstances obtaining in suit and more so, to equitable relief. Discretion vested in a Court of law has to be exercised judicially and equitably ensuring all the times, that the twain of law and justice are adequately applied and administered. Reliance may be placed on 2000 SCMR 780.

19. It is admitted position that the premises in question were given to the plaintiffs for parking of buses of route No.UTS-17 & 20 which are no more in operation since long and plaintiffs have suspended the operation due to snatching of buses by financer. The plaintiff in para 12 of rejoinder stated as under.

> **"Due to snatching of buses by financer, buses are not plied nor possible unless the payment to the financers is made on receipt of subsidy from the defendants and after request if buses are returned, the Plaintiff can ply on the fresh terms and conditions. It is further submitted that some of the finance companies have sold out buses, snatched for non-payment of markup and liabilities are being put upon the plaintiff for which the defendants are solely responsible."**

18. At present, a presumption as required under illustration (e) of Article 129 Qanoon-e-Shahadat Order, 1984, can be raised that officials acts have been regularly performed. However all these contentions, require deeper appreciation of evidence, which can properly thrashed out at the time of trial. From the tentative assessment of the material available on the record, I am of the considered view that the Plaintiff has no prima facie case at this stage. The balance of convenience is also not in favour of the Plaintiff as great inconvenience will be caused to the defendants in exercising their legal rights to deal as per law. No irreparable loss will be caused to the Plaintiff, if the injunction is refused because the loss, if any, can be compensated in the shape of damages, which has already been claimed by the Plaintiff in the sum of Rs.15,00,00,000/- in prayer clause of the suit.

101. In consequence, the application is dismissed with no order as to costs and the interim orders earlier passed on 03.2.2007 is recalled.

Karachi
Dated:_____ **J U D G E**