

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Suit No. 290 of 2018

DATE	ORDER WITH SIGNATURE OF JUDGE
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Plaintiff: **Lucky Tex Pakistan (Pvt.) Ltd.**
Through Mr. Rashid Anwar
alongwith Mr. M. Yousuf Naseem,
Advocates.

Defendant: **Cresox (Pvt.) Ltd.** Through
Mr. Behzad Haider alongwith
M/s. Gohar Mehmood and Zain-ul-
Abideen Soomro, Advocates.

For hearing of CMA No.2072/2018.,

Dates of Hearing: 11.09.2018 & 10.10.2018.

Date of Order: 22.10.2018

ORDER

Muhammad Junaid Ghaffar J.- This is a Suit for Specific Performance, and through **CMA No.2072/2018**, the Plaintiff seeks a restraining Order against the Defendant from entering into any agreement with a third party in respect of property bearing No.A-40, Manghopir Road, SITE, Karachi (“Suit Property”).

2. Briefly stated facts are that upon an offer of Defendant through its Chief Executive Mr. Tariq Shafi an Agreement dated 25.09.2017 was executed by the Plaintiff in respect of the Suit Property for a total sale consideration of Rs.900,000,000/- (Nine hundred Million Only), whereas, there were certain steps which were to be taken by the parties inasmuch as the Defendant Company owes huge amount of money to various Financial Institutions and as per the arrangement Rs.900 Million was to be paid directly for settlement of the Banks Loans and any amount above or below this figure would be to the benefit or expense of the Defendant as the case may be. It is further stated that as per

arrangement, on 25.09.2017, the Plaintiff was requested to settle two outstanding Bills of Sui Southern Gas Company Limited of Rs.937,250/- and Rs.4,754,770/-, respectively and was to be treated as a bridge financing. Accordingly both these amounts were paid and thereafter a sum of Rs.2,000,000/- was also paid to Arain Law Associates and hence a total of Rs.7,692,000/- was paid by way of bridge financing. Thereafter, several meetings were held between the parties and so also with the Consortium of Banks in respect of the outstanding debts against the Defendant Company, including but not limited to meetings held on 24.10.2017, 14.11.2017, 27.11.2017 and so on and so forth, but due to one reason or the other, the matter could not be finalized as the Banks were not willing to settle the outstanding loans in the sum of Rupees 900 Million, and on this the Defendant Company showed its intention to seek increase in the amount of sale consideration. This was not acceptable to the Plaintiff and subsequently it came to their knowledge that Defendant intends to renege on the contract and have in fact entered into some negotiations with a third party, hence, instant Suit.

3. Learned Counsel for the Plaintiff has contended that the Agreement in question has not been denied; but the authority of Mr. Tariq Shafi to enter into such agreement has been disputed. Per learned Counsel such stance is an afterthought which cannot be accepted in the given facts and circumstances of this case. He has contended that all along Mr. Tariq Shafi, who is otherwise the majority shareholder and is the Chief Executive of the Company, was negotiating on behalf of the Company, whereas, certain payments have already been made directly on behalf of the Company, therefore, the ground that Mr. Tariq Shafi had no authority to enter into any such agreement is baseless. Per learned Counsel the stance now taken that Mr. Tariq Shafi has been replaced as Chief Executive Officer is a case of blowing hot and cold at the same time as according to him, while filing the Vakalatnama, a proper Board Resolution and the Authority of Mr. Tariq Shafi is on record, whereas, at the time of filing of counter affidavit another Resolution has been placed on

record to suggest that now Mr. Tariq Shafi has been replaced as Chief Executive Officer. Learned Counsel has referred to various documents placed on record including the documents filed before the Securities and Exchange Commission of Pakistan and has contended that Mr. Tariq Shafi is still majority shareholder, and therefore, he was fully competent and authorized to enter into the agreement in question. Per learned Counsel there are only three Directors and the CEO can only be removed by 3/4th majority, hence the remaining two directors even otherwise cannot remove the Chief Executive Officer. As to the objection regarding deficiency and non-affixation of the stamp duty on the Agreement as raised by the Defendants Counsel, he has contended that there is no violation of Section 35 of the Stamp Act in question as there are numerous precedents, wherein, it has been held that mere deficiency in the Stamp Duty does not invalidates an agreement. As to the alleged violation of Section 183 of the Companies Act, 2017, he has argued that violation of this provision has no effect and consequence on the Agreement in question, except imposition of penalty on the Directors of the Defendant Company. In support of his contention he has relied upon the cases of *Union Insurance Company of Pakistan Ltd. Vs. Hafiz Muhammad Siddique (PLD 1978 SC 279)*, *Messrs James Construction Company (Pvt.) Ltd. Vs. Province of Punjab through Secretary (PLD 2002 SC 310)*, *The Pakistan Employees Co-operative Housing Society Ltd., Karachi Vs. Mst. Anwar Sultana and others (PLD 1969 Karachi 474)*, *Messrs Canal Breeze Cooperative Housing Society Limited (2000 SCMR 506)*, *Muhammad Azim Vs. Pakistan Employees Co-Operative Housing Society Ltd. Karachi and 4 others (PLD 1985 Karachi 481)*, *Messrs Taj Construction Company Vs. Federation of Pakistan and 9 others (PLD 1982 Karachi 378)*, *Major (Retd.) Ahmad Khan Bhatti Vs. Mst. Masoolia Fatimi (PLD 1981 Karachi 398)*, *Pakistan Industrial Development Corporation Vs. Aziz Qureshi (PLD 1965 (W.P.) Karachi 202)*, *Custodian of Enemy Property, Islamabad Vs. Hoshang M. Dastur and 6 others (PLD 1977 Karachi 377)*, *Pakarab Fertilizers Limited Vs. Dawood Hercules Corporation Limited through Secretary and 8 others (PLD 2015 Sindh 142)*, *Dewan Development (Pvt.) Ltd. And 2 others Vs. Messrs MyBank Ltd. Through Regional General Manager Karachi (2011 MLD 1368)*, *Bashir Ahmad Vs. Muhammad Yousuf through Legal Heir (1993 SCMR 183)*, *Muhammad Nawaz through*

L.Rs. Vs. Haji Muhammad Baran Khan through L.Rs and others (2013 SCMR 1300), Damon Cia Naviera SA v. Hapag-Lloyd International SA [1985] Vol-(1) All ER 475), Branca v. Cobarro [1947] Vol-(2) All ER 101).

4. On the other hand, learned Counsel for Defendant has contended that insofar as the Board Resolution filed along with Vakalatnama is concerned, it is the case of the Defendant that at the relevant time they had no knowledge about the contents of the Plaintiff and the Suit, and as soon as the same was examined, the authority conferred upon Mr. Tariq Shafi was withdrawn by removing him as CEO. According to him thereafter, through Counter Affidavit a new Board Resolution dated 13.3.2018 has been placed on record to that effect. Per learned Counsel the Agreement in question is not even a binding Agreement as thereafter further Agreement was to be signed, hence no specific performance can be granted in respect of this Agreement. He has further contended that there are 42 members of the Company, and therefore, Mr. Tariq Shafi, who only has a shareholding of 626,106 shares, cannot act against the interests and wishes of other members of the Company. According to the learned Counsel, the Plaintiff for seeking an injunctive relief must fulfill all three ingredients for grant of an injunction i.e. prima-facie case, balance of convenience and cause of irreparable loss and according to the learned Counsel all three ingredients are missing in this case. To support his contention he has relied upon the cases of ***Messrs Maxim Advertising Company (Pvt.) Ltd. Vs. Province of Sindh and 4 others (2007 MLD 2019)*** & ***Sayyid Yousaf Husain Shirazi Vs. Pakistan Defence Officer's Housing Authority and 2 others (2010 MLD 1267)***. He has further contended that Defendant is a Private Limited Company, whereas, the Plaintiff is also a Private Limited Company and should have been aware that for entering into any agreement with a Company, there must be a Board Resolution authorizing someone to act on behalf of the Company and to enter into an agreement. He has contended that the agreement in question may have been entered by Mr. Tariq Shafi, but not by and on behalf of the Company. According to him the Company is dormant and selling immovable property

is not in due course of its business, therefore, even otherwise by virtue of Section 183(3) of the Companies Act 2017, the Board of Directors have no power to enter into such an agreement. According to him the Suit property constitutes 63% of the total assets, which is a sizable part of the Company, and therefore, the provisions of Section 183 are to be strictly applied. To justify such stance, he has relied upon the case of ***Messrs Ali Asghar Textile Mills Limited (2012 CLD 1065)***. He next contended that even if the Suit is decreed the property cannot be transferred without consent of all members of the Company and for that a Special Resolution in a meeting is to be passed. He has placed reliance on the cases reported as ***The Chief Executive and Directors, Mubarak Textile Mills Ltd. Vs. Abid Hussain, Executive Director, Corporate Supervision Department, SECP (2018 CLD 111) and National Engineering Services Pakistan (Pvt.) Ltd. (2003 YLR 1696)***. He has further contended that the doctrine of constructive notice applies in this matter and the Plaintiff before entering into such a huge transaction involving Rs.900 Million ought to have gone through the Articles and Memorandum of the Company and so also the applicability of the relevant provisions of the Company law. Without prejudice he has further contended that in terms of Section 21(b) read with Section 56(f) of the Specific Relief Act, 1877, the prayer clause in this Suit and the complexities in the Agreement, of which the specific performance is being sought, cannot be granted as the Agreement involves numerous details including negotiations with the Consortium of Banks. According to him there was uncertainty in the Agreement, and therefore, such agreements cannot be specifically enforced. He has further contended that there are recovery Suits pending against the Defendant Company; whereas, the property in question is mortgaged and the modalities for redemption cannot be worked out through specific performance of the agreement in question, hence no case for injunction is made out; whereas, Plaintiff may seek monitory compensation. To support his contention he has relied upon ***Sh.Muhammad Saleem v Saadat Enterprises (2009 CLD 390), Lakshmi Ratan Cotton Mills Co. Ltd., v J.K. Jute Mills Co., Ltd., (AIR 1957 Allahabad***

311), J.C. Houghton and Company v Nothard. Lowe and Wills Limited (1928 AC 1) / [1927] All ER 97, Rama Corporation Ltd., v Proved Tin & General Investments Ltd., [1952] All ER 554, Adam Limited v Messrs Mitsui & Company (2009 CLD 144) and Muhammad Kamran Khan v F.N.E. Dinshaw Trust (PLD 2006 Karachi 108).

5. I have heard both the learned Counsel and perused the record. This is a Suit for Specific Performance and Injunction in respect of an Agreement dated 25.09.2017, which according to the Plaintiff was entered into by Defendant through their Chief Executive Officer Mr. Tariq Shafi. According to the agreement, the parties agreed that the suit property having an area of approximately 5.039 Acres and the Building constructed thereon covering an area of approximately 144,400 Sq. Ft. (except the Machinery and fixtures) be sold by Defendant to the Plaintiff for a total sale consideration of Rs.900 Million. It would be advantageous to refer to the relevant provisions of the Agreement in question, which reads as under:-

1. Plot No.A-40 Manghopir Road S.I.T.E. having land totaling approximately 5.039 Acres and the buildings located on the same plot totaling a covered area of approx. 144,400 square feet, in addition to the Power Generators, Waste Heat Recovery System, Chillers, Boilers, Effluent Treatment Plant and their installations, fixtures, fittings, cables and all their related parts and infrastructure shall be sold by CSL to LTEX for a total consideration of PKR 900,000,000/- (PKR Ninety Crores).
2. The Sale Price of PKR 900,000,000/- is inclusive of any and all payments to be first paid to the Consortium of Banks/Financial Institutions ("CoB") for the release of CSL's Pledged Assets from any encumbrances and charges, allowing for complete clearance/release and No Objection Certificates to transfer the Land, Buildings, and Machineries to LTEX by CSL. Following the release of all charges & encumbrances on CSL's Assets by the CoB, the balance amount of the Sale Price, if any, shall be transferred to CSL. Furthermore, any amount greater and/or less than PKR 900,000,000/- for the CoB settlement shall be to the account of CSL/Tariq Shafi and/or his nominees.
3. Annexure "A", which forms an integral part of this Agreement, being a list of Machineries and their related parts to be sold by Mr. Tariq Shafi and/or his nominees to a local and/or foreign buyer of his choice/discretion and at a price/rate decided by Mr. Tariq Shafi and/or his nominees. The sale of the items included in Annexure "A" shall be routed thru LTEX and the net proceeds (net of L/C charges) of the same shall be at the disposal of Mr. Tariq and/or his nominees. The proceeds from the sale of the items included in Annexure "A" upto PKR 300,000,000/- shall be Mr. Tariq Shafi's and/or his nominees' share solely, and any proceeds exceeding

PKR 300,000,000/- shall be LTEX's share. The sale proceeds of items in Annexure "A" are independent of the Sale Price of PKR 900,000,000/- detailed in Points 1 & 2 above.

4. In order to achieve mutually beneficial terms for all parties concerned, Mr. Tariq Shafi and/or his nominees and Mr. Ahmed Tabba and/or his nominees will conduct negotiations with the CoB jointly. The final terms agreed with the CoB will be the purview of the CoB, CSL, and LTEX and shall be shown as the official agreement between the concerned parties.
5. Appropriate notices and other regulatory and compliance related issues regarding Terms of this Agreement shall be fully covered to safeguard the interest of all concerned parties.
6. The timeline for the sale/removal of items in Annexure "A" shall be mutually agreed by Mr. Tariq Shafi and Mr. Ahmed Tabba and/or their nominees after the successful conclusion of Points No.1 & 2 of this Agreement.
7. Bridge Financing upto a maximum of PKR 10,000,000/- is to be provided by LTEX to CSL/Mr. Tariq Shafi and/or his nominees for miscellaneous expenditures, bills etc. Under the terms of this Bridge Financing, LTEX will directly pay upto PKR 10,000,000/- upon the written request of CSL/Mr. Tariq Shafi and/or his nominees. Furthermore, a provision for an additional PKR 10,000,000/- in Bridge Financing shall be provided by LTEX to CSL/Mr. Tariq Shafi and/or his nominees on a "if & when needed" basis. Adjustment of this Bridge Financing shall be done from the Sale Proceeds of the items in Annexure "A".

6. Perusal of the aforesaid arrangement reflects that the property was being sold for Rs.900 Million and the payments were first required to be paid to the Consortium of Banks so that release of pledged assets be obtained. It was further agreed that after that the balance amount, if any, was to be paid to the Company and furthermore any amount greater and/or less than Rs.900 Million was to be on the account of Defendant Company. The Plaintiff pursuant to such agreement has placed on record supporting documents of payment of Rs.937,250/- and Rs.4,754,770/- through Pay orders in favour of SSGC Limited, prepared from the account of the Plaintiff Company. The Plaintiff has also placed on record another Pay order dated 09.10.2017 in favour of Arain Law Associates for Rs.1,840,000/-, which according to Plaintiff was paid on the instructions of the Defendant Company. The Plaintiff has also placed on record a Certificate of Collection/deduction of tax in respect of this payment for an amount of Rs.1,60,000/-. All in all the Plaintiff claims to have paid an amount of Rs.7,692,020/-. These payments

made on behalf of the defendant as bridge financing have not been denied, rather admitted. (See reply at Para-6 of the Counter Affidavit). Subsequently, as per Plaintiff's case, the Defendant tried to wriggle out from the Agreement in question as according to their information the Plaintiff failed to convince the lenders to settle the outstanding loan in the sum of Rs.900 Million and was negotiating with third parties and they immediately came before this Court. On 12.02.2018, a conditional order was passed by this Court, whereby, Plaintiff was directed to furnish a Bank Guarantee of Rs.900 Million to the satisfaction of the Nazir of this Court within seven days and the Defendant was restrained from creating any third party interest in respect of the Suit Property.

7. The Defendant has taken a stance that Plaintiff may have entered into an agreement with Mr. Tariq Shafi but not with the Company. To this, I may observe that this within itself is a ground to grant the injunctive relief. It is not in dispute that the Defendant Company was and is still willing to sell the property in question. Whereas, it is also not in dispute that till 13.3.2018 (when purportedly a new board resolution was passed) Mr. Tariq Shafi was acting as Chief Executive of the Company in question, therefore, for all just and legal purposes, the Plaintiff could not be blamed and penalized if subsequently Mr. Tariq Shafi is not the Chief Executive Officer of the Defendant Company, and that the Agreement in question is also void and illegal, at least at this stage of the proceedings. It is a matter of evidence, which is to be led by the Defendant and to establish that at the relevant point of time, Mr. Tariq Shafi was not the Chief Executive of the Company or for that matter he was not authorized to act on behalf of the Company.

8. Insofar as reliance on Section 183 (ibid) is concerned, I may observe and as rightly pointed out by the learned Counsel for the Plaintiff that this provision, if violated, would go against the Directors of the Defendant Company and not otherwise. There are no consequences provided in the said Section, if the same is violated, except imposition of penalties

on the Directors of the Company. It does not provides and stipulates that any such sale of the property would also be void and illegal, therefore, no reliance can be placed on this provision in support of the Defendant's case. The case law relied upon in this regard is though not binding in nature, being decisions of Securities & Exchange Commission of Pakistan, but nonetheless, they are also to that effect only.

9. Insofar as the stance that Mr. Tariq Shafi was removed as CEO of the Company is concerned, again this will be decided at the evidence stage and the burden is on the Defendant to justify the same. Admittedly when Vakalatnama was filed, the same was done on and under the authority of Mr. Tariq Shafi, then acting as CEO of the Defendant Company, The stance taken is that at the relevant time the plaint and its annexures were not available, and therefore, he was still permitted to act as CEO and sign Vakalatnama. Firstly this does not appear to be a logical assertion. Why and how could a Company engage a Counsel without going through the contents of the Plaint? It is a mere assertion and without any supporting material except filing a new Board Resolution. Notwithstanding, this again is an argument which is to be proved at the trial and the burden of discharge in this regard rests on the Defendant Company.

10. It is also a matter of record that in the counter affidavit and written statement certain Email correspondence has been placed on record including Email dated 08.02.2018 (see Annexure-B to Counter Affidavit). This has been addressed to the Director of Plaintiff Company, by Jahanzeb Shafi (another Director of Defendant), and states that "*Apologies for the late Email. Please find below the Terms & Conditions of the Final Agreement, as agreed upon by **Tariq Shafi** and Ahmed Tabba on Feb 6, 2018 during the meeting at our residence. Thanks*". In this Email, the modalities have been explained and the Sale price has been shown as Rs.980 Million. This Email has been annexed with the Counter Affidavit with the assertion that the Agreement dated 25.9.2017 relied upon by the Plaintiff was a draft Agreement as established by this Email dated 8.2.2018, as the contents

are entirely different. However, if the stance of the Defendant Company is that Mr. Tariq Shafi was never authorized to enter into any Agreement of sale (till 25.9.2017) with the Plaintiff Company, then why and as to how in this Email Mr. Tariq Shafi is negotiating the purported further terms and conditions of the final alleged Agreement. This has not been explained in any manner and the only conclusion, at the present moment, which can be drawn is that he was fully competent to enter into negotiations for selling the Suit property. The only dispute appears to be is of the Sale price. In this Email the price purportedly agreed is Rs.980 Million as against Rs.900 Million as contended on behalf of the Plaintiff. If the price is agreed as Rs.980 Million by the Plaintiff, then according to the Defendant Mr. Tariq Shafi is authorized to enter into such sale, and for a price Rs.900 Million their stance is that he was not so authorized. This leads to the conclusion at least for deciding this injunction application that the Agreement in question cannot be conclusively ignored and treated as void so as to deny the injunctive relief prayed for. The contention of the Defendant as a whole appears to be that the Agreement in question was not a concluded Agreement, and much was to follow and that is why reliance has been placed on the aforesaid Email and its contents. But, the question that whether the parties had reached a concluded contract or not, is a question of fact to be deduced from the correspondence, and other documentary and oral evidence. The true test for deciding this question is to ascertain whether the parties were of one mind on all the material terms at the time it is said to have been finalized between them and whether they intended that the matter was closed and concluded between them¹.

11. The objection of Defendants Counsel that while entering into the Agreement, the Plaintiff ought to have considered the fact that without authority and a proper Board Resolution, no Agreement could materialize on behalf of the Company, now stands settled and has been laid to rest under the concept and

¹ Custodian of Enemy Property, Islamabad v Hoshang M Dastur and others (PLD 1977 Karachi-377)

doctrine of “Indoor Management”. Summing up, therefore, the concept of indoor management, the law is fairly well-established that a third party may in all reason rely on the assertion of an agent of the Company in respect of the contracts entered on behalf of the Company. His rights could be defeated only if it could be shown that the third party knew of circumstances tending to defeat his rights or the transaction was fraudulent². Broadly and briefly stated, this doctrine is to the effect that persons contracting with a company and dealing in good faith may assume that acts within its constitution and powers to have been properly and duly performed and are not bound to inquire whether acts of internal management have been regularly one³. It is also a settled proposition of law that even oral agreement are enforceable in law and to that there is only once exception and it is that it has to be proved through credible and unimpeachable evidence. Here in this case it is in fact a written agreement (though half-heartedly denied), but at least the plaintiff is entitled to lead its evidence and have it proved. Insofar as the ground that since the Agreement contains complexed propositions and therefore is not enforceable, again this is to be decided in evidence and not at this stage. Apparently this contention does not appear to be so well founded that the Agreement in question be discarded on this ground alone. In the case reported as ***Bashir Ahmed v Muhammad Yousaf (1993 SCMR 183)*** the Hon’ble Supreme Court has been pleased to observe as under;

“The question arises whether an oral agreement can be specifically performed. Section 4 of the Specific Relief Act provides that except where it is otherwise expressly enacted nothing in the Act shall be deemed to give any right to relief in respect of any agreement which is not a contract. The object of this provision is to exclude agreements which are not enforceable by law. Section 2(h) of the Contract Act defines contract as ‘an agreement enforceable by law’. An agreement or contract made between the competent parties with their consent for lawful consideration and lawful object is binding on the parties. The legislature thus intends that there should be a concluded valid contract. The contract can be in writing as well as oral. Oral agreement is valid and enforceable as a written agreement provided it fulfils all the requirements of a valid contract.

² Muhammad Azim v Pakistan Employees Co-operative Housing Society Ltd (PLD 1977 Karachi 481)

³ The Pakistan Employees Co-operative Housing Society Ltd v Anwar Sultana and others (PLD 1969 Karachi 474)

Reference can be made to Ali Muhammad Khan v. Riazuddin Khera PLD 1981 Kar. 170 and Kumar Gokul Chandra Law v. Haji Muhammad Din AIR 1938 Cal. 136. There is no bar in law that only those contracts can be specifically enforced which are in writing. An oral agreement which is valid in law, is enforceable and specific performance of such agreement can be granted..”

12. Having said that, it is also a matter of record that according to plaintiffs stance after signing the Agreement parties initiated discussions with the Banks who had extended loans to Defendant and Consortium of Banks was led by a consultant, whereas, email dated 19.10.2017 was addressed by the said consultant that one of the Banks is not willing to settle the outstanding loan in lump-sum, and therefore further discussion are needed. To this assertion in Para-7 of the supporting affidavit to this application, the Defendant has replied, “*The negotiations are never denied by the Defendant Company*”. Hence, if negotiations are not denied, then how come at this stage the Agreement itself can be discarded on the ground that there wasn’t any authority conferred upon the CEO, and that further Agreement was to follow. The Court of Appeal in the case of ***Branca V Cobarro (Supra)*** has observed as follows which to me appears to be relevant for the purposes of present case and reads as under;

My reading of this document is that both parties were determined to hold themselves and one another bound. They realized the desirability of a formal document as many contracting parties do, but they were determined that there should be no escape for either of them in the interim period between the signing of this document and the signature of a formal agreement, and they have used words which are exactly apt to produce that result and do not, in my opinion, suggest that the fully legalized agreement is in any sense to be a condition to be fulfilled before the parties are bound, because, as I have said, the word “until” is certainly not the right word to import a condition or a stipulation as to the event referred to. In my judgment, if the parties never signed a fully legalized agreement, the event putting an end to the provisional operation of this agreement would never occur and this document would continue to bind the parties. In the result, with all respect to the learned judge, I take a diffident view of this document from that which he took for the reasons I have given, and the appeal must be allowed.

13. The objection regarding deficiency and or non-affixation of stamp duty on the Agreement and its purported inadmissibility in evidence in terms of Section 35 of the Stamp

Act, 1899, also appears to be misconceived. Firstly the stage of proving it or otherwise is yet to arrive. Secondly, as already observed, even oral Agreements are admissible and enforceable. And lastly, it is settled proposition of law that the intent and purpose of S.35 *ibid* is not to invalidate all such Agreement, but to protect public revenue. There is a complete mechanism within the Stamp Act, as to how such defects could be cured, therefore, merely for this assertion, at this stage of the proceedings, no benefit can be availed of by the Defendant. The Honorable Supreme Court in the case reported as ***Union Insurance Company Limited (Supra)*** has been pleased to observe as follows, which has settled this issue and reads as under;

I would now examine section 35 in some detail. It prescribes that no instrument, which is not properly stamped, shall be admitted in evidence for any purpose . . . or shall be acted upon. . . " Now merely because an instrument cannot be admitted in evidence for any purpose as because it cannot be acted upon by the persons specified in the section, does not mean that such an instrument is invalid, and it is not irrelevant to observe here that the words which I have quoted have to be construed strictly, because they are to be found in a provision of a penal nature Therefore, it would be against all canons of construction to enlarge the meaning of these words, so as to render invalid instruments which fall within the mischief of the section. After all, instruments, which are not duly stamped, are executed every day, but I venture to think that most persons, who incur obligations under such instruments, honour their liabilities under such instruments, regardless of the provisions of section 35. In any event, this section is attracted only when an instrument is produced before the persons specified in the section. But, for example, an instrument would be produced in evidence only when there is a dispute about it, therefore, if the intention of the Legislature had been to render invalid all instruments not properly stamped, it would have made express provision in this respect, A and it would also have provided some machinery for enforcing its mandate in those cases in which the parties did not have occasion to produce unstamped instruments before the persons specified in the section.

Additionally, I find nothing in the section which would support the appellant's plea that an instrument becomes invalid, if it falls within the mischief of the section. After all, if an instrument is invalid, it must be invalid for all purposes, but proviso (d) to the section expressly saves unstamped instruments in most criminal proceedings, whilst the other provisos to the section enable the parties to overcome the disabilities attached to an instrument not properly stamped by paying the requisite duty together with a penalty, therefore, this would suggest that the object of the section is to protect public revenue. Again, if an instrument is invalid, it should not be admissible in evidence, and it is so stated in section 35. But the next section prescribes that if an instrument has been admitted in evidence, howsoever erroneously, its admissibility

cannot be questioned at any stage thereafter, and even the appellate Court's powers to entertain an objection about the admissibility of documents have been removed by section 61, which instead empowers the appellate Court to collect the duty payable on the unstamped instrument together with a penalty. These provisions as well as other provisions in Chapter IV of the said Act, such as sections 33, 38, 39 and 40, can only lead to the conclusion that the object of the Legislature in enacting the said Act was to protect public revenues and not to interfere with commercial life by invalidating instrument vital to the smooth flow of trade and commerce.

14. In view of above facts and circumstances, of this case, it appears that the Plaintiff has made out a prima facie case; whereas, the Plaintiff has shown its willingness to perform the Agreement in question and for such purposes has already furnished a Bank Guarantee with the Nazir of this Court as directed while passing the interim order. Moreover, the balance of convenience also lies in favour of the Plaintiff and if the injunctive relief is not granted, the Plaintiff shall suffer irreparable harm and loss, which cannot be quantified as in that case third party interest(s) would be created by the Defendant. Accordingly, the injunction application bearing CMA No.2072/2018 is allowed and Ad-interim order passed on 12.02.2018 is hereby confirmed on the same terms and conditions.

Dated: 22.10.2018

Judge

Ayaz