

ORDER SHEET  
**IN THE HIGH COURT OF SINDH AT KARACHI**

Suit No. 737 of 2019

DATE

ORDER WITH SIGNATURE OF JUDGE

1. For hearing of CMA No. 10274/19. (U/S 151 CPC)
2. For hearing of CMA No. 6365/19. (U/O 39 Rule 1 & 2 CPC)
3. For hearing of CMA No. 6366/19. (U/O 18 Rule 18 CPC)
4. For hearing of CMA No. 6367/19. (U/O XL rule 1)
5. For hearing of CMA No. 6448/19. (U/S 94)
6. For hearing of CMA No. 6721/19. (U/S 151 CPC)
7. For hearing of CMA No. 6525/19. (U/S 30 CPC)
8. For orders on CMA No. 12940/19. (U/O VII rule 11 CPC)

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**01.11.2019.**

Mr. Ch. Atif Rafiq, Advocate for Plaintiffs.

Mr. Khalid Rajpar, Advocate for Defendant No.3.

Ms. Fauzia Rasheed holding brief for Mr. Sohail Muzaffar, Advocate for Defendant No.4.

Mr. Omer Memon, Advocate for Defendant No.5 & 13.

Mr. Abdul Lateef Shaikh, Advocate for Defendant No.10/

Mr. Hanif Faisal holding brief for Mr. Khalid Jawed Khan, Advocate for Defendant No.11

Mr. Muhammad Imran Khan Advocate for Defendant No.15.

Mr. Kashif Hanif, Advocate for Defendant No.16.

Mr. Suleman Huda, Advocate for Defendant No.18.

Mr. Adnan Motan, Advocate.

Mr. Kafeel Ahmed Abbasi, DAG.

Mr. Moin Afzal, Deputy Collector and Mr. Abdul Ghani Soomro Appraising Officer on behalf of Respondents.

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**CMA's at Serial Nos: 2,3,4,5 & 7.** This is a Suit for Declaration, Recovery and Injunction and the Plaintiffs have sought the following relief(s):-

- I. Declaration that the Plaintiffs have no correlation / association / connection or are in any manner accountable or liable for the fraud alleged by the Defendants No. 1-4 & 15-18.
- II. Declaration that the Defendants No. 5-13 have acted in collusion in committing fraud, misrepresentation and deceit against the Plaintiffs, Defendants No. 1-4 & 15-18 and other third parties.
- III. Direction to the Defendants No. 5-14 to compensate the Plaintiffs for the Plaintiffs' goods stolen from the warehouse.
- IV. Direct any public private Auditing Company to conduct a thorough audit of the Plaintiff No.1 Company.
- V. Permanent injunction restraining the Defendants No.1-4, its agent, representative's employees or any other person acting on their behalf

from taking any action against the Plaintiffs including but not limited to the cancellation / revocation of the Plaintiffs bonded warehouse license and / or sealing the Plaintiff's Bonded Warehouse.

- VI. Restrain the Defendants No. 1-4 & 15-18, their agent, representatives, employees or any other person acting on their behalf from taking any coercive or detrimental action against the Plaintiffs.
- VII. Restrain the Defendant No. 19-20, their agent, representatives, employees or any other person acting on their behalf from taking any coercive or detrimental action against the Plaintiffs.
- VIII. Permanent injunction restraining the Defendants No.1-4 & 15-18, their agents, employees, representatives or any other persons acting on their behalf from taking any coercive or detrimental action against the Plaintiffs including but not limited to referring the Plaintiffs to the CIB and / or defaulters list.
- IX. Grant any other consequential and / or better relief that this Honorable Court deems fit and proper in the arising circumstances.
- X. Cost.

Learned Counsel for the Plaintiffs submits that Plaintiffs had obtained a License in terms of Section 12 of the Customs Act, 1969, for a Public Bonded Warehouse, (PWL No.01/1992) which was granted by the official defendants and the business of such Public Bonded Warehouse continued under the management of the Plaintiffs till 2003, whereafter Defendant No.5 was hired as a contractor / agent by means of a Special Power of Attorney dated 01.08.2003 for running and maintaining the warehouse in question including management of goods, into bonding and ex-bonding of the same. According to him Defendant No.5 has since expired on 8.4.2019 and now it has transpired that various goods stored in the Bonded Warehouse on behalf of defendants No.6 to 14 have not been accounted properly and are missing from the warehouse, against which the defendants No.1 to 4 have initiated proceedings including registration of certain FIRs, raid on the Warehouse and seizure of goods, and in addition causing of harassment to the Plaintiffs and their employees. Per learned Counsel, the Plaintiffs have no role to play in any such alleged incidents of theft / pilferage/ missing goods, and it was Defendant No.5 who was managing it all and accordingly responsible for it. In these circumstances, he has prayed for grant of these applications and restraining the official defendants from

raising any claim whatsoever against the Plaintiffs, including any coercive action of whatsoever nature.

On the other hand, concerned Customs department(s) have filed their counter affidavit(s) / written statements and Mr. Khalid Rajpar appearing on behalf of Collector of Customs (West) has opposed the grant of these applications as according to him proper procedure is being followed and Plaintiffs have no prima facie case.

I have heard the learned Counsel and perused the record. It appears that when instant Suit was filed, on 23.4.2019 no ad-interim orders were passed; and only notice was ordered. However, on 26.04.2019 an order for inspection of the Warehouse in question was made, relevant portion whereof reads as under:-

“The controversy in this matter is in respect of bonded warehouse issued in the name of plaintiff, which was being managed by defendant No.5, who has since expired and it is alleged that various goods stored in the said bonded warehouse have been removed without payment of taxes etc. The representative of Collector of Customs (East) submits that they have made certain inspection of the warehouse and according to their inspection various goods have been removed without lawful authority.

Be that as it may, the respective collectorates whose goods have been stored in the warehouse are directed to carry out inspection of the goods stored on their behalf in the public bonded warehouse and prepare an inventory of the same. Defendants No.1 to 4 are also directed to place on record details of any proceeding which may have been initiated by them and this exercise be carried out within 10 days. During this period the official defendants shall strictly act in accordance with law and shall not cause harassment to the plaintiffs as alleged. However, during inspection the plaintiff shall cooperate with the official defendants.”

Before the inspection could be carried out on 29.04.2019, Defendant No.11 came before the Court with an application bearing CMA No. 6721/2019 and it was contended that Defendants No.1 to 4 instead of preparing inventory, and carrying out inspection as ordered, have started causing harassment and have registered FIRs against Defendant No.11, whereas, according to them, the goods were still lying in the warehouse and until a proper inventory is prepared, no action ought to have been taken. In these circumstances and considering the peculiar facts that Defendant No.5 stands expired against whom the allegations have been levelled by the Plaintiffs for allegedly

usurping and selling the goods from the Customs Bonded Warehouse, without payment of duties and taxes, Defendants No.1 to 4 were directed to maintain status-quo and not to take any coercive action against the Plaintiffs or even the defendants, who were before the Court. Since then the matter has been pending and various applications have come before the Court on behalf of Plaintiffs as well as various Defendants, though apparently they have no nexus with the main Suit. Further applications have also been filed as there was some dispute in respect of the mode and manner, under which the inventory was to be prepared. However, finally the inspection has been carried out and inventory has been prepared, which has been placed on record. Counsel for the Plaintiff after all this exercise was confronted as to any further relief, which could be granted by this Court in these circumstances and for giving consent for disposal of his pending applications as well as the entire Suit by directing the defendants No.1 to 4 to act strictly in accordance with law, on the basis of the inventory of goods lying in the Warehouse, without causing any harassment; and to that instead of assisting the Court in any manner, he has raised objections on various technical grounds. Today he has made an effort to place on record a Statement with various documents including an application made to Member Customs, Federal Board of Revenue, complaining against the Customs Authorities and to review the matter at his end. However, in the given facts such statement has not been taken on record. This Court is of the view that a very reasonable solution was offered on behalf of the Defendants to resolve the matter; however, conduct of the Plaintiffs is not appreciable, whereas, during this period they have also changed their Counsel. Resultantly, this Court has been compelled to pass appropriate orders on the Plaintiff's as well as Defendant's applications in accordance with merits and law.

Perusal of plaint reflects that the Plaintiffs have admitted that they had given power of attorney to Defendant No.5 for running and maintaining the public bonded warehouse and it would be advantageous to refer to such disclosure, which is available in para-7 thereof and reads as under:-

"7. Being dissatisfied of the day to disputes, conflicts losses and lack of supervision in the running of the warehouse, the Plaintiffs No.2-4 hired the Defendant No.5 as a contractor / agent vide Special Power of Attorney dated 01.08.2003 for the day to day running and maintenance of the warehouse, management of the goods being deposited, managing authorizing and supervising of in-bond and ex-bond of the goods. More importantly, the Defendant No.5 was also authorized to receive cash/cheque payments from the owners of the goods. However, it is pertinent to mention that the nature of business was such that the substantial portion of the rent / fee was being received in cash by the Defendant No.5. The said understanding between the Plaintiffs and the Defendant was on the basis of a monthly commissioner that varied from month to month on the basis of cash/cheque.

Perusal of the aforesaid admitted fact reflects that the Plaintiffs executed Power of Attorney for running and managing of a Customs Public Bonded Warehouse, for which they had no lawful authority to do so. It needs to be appreciated that such a warehouse can only be run by a person after issuance of a proper license by the Customs Authorities under Section 12 of the Customs Act, 1969, which admittedly cannot be transferred or sub-let to anyone. For issuance of such a License a person has to fulfill various prerequisites, and yearly renewal of it. These are matters which cannot be done by someone else on behalf of another. Though a premises can be rented out; but not the License of a Bonded Warehouse itself. It is a matter of record that the arrangement between the Plaintiff and deceased defendant No.5 was purely a private arrangement without any approval of Defendants No.1 to 4. Even if Defendant No.5 was ever acknowledge, recognized or entertained by Defendants No.1 to 4; that could only be as an employee / Manager or representative of the Plaintiffs; but not as their Licensee. In these circumstances, the Plaintiffs now cannot turn around and say that the entire responsibility rests upon Defendant No.5 as admittedly it is the Plaintiffs, who are Licensees of the Customs for all legal purposes. Ordinarily, the Court ought not to have shown any indulgence; however, as stated hereinabove, in the peculiar facts and circumstances, an ad-interim order was passed and that was primarily on the consideration that any extreme action initiated by the Customs may have impact on the legal heirs of Defendant No.5 who may not be privy to such aspect of the case; however, even that ground is no more available as the legal heirs of Defendant No.5 have by themselves filed another

Suit No.1370 of 2019 and have even claimed ownership of certain goods. Moreover, when the material placed on record is examined, it is clear that the Plaintiffs do not have any prima-facie case nor balance of convenience lies in their favour, whereas, it is the defendants No.1 to 4, who would be caused irreparable loss, if any further injunction is granted or continued.

In theses circumstances, the applications bearing CMA Nos.6365, 6366, 6367, 6448 and 6525 of 2019 listed at Serial Nos.2 to 5 and 7 merit no consideration and are accordingly dismissed.

**CMA at Serial No.6:** This application was filed by Defendant No.11 and after carrying out the inspection and inventory, it has served its purpose as otherwise the defendants No.1 to 4 cannot be restrained from acting in accordance with law. Accordingly, this application is disposed of with these observations.

**CMA at Serial No.1:** This application has been filed by Defendant No.10 and is fixed for orders and is seeking some relief against Plaintiffs, Defendant No.1 to 6 as well the Nazir of this Court. After going through the contents of the same it appears that it has no nexus with the relief claimed in this Suit, and appears to an issue which is outside the purview of instant matter. In fact it appears to be a dispute between private parties as to some obligations. Accordingly this application is dismissed, whereas, Defendant No.10, if advised, may seek his independent remedy in accordance with law.

9. Notice for **15.11.2019**.

J U D G E

Ayaz P.S.