

ORDER SHEET
THE HIGH COURT OF SINDH AT KARACHI

CP D 5947 of 2018
CP D 5949 of 2018

Date	Order with Signature of Judge(s)
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1. For orders as to maintainability of the petition.

11.10.2021

Ms. Pooja Kalpana, Advocate for the petitioner.
Barrister Hussain Bohra, Assistant Attorney General.

These petitions were preferred during the pendency and subsistence of suits filed by the petitioners, seeking to agitate the same grievance as contained herein. This Court had raised the issue of maintainability at the very onset and the same issue remained to be addressed till date.

Petitioners' counsel articulated that suits were pending before this court, filed by the petitioners and agitating the same cause, and interim relief had also been obtained therein. However, post rendering of the judgment by the Supreme Court in *Searle Solutions*¹, requiring the plaintiffs to secure their claim, the suits ceased to remain as an *efficacious* remedy, hence, the petitioners were entitled to prefer and maintain these petitions notwithstanding the subsistence of the suits, albeit subsequently withdrawn.

Maintainability is an issue requiring determination at the very inception of the petition, hence, the issue was raised by this Court at the very onset. It is an admitted fact that upon institution of the present petitions the same matter, between the same parties, was pending in suits before this very court. It is, thus, apparent that writ jurisdiction was invoked while the petitioners were already availing a remedy before the forum of its own volition.

The cause of action of the plaintiffs (petitioners herein) remained as pleaded and the same could not be demonstrated to be diminished or superseded by a pronouncement of the august Court and it was never the petitioners' case that any new cause accrued thereto. The law in itself provides for efficacious remedy and any qualification with respect to interim relief therein could not be construed to vitiate the remedy itself. The petitioners have admittedly indulged in *forum shopping* ostensibly to defeat the directives of the august court in *Searle Solutions* and the same does not merit the appreciation of this Court.

Article 199 of the Constitution contemplates the discretionary² writ jurisdiction of this Court and the said discretion may be exercised in the absence of an adequate remedy. In the present matter *admittedly* there existed an adequate remedy and furthermore the same had also been availed, therefore, no case has been set forth before us for invocation of the writ jurisdiction.

¹ *Searle IV Solution vs. Federation of Pakistan* reported as 2018 SCMR 1444.

² Per *Ijaz UI Ahsan J. in Syed Iqbal Hussain Shah Gillani vs. PBC & Others* reported as 2021 SCMR 425; *Muhammad Fiaz Khan vs. Ajmer Khan & Another* reported as 2010 SCMR 105.

There is yet another element pertinent hereto, being the *doctrine of election*³, signifying that the election to commence and follow an available course, from concurrent avenues, vests with a suitor, however, once an option is exercised then the suitor is precluded from re-agitating the same *lis* in other realms of competent jurisdiction. The Supreme Court has observed that as long as a party does not avail of a remedy, all such remedies remain open to be invoked, however, once the election is made then the party may not be allowed to hop over and shop for one after another coexistent adjudication process. The judgment was followed by an earlier Division bench of this Court in *Lucky Cement vs. Federation of Pakistan* reported as 2021 PTD 835 and the ratio is squarely applicable herein.

In view hereof, we are of the considered opinion that no case has been set forth before us to merit the exercise of writ jurisdiction of this Court, therefore, the listed petitions, and accompanying applications, are hereby dismissed.

JUDGE

JUDGE

³ Per *Mushir Alam J* in *Trading Corporation of Pakistan vs. Dewan Sugar Mills Limited & Others* reported as *PLD 2018 Supreme Court 828*.