

plaintiffs fulfilled the criteria laid down but defendants in a malafide and discriminatory manner deprive the plaintiff from participating in the process.

3. Defendant No.7 in his C.A. filed today contends that pursuant to auction Rules R/w. Act 2013 and the Order dated 19.11.2021 passed by this Court in Suit No.1643/2021 they got published **Auction Notice dated 30.11.2021 in daily English Newspaper DAWN Karachi, daily Urdu Newspaper JANG Karachi and daily Sindhi Newspaper KAWISH** for Auction of Collection Rights of Tax / Fee from Milching Animals and for issuance of Health Clearance Certificate in the jurisdiction of District Council Karachi in respect of (1) Baba Bohri, National Highway Road, (2) Khadeji, Zero Point at Lucky Cement Super Highway Road, that **said Auction was held on 08.12.2021 in the office of District Council Karachi**. The Applicant/intervener and Six other Bidders have deposited their documents for participation in the said Auction. The documents of two of them were found incomplete as such they were not allowed to participate in the Auction. It was contended that **Plaintiff M/S.SSS Corporation has not participated in the said Auction proceedings**. The Bid offered by the defendant No.7 has been accepted being highest.

4. Though the present plaintiffs were not party to the suit No.1643/2021 which was disposed of by order dated 19.11.2021. Relevant portion is that :-

4. Learned counsel for plaintiff while arguing submits his proposal that the suit can be disposed of with direction to the defendants that they shall **re-auction the contract within fifteen days**. With regard to outstanding as claimed by defendants he contends that though he is

not liable to pay as per demand of the defendants and that can be referred for arbitration or he has no objection if a committee is formed by the defendants that shall hear the plaintiff and decide the controversy due to extraordinary unexpected circumstances with liberty to challenge the decision of that committee if aggrieved.

5. At this juncture learned counsel for defendants and defendants' Law Officer agreed that **they will re-auction the contract within fifteen days, however the possession may be handed over to them immediately.** Defendants also concede that they will form a committee that **will decide the controversy with regard to outstanding amount within the shortest period.** Whereas counsel for plaintiff contends that he has right to continue with his contract till re-auction process that may be carried out within fifteen days as he will participate in the same proceedings, however undertakes to hand over the physical possession to the successful bidder without any further delay. Besides, intervener who claims that he was the second highest bidder, has right to be allowed to take over and continue to receive the fees and he is ready to pay all outstanding.

6. Since parties are not at issue further therefore this suit is disposed of in following terms:-

- A. **That defendants No.2 to 4 shall re-auction the subject matter issue within fifteen days as per their Rules.**
- B. That plaintiff will hand over the possession to new successful bidder, whosoever may be, without any delay in re-auction process.
- C. Defendants No.2 and 3 shall refer the dispute with regard to outstanding amount to the arbitrator as referred in the Contract who shall decide the fate of installments not paid by the plaintiff due to restriction applied by Government while taking the plea of pandemic (covid-19). Plaintiff would be at liberty to challenge findings of the arbitrator if aggrieved. However on that plea he would not be debarred to participate in re-auction process.
- D. Intervenors would also be at liberty to participate the re-auction proceedings.

In terms of above, this suit is disposed of along with listed applications.

5. Heard learned counsel for plaintiff and defendants.
6. Learned counsel for plaintiff while reiterating the pleadings and plaint, has relied upon different auction notices and

publication with regard to award of contract in question. He has relied upon 2007 SCMR 178, 2003 SCMR 280, 2017 CLC 979 and 2005 YLR 1778. He has also referred Rule 9 of the Sindh Local Councils (Auction of Collection Rights) Rules 2016 which is that :-

“9. The reserve price for an Income shall be the average of last 'proceeding three years income of the respective income.

Provided that in case of an income introduced by a local council for the first time the assessed and expected income as provided in the budget from that source shall be the reserve price for the income.”

7. Whereas learned counsel for defendant No.7 also reiterated the contents of C.A. with further pleas that present application as set out in the **prayer has become infructuous as contract has been awarded, defendant has received the contract including physical possession at the site.**

8. It is pertinent to mention that while deciding injunction application, the plaintiff shall always be under legal and bounden obligation to establish co-existence of all three ingredients for grant of injunction in his favour which are:-

a) Prima facie case;

b) Balance of convenience; and

c) Irreparable loss in case injunction is not granted;

It is an undisputed position that it is the right of the District Council to give contract in question because the same help Council (s) in managing its financial issue (s), therefore, same *normally* needs not be allowed to be run / controlled by unauthorized persons by using different tactics including throwing suit (s), having no bases.

9. *Prima facie*, plaintiff claims that though he has attempted to participate in the bid but he was not allowed, such plea is denied by other side by referring different photocopies and notices. The plaintiff placed nothing on record to substantiate his plea of not allowing it (*plaintiff*) in participating in the auction proceedings which, per record, has been conducted after due publication of **'Auction notices'** in renowned news papers, therefore, I am not inclined to accept such like plea (s), particularly when the auction proceedings have been done; contract has been awarded and possession is also delivered to the successful bidder because this shall allow continuity of collection of Tax / Fee from Milching Animals without any valid contract by the Council. I would add that if such like plea is allowed to frustrate a lawful process of the Government functionaries, there shall never be an end in frustrating the purpose and object of Section 56 of the Specific Relief Act.

10. Since, the plaintiff has failed in establishing a case for grant of injunction in his favour hence same deserves to be dismissed and is dismissed, accordingly.

11. While parting, I would add reiterate the principle, so enunciated in the case reported as 2007 SCMR 741 that:-

It is pertinent to mention here that in view of the Order VII rule 11 CPC it is the duty of the Court to reject the plaint if, on a perusal thereto, it appears that the suit is incompetent, the parties to the suit are at liberty to draw courts' attention to the same by way of an application. The Court can, and, in most cases hear counsel on the point involved in the application meaning thereby that court is not only empowered but under obligation to reject the plaint, even without any application from a party, if the same is hit by any of the clauses mentioned under rule 11 of Order VII CPC.

and since, *prima facie*, the plaintiffs has not been able to show any cause of action because it (plaintiffs) has nothing to substantiate his plea of not allowing participation despite attempt; it (plaintiff) placed nothing on record which could show infringement of any of it (*plaintiffs'*) right. In absence thereof the plaint is not maintainable being without any cause of action hence the plaint of the plaintiffs is rejected Under Order VII rule 11 CPC.

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