

ORDER SHEET

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

Suit No.824 of 2018

DATE	ORDER WITH SIGNATURE OF JUDGE
1. For orders on CMA No.11738/2018 (U/S 151 CPC) For hearing of CMA Nos:-	
2. 8144/2018 (U/O 39 Rule 4 CPC)	
3. 6194/2018. (U/O 39 Rule 1 & 2 CPC)	
4. 9657/2018 (U/S 151 CPC)	
5. 9968/2018 (U/S 151 CPC)	
6. 11585/2018 (U/S 151 CPC)	

-----

**28.08.2018.**

Mr. Ahmed Hussain, Advocate for Plaintiff.  
Mr. Khalid Rajpur, Advocate for Defendants.  
Mr. Umar Zad Gul Kakar, DAG.

-----

1 & 6. CMA No.11585/2018 at Serial No.6 has been filed on behalf of the Plaintiff under Section 151 CPC seeking permission to withdraw instant Suit as the Plaintiff has already preferred C.P No.D-5852/2018. Application at Serial No.1 has been filed on behalf of the Defendant Department seeking directions to the Nazir to implement Order dated 10.08.2018. Instant Suit has been filed challenging the levy of Sales Tax at import stage on the Plant and Machinery imported by the Plaintiff and pursuant to Order dated 19.04.2018, the consignment(s) being regularly imported by the Plaintiff have been directed to be released on furnishing Bank Guarantee to the satisfaction of the Nazir of this Court. Such Bank Guarantees have been furnished. On 10.08.2018 the following order was passed:-

“1. Pursuant to Order dated 06.08.2018, Nazir has furnished his report and through which it reflects that the Plaintiff has furnished two separate Bank Guarantees one for Rs.60,00,00,000/- (Rupees Six Hundred Million) and other for Rs.1,000,000,000/- (Rupees One Billion). Insofar as the first Bank Guarantee of 600 Million is concerned, till date an amount of Rs.54,12,34,147/- has been utilized in compliance of the

Court's Order and goods to that extent have been released. As to the second guarantee, Rs.10,63,98,482/- has been released as above.

In view of such position and directions of the Hon'ble Supreme Court vide Judgment dated 27.06.2018 passed in Civil Appeal No.1171/2017 and other connected matters, 50% amount is to be paid to the Department. Accordingly Nazir is directed to seek encashment of 50% of the two utilized amounts i.e. Rs.54,12,34,147/- (50% = 27,06,17,074/-) and Rs.10,63,98,482/- (50% = Rs.5,31,99,241/-) from the concerned Bank(s) immediately and pay the same to respective Collectorates. If the Plaintiff as requested intends to make for cash payment of the said amount instead of encashment of Bank Guarantee, the same shall be paid to the Department through respective Collectorates and necessary receipt be placed before the Nazir, who shall then seek appropriate orders from the Court before encashment. However, Nazir shall seek encashment within a maximum of 5 days from the date of this order, in any case.

2 to 5. Adjourned.”

Such order was impugned by the Plaintiff in High Court Appeal No.224/2018, however, while confronted by the learned Division Bench, the Plaintiffs' Counsel did not press the Appeal with a further request seeking direction to this Court to decide the listed application for withdrawal of the Suit and during such period the implementation of Order dated 10.08.2018 was suspended.

The order dated 10.08.2018 has been passed by this Court pursuant to Judgment of the Hon'ble Supreme Court dated 27.06.2018 passed in Civil Appeal No.1171/2017 and other connected matters, whereby, for a Suit to be maintainable before this Court 50% of the disputed amount is to be deposited with the concerned Department.

Since in this matter interims orders were passed by securing Bank Guarantee of the entire disputed amount and as reflected from the record, various consignments imported by the Plaintiff have been released, therefore, in these circumstances,

the permission to withdraw the Suit cannot be granted, notwithstanding filing of a Petition in respect of the same issue as is pending before this Court in this Suit. At the request and prayer of Plaintiff mandatory injunctive orders are operating, and furnishing of Bank Guarantee as a corollary is subject to final outcome of the Suit, and a request for withdrawal of Suit under Section 151 CPC (instead of Order 23 Rule 1 CPC) cannot be entertained. Accordingly, the Application at Serial No.6 stands dismissed by declining the request for withdrawal of the Suit due to peculiar facts of this case. Whereas, an order for encashment of Bank Guarantee has already been passed, therefore, the Application at Serial No.1 filed by the Department is unwarranted and is accordingly dismissed as well.

Since HCA No. 224/2018 stands dismissed as withdrawn, Nazir is directed to proceed further pursuant to directions given on 10.08.2018.

J U D G E

Avaz P.S