

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Adm. Suit No. 14 of 2006

DATE

ORDER WITH SIGNATURE OF JUDGE

For hearing of CMA No. 26/2018

19.08.2019.

Mr. Fayyaz Ali Metlo, Advocate for Plaintiff.
Mr. Adeel Abid, Advocate for Defendant.

This is an application filed by the Plaintiff under Order XXI Rule 64 read with rule 71, 77, 92(1) and Section 151 CPC, seeking directions to the Official Assignee to pay the auction proceeds along with profit, if any.

Learned Counsel for the Plaintiff submits that pursuant to order dated 12.02.2007 the cargo i.e. sugar in question has been auctioned and the proceeds of the same may be ordered to be released to the Plaintiff so as to minimize the losses sustained by the Plaintiff as against recovery of the total amount in this Suit.

On the other hand, learned Counsel for the Defendant No.1 has opposed this application and submits that vide order dated 12.02.2007, whereby, the order for sale of sugar was passed; the Court has already ordered that the proceeds of the auction be deposited and invested with the Official Assignee, and the fate of the same has to be decided at the trial of the Suit; hence, this application is misconceived and is not maintainable.

I have heard both the learned Counsel and perused the record. At the very outset, in view of objection by the learned Counsel for the Defendant No.1 in respect of order dated

12.02.2007, Counsel for the Plaintiff was confronted as to maintainability of this application and was also given an option to withdraw the same, failing which cost may be imposed and to this he has pressed the application for a decision on merits. It would be advantageous to refer to the relevant portion of the order dated 12.02.2007, whereby the order for auction of the sugar in question was passed. It reads as under:-

“There appears to be consensuses amongst all the counsel that in order to avoid further loss and damage to the cargo and to save the property from further destruction and diminution in value it would be just property and fair to order sale of the cargo (sugar) through official assignee. Order accordingly. The sale proceed realized may be deposited and invested in profit bearing scheme. *Fate of such amount to be decided after the trial* and the amount of the bank guarantee to be determined once sale proceed is realized.”

Perusal of the aforesaid order clearly reflects that cargo in question was ordered to be sold through Official Assignee and the same was done with consent of all, whereas, it was further ordered that sale proceeds be realized and deposited as well as invested in a profit bearing scheme. It was further observed that the fate of such amount is to be decided after the trial. It is not in a dispute that the said order was a consent order including the consent of the Plaintiff, whereas, neither it has been impugned through any appeal nor reviewed in any manner. This is notwithstanding the fact that this order was passed in the year 2007 and the Plaintiff was never aggrieved of the same. Merely, for the fact that a new Counsel has been engaged by the Plaintiff, such an application appears to be an attempt to mislead the Court and to obtain a favorable order with bad intentions, which otherwise does not have any merits. It may also be observed that it is also an onerous duty of a Counsel to be careful and vigilant in filing such applications and not to mislead the Court with any such prayer. Once an order

has been passed with consent which also directs that the fate of amount realized through auction is to be decided at the trial; then there was no occasion for the Plaintiff to file before conclusion of the trial, any such application. The Counsel ought to have shown restraint and advise the Plaintiff accordingly.

In view of hereinabove facts and circumstances the listed application is frivolous and misconceived and is an attempt to mislead the Court to obtain a favorable order in negation to an earlier order already in field; hence the same was dismissed by means of a short order in the earlier part of the day with cost of Rs.10,000/- to be deposited in the account of Sindh High Court Clinic and these are the reasons thereof.

J U D G E

Rafiq P.A.