

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
Suit No.1701 of 2015

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DATE

ORDER WITH SIGNATURE OF JUDGE

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1. For hearing of CMA No.13008/15 (U/O 39 Rule 1 & 2 CPC.)
2. For hearing of CMA No.742/16 (U/O VII Rule 11 C.P.C)
3. For Examination of parties/settlement of Issues.

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20.10.2016.

Ms. Rukhsana Umar, Advocate for the plaintiff.

Mr. Fsail Mehmood Ghani, Advocate for the defendant.

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2. This is an Application under Order VII rule 11 C.P.C. filed by the defendant on the ground that the plaintiff after having availed the remedy for compensation under the Payment of Wages Act, 1936 has no cause of action and locus-standi to file instant Suit.

Learned Counsel for the defendant submits that pursuant to proceedings initiated before the Commissioner Workman Compensation and Authority under the payment of Wages Act in Case No.71/2008, the plaintiff was awarded an amount of Rs.8,88,134/-, which included one-time penalty as compensation for his wrongful dismissal by the defendant. He submits that though under the law of Wages Act a maximum of 10 times can be granted as a penalty but the plaintiff did not challenge the said Order dated 31.10.2009 and now is estopped by his conduct from claiming the balance of 9 times penalty as compensation. He further submits that the Order of the Authority was challenged by the defendant through a Petition bearing No.955/2009 as the defendant was not permitted to reopen its side for leading evidence, however, the said petition was dismissed vide Order dated 26.05.2010 against which CPLA No.397-K/2010 was preferred before the Hon'ble Supreme Court, which was also dismissed vide Order dated 11.11.2010

and thereafter the defendant has paid the amount to the plaintiff vide Cheque dated 13.12.2014, which duly stands acknowledged by the plaintiff. He submits that after acknowledging such payment, there is no cause of action for the plaintiff to file instant Suit, whereas, the matter was under litigation and therefore, the compensation was not paid within time, hence the defendant is not liable to pay any mark-up as is being claimed. In support of his contention he has relied upon the cases reported as **AIR 1964 Patna 292 (Bhalgora Coal Co. Ltd., Jharia and other v. Indrajit Singh and others, 1972 II LLJ 482 (Mohan Alal Chitroa v. Labour Enforcement Officer (Central), Bhilwara and others) and NLR 2013 Labour 1 (Independent Newspaper Corporation (Private) Ltd. v. Pubjab Labour Appellate Tribunal and others )**

On the other hand, Counsel for the plaintiff submits that instant Suit is not merely for the balance 9 times of compensation but so also for damages and interest on delayed payment and per Counsel it is a settled law that plaint cannot be rejected in piecemeal. She has relied upon **PLD 2008 Karachi 458 (Raees Ghulam Sarwar v. Mansoor Sadiq Zaidi and 4 others)**

I have heard both the learned Counsel and perused the record. Instant application has been moved on behalf of the defendant by claiming that the plaintiff has no locus-standi and cause of action to file instant suit inasmuch as he has been awarded compensation under collateral proceedings and same stands paid. Perusal of the plaint, however, reflects that the plaintiff does not dispute such payment; on the contrary the plaintiff's case is premised on the fact that due to the conduct of the defendant, the payment was made in the year 2014, whereas, the compensation was awarded in the year 2009 and the claim

in this Suit is based on this factual aspect. The plaintiff in addition to the compensation as provided under the Wages Act is also claiming damages as well as mark-up and interest on delayed payment and other cost(s) incurred on such litigation. It is a settled proposition of law that a plaint cannot be rejected in piecemeal and even if the contention of the learned Counsel for the defendant to the effect that no compensation can be awarded in these proceedings is accepted, even then there are other relief(s) and prayers which are being sought by the plaintiff in this matter and therefore to the extent of such claim the plaint cannot be rejected. It is settled law that plaint cannot be rejected in piecemeal and parts, and even if main or primary cause of action is barred, and it is only a secondary cause of action that is not, the plaint cannot be rejected in respect of that part which relates to the primary cause of action. (**See Muhammad Amin Lasania v. M/s Ilyas Marine & Associates Private Limited-SBLR 2011 Sindh 989**). The question that whether the plaintiff is entitled for damages as well as for any interest or mark-up is a question which can only be adjudicated by the Court after recording of evidence.

In view of such position, the listed application is misconceived and therefore, same was dismissed in the earlier part of the day by means of a short Order and these are the reasons in support of this order.

J U D G E

Ayaz P.S.