

ORDER SHEET  
**IN THE HIGH COURT OF SINDH AT KARACHI**  
Suit No.2744 of 2016

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DATE

ORDER WITH SIGNATURE OF JUDGE

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1. For hearing of CMA No.18127/2016
2. For orders on CMA No.12046/2018
3. For orders on CMA No.12047/2018

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**31.08.2018.**

Mr. Faisal Siddiqui Advocate for Plaintiff.  
Ms. Mamoona holding brief for Mr. Sohail Muzaffar, Advocate for Defendant.  
Mr. Umar Zad Gul Kakar, DAG.

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2 & 3. CMA No.12046/2018 at Serial No.2 has been filed on behalf of the Plaintiff under Order 23 Rule 1 CPC seeking permission to withdraw instant Suit unconditionally with no order as to costs. In the affidavit it has been stated that Plaintiff has already preferred C.P No.D-6195/2018, whereas, CMA No.12047/2018 at Serial No.3 has been filed under Section 151 CPC read with Section 94 on behalf of the Plaintiff seeking directions to the Nazir of this Court to return the amount of Rs.17,629,774/ along with profit deposited pursuant to orders of this Court dated 26.12.2016. On 20.8.2018 after issuance of notice by the office for compliant of directions of the Hon'ble Supreme Court regarding maintainability of Suit before this Court, the following order was passed.

**20.08.2018**

Mr. Muhammad Vawda, Advocate for Plaintiff.  
Ms. Masooda Siraj, Advocate for Defendant.  
Ms. Mamoona holding brief for Mr. Sohail Muzaffar, Advocate for Defendant.  
Ms. Rukshanda Waheed, State Counsel.  
Mr. Umar Zad Gul Kakar, DAG.

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In response to Office Notice regarding deposit of 50% of the disputed amount, learned Counsel submits that in this matter the entire amount has been deposited with the Nazir, therefore, no directions are needed for payment of 50% to the department by the Nazir of this Court. However, while confronted Counsel requests for time to seek instructions. At his request time allowed.

To come up on 27.08.2018 at 11:00 am. Interim order, passed earlier, to continue till the next date of hearing.

On 27.8.2018 once again time was sought and the following order was passed.

**27.08.2018.**

Mr. Mohamed Wada Advocate for Plaintiff.

Mr. Muhammad Khalil Dogar Advocate for Defendant No. 5.

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Counsel requests for further time to seek instructions pursuant to order dated 20.08.2018 on the ground due to Eid holidays instructions could not be sought in time. Reluctantly, further time is allowed. To come up on 31.08.2018 at 10:30 a.m.

Today Learned Counsel submits that the condition of 50% deposit of the disputed amount as directed by the Hon'ble Supreme Court vide Judgment dated 27.06.2018 passed in Civil Appeal No.1171/2017 and other connected matters is not applicable in this matter, whereas, the plaintiff has filed instant application for unconditional withdrawal; hence, the same must be allowed and while doing so, the accompanying applications for return of the amount may also be allowed.

I have heard the learned Counsel and perused the record. Instant Suit has been filed challenging the demand raised by defendant No.2, dated 17.12.2016 (Annexure "G"). On 26.12.2016 while issuing notices to the defendants, they were restrained from taking any coercive action against the plaintiff pursuant to the impugned notice subject, however, to a condition that the plaintiff pursuant shall deposit the amount mentioned in the impugned notice with the Nazir of this Court within three days and pursuant to such order an amount of Rs.17,629,774/ has been deposited which has been invested.

Pursuant to Judgment of the Hon'ble Supreme Court dated 27.06.2018 passed in Civil Appeal No.1171/2017 and other connected matters, a Suit is only maintainable before this Court if 50% of the disputed amount is to be deposited with the concerned Department. This applies to pending Suits as well. The relevant portion of the said judgment reads as under;

18. For the foregoing reasons, while allowing these appeals, it is held and directed as under:-

(1) the adverse orders/actions by the Assessment Officer/Customs authorities cannot be said to be beyond jurisdiction and thus fail to circumvent the bar to jurisdiction of civil courts imposed under Section 217(2) of the Customs Act;

(2) the Single Bench of the Sindh High Court, regardless of what jurisdiction it exercises, is a "High Court" and will always remain a High Court because it is a constitutional Court and is not a District Court.

(3) Section 217(2) ibid only bars the cognizance of suit(s) filed under the civil jurisdiction exercised by the civil courts, and this bar cannot be extended to include the exercise of the same jurisdiction by the Single Bench of the Sindh High Court at Karachi;

(4) allowing such special jurisdiction to the Sindh High Court, while the same is not available to other Provinces, does not violate the provision of Article 25 of the Constitution;

(5) the suits of the appellants filed before the Single Bench of the Sindh High Court at Karachi are maintainable;

(6) despite the fact that the Single Bench of the Sindh High Court at Karachi can take cognizance of any suit arising out of an action/order of the tax authorities/Customs Officers, such jurisdiction must be sparingly exercised and the suits must be expeditiously decided within the period of one year or less; and

**(7) the suits, which are already pending or shall be filed in future, must only be continued/entertained on the condition that a minimum of 50% of the tax calculated by the tax authorities is deposited with the authorities.**

Since in this matter interims orders were passed by securing the entire disputed amount and defendants have been restrained from any further coercive action including Blocking of User ID/NTN of the Plaintiff, 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 injunctive orders are operating, and deposit of the amount as a corollary is subject to final outcome of the Suit, hence, request for withdrawal of Suit under Order 23 Rule 1 CPC cannot be entertained, as simultaneously, the plaintiff seek return of the amount lying with the Nazir of this Court. In fact it is a conditional withdrawal which can always be refused by the Court, whereas, there are good reasons for doing so in this case. The amount stands determined (rightly or wrongly), and interim orders have been passed. Accordingly, the Applications at Serial No.2 & 3 are dismissed by declining the request for withdrawal of the Suit, due to peculiar facts of this case, and in view of the judgment of the Hon'ble Supreme Court as above. Whereas, Nazir is directed to release / pay 50% of the disputed amount i.e. Rs 88,14,887/- to Defendant No.3 and file his report for further orders.

1. Adjourned.

J U D G E

Avaz P.S\_\_\_\_\_