

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
High Court Appeal No.206 of 2020

DATE

ORDER WITH SIGNATURE OF JUDGE

Fresh case

1. For hearing of Main case
2. For orders on CMA No.2425/2020 (stay)

10.11.2020

Mr. Abid Zuberi Advocate for the Appellant.

Through this High Court Appellant impugned is an order dated 29.10.2020 whereby certain directions have been given by a learned Single Judge of this Court in Suit No.523 of 2003 in compliance of judgment of the Hon'ble Supreme Court reported as ***Searle IV Solution (Pvt) Ltd., v Federation of Pakistan (2018 SCMR 1444)***.

Learned Counsel for the Appellant submits that the impugned order is not sustainable inasmuch as the Hon'ble Supreme Court in the said case has not made it absolute that 50% of the disputed amount must be deposited with the department, whereas, it has used the words goodwill gesture; hence, the furnishing of a Bank Guarantee with the department would also suffice; and therefore the impugned order be modified with directions to expeditiously decide the main Suit.

We have heard the learned Counsel and perused the record. The learned Single Judge in the impugned order has asked the Plaintiff / Appellant to deposit 50% of the amount of Bank Guarantee within 10 days with the Customs either by substituting the Bank Guarantee lying with FBR or by making a separate deposit; failing which adverse order will follow. It is an admitted position that pursuant to Judgment of the Hon'ble Supreme in ***Searle IV Solution*** (Supra) a Suit is only maintainable before this Court on its Original Side jurisdiction if 50% of the disputed amount is deposited with the concerned Department. This applies to pending Suits as well as all fresh Suits. 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.

The order impugned before us has been passed in compliance of the judgment as above (para 18(7)) which is binding and therefore, no exception could be drawn and does not warrant any interference by this Appellate Court; hence, instant Appeal was dismissed in limine by way of a short order in the earlier part of the day and these are the reasons thereof.

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