

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Suit No.1512 of 2013

DATE

ORDER WITH SIGNATURE OF JUDGE

For hearing of CMA No.13244/13 (U/O 39 Rule 1 & 2 CPC)

28.08.2018.

Ms. Pooja Kalpana, Advocate for Plaintiff.
Mr. Ghulam Hyder Shaikh, Advocate a/w Mr. Shoaib Raza, D.C and
Hassan Mehdi, SDO.

On 17.08.2018 the following order was passed:-

“This is a Civil Suit under Section 9 CPC filed against the Tax Department. The Hon’ble Supreme Court vide Judgment dated 27.06.2018 passed in Civil Appeal No.1171/2017 and other connected matters has been pleased to observe that though a Civil Suit on the original side of this Court is maintainable, however, with certain conditions. It has been observed in the concluding Para-18 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.

In view of such position, the Plaintiff is directed to deposit 50% of the amount being claimed by the Department within three days from today and after deposit of the same with the Tax Authorities, the receipt to that effect be placed on record through statement. If the deposit is not made, the Suit stands dismissed as not maintainable.

To come up on 28.08.2018 at 11:00 a.m. for compliance.”

Today No compliance has been made and no amount has been deposited. Though learned Counsel for the plaintiff has made an effort to argue that no amount is involved; hence no compliance is to be made. However, on perusal of the record including the injunction application it appears that plaintiff itself has prayed for an order restraining the defendants from recovery of Sales Tax, and consequently from any other adverse action. The prayer clause in the Suit is also to the same effect. Moreover, on 13.4.2015 learned Counsel for the plaintiff had himself referred to grant of injunction permanently in Suit No.554 of 2014, wherein the same was granted subject to furnishing of a Bank Guarantee, and had requested the Court not to order for furnishing a Bank Guarantee in view of alleged different facts. However, in the present circumstances, after passing of directions by the Hon'ble Supreme Court as above, this Court cannot proceed further without deposit of 50% of the amount in question. Accordingly, the Suit stands dismissed as not maintainable with pending applications.

J U D G E

Avaz P.S.