

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
High Court Appeal No.199 of 2019

Order with Signature of Judge(s)

Fresh Case:

1. For order on CMA No.1511/2019 (Urgent)
2. For order on office objection a/w reply as at "A".
3. For order on CMA No.1512/2019 (Exemption)
4. For hearing of main case.
5. For order on CMA No.1513/2019 (Stay)

30.04.2019.

Mr. Mohamed Vawda, Advocate for the appellant.
Khawaja Shams-ul-Islam, Respondent No.1 present in person.

1. Urgency granted.
- 2-4. This High Court Appeal has been filed against the interim order dated 15.04.2019 passed by the learned Single Judge in Suit No.675 of 2019.

A Suit bearing No.675 of 2019 has been filed by the present respondent No.1 against the appellant and the respondents No.2 to 8 for declaration, injunction, direction and damages of Rs.500 million and not to portray and air a negative picture of the respondent No.1 in their respective channels, as the same, according to the plaintiff in the said suit, is violative of Articles 4, 9, 14, 18, 23, 24 of the Constitution of Islamic Republic of Pakistan, 1973 (**the Constitution**), as well as violative of PEMRA Ordinance, 2002, PEMRA Rules, 2009, and Code of Conduct for Media Broadcasters or Cable TV Operators Programmes as defined in 'Schedule A' of the PEMRA Rules alongwith an application under Order XXXIX Rules 1 & 2 CPC bearing CMA No.5938 of

2019. The matter with regard to the application under Order XXXIX Rules 1 & 2 CPC (CMA No.5938 of 2019) proceeded before the learned Single Judge who by issuing notice to the defendants in the suit directed that till next date of hearing ad-interim order as solicited was granted. It is against the said order granting ad-interim stay to the plaintiff in the suit and respondent No.1 in this appeal that the present High Court Appeal has been filed.

Mr. Mohamed Vawda Advocate has appeared on behalf of the appellant and stated that the restraining order passed by the learned Single Judge is an attack on the fundamental right of the appellant as enshrined under Article 19 of the Constitution. He states that the appellant is being regulated by PEMRA Ordinance 2002 and Electronic Media (Programmes and Advertisements) Code of Conduct, 2015, hence, whatever is aired by them is as per their Code of Conduct. He further stated that certain parameters have laid down in Suo Moto Case No.28 of 2018, reported as PLD 2019 SC 1, by the Hon'ble Supreme Court of Pakistan which have not been brought in by the learned Single Judge and the restraining order has been obtained which is causing serious prejudice to the appellant and since there are extra ordinary circumstances hence the instant High Court Appeal has been filed.

Khawaja Shams-ul-Islam is present for himself and stated that firstly this High Court Appeal is not maintainable since only an interim order has been passed and whatever the appellant wishes to state can be submitted before the learned Single Judge before

whom the instant matter is pending and is fixed for hearing on 10.05.2019. He further stated that other than the appellant the respondents No.2 to 8 have not challenged the order dated 15.04.2019 and hence, according to him, this High Court Appeal being premature is liable to be dismissed. He has also placed reliance on an unreported decision of this Court in the case of Sohaila Pirani Vs. Irshad Ali Kassim and others (HCA No.389 of 2018).

Mr. Vawda, in rebuttal, stated that this appeal is very much maintainable and has relied upon the decisions given in the following cases:

- 1) Nestle Milkpak Limited Vs. Classic Needs Pakistan (Pvt.) Ltd. and 3 others (2006 SCMR 21)
- 2) Shahid Mazhar Vs. Shadman Cotton Mills Limited and 3 others (2012 CLD 1402)
- 3) Pakistan Broadcasting Association through Chairman Vs. Sarfaraz Hussain Shah (2014 CLC 1002)
- 4) Benazir Shah Vs. BOL Enterprise (Pvt.) Ltd. and others (Unreported decision of this Court in HCA No.14 of 2015)
- 5) Roche Pakistan Limited Vs. Getz Pharma Limited & others (Unreported decision of this Court in HCA No.209 of 2015)
- 6) Mohammad Salman Iqbal & others Vs. M/s. T-Ten Sports Management FZE & others (Unreported decision of this Court in HCA No.386 of 2018)

Insofar as freedom of speech is concerned, he has relied upon the decision given in the case of Wali Muhammad Khoso and another Vs. Federation of Pakistan through Federal Secretary Information Government of Pakistan and 6 others (2010 CLC 546).

We have heard the learned counsel for the appellant as well as respondent No.1 in person at some length and have also perused the record and the decisions relied upon by them.

Whether in the instant matter some derogatory or negative remarks have been used and aired by the appellant and the respondents No.2 to 8 against the respondent No.1 and whether the same falls under Articles 4, 9, 14, 18, 23 & 24 of the Constitution and other provisions of law as mentioned in the suit, could only be dilated upon by the learned Single Judge before whom the matter is subjudice. Moreover, as the Hon'ble Supreme Court of Pakistan in *Suo Moto Case No.28 of 2018*, reported as *PLD 2019 SC 1*, has already laid down certain parameters vide pages No.30 & 31 of the said judgment, the same may be adhered to in their letter and spirit. However, the learned counsel for the appellant and the respondent No.1 are directed to appear before the learned Single Judge on 10.05.2019, when the matter is already fixed, and make their submissions accordingly.

With the above observations, this High Court Appeal stands disposed of alongwith the listed applications.

Judge

Judge