

ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

High Court Appeal No.23 of 2022

<i>Date</i>	<i>Order with signature of Judge</i>
-------------	--------------------------------------

Fresh Case:

1. For orders on CMA No.120/2022 (U/A)
2. For orders on office objection along with reply as at "A".
3. For orders on CMA No.121/2022 (Exemption)
4. For hearing of main case.
5. For orders on CMA No.122/2022 (Stay)

21.01.2022:

Mr. Mujtaba Sohail Raja, advocate for the appellant.

1. Granted.

3. Granted subject to all just exceptions.

2, 4-5. Instant High Court Appeal has been filed against the order dated 18.01.2022 passed by the learned Single Judge in Suit No.2041/2019, wherein, according to learned counsel for the appellant, while ignoring the earlier orders already passed in the Suit including the order, whereby, directing the respondents to allow the appellant to contest in the forthcoming elections of Pakistan Airline Pilots' Association (PALPA) for the post of President, the learned Single Judge has been pleased to observe that the appellant may satisfy the Court as to maintainability of the Suit. According to learned counsel for the appellant, on the fateful date, when the impugned order was passed there were several applications pending including the contempt application filed by the appellant against the respondents, who inspite of specific order passed by the learned Single Judge in the aforesaid Suit directing the respondents to issue nomination paper to the appellant so that he may be able to contest the forthcoming elections as per Constitution and bye-laws of PALPA, however, instead of seeking enforcement of the earlier orders already passed by the learned Single Judge, the learned Single Judge has not passed any order

on such application and made an observation with regard to maintainability of suit, whereas, according to learned counsel for the appellant, he has made an attempt to satisfy the Court with regard to maintainability of the Suit, however, learned Single Judge has not allowed the appellant to make his submission in this regard on the fateful date. According to learned counsel for the appellant, through impugned order the learned Single Judge has undone the effect of the earlier orders already passed in the Suit, whereas, no objection whatsoever was either raised by the respondents with regard to maintainability of the Suit nor the appellant was ever confronted by the learned Single Judge on this account except through impugned order. Learned counsel for the appellant has further contended that though the appellant is willing to satisfy the Court as to maintainability of the Suit, however, since the process of elections has already commenced and will be concluded within a period of 15 days, therefore, prays that appellant may be allowed to contest the election and the learned Single Judge may be directed not to draw any adverse inference or to pass adverse order with regard to maintainability of the Suit till conclusion of the elections process.

We have heard the learned counsel for the appellant, perused the record and the impugned order passed by the learned Single Judge in the above Suit and are of the opinion that prima-facie, no adverse order has been passed by the learned Single Judge, whereby, right and interest of the appellant to contest the elections or to file the Suit has been finally determined, however, the contention of the learned counsel for the appellant to the extent that Suit was filed in the year 2019 and written statement has been filed by the respondents, who did not raise any objection with regard to maintainability of the Suit neither the learned Single Judge ever confront the appellant with regard to maintainability of the Suit, on

the contrary, various orders have been passed including the order directing the respondents to issue nomination papers and to allow the appellant to contest the forthcoming elections of PALPA in accordance with the Constitution and bye-laws. It further appears that such orders have not been recalled or modified, whereas, the respondents appears to have violated the directions issued by the learned Single Judge, therefore, instead of issuing directions to the respondents/alleged contemnors to ensure compliance of Court's order already passed in the instant matter, the learned Single Judge has been pleased to make an observation with regard to maintainability of the Suit at this stage of the proceeding, which would certainly dilate the effect of the earlier orders already passed in the Suit after hearing the parties. Accordingly, we would dispose of instant High Court Appeal with an observation that the learned Single Judge may allow reasonable time to the appellant to satisfy the Court with regard to maintainability of the Suit, however, in the meanwhile, the orders already passed in the Suit, which have admittedly not been recalled or filed an appeal against, shall be implemented, however, without prejudice and subject to final outcome of the pending applications and the Suit.

Instant High Court Appeal stands disposed of in the above terms along with listed applications.

JUDGE

JUDGE