

IN THE HIGH COURT OF SINDH, KARACHI

High Court Appeal No.113 of 2019

Present

Mr. Justice Aqeel Ahmed Abbasi
Justice Mrs. Rashida Asad

Multinet Pakistan (Pvt) Ltd. Appellant

Versus

Federation of Pakistan & others Respondents

Hearing (Priority) Case

1. For orders on office objection/reply as at 'A'.
2. For hearing of main case.
3. For hearing of CMA No.479/2019.

Date of hearing : 12.11.2020

Date of order : 12.11.2020

Mr. Abdul Ahad Nadeem, Advocate for Appellant.

Mr. Zubair Ahmed Rajput, Advocate for Respondent No.2 along with Ahmed Hassan, Deputy Director (ROW) and Ghulam Hussain, Deputy Director (Legal), NHA Headquarters.

Through instant High Court Appeal, the appellant impugned the order dated 15.01.2019 passed by the learned Single Judge of this Court on CMA No.4128/2017 (U/O XXXIX Rule 1&2 CPC), filed by the appellant, whereby, the appellant has been directed to pay to the Respondent No.2 (NHA) an amount of Rs.259.336 Million being 50% of the amount as claimed by it, and also to furnish a bank guarantee/surety of the aforesaid amount before the Nazir of this Court as the remainder of the amount.

2. During the course of hearing instant appeal on 04.02.2020, following order was passed: -

*“After hearing the learned counsel for parties, there has been a proposal on behalf of appellant that appellant would deposit an amount of **Rs.172,531,977/-** with NHA whereas for remaining amount, the NHA will not seek enforcement. It has been further stated that for the future demand with effect from March, 2017, the appellant will continue to deposit rental charges at the rate of Rs.20/- per meter per annum in due course, provided the respondent may not take any coercive action. It has been further suggested that in order to reconcile the payments made by the appellant and the demand shown as outstanding by the respondents, both the parties will make a request before the learned single Judge for appointment of an Auditor so that the legitimate outstanding amount, if any, may be determined in accordance with law, however, subject to the claim of the appellant before learned single Judge in the Suit. Learned counsel for respondent requests for time to seek instructions.”*

3. The appellant did not make the proposed payment of 50% of the outstanding amount of Rs.172,531,977/-, therefore, on 27.10.2020 following order was passed: -

“Counsel for the appellant submits that appellant is willing to deposit pay order of Rs.172,531,977/-, as committed in order dated 04.02.2020, in favour of N.H.A. on the next date whereas remaining undertaking will be complied with in a short period of time. As an indulgence one week time is granted to the appellant to make payment of Rs.172,531,977/- to N.H.A. through pay order failing which appropriate action will be taken against the appellant for having deviated from the undertaking given in Court and further appropriate order will be passed in the instant High Court Appeal.”

4. Today, learned counsel for the appellant along with representative of appellant-company has filed statement dated 12.11.2020 along with copy of letter dated 09.11.2020 and copy of pay order amounting to Rs.172,531,977/- in favour of National Highway Authority (NHA) / Respondent No.2, and submits that pursuant to Court's order dated 04.02.2020, the aforesaid amount has been deposited with the NHA/Respondent No.2, the same is taken on record, copy thereof has been supplied to the learned counsel for respondent No.2, who has also filed a statement dated 12.11.2020 along with summary of rentals to be paid by the appellant from 2017 onward @ Rs.20/-

per meter per annum, copy whereof has been supplied to learned counsel for the appellant.

5. Both the learned counsel for the parties submit that since payment of aforesaid amount has been made by the appellant to the respondent (NHA), whereas, appellant is willing to deposit the outstanding amount from 2017 onward @ Rs.20/- per meter per annum, therefore, instant High Court Appeal may be disposed of, as the purpose of filing instant High Court Appeal is served out. It has been further submitted that both the parties will make an effort before the learned single Judge to get the entire suit decided at an early date, in the meanwhile, the parties will submit mutually agreed payment plan of future rent at the rate of 20% from 2017 onwards. Learned counsel for the respondent, however, submits that the appellant may be directed to ensure payment of the agreed outstanding amount at the rate of 20% from 2017 onward at an early date, not beyond the period of three months from the date of this order, as the appellant has already given an undertaking to this effect. Learned counsel for the appellant submits that on account of COVID-19 appellant is facing financial crisis, however, needful will be done as per mutually agreed terms, however, this is without prejudice to the legal instance of the appellant in the suit.

6. Accordingly, instant High Court Appeal is disposed of in the above terms along with listed application. However, parties are at liberty to make any settlement of account before the learned single Judge, or to make a request for issuance of future NOC(s) by respondents, which may be decided in accordance with law.

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Nadeem/Farhan