

# IN THE HIGH COURT OF SINDH, KARACHI

## *High Court Appeal No. 300 of 2022*

PRESENT:

MR. JUSTICE AQEEL AHMED ABBASI  
JUSTICE MRS. KAUSAR SULTANA HUSSAIN

### Fresh Case

1. *For orders on CMA No. 2825/2022.*
2. *For orders on office objection a/w. reply at 'A'.*
3. *For orders on CMA No. 2826/2022.*
4. *For hearing of main case*
5. *For orders on CMA No. 2827/2022.*

### 08.09.2022:

Mr. Hassan M. Mandviwala, advocate for the appellant.

## **O R D E R**

1. Granted.

2-5 Instant High Court Appeal has been filed by the appellant, against an ad-interim order dated 02.08.2022 passed by the learned Single Judge in Suit No.1405 of 2022 [Re: *Adelte J. V. & others v. Pakistan Civil Aviation Authority & others*] filed by the respondents seeking Declaration and Injunction, whereby, according to learned counsel for the appellant, the learned Single Judge, while issuing Notice to the defendants, has been pleased to pass restraining order, directing the defendants not to encash the subject performance security/guarantee subject matter of the suit in any manner, whereas, further directions have been issued that till next date of hearing, defendants are restrained to entertain any request for issuance of counter guarantee pertains to the plaintiffs subject performance security/guarantee as Defects Liability Certificate has already been issued to the plaintiffs by the defendants.

It has been contended by the learned counsel for the appellant that in view of the aforesaid restraining order, the appellant in respect of subject contract, has been restrained extending the counter guarantee, whereas, the amount of the guarantee has already been issued to respondent No.1/CAA. It has been prayed that any interim order to this effect may be suspended.

Mr. Haider Waheed, advocate present on Notice under Order 43 Rule 3 CPC on behalf of respondent No.2 & 3, submits that instant High Court Appeal is misconceived and not maintainable as the same has been filed against an ad-interim order, whereas, the appellant has right to file counter-affidavit/reply/objections before the learned Single Judge to seek modification/recalling the impugned order in accordance with law. It has been further contended by the learned counsel for the respondents that the interest of the appellant has already been safeguarded by the learned Single Judge vide order dated 10.06.2022, according to which, it has been already ordered that the amount, which is lying in the account of CAA, the appellant may obtain the same.

We have heard the learned counsel for the appellant as well as Mr. Haider Waheed appeared on behalf of respondents No. 2 & 3, perused the impugned order passed by the learned Single Judge, which reflects that while issuing notices to the defendants, after taking into consideration the submissions made by the learned counsel for the plaintiff, learned Single Judge has been pleased to pass ad-interim order with certain directions and there is not final order passed either on the injunction application, nor the right and

liability of the parties appears to have been determined, whereas, the appellant has opportunity to file counter-affidavit/reply/objections to the injunction application by raising all such factual and legal grounds to seek modification/recalling the order passed by the learned Single Judge, however, instead of approaching the learned Single Judge for such purpose, instant High Court Appeal has been filed. It has been observed that the tendency to file High Court Appeal against an ad-interim order has increased recently, which results in multiplicity of litigation and amounts of preempting the final decision by the learned Single Judge on the pending application after hearing the parties, in accordance with law.

In view of the above facts, we are of the opinion the instant High Court Appeal is misconceived and premature, therefore, we dispose of instant High Court Appeal, with the directions to the appellant to appear before the learned Single Judge by filing urgent application, submitting counter-affidavit/reply/response on the injunction application or may file application under Order 39 Rule 3 CPC for recalling/modification the impugned ad-interim order passed by the learned Single Judge, who may pass appropriate order after hearing the parties and disposed of the injunction application accordingly.

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

***JUDGE***

***JUDGE***

**A.S.**