

ORDER SHEET IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 928 of 2022

Date: Order with signature of the Judge

1. For hearing of CMA No.9656 of 2022
2. For hearing of CMA No.10012 of 2022
3. For hearing of CMA No.10089 of 2022
4. For hearing of CMA No.10238 of 2022
5. For hearing of CMA No.14220 of 2022
6. For hearing of CMA No.14221 of 2022

04.09.2023

Mr. Khawaja Saiful Islam, advocate for the plaintiff
Mr. Ameer Bux Metlo, advocate for defendant
Mr. Rana Azamul Hassan, advocate for defendant
Mr. Ghulam Ali Khan, advocate for alleged contemnor No.2.
Mr. Aamir Zaib, DAG

Present suit, filed in the year 2022, primarily impugns orders issued / demand by the Income Tax Authorities under section 129 of the Income Tax Ordinance 2001. Per learned counsel for the plaintiff, while such orders are appealable under the statutory hierarchy, no appeal was preferred and alternatively this suit was filed instead. Learned counsel submits that this court has the jurisdiction to adjudicate the grievance/s of the plaintiff with respect to the impugned orders in a civil suit.

Mr. Ameer Bux Metlo Advocate submits that in view of section 127 of the Income Tax Ordinance, 2001 any grievance with respect to the impugned orders had to be adjudicated in appeal, per statutory hierarchy. Learned counsel submits that there is no cause for this court to unilaterally assume statutory jurisdiction; demonstrably conferred elsewhere by the Income Tax Ordinance 2001. It was vociferously articulated that sanction of such matters being agitated herein would render the entire statutory dispute resolution hierarchy as otiose.

Mr. Rana Azamul Hassan Advocate submits that this precise grievance was earlier escalated in a writ petition, being CP D 3498 of 2022, and after the said petition having been dismissed as withdrawn, the same cause is being unlawfully re-agitated herein. It is further added that notwithstanding the foregoing, not only has the present suit been entertained without any deposit, in abject violation of the judgment of the Supreme Court in the case of *Searle Solutions* reported as *2018 SCMR 1444*, but that unsecured *ad interim* orders have also been obtained on the very first date and prior to service of notice, whereby the effect of the impugned orders has been virtually nullified and mandatory injunction issued; amounting to granting final relief at the interim stage.

Heard and perused. The primary question before this Court is in respect of jurisdiction. Admittedly, the impugned orders are appealable and default by the plaintiff himself in seeking recourse in the statutory hierarchy could not be demonstrated to denude the statutory forum of its jurisdiction; or confer the same upon this court. Even otherwise, the plaintiff's learned counsel remained

unable to demonstrate as to under what law this Court could assume jurisdiction in the matter under consideration and that also post agitation of the same *lis* in earlier writ proceedings. In view of the foregoing, all pending applications herein are hereby dismissed *inter alia* on account of this being *forum non conveniens* and the plaint herein is hereby returned¹.

J U D G E

Amjad/PA

¹ Per *Junaid Ghaffar J* in Order dated 25.10.2016 in Suit 2631 of 2015; *Murlidhar P Gangwani vs. Engineer Aftab* reported as 2005 MLD 1506; *Dewan Scrap vs. Customs CE & Sales Tax Tribunal* reported as 2003 PTD 2127; *Safe Mix Concrete vs. Pakistan* reported as 2020 CLC 602.