

**IN THE HIGH COURT OF SINDH, KARACHI**  
**H.C.A. No. 300 /2023**

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Date Order with signature of Judge

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Present: *Mr. Justice Muhammad Junaid Ghaffar*  
*Justice Ms. Sana Akram Minhas*

**Appellant:** The Securities & Exchange Commission of Pakistan Through Mr. Muzzafar Ahmed Mirza, learned Chief Prosecutor.

**Respondents:** Cnergyico PK Limited, & Others. Through Mr. Abdul Ahad Nadeem, Advocate for Respondent No. 1.

**Date of hearing:** 04.09.2023.

**Date of Order:** 04.09.2023.

**ORDER**

**Muhammad Junaid Ghaffar, J:** Through this High Court Appeal, the Appellant has impugned order dated 16.08.2023 passed by a learned Single Judge of this Court in a Civil Suit filed by Respondent No. 1. The said order reads as under:-

**“16.08.2023.**

Mr. Abdul Ahad, Advocate for Plaintiff.

1. Urgency granted.

2. The plaintiff-company is aggrieved by order dated 18.07.2023 (page 25) passed by the defendants under Section 258(1) of the Companies Act, 2017, whereby a team of inspectors has been appointed for carrying out “*Serious Fraud Investigation of the Company*”. It is contended that the impugned order is not justified as no fraud whatsoever has been committed by the company, as alleged by the defendants or otherwise. Learned counsel submits that an appeal against the said order has been filed by the Plaintiff on 11.08.2023 before the Appellate Bench of defendant No. 1 / SECP which has not yet been taken up. It is urged that in case the impugned investigation is completed and an investigation report is submitted by the inspectors, the appeal filed by the plaintiff shall become infructuous. It is further urged that in view of the impugned order, the defendants are harassing the plaintiff by making unreasonable demands. The plaintiff is directed to amend the title of the plaint by deleting the name of defendant No. 2 who shall remain as defendant in his official capacity. The plaintiff is further directed to add the members of the Appellate Bench as defendants and to file the amended title in the above terms within seven (07) days. Subject to filing of the amended title, let notice be issued to the defendants. Counter affidavits and rejoinders to be filed and exchanged before the next date of hearing. The Appellate Bench of defendant No. 1 / SECP is directed to decide the plaintiff’s appeal within fifteen (15) days strictly in accordance with law and after providing opportunity of hearing to the plaintiff. The defendants are jointly and severally directed to place on record on the next date of hearing the final order passed in

the aforesaid appeal. Till the final decision of the appeal, the investigation initiated pursuant to the impugned order shall remain suspended. To be listed on 07.09.2023.

2. At the very outset, learned Chief Prosecutor of the Appellant (SECP) has been confronted by us as to maintainability of this Appeal against an ad-interim order and he has not been able to satisfactorily respond; however, has argued that ad-interim order in appeal has given certain directions to SECP as well as Respondent No. 3 which directions cannot be complied with by a number of reasons and therefore, the order is liable to be set aside. He has also made his best efforts to assist us with the merits of the case as well as according to him, Respondent No. 1 has siphoned off public money. The impugned action taken by SECP was fully justified; however, we have restrained him on arguing on the merits of the case. Our primary concern is that entertaining such appeals against ad-interim orders are an exception and not a rule. The order in question does not fulfill the requirements of an exception and therefore, we had confronted the appellant's counsel on this ground alone. At best if an ad-interim order has been obtained by misleading the facts as alleged on behalf of the present appellant, then the proper recourse was to avail remedy under Order 39 Rule 4 CPC for recalling / modification of the ad-interim order before the very same learned Single Judge. It is not that in each and every case wherein, an ad-interim order has been passed the aggrieved party can maintain an appeal against such orders. It is only in exceptional circumstances that the appellate court entertaining any such appeals.

3. In view of the above, we are left with no choice but to dismiss this appeal as being not maintainable, whereas, the appellant is at liberty to raise all arguments and agitate the matter before the learned Single Judge by way of an application under Order 39 Rule 4 CPC or otherwise.

**J U D G E**

**J U D G E**

Arshad/