

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit 675 of 2016

Date

Order with signature of Judge(s)

1. For final arguments.

20.09.2023

Mr. Faraz Mahar, advocate holding brief for Mr. Ayan Mustafa Memon, advocate for the plaintiff.

Mr. Javed Ali Sangi, advocate for the defendant/SRB.

Mr. Shehryar Qazi, Additional Advocate General Sindh.

This suit essentially impugns a show cause notice dated 04.02.2016, as is manifest from paragraph 17 of the memorandum of plaint being the paragraph wherein the cause of action has been pleaded. The counsel, holding brief for the plaintiff's counsel, was earlier confronted with the issue of maintainability and for such purpose time was granted on 13.09.2023 and again on 18.09.2023. Today the plaintiff's counsel is once again stated to be unavailable. While this may be a fit case for dismissal for non-prosecution, however, it is considered appropriate to advert to the issue of maintainability instead.

The grievance of the plaintiff arose upon issuance of a show cause notice thereto, as is manifest from the paragraph referred to supra. Perusal of the impugned notice demonstrates that a forum and opportunity for consideration of any grievance of the plaintiff was provided. Any order passed in pursuance thereof would be appealable, however, instead of replying the impugned notice the present suit was filed and *ad interim* orders obtained¹.

Default by the plaintiff in seeking recourse before 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 how this Court could assume jurisdiction in this matter in view of the Judgment reported as *2022 SCMR 92 (Commissioner Inland Revenue v. Jahangir Khan Tareen)*, as approved by the Supreme Court recently in Judgment dated 15.09.2022 rendered in *DCIR vs. Digicom Trading (CA 2019 of 2016)*. Similar views were articulated by learned Single judges in order

¹ On 21.03.2016 and disposed of vide order dated 03.09.2018.

dated 27.09.2022 rendered in Suit 855 of 2015 and the judgment reported as 2022 PTD 1742 (PPL vs. Pakistan).

The application for interim relief was disposed of vide order dated 03.09.2018 and the proceedings per the impugned notice were directed to be concluded by the department and any grievance with the order passed therein was directed to be escalated up the ladder of the statutory dispute resolution hierarchy. The appeal against the aforesaid order was dismissed by a Division Bench of this Court vide Judgment dated 30.10.2019 in HCA 306 of 2019. As noted supra, the cause of action pleaded was with respect to the impugned notice, therefore, if action pursuant thereto was already sanctioned and orders consequential thereto are to be considered in the statutory hierarchy then *prima facie* no cause of action remains to be addressed herein.

It is noted that while the main grievance appears to be in respect of the impugned show cause notice, however, ancillary issues have been raised; perhaps to seek the adjudication of the grievance outside the statutory hierarchy designated for such purpose. A Division Bench of this High Court, in *Muhammad Saddiq case*², had deprecated such invocation of jurisdiction and held that such actions, merely to overcome objections of maintainability, cannot but be disapproved. A subsequent Division Bench has also maintained³ that such masquerade of pleadings is undesirable.

In view of the foregoing, the plaint herein is rejected per Order VII rule 11 (a) and (d) CPC.

JUDGE

Khuhro/PA

² *Muhammad Saddiq & Another vs. Ruqaya Khanum & Others* reported as *PLD 2001 Karachi 60*.

³ *AKD Investment Management Limited & Others vs. JS Investments Limited & Others* reported as *2020 CLD 596*.