

ORDER SHEET  
**IN THE HIGH COURT OF SINDH, KARACHI**  
C. P. NO. D-3968 / 2024

Date

Order with signature of Judge

**FRESH CASE.**

- 1) For orders on Misc. No. 17428/2024.
- 2) For orders on Misc. No. 17429/2024.
- 3) For hearing of main case.

**21.08.2024.**

Mr. Omar Soomro and Danish Nayyer Advocates for the  
Petitioners.

Through this Petition, the Petitioner has sought the  
following prayers:-

- A. Declare that subsection (4) of Section 23C of the Foreign Exchange Regulation Act, 1947 is unconstitutional and violative of the fundamental rights (Articles 4, 8 and 10-A) and liable to be struck down.
- B. Declare that the recovery proceedings including attachment of bank accounts of the Petitioners without scrutiny of penalty (imposed by the Respondent No. 3) by the Appellate Tribunal is unlawful and of no legal consequences.
- C. Pending disposal of the Petition, restrain the Respondents especially Respondent No. 3 from taking any adverse / coercive action against the Petitioners.
- E. Direct the Respondent No. 1 – 3 to immediately unblock / unfreeze the bank accounts of the Petitioners and restore the Petitioner's access to their bank accounts and credit / debit cards without any hindrance.
- F. Pending disposal of this Petition, restrain Respondents No. 1 – 3 from initiating any recovery process against the Petitioners including but not limited to encashing / debiting the bank accounts of the Petitioners.
- G. Grant such other relief as this Court deems just and proper in the facts and circumstances of this case."

At the very outset, Petitioner's Counsel has been confronted as to the grant of the above relief in view of Judgment dated 21.06.2024 passed in C. P. No. D-3066 of 2024 (*M/s. Pak Terry Mills Pvt. Ltd. Vs. Federation of Pakistan*

& others) whereby, the issue in hand has been decided by a learned Division Bench of this Court and learned Counsel has made an attempt to argue that since vires have been challenged in this matter, the said Judgment would not apply to the case of the present Petitioner, whereas, there are other pending Petitions wherein, ad-interim orders have been passed in identical matters. He has referred to those orders available at Page 131 onwards of instant petition.

However, we are least impressed with this submission because the Judgment in question has decided the matter after considering the orders so passed in pending petitions including one such ad-interim order in C. P. No. D-1075/2024 (*M/s Panvi Traders V/S Fed. of Pakistan and Others*). The Judgment of this Court as above reads as under:-

**“Muhammad Shafi Siddiqui, J.-** Foreign Exchange Operations Department of State Bank of Pakistan filed a complaint before the Adjudicating Officer in respect of non-repatriated amount against M/s. Pak Terry Mills Pvt. Ltd. and its directors. The complaint was heard and the Adjudicating Officer adjudged the petitioner as willful defaulter as provisions of Foreign Exchange Regulation Act, 1947, were contravened. Consequently, the directors of the petitioner were directed to deposit the amount of penalty in the Government account maintained with State Bank of Pakistan. Being aggrieved of it, an appeal before the Foreign Exchange Regulation Appellate Board was preferred which in compliance of Section 23,C(4) of the Regulations required the petitioner to deposit the amount in cash. Learned counsel for the petitioner has relied upon a judgment of Lahore High Court passed in Case No.W.P. No.36748/2022 which considered the requisite provisions of Section 23,C(4) as violative of fundamental rights in terms of para 7 of the order and the counsel has also relied upon the ad-interim injunctive order such as one passed in C.P. No.D-1075/2024 where the Court ordered that the respondents may not take any further coercive action against the petitioner therein till the next date of hearing.

2. We have heard the learned counsel and perused the record.

3. The petitioner exported goods and were under the obligation to repatriate the outstanding export proceeds in foreign exchange, wherein they failed within the stipulated period from the date of shipments. Consequently, the four points as framed by the Adjudicating Officer were adjudged against the petitioner and its directors under the law. The repatriation of the export proceeds is the sole responsibility of the accused as foreign exchange was involved. There was no evidence of genuine efforts for the repatriation of the amount, as adjudged by Adjudicating Officer, however, subject to outcome of appeal before board. This is contravention of Section 12(1) of Foreign Exchange Regulation Act, 1947, and is liable to be dealt with within the frame of the Act referred above. The failure to repatriate the amount has triggered Sub-Section 4 of Section 23B of the Foreign Exchange Regulation Act, 1947, and the amount was adjudged payable. This petition was filed on the grounds that the conditions prescribed by board for security at the time of hearing appeal is unlawful and the action is contrary to the

fundamental rights of the petitioner and its directors and that it was so adjudged to be in violation of the fundamental rights by a Bench of Lahore High Court, which conclusion be followed by this Bench, as argued.

4. Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973 is in respect of trial and not appeal. Original proceedings were initiated by Adjudicating Officer and no such restrictions were imposed at that point in time; hence requirement of Article 10-A were not violated. The appeal before the Board was filed under the relevant law which required the appellant or the petitioner to secure the amount by way of deposit of a cash. The law is clear and no interference is required. Similarly, petitioner has lost the case before adjudicating authority in terms of the judgment dated 16.05.2024; it is only the Appellate Board which under proceedings required the petitioner / appellant to deposit the amount and as we understand this is not violation of any fundamental right. Fair trial is / was not burdened by any restriction. Appeal, for the purposes of re-appreciating the evidence and record, is considered as continuation of trial but financial restriction for the appellate stage is the lawful / statutory cap as legislated. Appeal is a creation of statute, and although right of appeal is a fundamental right but conditions attached could not be deemed to be unconstitutional. Reliance is placed on the following cases:-

- i) The Supreme Court of India – 1980 AIR 2097 (Seth Nand Lal & Anr vs State Of Haryana & Ors)
- ii) The Supreme Court of India – AIR 1975 Supreme Court 1234 (Anant Mills Co. Ltd. vs State Of Gujarat & Ors)
- iii) The Supreme Court of India – AIR 1999 Supreme Court 1818 (The Gujarat Agro Industries Co. Ltd vs Municipal Corporation Of City)
- iv) The Supreme Court of India – Civil Appeal No.3464 of 2022 arising out of SLP (Civil) No.30369 of 2017 (The Director, Employees State Insurance Health Care & Ors. Versus Maruti Suzuki India Limited & Ors.)

5. If the proposed question / argument is considered as violation of fundamental rights then the litigation involving finances will never be secured. Summary chapter trial imposes condition even during trial but was not adjudged as violative of fundamental rights. So are the cases covered under FIO 2001 where leave is inevitable to contest the suit. Case of Searl IV Solution (Pvt.) Ltd.<sup>1</sup> is a prime example where the Hon'ble Supreme Court restricted right by compelling the litigant to deposit 50% of the tax calculated by authorities. The statute has restricted hearing subject to deposit. On this count, the argument that the fundamental right of the petitioner has been infringed by virtue of an order which required them to deposit the amount in terms of the relevant law i.e. Section 23,C(4) of the Foreign Exchange Regulation Act, 1947, is not convincing; more importantly the relevant law is not challenged before us in this petition and for no reason we should continue to proceed for a challenge when the law itself was not challenged. The ad-interim order passed in C.P. No.D-1075/2024 (another Constitution Petition not fixed before us) by this Court also does not suggest any law of the nature as under discussion was challenged, nor is that binding on this Bench being ad-interim order; hence no interference is required. Pre-requisites of appeals, requiring leave, security, or deposits, do not violate the right to fair trial and due process. When legislature can give right of appeal, it can attach conditions with such appeal. Courts in both Pakistan and India have upheld these mechanisms as consistent with constitutional principles, provided they are reasonable, uniformly applied, and not excessively onerous. These measures strike a balance between preventing frivolous litigation and ensuring

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<sup>1</sup> 2018 SCMR 1444 (Searl IV Solution (Pvt.) Ltd. & others vs., Federation of Pakistan & Others)

access to justice, thereby upholding the principles of fairness and due process, especially in financial matters. Needless to say that fair trial and due process is to be adopted as per the relevant statute/law and Constitution, not otherwise.

The petition is dismissed *in limine* along with all listed applications.”

From perusal of the above it clearly reflects that the issue has been dealt with in detail, whereas, it has been further held that Pre-requisites of appeals, requiring leave, security, or deposits, do not violate the right to fair trial and due process and when legislature can give right of appeal, it can attach conditions with such appeal. This observation clearly answers the objection of the Petitioners Counsel as to challenge of vires of law in question. Even if the vires was not under challenge in the said case, the Court has attended to it and has held that the provision in question is not ultra vires at least.

Moreover, the said judgment is binding on this Bench and no case for referral of the matter to a larger bench is made out. In view of the above, this Petition is dismissed *in limine* with pending applications for the reasons so assigned in C. P. No. D-3066 of 2024.

**J U D G E**

**J U D G E**

Arshad/