

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.-982 of 2024
[Kashif Aijaz vs. Sarmaya Enterprises & Another]

Date	Order with signature of Judge(s)
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1. For orders as on maintainability of suit.
2. For orders on office objection at flag 'A'.
3. For orders on CMA No.10041/2024.
4. For orders on CMA No.10234/2024.

18.09.2024

Sardar Sher Afzal, advocate for the plaintiff.
Mr. Abdul Ghaffar, advocate for the defendant No.2.

Counter affidavit, written statement and statement etc has been filed by the learned counsel for the defendant No.2, which are taken on record.

This suit essentially seeks a restraint to be placed upon encashment of certain cheques, admittedly issued by the plaintiff and to restrain initiation of criminal proceedings pursuant thereto. The court appears to have raised an objection with respect to the maintainability and as a consequence thereof amended plaint has been filed, however, the infirmity remains manifest from the record. While juxtaposition of prayer clauses has been made in the amended plaint, the desired relief sought is the same and the prima facie offends section 56(e) of the Specific Relief Act.

Perusal of the office objection demonstrates that the undertaking required, stipulating that no other remedy has been sought in respect of the lis under consideration has not been filed. Per learned counsel for the plaintiff such an undertaking was subsequently filed on 09.07.2024, however, it merely states that no other suit/petition is pending before this court in respect of the same cause of action. Learned counsel was confronted with the statement filed by the counsel for the defendant No.2 showing that the same list is perhaps being agitated in other proceedings, inter alia, before the court of Xth Additional District & Sessions Judge, Karachi-East. Upon being so confronted, he states that the other proceedings invoked are pending, however, they are not before this court.

The plaintiff has remained unable to demonstrate entitlement to file this suit, per section 42 of the Specific Relief Act. Furthermore, the counsel could not dispel preponderance objection that relief sought cannot

be entertained under section 56 of the Specific Relief Act. Learned counsel for the defendants No.2 points out that the plaintiff has relied on purported agreement annexed as Annexure P/8, available at page 63 of the court file, original document is shown to the court bearing the same e-stamp etc and it is demonstrated that copy annexed with the suit is a forgery. The original document has been seen and returned to the learned counsel. Learned counsel for the defendant No.2 points to Annexure A/1 to the written statement which is bail order pertaining to the plaintiff issued by the Xth Additional District & Sessions Judge, Karachi-East in Bail Application No.3143 of 2024. Counsel draws attention to the last three lines, paragraph 3 on page 3, which states that “Upon review, it appears that the date on the first page of the agreement was altered from ‘08-07-2023’ to ‘15-07-2023’, and the second page was completely changed.” Therefore, irrespective of the fate of the suit it is imperative for this court to consider the aspect of whether the plaintiff attempted to obstruct and/or prejudice the process of law or due course of adjudication proceedings.

In view of the aforesaid, the plaint herein is hereby rejected per order VII Rule 11 CPC. Let show cause notice be issued to the plaintiff per section 17(2) of the Contempt of Court Ordinance, 20023, to answer as to why proceedings may not be initiated there against for obstruction and/or attempting to prejudice the course of judicial proceedings.

To come up on 30.10.2024. Issue notice to the learned Advocate General Sindh either be present in person or nominate an AAG to assist this court for framing of charge per chapter 19 Cr.P.C. and to prosecute if so required; in pursuance of judgment of Division Bench of this Court reported in the case of Ekram ud Din Khan vs. D.G. FIA and 3 others (PLD 2023 Sindh 90).

Judge