ORDER SHEET
THE HIGH COURT OF SINDH, KARACHI
Suit No. 765 of 2024

Dated:	Order with signature of Judge(s)

1.For orders as to maintainability of this suit vide order dated 15.7.2024.
2.For hearing of CMA No.10115/2024.
3.For hearing of CMA No.10116/2024.

31.07.2024:

Mr. Raj Ali Wahid, Advocate for the Plaintiff.

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1 and 2. Deferred.

3. This application was maintained when the suit was presented on 11 July 2024. The matter was listed before me on 15 July 2024 and on which date, as the issue involved related to seeking relief for restraining certain cheques from being presented, I framed an issue as to the maintainability of this Suit and adjourned this matter for hearing on 23 July 2024. On 23 July 2024 I heard this suit on the issue of maintainability also on this application and was inclined to find the suit as maintainable and grant ex-parte ad-interim relief to the Plaintiff and had even dictated such an order orally in court.

While this Suit was instituted by a private limited company known as Vista Apparel (Private) Limited, unknown to me at the time, it seems that a Constitutional Petition bearing CP No. D-3513 of 2004 had also been presented before this Court on 15 July 2024 and which had been instituted by the Chief Executive of Vista Apparel (Private) Limited seeking in effect the same relief as was being sought on this application. Mr. Raj Ali Wahid is also the counsel for the Petitioner in that Petition and who had on 15 July 2024 appeared in that Petition and obtained ex-parte ad interim orders from this Court.

Mr. Raj Ali Wahid, Advocate appeared before me on both 15 July 2024 and on 23 July 2024 and on both dates while arguing on the maintainability of the Suit and on this Application at no time disclosed that he had also maintained C.P. No.D-3513 of 2024 seeking the same relief on the same cheques. I have also perused the Memo of the Petition in CP No. D 3513 of 2024 and which also does not disclose in the Memo of the Petition that this Suit had been instituted seeking such relief from this Court on the same Cheques.

The jurisdiction that this Court exercises on its original side under Section 9 of the Code of Civil Procedure, 1908 is concurrent with the jurisdiction that this Court exercises

under Article 199 of the Constitution of the Islamic republic Pakistan, 1973. Taking advantage of such concurrent jurisdiction it has now become a practice amongst counsel to attempt to obtain relief for a client in one jurisdiction and if not obtained to "try their luck" in the other jurisdiction. This practice was deprecated by this Court in an unreported order entitled Suit No. Nil of 2020 (***Damen Shipyards Gorinchem B.V. vs. The Ministry of Maritime Affairs & Others***) wherein my learned brother Muhammad Junaid Ghaffar, J. had averred to this issue when he held as hereinunder:

> " … *This Court i.e the High Court of Sindh at Karachi has been conferred with two parallel jurisdictions in civil matters. The one is under Article 199 of the Constitution of Pakistan, being exercised presently by learned Division Benches of this Court. The other is the Original Side Jurisdiction, which is though conferred under the Civil Courts Ordinance, 1962; but is an independent jurisdiction of this Court acting as a High Court being a Constitutional Court and not a District Court, as recently affirmed by the Hon'ble Supreme Court in the case reported as Searle IV Solution (Pvt.) Ltd and others V. Federation of Pakistan and others (2018 S C M R 1444).*
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> *Time and again it has been noted with concern as well as anguish that parties are coming before this Court (Sindh High Court) by resorting to any one of these remedies; i.e. either by way of a Civil Suit or a Constitutional Petition and after having failed in getting any ad-interim order(s) to their satisfaction, immediately make efforts to seek the other remedy as the case may be. At times, (though very remotely) the proper course is adopted by the parties and their Counsel by first withdrawing one of the cases/remedies with a permission to seek the other, and then approach the second Court for availing such remedy, which is then dealt with by such Court accordingly. However, recently, it has been noticed that mostly, after failing to get any ad-interim order(s)/ relief(s), the parties immediately approach the other Court and make an attempt to seek ad-interim orders without properly disclosing and or assisting the Court as to filing and seeking of the 1st remedy, and even if it is so disclosed, the same is done in a manner that the Court is not able to take immediate notice of it while hearing the application for passing of an ad-interim order**. This conduct on the part of the parties and their Counsel by way of choice, will, and Bench hunting tactics has resulted in multiplicity of litigation and so also making mockery of the Judicial System due to availability of these two jurisdictions in one High Court in the same premises. It is an attempt to take chances before Benches / Judges of one's choice**. The proper course which needs to be adopted is, that first, the party should withdraw its first litigation by apprising the Court of the true facts as well as reasons for doing so, and then seek permission to pursue any other remedy, which may include the remedy under the Constitutional Jurisdiction. If the Court is satisfied, then permission can be granted and naturally such permission would also include permission to pursue the other remedy. However, without doing his and after filing and availing the second remedy, the party is not permitted to seek withdrawal of the first litigation by stating that it is being withdrawn (though unconditionally); but at the same time seeking implied permission to pursue the Petition already filed. If such an application is granted, this would amount to giving permission to proceed with the Petition as well. This in the given facts is not permissible and the Court must take notice of the same. It is settled law that once an application has been filed for withdrawal with a permission to file a fresh case, then notwithstanding the fact that the Court might not have granted any such permission, it is always deemed to be granted. Therefore, if this application is allowed it would not only permit withdrawal; but an implied permission to pursue the other remedy already chosen and availed by the Plaintiff.*
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> *The Hon'ble Supreme Court in the case reported as Trading Corporation of Pakistan v Devan Sugar Mills Limited (PLD 2018 SC 828), though while dealing with a challenge to an ex-parte decree / order and the selection of remedies chosen by a litigant, but has affirmed this view that a litigant after choosing to select a particular remedy from a host of all remedies available to him, cannot resort to the other remedy which was available before making a selection. It has been held that*

once a selection is made then the party generally (meaning at least without due course and permission) cannot be allowed to hop over and shop for one after another coexistent remedies. The relevant observations are as under;

> *8. Heard the counsel and perused the record. We have examined the contents of the application under section 12(2) C.P.C. which was filed on 7.12.2011, heard and decided by the executing Court on 7.8.2012 and maintained by High Court on 9.8.2016 and the one filed under section 47 C.P.C. on 14.10.2016. We have noted that facts and ground in both set of the proceedings are substantially same. The moment suitor intends to commence any legal action to enforce any right and or invoke a remedy to set right a wrong or to vindicate an injury, he has to elect and or choose from amongst host of actions or remedies available under the law. The choice to initiate and pursue one out of host of available concurrent or co-existent proceeding/ actions or remedy from a forum of competent jurisdiction vest with the suitor. Once choice is exercised and election is made then a suitor is prohibited from launching another proceeding to seek a relief or remedy contrary to what could be claimed and or achieved by adopting other proceeding/action and or remedy, which in legal parlance is recognized as doctrine of election, which doctrine is culled by the courts of law from the well-recognized principles of waiver and or abandonment of a known right, claim, privilege or relief as contained in Order II, rule (2) C.P.C., principles of estoppel as embodied in Article 114 of the Qanun-e-Shahadat Order 1984 and principles of res-judicata as articulated in section 11, C.P.C. and its explanations. Doctrine of election apply both to the original proceedings/action as well to defences and so also to challenge the outcome on culmination of such original proceedings/ action, in the form of order or judgment/decree (for illustration it may be noted that multiple remedies are available against possible outcome in the form of an order/judgement/decree etc. emanating from proceedings of civil nature, which could be challenged/defended under Order IX, rule 13 (if proceedings are ex-parte), section 47 (objection to execution), section 114 (by way of review of an order), section 115 (revision), under Order XXI, rules 99 to 103 C.P.C. and section 96 C.P.C. (appeal against the order/judgment) etc. Though there is no bar to concurrently invoke more than one remedy at the same time against an ex-parte order/judgment. However, once election or choice from amongst two or more available remedy is made and exhausted, judgment debtor cannot ordinarily be permitted subsequently to venture into other concurrently or coexisting available remedies. In a situation where an application under Order IX, rule 13, C.P.C. and also an application under section 12(2), C.P.C. seeking setting aside of an ex-parte judgment before the same Court and so also an appeal is filed against an ex-parte judgment before higher forum, all aimed at seeking substantially similar if not identical relief of annulment or setting aside of ex-parte order/judgment. Court generally gives such suitor choice to elect one of the many remedies concurrently invoked against one and same ex-parte order/judgment, as multiple and simultaneous proceedings may be hit by principle of res-subjudice (section 10, C.P.C.) and or where one of the proceeding is taken to its logical conclusion then other pending proceeding for the similar relief may be hit by principles of res-judicata. Giving choice to elect remedy from amongst several coexistent and or concurrent remedies does not frustrate or deny right of a person to choose any remedy, which best suits under the given circumstances but to prevent recourse to multiple or successive redressal of a singular wrong or impugned action before the competent forum/court of original and or appellate jurisdiction, such rule of prudence has been evolved by courts of law to curb multiplicity of proceedings. As long as a party does not avail of the remedy before a Court of competent jurisdiction all such remedies remain open to be invoked. Once the election is made then the party generally, cannot be allowed to hop over and shop for one after another coexistent remedies.....".*

Keeping in mind that this order was widely circulated and which actually resulted in certain administrative changes being made in this Court i.e. that before filing a case an affidavit is to be sworn by the litigant that no parallel litigation has been filed, one would have hoped that such practice would be discontinued. ***However, in this case it seems that the intention of this Order has not had the requisite impact***. Keeping in mind that the Cheques had been issued on the account maintained by a private limited company and keeping in mind that in such circumstances, the criminal complaint would be registered as against the Director and/or Chief Executive of the Company, a decision has been made to bifurcate the claim and to maintain two independent *lis.* While in theory this could be done one would ask the question as to why the Chief Executive, or for that matter all other persons against whom a criminal complaint could have been maintained, had not have been impleaded as a co-plaintiff in this Suit or as to why the private limited company could not have been impleaded as a Co-Petitioner in the petition. **The answer to that is simple, an attempt was being made to seek the same relief before two different forum in the hope that relief would be obtained in at least one of those forums and which might have been prejudiced at either forum by the disclosure of the other litigation. This to my mind is a clear instance of both misleading the court and forum shopping, which can only be regarded as sharp practice on the part of Mr. Raj Ali Wahid, Advocate**.

On the face of it, Mr. Raj Ali Wahid, Advocate has:

(i) deliberately suppressed the institution of CP No. D 3513 of 2024 from this Court; and

(ii) deliberately suppressed the fact that ex-parte ad interim relief was obtained in CP No. D 3513 of 2024;

The Supreme Court of Pakistan in a decision reported as **Zakir Mehmood vs. Secretary, Ministry of Defence (D.P) Pakistan Secretariat, Rawalpindi and others**[1] has held that:

> " … *9. Before parting with the order, we find it necessary to emphasise that it is high time that courts and tribunals should regularly exercise their powers to impose reasonable costs to curb the practice of instituting frivolous and vexatious cases by unscrupulous litigants, which has unduly burdened their dockets with a heavy pendency of cases, thereby clogging the whole justice system. The possibility of being made liable to pay costs is a sufficient deterrence to make a litigant think twice before putting forth a false or vexatious claim or defence before court. The imposition of these costs plays a crucial role in promoting fairness, deterring frivolous lawsuits, encouraging settlement, and fostering efficient use of resources: (i) promoting fairness: imposing costs in litigation helps to create a level playing field for both plaintiffs and defendants. By requiring both parties to bear the*

[1] 2023 SCMR 960

financial burden of litigation, the system encourages parties to consider the merits of their case before initiating legal action. This helps to ensure that only those with legitimate grievances pursue legal recourse, reducing the possibility of abuse; (ii) deterring frivolous lawsuits: imposing costs can discourage parties from filing baseless or frivolous claims, as the risk of incurring significant financial losses may outweigh any potential gains. This helps to protect defendants from having to defend themselves against meritless claims, reducing strain on the court system and preserving judicial resources; (iii) encouraging settlement: when parties are aware of the potential costs associated with litigation, they may be more inclined to engage in settlement negotiations or alternative dispute resolution methods. This can result in more efficient resolution of disputes, lower costs for all involved, and a reduced burden on the court system; (iv) fostering efficient use of resources: imposing costs in litigation incentivizes parties to focus on the most relevant and important aspects of their case, as both parties will want to minimize their expenses. This can lead to more efficient use of legal resources, including court time and the expertise of legal professionals, and may result in more focused and streamlined proceedings. The practice of imposing costs would thus cleanse the court dockets of frivolous and vexatious litigation, encourage expeditious dispensation of justice, and promote a smart legal system that enhances access to justice by taking up and deciding genuine cases in the shortest possible timeframe."

As clarified by the Supreme Court of Pakistan, under Section 151 of the Code of Civil Procedure, 1908 this Court has inherent jurisdiction to develop its procedure in respect of matters pertaining to abuse of process. I have no doubt that the manner in which this case has been conducted, on account of Mr. Raj Ali Wahid Advocate misleading the court and which comes within the purview of abuse of process and which as per the decision of the Supreme Court of Pakistan warrants for costs to be awarded to create "*a sufficient deterrence to make a litigant think twice.*" This court has traditionally avoided imposing costs or restrained itself from imposing costs as punitive sanction. However, keeping in mind the unfortunate practice that has developed over the years in this Court I would think that this practice will continue unless costs are imposed that are higher than a fee being charged by counsel, thereby putting the litigant and the counsel on notice that if such practice is indulged in, the economic loss suffered will be greater than the benefit received by either of them. To my mind this amount should not be less than three times such a fee so as to create a "sufficient deterrence" to **dissuade such a practice** and keeping in mind the average fee charged for such litigation while dismissing this application on the grounds that the Plaintiff is not entitled to the relief claimed as having come to this Court with unclean hands, I impose costs on the Counsel of Rs.3,000,000/- (Rupees Three Million) to be deposited in the account of the Sindh High Court Clinic.

The office is also directed to place a copy of this Order in CP No. D-3513 of 2024 and to make an appropriate endorsement in the order sheet of that petition.

J U D G E

Nasir P.S.