

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
High Court Appeal No. 36 of 2025

Date

Order with signature of Judge

FRESH CASE:

1. For order on Office Objections a/w reply as at "A".
2. For hearing of Main Case.
3. For order on CMA No.240/2025 (Stay).

Dated: 5th March 2025

M/s. Rehan Kayani and Syed Naveed Hussain Wasti,
Advocate for Appellant.

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Through this High Court Appeal Order dated 23.01.2025 passed on CMA No.16053/2024 has been impugned and on 18.02.2025 learned counsel for the Appellant was confronted to satisfy this Court as to the observations of the learned Single Judge of this Court recorded in Paragraph 4 onwards, as the facts so ascertained, *prima facie* do not require any further interference.

Today, learned counsel for the Appellant has reiterated the same arguments and has not placed any substantial documents to controvert the above facts. He has however, argued that the initial hold of the consignment by Respondent No.1 was premised on some other issue which stands resolved in favor of the Appellant by Respondent No.6, therefore, the impugned order cannot be sustained.

Heard learned Counsel and perused the record. It will be advantageous to refer to the relevant findings of the learned Single Judge in the impugned order, which reads as follows: -

"4. I have examined the documents produced by both sides. The financial instrument issued by the Bank at the

Plaintiff's request to the exporting beneficiary at the UAE was numbered AKB-IMP-016938-08052024 for a total of USD 73,273.50 against shipment of textile fabric from China. Per the Plaintiff's documents, since shipments were made in stages the financial instrument was not exhausted, the most recent shipment being under BL No.027E639407 dated 08-07-2024 with a commercial invoice dated 01-07-2024 for USD 10,058.40 which was the balance remaining under the financial instrument. However, the documents produced by the Bank reflect that the entire amount of the financial instrument i.e. USD 73,273.50 had already been exhausted by the Plaintiff in the shipment that had arrived under BL No. WOL0000213 dated 03-03-2024 with commercial invoice dated 01-03-2024. Furthermore, in the BL produced by the Bank the shipper is 'Zhejiang Sunny Imp Exp Co. Ltd.' which is also the supplier named in the contract produced by the Plaintiff. On the other hand, the BL and GD now being relied upon by the Plaintiff mention a different shipper namely 'Anhui Shengshengmei Import and Export Ltd.'

5. *Prima facie, the Bank's documents are reliable and suggest that even after exhausting the financial instrument of the Bank as far back as March 2024, the Plaintiff has been misusing the same financial instrument in subsequent GDs, including the subject GD, for clearing consignments apparently to evade restrictions on remitting foreign exchange.*

6. *Even though the hold on the subject consignment flagged in the PSW system does not turn out to be an issue to the importability of the consignment, however, on the facts coincidentally exposed the Plaintiff can be questioned over violation of the Foreign Exchange Regulation Act, 1947 and the Customs Act, 1969. For the present, it will suffice to hold that prima facie the Plaintiff has not approached this Court with clean hands which is reason enough to decline him a temporary injunction in equitable jurisdiction. Therefore, CMA No.16053 / 2024 is dismissed while leaving the Customs (Defendant No.6) to deal with the hold on the subject consignment as per law."*

From perusal of the aforesaid observations, it reflects that as per the bank record the Appellant has fully utilized the financial instrument against the document bearing No.AKB-IMP-016938-08052024 for US\$ 73,273.50, whereas the Appellant has made an attempt to utilize the same financial instrument for further import, which already stands exhausted under BL No.WOL0000213, dated 03.03.2024 with invoice dated 01.03.2024. The Appellant's Counsel has not been

able to controvert such stance of the Respondent Bank with any documents so issued in its favour and, therefore, at this injunctive stage, in our considered view, no case for further indulgence is made out. At best the Appellant ought to have it resolved with Respondent No.1, being its Banker, by providing necessary documents for reconciliation, if, as contended, the Respondent No.1 had committed a mistake in this regard.

As to the argument that the ground on which Respondent No.1 had put hold on the Appellants consignment was resolved in its favor, it would suffice to observe that the learned Single Judge has also dealt with this by observing that on the facts coincidentally exposed, the Appellant can be questioned on violation of various other laws and has dismissed the injunction application by observing that the Appellant has not approached this Court with clean hands, which is a reason enough to decline a temporary injunction in equitable jurisdiction. We do not find any justifiable cause or reason to interfere with such observations and at best, the Appellant can substantiate its claim at the stage of leading evidence.

In view of hereinabove facts and circumstances of this case, this High Court Appeal is meritless, hence ***dismissed*** in *limine* with pending applications.

ACTING CHIEF JUSTICE

JUDGE