

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 836 of 2012

J U D G M E N T

Date of hearing: 21.11.2013.

Plaintiff: Mr. Khurram Naseemuddin through Mr. Abdul Ghaffar Khan, Advocate.

Def. No.1 & 2: Federation of Pakistan and Mr. Gulsher Mugheer, Inspector, FIA, through Mr. Abdul Sadiq, Standing Counsel alongwith Sub-Inspector/I.O. Ghazanfar Ali of FIA.

Def. No.3: Habib Bank Limited called absent.

Intervener: Gulzar Shah through Mr. Mohamed vawda, Advocate.

NAZAR AKBAR, J. The plaintiff has filed this suit for damages, declaration and permanent injunction against Director General, FIA, Islamabad, Inspector, FIA, Commercial Banks Circle, and Habib Bank Limited with the following prayer:-

- “(i) Declare that the Defendants No.1 and 2 are conducting a fishing and roving inquiry against the plaintiff.
- (ii) Declare that the notices dated 02.07.2012 (Annex “C”) and dated 05.07.2012 (Annex “D”) have been issued without lawful authority, ultra vires, void ab initio and are of no legal effect.
- (iii) Direct the Defendants to forthwith close down the malicious enquiry against the Plaintiff.
- (iv) Prohibit the Defendants jointly and severally from directly or indirectly through their officers, subordinates or employees from taking any adverse action, initiating any penal action or adopting any coercive measures against the plaintiff on the basis of Notices dated 02.07.2012 (Annex “C”) and 05.07.2012 (Annex “D”) in connection with Enquiry No.109/2011 and/or seeking and providing any documents in connection therewith and/or harassing in any manner whatsoever.

- (v) Grant damages of Rs.50 million against the Defendant No.2.
- (vi) Grant any such relief which this Hon'ble Court deems just and proper in the circumstances of the case.
- (vii) Grant costs."

2. The examination of prayer clauses instantly gives an impression that through the civil suit the plaintiff intends to stop criminal investigation initiated by the Federal Investing Agency, therefore, by order dated 30.10.2013 this Court has put the plaintiff on notice to satisfy the Court on the issue of maintainability of this suit. I have heard learned counsel for the plaintiff and dismissed the suit as not maintainable by a short order on 21.11.2013. Following are the reasons for dismissal of suit as not maintainable.

3. Briefly stated, the plaintiff has challenged notices issued by FIA to M/s. Habib Bank Limited on 2.7.2012 and 5.7.2012 in furtherance of an inquiry that certain immovable properties of one Gulzar Shah have been fraudulently offered by Shamail Sikandar and Muhammad Naveed to various banks for obtaining loan against the said properties in favour of M/s. Khurram Enterprises.

4. Admittedly, the Defendants No.1 and 2 are Officers of FIA established under the Federal Investigation Agency (FIA) Act, 1974 are fully competent to enquire into the fraud committed by different persons in obtaining loans from the Banking Institutions. The Defendant No.2 is Inspector, FIA posted in Commercial Banks Circle and it comes within the purview of his duty to inquire into and investigate complaint registered and numbered and marked to

him in terms of Section 5 of the Federal Investigation Agency Act, 1975.

5. Learned counsel for the Defendant No.2 namely Inspector of FIA has filed counter affidavit to the application for interim relief and in this counter affidavit he has comprehensively made parawise reply to the plaint and raised the question of maintainability of the suit. He has annexed Progress Report of Enquiry No.109/2011 of FIA CPC, Karachi. However, the plaintiff had obtained interim orders on 26.7.2012 against the Defendants No.1 & 2. Learned counsel for the Plaintiff has contended in para-10 of the plaint that the Defendant No.2 illegally, without any reason and mala fide in absence of any complaint against the Plaintiff or his brother has initiated enquiry on the alleged availing of loan against fictitious property. He has further contended that FIA cannot make a roving enquiry and therefore, the action is without lawful authority. However, he has not touch the bar of Section 56(d)(e) of Specific Relief Act, which reads:-

56. Injunction when refused. An injunction cannot be granted--

(d) to interfere with the public duties of any department of ¹³[the ¹⁴[Federal Government], ¹⁵* * * or any Provincial Government}, or with the sovereign acts of a Foreign Government;

(e) to stay proceedings in any criminal matter;

6. The Plaintiff himself has referred to Section 5 of the FIA Act, 1975 and yet he contended that the suit is maintainable against the FIA to stop an investigation. The Plaintiff has a remedy against such action of the FIA by knocking the doors of the Court functioning under Criminal Procedure Code to challenge the

legality of action taken or intended to be taken against the Plaintiff under the FIA Act, 1975. The perusal of the FIA Act, clearly indicates that in terms of Section 2 the FIA Act is applicable to all the citizens of Pakistan and in terms of Section 2(b) of the Act the course of action to be adopted by an aggrieved party is under the Code of Criminal Procedure since in terms of Section 2(d), the officials of FIA including the defendant No.2 are performing their duties as officials of Provincial Police in relation to inquiry and investigation of an offence. Therefore, the Plaintiff instead of filing civil suit has to invoke the jurisdiction of Court established and functioning under Chapter II of Cr.P.C., 1898 in accordance with Section 6 of the Code to challenge the action taken by FIA or intended to be taken pursuant to the notice impugned in this suit. The remedy is quashment, if made out, and not simple declaration and decree prohibiting the Public Functionaries from performing their duties within the four corners of law.

7. The counsel for the Plaintiff has referred to and relied upon the judgment reported as *Mian HAMZA SHAHBAZ SHARIF ..VS.. FEDERATION OF PAKISTAN and others (1999 P.Cr.L.J 1584)* & *Messrs K.G. Traders and others ..Vs.. DEPUTY COLLECTOR OF CUSTOMS and 4 others (PLD 1997 Karachi 541)*. Both these cases have no bearing on the case of the Plaintiff. The plaintiff has invoked the jurisdiction of this Court under Section 9 CPC and seeking such declaration and injunction as if the impugned notice have disturbed plaintiff's legal character or right to property, therefore, unless civil right and character is in danger, the plaintiff's right to seek declaration and injunctions against public functionaries are specifically barred. The case reported in Pakistan

Criminal Law Journal deals with proceedings initiated under Section 561-A Cr.P.C, 1898 and the proceedings were quashed in exercise of power conferred on the High Court under Article 199 of the Constitution. In the case in hand this Court is exercising Original Side Jurisdiction is seized of a civil suit and cannot pass an order in terms of Section 561-A Cr.P.C. as it would amount to usurpation jurisdiction of Court established under the Code of Criminal Procedure, 1898. Similarly the case reported in ***PLD 1997 Karachi 541*** is also not relevant. In this case the dispute arose on a show cause notice issued by the Collector of Custom to the Plaintiff and the Plaintiff has contested the show cause notice while showing to the Court some statutory provisions which were violated by the Customs Authorities. In the instant case the notice issued and impugned are not in violation of any statutory authority of FIA and even if that be so such notice can be challenged before competent court having jurisdiction to quash action of FIA on all as any of the allegation leveled by the plaintiff in the instant plaint. The claim of the Plaintiff that FIA is acting without any complaint is also incorrect since the Defendants are enquiring into a written complaint by one Gulzar Shah, which has been numbered as Enquiry No.109/2011.

8. Learned counsel beside the above reported judgments has also mentioned the following three cases in para-15 of the plaint.

- i. ASSISTANT DIRECTOR INTELLIGENCE AND INVESTIGATION, KARACHI ..VS.. M/S. B.R. HERMAN and others (PTCL 1993 CL 539)
- ii. SHAHZAD AHMED CORPORATION ..VS.. FEDERATION OF PAKISTAN and others, (2005 PTD 23)
- iii. 2005 PTD (Trib) 135

9. The counsel for the plaintiff did not refer to these case laws during the course of arguments. I have examined these case laws and none of the citation is relevant in the context of present suit. No other law or arguments were advanced on the question of maintainability of the suit. Therefore, the same was dismissed as not maintainable. These are the reasons for the short order.

JUDGE

Approved for reporting

JUDGE

Karachi
Dated: _____

SM