

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Suit No.2093 of 2015

Date Order with signature of Judge

For further orders in view of the Court order dated 23.6.2017.

14.07.2017

Mr. Mukesh Kumar G. Karara, Advocate for the plaintiff.
Mr. Sharaf Din Mangi, State Counsel alongwith
Dr. Wali Muhammad Leghari, Program Manager, HPCP Sindh
and Mr. Muhammad Younus, Section Officer, Health
Department.

With great respect I am unable to appreciate the way the plaintiff has got order dated 22.5.2017 on an urgent application bearing CMA No.8306/2017 whereby the suit was placed in Court and subsequent orders dated 31.5.2017, 15.6.2017 and 23.6.2017 in the name of "further orders" on the said application for urgent hearing passed in this suit.

2. Learned counsel for the plaintiff in the application for urgent hearing (**CMA No.8306/2017**) declared that there is an urgency and got the suit fixed for order in Court on **22.5.2017**. However, neither there was any application pending in this suit for interim order nor any other application was filed to be disposed of urgently on **22.5.2017**. In the cover of orders on urgent application, learned counsel for the plaintiff on **22.5.2017** made the following submissions which were incorporated in the order:-

*"To a query, learned counsel for **plaintiff attempted to justify the urgency that Defendant No.2 and 3 (Procuring Agencies) have admitted the claim of Plaintiff for outstanding dues of 111.06 million [PK Rs.111060075/-] in their pleadings/ Written Statement; Paragraphs-3 and 8. The counsel further states that on 30.06.2017, the funds will lapse as new financial year will start and the matter will be further delayed to the***

detriment of Plaintiff. These are the convincing grounds for granting the urgency, therefore, the urgency is granted. However, **in view of Paragraph-5 of the Written Statement that contract was awarded to Plaintiff after fulfillment of SPPRA Rules, Office is directed to fix this matter on 31.05.2017** as per Roster, but on that day Defendant No.3 (The Program Manager) will be present in person along with Deputy Secretary Health Department to assist the Court the reasons for not paying the outstanding dues of Plaintiff. If, for any reason, the officials fail to appear then other measures may be adopted by the Court for ensuring the attendance of these Officials.”

3. Then on **31.5.2017** the case was fixed for **“further orders”**.

However, only one of the two officers was present and the case was adjourned to **15.6.2017**. On **15.6.2017** Deputy Secretary Health, Mr. Zahid Khemtio and Program Manager Hepatitis-C Dr. Wali Muhammad were present when learned counsel for the plaintiff made a startling generous offer to forego his claim of 80 Million out of 111.06 Million as if his claim had already been adjudicated and suit had been decreed and he was arguing execution application. On his offer, the officers present in Court almost conceded and sought time to *“acquire consensus with the relevant officers in this regard”*, therefore, following order was passed on 15.06.2017.

*“Learned counsel for the **plaintiff has made an offer to present Deputy Secretary Health that he will not press his claim of mark up stand in the sum of Rs.8 crore for four years and further damages as claimed in case the payment is made forthwith as the plaintiff is in dire need of finance, to which Deputy Secretary present requests for time in order to acquire consensus with the relevant office in this regard, it is however it is stated that the budget for the current financial year has already lapsed. For this purpose only the matter is kept for 23.6.2017.”***

4. On **23.6.2017** again the position was same, Dr. Wali Muhammad Leghari (defendant No.3) sought two weeks’ time to do the needful. Therefore, following orders were passed.

*“This Court vide its order dated 15.06.2017 granted a week’s time on the specific request of the Officer present in Court to acquire consensus of the relevant officers in this regard as to the payment of Rs.111 Million, where he has already given up his claim for markup in the sum of Rs.8 Crores, as well as his claim of damages. The **Officer present in Court submits that he was unable to get the consensus from the relevant officers.** Two weeks’ time as a last opportunity is given to do the needful. To come up on 14.7.2017.”*

The above proceedings reflect that an effort was made to get the suit decreed on an application for urgent hearing (CMA No.8306/2017) on the basis of written statement by avoiding proper adjudication on merit in accordance with law.

5. Today again Mr. Wali Muhammad Leghari, Program Manager HPCP, Sindh (defendant No.3) and Mr. Muhammad Younus, Section Officer, Health Department for defendant No.2 are present in Court, when they were confronted with the written statement filed by defendant No.3, they informed the Court that the said written statement was filed and verified by one Mr. Abdul Khaliq son of Jamaluddin Sheikh as defendant No.3 on **27.2.2017** just 15 days before his retirement from service on **14.3.2017** and it was also signed by Deputy Secretary, Health on behalf of defendant No.2. The first impression from the written statement is that it was not shown to any law officer for evaluation. However, routine preliminary objections were also taken.

6. I have purposely reproduced above orders as on each date the suit was listed in Court for “further orders” and the initial order dated **22.5.2017** was on an application for urgent hearing. The suit is not ripe for final disposal. Even till date the counsel for the plaintiff has not filed any application for disposal of suit on admission in written statement in terms of **Order XII Rule 6 CPC**. I am sorry to observe that failure to file an application under Order XII Rule 6 CPC with an

urgent application was not without purpose as it may be appreciated from the facts narrated above. An attempt has been made to hoodwink the process of the Court and the law.

7. The perusal of record shows that defendants No.2 and 3 have filed written statement on **27.2.2017** and till date defendant No.1 has not filed written statement nor his right to file written statement has been stuck off. The diary of the Additional Registrar dated **18.4.2017** shows that the case is to be fixed in Court on **21.8.2017** for exparte orders against defendant No.1. However, even before **21.8.2017**, if the “consensus is developed amongst the relevant officers” in the health and finance department, the suit could be disposed.

8. Generally response from the official defendants comes very slowly even for filing written statement and contesting the matters on merit is almost prohibited exceptions apart. In the case in hand retiring officer seems to have filed written statement which should have been examined by the law officers of the defendants before placing in Court. However, still no damage has been done if defendants take this case seriously on merit and do not place the things in Court in such a fashion that they conveniently get a consent decree and under the cover of orders of Court make huge payments to the plaintiff without contest. There must be a fair and honest contest from the defendants. The claim of plaintiff may be true but it should be seen that there was no collusion between the plaintiff and the defendants. In my humble view at least from the written statement and the proceedings discussed above there appears to be a willful desire to involve the Court before making the payment. The Government functionaries consume/utilize annual budget of billions of rupees through various contractors without involving Courts and they do not seek indulgence of Court to **“acquire**

consensus with the relevant officers". It is pertinent to mention here that the Courts are involved in routine financial matter of the departments when they need to do something out of box. Before the Court their officials paint a picture of everything as "good" and "according to law" and yet they do not give any reason that why they are in Court when there is no dispute between the parties. It simply means that they need a Court order to be placed in their official record. Such conduct of the government functionaries can be described as the worst form of the abuse/mis-use of the process and the authority of the Court. Civil Courts have limited powers to prevent such abuses because if otherwise a case is made out the Court has to pass an order according to law on the basis of record placed before it. Nevertheless an observation can be made for guidance to the AUDITORS that any payment made by any of the Government functionaries under a decree or order of the Court is not to be treated as unquestionable by auditors. Payments made by various government functionaries during the course of their routine financial matter shall be subjected to lawful scrutiny by the Auditor General of Sindh despite the fact that payments are made under the cover of judgments and decrees or order of the Court. Civil Court before passing a decree on admission whether genuine or not cannot conduct audit of accounts to ascertain the correctness of claim and its acceptance by the defendants.

9. In view of the above, the application for urgent hearing (CMA No.8306/2017) stand disposed of and the suit should not be fixed for "further orders" anymore. The due process for the disposal of suit i.e the orders in terms of Sindh Chief Court Rules to proceed exparte against defendant No.1, if needed, be passed first and then other requirements of law such as framing of issues etc. should be followed in this case.

10. Any observation in this order should not prejudice either side.
11. Copy of this order should be sent to the Chief Secretary, Sindh and Auditor General, Sindh so that they should know, if there was any mischief on the part of official defendants they should take care of it accordingly.

JUDGE

*Ayaz Gul/PA**