

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Suit No. 444 of 2017

Date	Order with signature of Judge
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Present

Mr. Justice Muhammad Ali Mazhar.

- 1.For hearing of CMA No. 2404/2017
- 2.For hearing of CMA No. 2820/2017
- 3.For hearing of CMA No. 3529/2017

20.04.2017

Mr. Sarfaraz Ali Metlo, Advocate for the Plaintiff
Mr. Suhail Muzaffar, Advocate for the defendant No.5
Mr.Agha Zafar Ahmed, Advocate for the defendant No.6
Muhammad Safdar, Billing Incharge, Qasim International
Container Terminal.

Muhammad Ali Mazhar, J: In view of the last order dated 18.04.2017, learned counsel for the defendant No.5 and 6 submitted the calculation sheets of their dues. Basically, the plaintiff imported old and used Hino Prime Mover Trucks. The orders in original were passed against the plaintiff but the same were challenged before the Custom Appellate Tribunal and the learned Tribunal was pleased to set aside the order in original and the respondents in the appeal were directed to issue delay detention certificate in accordance with law. Since the consignment was not released, therefore, the plaintiff had filed C.P.No.D-6913/2016. The learned Division Bench observed that the order of learned Appellate Tribunal is in field and the department has not filed any reference against the order. It was further directed that the order passed by the Tribunal must be complied with within 48 years.

Learned counsel for the plaintiff submits that plaintiff has no issue with the Custom Authority and they have complied with the order but the consignment is not being

released due to nonpayment of storage and detention charges of defendant No. 5 and 6 and in this regard, the plaintiff agrees to furnish tangible security with the Nazir of this court.

The calculation sheet of dues filed by the learned counsel for the defendant No.5 and 6 do show that the dues of defendant No.5 are amounting to Rs.31,508,977/-, while the dues of defendant No.6 are USD 431,000/-. Learned counsel for the defendant No. 6 argued that instead of tangible security, order for furnishing bank guarantee may be passed for release of consignment which will be subject to the final outcome of this suit. Mr. Suhail Muzaffar, learned counsel for the defendant No.5 is also of the same view.

Learned counsel for the plaintiff submits that consignment arrived at port in October, 2014 and November, 2014 and since then the demurrage is accumulating day by day and still the consignment is blocked due to non-payment of alleged dues. Learned counsel further submits that they have no available resources to arrange the bank guarantee of such a huge amount but the plaintiff has only property in Quetta and so far as the tangible security is concerned, he will make all best possible efforts to furnish the tangible security equivalent to the amount of calculation of dues submitted by the defendant No. 5 and 6 today in court.

On 27.02.2017, learned Single Judge as an interim measure ordered that storage and detention charges shall not be demanded from the plaintiff and the consignment shall be released subject to furnishing solvent surety in the sum of Rs.100,000/- with the Nazir of this court. However, on 21.03.2017 another learned Single Judge modified the order with the condition that subject containers may not be released, however, it may be so after settling the accounts with defendant No. 5 and 6 and since then matter is lingering on. Whereas, another order dated 30.03.2017 passed by the learned Single Judge shows that the plaintiff was left at liberty

to negotiate the outstanding dues of defendant No.6. In the injunction application 3529/2017, the plaintiff has prayed for the injunction that defendant No. 5 and 6 may be restrained from demanding payment of the storage and detention/handling charges and allow transport/release of goods of the plaintiff without payment of storage and detention charges but, now, the plaintiff's counsel on instructions has shown his consent to furnish the tangible security.

As a result of above discussion, the plaintiff may furnish tangible security equivalent to the amount of dues of defendant No. 5 and 6. On producing the tangible security, the Nazir shall inform the learned counsel for the defendant No. 5 and 6 through notice. If the tangible security is in the shape of original title documents of immovable property the Nazir shall get the valuation of the property. The surety shall also furnish indemnity bond and undertaking that in case the suit is dismissed, he will be responsible to pay the dues of the defendant No. 5 and 6 and his property will be sold out by the Nazir of this court. After accepting the surety by the Nazir, the defendant No.5 and 6 shall not cause any hindrance or obstruction. The Nazir shall issue certificate of acceptance of surety, thereafter, the defendant No. 5 and 6 will immediately release the consignment.

The injunction application is disposed of in the above terms.

JUDGE