

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Suit No.1510 of 2001

Date	Order with Signature of Judge
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Present: ***Mr. Justice Nazar Akbar***

Plaintiff : Market Committee, Karachi
Through Mr. Parvez Ahmed, Advocate.

Defendant : Azizuddin Qureshi & Co. Karachi
(Nemo).

Date of hearing : 14.04.2018

Decided on : 26.04.2018

JUDGMENT

NAZAR AKBAR, J. The plaintiff has filed this suit for declaration and recovery of money against the defendant. The plaintiff is a body established under **Agriculture Produce Market Act, 1939**. The plaintiff is entitled to collect and recover Market Fees on various items being brought or sold within the “notified area” of Karachi Division on specified rates mentioned in the schedule of the said Act. The plaintiff through various Newspapers published notices for holding open auction for awarding contract for the purpose of collection of market Fees on various schedule items specified under three categories and the interested parties were informed to collect the required information from the office of the plaintiff on 16.10.1997. The interested contractors were required to deposit pay orders to the extent of 10% amount of the bid amount refundable.

2. The defendant participated in the auction for contract for collection of Market Fees on imported items of food grain and had deposited Rs.2,00,000/- towards Call Deposit amount on

17.10.1997. The defendant's highest bid amounting to **Rs.93,50,000/-** was accepted and the defendant deposited **Rs.21,37,500/-** on 21.10.1997 equivalent to 25% of the total bid amount. The defendant also deposited **Rs.23,37,500/-** as security and, therefore, on **30.10.1997** an agreement between the plaintiff and the defendant was executed. According to the terms and conditions of the said agreement the period of contract was 8 months commencing from 01.11.1997 to 30.6.1998 and the defendant was liable to make payment of salary of the staff of Market Committee and other staff as well as Income Tax at the rate of 5% of the contractual amount but the defendant failed to make payment of monthly installment as well as staff salary. The defendant paid only **Rs.31,16,664/-** out of **Rs.93,50,000/-** and continued to make default in payment of the monthly installments as well as income tax. The two cheques for an amount of **Rs.4,79,166/-** and **Rs.15,16,606/-** as well as two other cheques for **Rs.55,69,995/-** and **Rs.42,91,664/-** issued in favour of the plaintiff was bounced by the bank and the defendant were informed in writing. The defendant beside the said amount of bounced cheque also defaulted on other liabilities and therefore the defendant was liable to pay an amount of **Rs.62,33,336/-** to the plaintiff. Then despite repeated notices the defendant has failed to make payment of the outstanding amount, hence this suit for declaration and recovery of money with the following prayers:-

- a. *To declare that the period of suit contract was eight months and the period of contract has been wrongly, malafidely, with ulterior motives and fraudulently got typed by the defendant.*
- b. *The defendant be directed to make payment of balance contractual amount of **Rs.62,33,336/-** to the plaintiff.*

- c. *The defendant be directed to make payment of interest at the rate of 22% being the Bank rates with effect from 30.6.1997 till the realization of the principle amount.*
- d. *The defendant be directed to make payment of Income Tax at the rate of 5% on the principle amount of **Rs.62,33,336/-**.*
- e. *Any other relief or reliefs which this Hon'ble Court deem fit and proper in the circumstances of the case.*
- f. *Cost of the suit be awarded.*

3. Notices were issued to the defendants returned un-served and after exhausting other modes of services the publication was made in Daily "Jang" dated **09.4.2004** for service on the defendant. Therefore, by order dated **30.04.2004** service against the defendant was held good and by order dated **22.11.2004** case against the defendant was ordered to be proceeded exparte. The plaintiff was required to file affidavit-in-exparte proof which was filed on **02.02.2011** through witness Hafeez-ul-Hassan S/o Syed Ali Jan. His examination-in-chief was recorded on **10.10.2012** and he produced several documents as Ex:PW-1/3 to Ex:P.W-1/18.

4. I have perused the record and heard counsel for the plaintiff. There is no contest to the claim of plaintiff. The defendant did not appear in Court inspite of service. The averments of the plaintiff have been supported by evidence has gone un-rebutted. The plaintiff is a statutory body constituted under **Agriculture Produce Market Act, 1939**, and its witness has filed original of the documents executed by the defendant including duly attested agreement and other correspondence confirming the liability of the defendant. Therefore, there is no option but to believe the unchallenged version of the plaintiff. The delay in disposal of the suit is squarely on the plaintiff since the proceedings were exparte.

5. In the circumstances mentioned above, the suit of the plaintiff is decreed only in terms of prayer clause (b) with simple markup at the rate of 10% per annum from the date of decree. The plaintiff is also entitled to the cost of the suit.

JUDGE

Karachi,
Dated:26.04.2018

*Ayaz Gul/PA**