

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Suit No.05 of 2019

Date	Order with signature of Judge
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For hearing of CMA No.18687/2018.

04.01.2019

Mr. Ameer Bakhsh Metlo, advocate holding brief for Mr. Sarfaraz Ali Metlo, advocate for the plaintiff.

Mr. Mehmood Sherwani, advocate for defendant No.1(a).

Ms. Masooda Siraj, advocate for defendants No.2 to 4.

NAZAR AKBAR, J:- The plaintiff has filed instant suit for the recovery of **304,431 USD** from defendant No.1 having business in **Tajikistan** on the basis of an agreement and also impleaded defendant No.1(a) carrying on business in **Afghanistan**. On **31.12.2018**, without service of notice to defendant No.1 and 1(a), restraining orders were obtained against the defendants.

2. Ms. Masooda Siraj, advocates filed power on behalf of defendants No.2 to 4 as well as written statement, which are taken on record.

3. Today Mr. Ameer Bukhsh Metlo, advocate says that Mr. Sarfaraz Metlo, advocate is out of country and, therefore, case may be adjourned. It is a date by Court case and after interim orders a fixed date for today has been obtained by Mr. Sarfaraz Ali Metlo, advocate, therefore, he was supposed to be present in Court. His own name is also printed on the vakalatnama but it is not signed by him. Be that as it may, I have examined the file and heard learned counsel for the plaintiff holding brief for his elder brother. In support of his

injunction application he has also placed reliance on a case reported as *Pakistan International Airlines Corporation vs. ACT Airlines INC (2011 CLC 714)* that in similar circumstances injunction orders have been granted by this Court. He has also referred to similar order in suit No.820/2013 which were obtained by Mr. Sarfaraz Ali Metlo, advocate on **24.6.2013** and annexed with the plaint as annexure P-2 at page-259.

4. Learned counsel for defendant No.1(a) has pointed out that clause-5 of the agreement, on the basis of which the suit has been filed, clearly stipulates an Arbitration clause which fact has been suppressed by the plaintiff while obtaining the exparte interim orders. Ms. Masooda Siraj, advocate for official defendants No.2 to 4 states that the property in transit is a perishable item and in written statement she has also stated that in terms of SRO 932(I)/2012 dated 01.8.2012 the jurisdiction of official defendants is not extended to **Tajikistan** since no agreement exists between Pakistan and Tajikistan. Mr. Ameer Bakhsh Metlo, advocate do not deny arbitration clause, however, he has contended that it was not proper remedy for the plaintiff for recovery of his dues against defendant No.1.

5. The case of the plaintiff on the face of it is simple suit for recovery of dues for providing services to defendant No.1 in terms of a contract filed by the plaintiff himself available at page-27 which contains the following stipulation for the purpose of resolution of the dispute or claim of plaintiff against defendant No.1.

5. *ARBITRATION*

5.1 *Any disagreements, disputes and differences which may arise out of or in connection with the present Contract, its termination and invalidity will*

be settled by negotiations between the Parties. If the Parties do not come to an agreement by negotiations the matter is to be submitted for settlement in the International commercial Arbitration Court at the Republic of Tajikistan Chamber of Commerce and Industry in compliance with the existing legislation of the RT. The decision made by Arbitration Court is final and binding to both Parties.

The reported case-law relied upon by the learned counsel for the plaintiff is quite distinguishable since there was no arbitration clause in the agreement between the parties in the reported judgment. In the reported case before passing the order, it has been clearly questioned by the learned Judge that whether this Court has jurisdiction and the reply was in the affirmative by reference to the agreement. I quote relevant observation and fact from page-716 of the reported case as follows:-

“On a query of this court, the learned counsel has referred to Article 23-B of the agreement whereby the parties agreed to submit to the jurisdiction of this court. He further argued that the agreement was signed at Karachi and delivery of engines was also given at Karachi; therefore, this court has the jurisdiction.”

In the case in hand the main defendant No.1 lives in **Tajikistan** and he or his representative never came to Karachi. The plaintiff has agreed to dispute resolution through International Commercial Arbitration Court. The plaintiff wants a similar order in **2019 January** which his counsel has obtained in **2013 June** in suit No.820/2013. I called file of the **suit No.820/2013** to see the status of the said suit after five years. I found that after **23.12.2014** that suit has always been listed on a day when it was mostly discharged by office without sending it to Court with note **“discharged as discussed by High Court Bar”** or otherwise. But for this reason

foreign businessman do not come forward to lift economy of our beloved Pakistan.

6. In view of above facts and circumstances, in my humble view, this Court apparently has no jurisdiction in terms of the Arbitration clause, therefore, prima-facie it was case of hardship to defendant No.1(a) with whom the plaintiff has no direct privity of contract. Consequently, interim order dated **31.12.2018** is recalled. The official defendants No.2 to 4 may act in accordance with law and release the consignment of defendant No.1(a) without certificate from the Nazir of this Court. The application (CMA No.18687/2018) is, therefore, dismissed.

JUDGE