

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Suit No. 207 of 2012

Mr. Arbab A. Munir

Versus

Mackinnons, Mackenzie & Co. of Pakistan (Pvt.) Ltd.

Date	Order with signature of Judge
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For hearing of CMA No. 1811/12

Date of Hearing: 27.01.2016

Plaintiff: Through Mr. Ghazain Zafar Magsi Advocate

Defendant: Through Mr. Faisal Mahmood Ghani Advocate

Muhammad Shafi Siddiqui, J.- This is an application filed by the plaintiff to restrain the defendant from stopping or causing impediments in the pension which the plaintiff is otherwise entitled.

2. Brief facts of the case are that the plaintiff was once employed with the defendant under a contract. Plaintiff served the defendant for about 33 years w.e.f 27.6.1978. He served the defendant at various designations. He reached at the age of superannuation and was discharged from service on 11.9.2009 and in consideration of such services the plaintiff offered extension for three additional years which was accepted however the plaintiff tendered his resignation on 30.3.2011 on account of change in the management. In terms of the employment contract as amended from time to time the plaintiff was entitled to retirement benefits including but not limited to monthly pension from superannuation fund and the plaintiff was receiving pension w.e.f 01.7.2008. This right is also ensured through renewed service contract in terms of clause-13 of the Service Contract which was renewed on 07.9.2010.

3. Counsel for the plaintiff submitted that after his retirement the plaintiff started his own business which relates to recruitment and/or providing skilled/ non skilled labour in terms of the requirement of the companies. The defendant soon after started threatening the plaintiff for the consequences in case he would continue to pursue his endeavours. Learned Counsel submitted that the defendant in support of such threats has relied upon clause-10 of the employment Contract. He submitted that without prejudice to such rights as available in relation to clause-10, plaintiff is neither indulged in any activity which is detrimental to the legitimate business of the defendant nor any other secrets or confidential information belonging to defendant company has ever been disclosed to any one concern. Learned Counsel submitted that only as a counter blast and having no resort the defendant has amended the pension Rules of the company by inserting Rule 8(a) with malicious intention to disentitle the plaintiff for pension. Learned Counsel further submitted that though this amended Rule shall not be applied retrospectively to the plaintiff yet it is made only to disentitle the plaintiff and the malice is obvious. Learned Counsel urged that the plaintiff was refused his pensions since this Rule was amended, however interim order has been passed on 27.2.20112 whereby the defendant was restrained from attempting to give a retrospective effect to this amended Rule.

4. On the other hand learned Counsel for the defendant has relied upon clause-10 of the employment Contract available as annexure-D at page 35 which reads as under:-

“10. You recognise that, whilst performing your duties for the Company, you will have access to and come into contact with trade secrets and confidential information belonging to the Company and will obtain personal knowledge of and influence over its customers and/or employees. You therefore agree that the restrictions set out in this Clause are reasonable and necessary to protect the legitimate business interests of the Company both during and after the termination of your engagement. You shall neither during the term of your engagement (except

in the proper performance of your duties) nor at any time (without limit) after the termination of your engagement directly or indirectly.

- (a) Divulge or communicate to any person, company, business entity or other organization.*
- (b) Use for your own purposes or for any purposes other than those of the Company; or*
- (c) Through any failure to exercise due care and diligence, cause any unauthorized disclosure of any trade secrets or Confidential information relating to the Company, but so that these restrictions shall cease to apply to any information which shall become available to the public generally otherwise than through your default."*

5. Learned Counsel submitted that the plaintiff since has started his own business is not entitled for such pensionary benefits. He has further alleged that in terms of the last contract he has to ensure that he would not disclose the trade secrets and confidential information belonging to the defendant company and will not influence the customers and employees. Counsel further argued that under the agreement he has to protect the legitimate interests of the company both during and after termination of the service. He was further required not to divulge or communicate to any person, company, business entity or other organization. It is submitted that plaintiff is further restrained from disclosing the trade secrets and confidential information however this would not be applicable to any information which is publically known. Counsel submitted that the plaintiff has defrauded the defendant in a manner that he is presenting himself to be Director/Chief Executive of PANDOPL which in fact sounds similar to defendants concern such as P&OPL (Pacific & Oriental (Pvt.) Ltd. and hence this would amount to defrauding the customers of the defendant.

6. Learned Counsel for the plaintiff at the very outset in rebuttal submitted that although they are not in such business at all but he gives undertaking that he would not use such website under the name and style of PANDOPL and the e-mail address.

7. Heard the learned Counsel and perused the material available on record.

8. The plaintiff no doubt was an employee of the defendant and the last agreement/contract executed between them dated 07.9.2010 is available on record, however the defendant's case rests on clause-10 of the Contract. The cause that leads to filing of the suit is off course the denial of pensionary rights in response of the business that was started by the plaintiff which allegedly amounts to revealing the trade secret and confidential information that plaintiff came to know while he was in service. At the very outset the defendant was enquired as to what trade secret have been disclosed or confidential information has been passed on. He is unable to disclose even a single secret or confidential information. The defendant in fact was involved in recruitment business and the plaintiff worked for about 33 years in this field. Impediments which are claimed to be faced by the plaintiff are enshrined in clause-10 of the Contract. Business of a recruitment company for a particular business such as shipping companies is not a novel or unique business which is not known to people at large. The defendant has also not been able to show as to what trade secrets or confidential information has been passed on. A detail study of the agreement and in particular paragraph 10 reveals that there is no such embargo on the plaintiff to commence a competitive business. Only obstacle is that the plaintiff shall not to disclose trade secret and confidential information which the defendant has failed to point out. The companies with whom the defendant was associated with or working for may have found plaintiff more suitable and appropriate and/or economical and plaintiff may have been providing better services but that does not amount an act contrary to clause-10 of the Contract. It does not amount to divulging information by communicating to any person, company or business entity or to swap the business of the defendant nor can there be an agreement under the law as it would be violative of Article 18 of the Islamic Republic of

Pakistan. Plaintiff throughout his life has served the defendant and professionally skilled to conduct only this business. It is matter of livelihood of the plaintiff which cannot be denied on account of the score that it amounts to running a parallel business.

9. Insofar as the amended clause-8A in the Supplemental Trust Deed for superannuation fund is concerned, since the plaintiff resigned much prior to the alleged amendment, it cannot be applied retrospectively though the subject clauses such as (ii) and (iii) of clause-8A of the aforesaid Deed have not been challenged but apparently it amounts to usurping the rights of the member/ pensioner who has throughout his life has done only one business and that it would be unlawful for a company to enforce such terms which are contrary and violative of the fundamental and constitutional rights as guaranteed. These observations are only tentative and would not affect the trial.

10. Insofar as the subject website under the name and style of PANDOPL is concerned, the plaintiff has already given assurance that he would neither use the website nor has any intention and so also the e-mail which are deceptively similar to the one used by the defendant under the circumstances of the case.

11. These are the reasons for allowing the application.

Judge