

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Suit No.3084 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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For hearing of CMA No.22824/2021 (U/O 39 R.1&2 CPC).

10.01.2022

Mr. Muhammad Safdar, Advocate for the plaintiff.
Mr. Agha Zafar Ahmed, Advocate for the defendant No.1.
Mr. Khursheed Javed, DAG.

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Counter affidavit to application under Order XXXIX Rule 1 & 2 filed on behalf of defendant No.1 is taken on record and plaintiff's counsel insisted for hearing without filing rejoinder.

The plaintiff has filed this suit seeking specific performance of an agreement along with damages and interim injunction in relation to an agreement which is effective from 5th July, 2021 to 4th July, 2022. It is a case of the plaintiff that in relation to same assignments, which form subject of agreement, a public notice for re-tendering the same was issued and aggrieved of it this suit was filed along with an injunction application, restraining defendant No.1 from exercising such rights for re-auctioning the contractual obligations afresh.

I have heard learned counsel appearing for the plaintiff and for defendant No.1 and perused the record.

The perusal of the agreement on the basis of which this suit was filed and injunction is sought is apparently in the nature of a permissible right for lifting the garbage with effect from 5th July, 2021 to 4th July, 2022. In terms of article 1 which is headed as "Terms of the Agreement" and according to the next article which is also typed as 1, headed as "Termination of the Agreement" it is the prerogative of either party to take any action in relation to termination of the agreed obligation. Article 1 under the heading of "Term of the

Agreement” provides that this assignment was effective from 5th July, 2021 to 4th July, 2021 unless the owner/ defendant No.1 terminates the agreement. It was also extendable by the executor/ defendant No.1 if deemed necessary for another term. However, the termination of the agreement clause also provides that without prejudice to any rights available to any contractual party or remedies available, the defendant No.1 has the “acquired” right under the agreement to terminate it without assigning any reason specifically in relation to the agreement which is in the shape of a permissible right which could only be granted as a license agreement. Although the tenure of this license agreement is for one year but the clauses therein enables the parties to act accordingly insofar as the earlier termination of the agreement is concerned. Since the status of this agreement is of a license, therefore, no vested right could be accrued.

Section 60 of the Easement Act provides that a license may be revoked by the granter unless it is coupled with a transfer of property and such transfer is in force. Whereas, following provisions provides that revocation of license may be expressed or implied, therefore, in case the subject of the agreement was re-tendered, it is an implied termination and revocation despite non-receipt of termination letter.

In terms of Section 60/62 of the Easement Act it is not vested right of a licensee to enforce the terms of such agreement which in its present form only presents permissible rights i.e terms of agreement as stated therein which could be withdrawn, even without notice in case of a license. Hence in view of that, the plaintiff’s right is not matured to enforce rest of the agreed obligation including the tenure of one year. In case the plaintiff is of the view that under the general law it has been unlawfully terminated without assigning any reason,

they have already secured it by way of this suit in the shape of recovering damages.

Section 21(d) of the Specific Relief Act provides that the agreement cannot be enforced which in its nature is revocable. Similarly, Section 56(f) of the Specific Relief Act provides that an injunction cannot be granted to prevent the breach of a contract, the performance of which could not be specifically enforced. Since the parties have disclosed their desire insofar as the right of terminating the agreement is concerned and in the light of aforesaid two provisions, apart from agreement being a revocable license, plaintiff cannot enforce such terms, as stated. More so, when the tenders have already floated and the difference in two of the bids received, which were opened, was almost 5 times more than the amount being paid by the plaintiff.

In view of above facts and circumstances of the case, I am of the view that no case of any injunctive order has been made out. No prima facie case has been made out. Plaintiff would not suffer any irreparable losses in case injunction is declined and balance of inconvenience is also not in favour of plaintiff. The injunction application merits no consideration and is dismissed.

JUDGE

Ayaz Gul