



for the import of one million doses of Covid-19 vaccine at the rate of \$ 45 per unit as per the terms and conditions of the agreement and also paid the entire sale consideration and the alleged vaccine doses have already arrived at Karachi and cleared by the customs authorities, however, the Federal Government rescinded the notification of exemption which was challenged by the respondent No.1/plaintiff through the aforesaid suit and when it was fixed before the learned single Judge for orders while issuing notices to the defendants as well as the learned D.A.G. with further directions to file counter affidavit and rejoinder if any before the next date, the learned single Judge was pleased to suspend the operation of the impugned notification dated 18.03.2021 to the extent of the Covid-19 vaccine imported by the plaintiff.

2. The learned counsel for the appellants argued that the Drug Regulatory Authority of Pakistan (DRAP) after withdrawing the exemption notification has not fixed the prices for the Covid-19 vaccine and the matter is pending and without fixation of the prices the selling activity of the said vaccine would be illegal. It is further contended that due to noncompliance of the ad-interim order, a contempt application has already been moved and notice has already been issued to the alleged contemnor and the matter is fixed on 01.04.2021. When we raised the query to the learned counsel for the appellants that how the appeal is maintainable against an ad-interim order and why they are not raising all the pleas before the learned single Judge? We also raised a query that whether any counter affidavit to the injunction application has been filed by them or any application for vacation of the ad-interim order under Order 39 Rule 4 CPC has been moved? The learned counsel for the appellants submits that they are preparing the counter affidavit and the application but not filed any application for vacation of stay or the counter affidavit in the trial court so far but directly approached this court in appeal.

3. On notice under Order 43 Rule 3 CPC, M/s. Makhdoom Ali Khan and Abdul Sattar Pirzada, learned counsel have filed their vakalatnama for respondent No.1. Mr. Makhdoom Ali Khan referred to a judgment passed by the learned Division Bench of this court in the case of Karachi Electric Supply Company vs. Muhammad Shahnawaz reported

in 2010 YLR 2426 in which the learned Division Bench in paragraph 17 held as under:

“17. The respondent's case before the learned single Judge is at ad interim stage. The hearing of the respondents' case is yet to take place. The order before us was merely an ad-interim order; the same may be confirmed or set aside by the learned single Judge, after hearing the parties. The appellant may even move an application under Order XXXIX Rule 4, C.P.C. for discharging, varying or setting aside the ad-interim order. We would, therefore, refrain from expressing our opinion regarding the effect, implication and purport of the above judicial pronouncements and legal principles in the present context or else we will be encroaching upon the jurisdiction of the learned single Judge. We may, however, observe that at this ad-interim stage of the case, in view of the above pronouncements, it cannot be said that the ad interim order is either capricious, arbitrary or against the well settled principle of law or that the same may result in miscarriage of justice.”

4. He further argued that on the basis of exemption granted by the Federal Government, the respondent No.1 entered into an agreement for consignment and after reaching the consignment at Karachi Port, they abruptly withdrawn the notification which is totally unjustified. So far as the release of consignment is concerned, the learned counsel for respondent No.1 has filed a statement alongwith some documents and at page 13 of the statement there is a Lot Release Certificate issued by the DRAP, however, he further submits that despite issuing the Lot Release Certificate, the Federal Drug Inspector at Karachi is not signing the relevant documents, therefore, at this juncture the sale of vaccine is not possible unless this exercise is completed. He further argued that in view of the exemption granted the Federal Government has no power to fix the prices.

5. This appeal has been preferred against the ad-interim order where the final decision on the injunction application is to be rendered by the learned single Judge after hearing the parties and even at this stage no counter affidavit has been filed before the learned trial court nor application under Order 39 Rule 4 CPC has been moved. So far as the contention raised by the learned counsel for the appellants that the respondent No.1 should be restrained from selling product in the market before fixation of prices by the Federal Government, this contention can also be raised before the learned single Judge when the matter is already fixed tomorrow for hearing of the contempt application and the appellants may file their counter affidavit and application under Order 39 Rule 4 CPC if they choose to file tomorrow

before the learned single Judge. At this juncture counsel for the appellants contended that the prices of the drug imported by the respondent No.1 shall be fixed by the Federal Government within a week and the progress report will be submitted before the learned single Judge. At present we are seized of an appeal only against ad-interim order and if at this stage any cognizance of the matter is taken, this may prejudice the pending proceedings where the injunction application is to be decided on merits by the learned trial court after hearing the parties. The propriety demands that all pleas in defence should be taken before the learned single Judge for vacation of ad-interim order. Mr. Makhdoom Ali Khan has already given a clear statement that unless the Drug Inspector signs the relevant documents, the question of selling the vaccine in the market does not arise which aspect is also to be seen by the learned trial court and the counsel for the appellants has also given a statement that within a week the prices will be fixed by the DRAP which will be placed before the learned single Judge. So far as the contention raised by the counsel for the appellants that contempt notice has been issued, the notice of contempt is not challenged in this appeal, however, it is clarified that the learned counsel only intimated that the notice has been issued for which reply may be submitted and keeping in view all attending circumstances it is for the learned single Judge to decide whether contempt proceedings may be initiated or not. Since the matter requires some urgent attention, therefore, this appeal is disposed of alongwith listed application with the directions to the learned single Judge to decide the injunction application within ten days after hearing the parties.

Judge

Judge