

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P No. D-1918 of 2021

DATE: ORDER WITH SIGNATURE(S) OF JUDGE(S).

Hearing

1. For order on office objection No.18.
2. For hearing of main case.

06.09.2021

Mr. Muhammad Rafiq Kamboh, Advocate for the
Petitioner.

Mr. Abdul Jalil Zubedi, AAG.

This Petition under Article 199 of the Constitution assails the concurrent dismissals of the Petitioners Application under S.94 CPC (the “**Underlying Application**”) in Civil Suit No. 483 of 2019 pending before the VIIth Senior Civil Judge, Karachi and Civil Revision No.125 of 2019 preferred by him before the IInd Additional District Judge, Karachi South.

Through the Suit, the Petitioner had assailed a Memorandum of Understanding (“**MOU**”) executed between him and the Respondent No.1 for the ostensible purpose of settlement of certain outstanding balances and liabilities and prayed *inter alia* that the MOU be declared as having been forcibly obtained and to be void and liable to be cancelled. Certain other prayers were also advanced for purpose of seeking rendition of accounts and payment of a monetary sum, etc. Albeit there being no final prayer specifically seeking release of the Unique Identification Number (“**UIN**”) said to have been issued to the Petitioner, the Underlying Application was preferred for such purpose, with it being prayed that the trial Court be pleased to direct that the UIN be released and the Petitioner be immediately de-registered from the system of the defendants. The Underlying Application came to be dismissed vide an Order dated 16.11.2019, with the ensuing Revision meeting the same fate on 23.01.2021.

The relevant excerpt from the operative part of the Order dated 16.11.2019 encapsulating the reasoning of the trial Court reads as follows:

“In view of the above, I am inclined towards the arguments of learned counsel for defendant when he says that allowing instant application impliedly and indirectly would mean allowing prayer of plaintiff as provided under prayer clause of the plaintiff’s plaint. So far as the arguments of learned counsel for the plaintiff is concern that as per rules the defendants are bound to update/modified the name of plaintiff from their system, hence the plaintiff is entitled for release of UIN. It appears that arguments of learned counsel for plaintiff is devoid of any force because under the same rules the plaintiff is provided an opportunity to approach the Exchange for redressal of his grievance or in case of violation of code of conduct prescribed by the Exchange. Therefore, it was just and proper for the plaintiff to approach the Exchange as provided under chapter 4 of Pakistan Stock Regulations. Furthermore, I do not find any force in the arguments advanced by the learned counsel for the plaintiff when he says that no loss shall be caused to defendant if they are directed to release UIN and issue NOC in favour of plaintiff. Tentatively the plaintiff and defendants have bound themselves by way of MOU dated 01.10.2018 and agreed upon some terms and condition and at this stage allowing this application without even recording the evidence would prejudice the defendant’s side. As prima facie the plaintiff has failed to establish that the MOU dated 01.10.2018 was obtained forcibly by the defendants.”

Having perused the MOU, it is immediately conspicuous that one its clauses clearly stipulates as follows:

“Mr. Rasheed Moosa will not book any new business in the branch of Market 786 (Pvt) Ltd and his UIN would be released after the completion of all points and conditions mentioned in this MOU.”

Keeping that in mind, the trial Court concluded that allowing the Underlying Application would be tantamount to granting final relief to the Petitioner at the interlocutory stage, and such assessment was then in turn endorsed by the Revisional Court. In our view, this assessment of the matter by the fora below and the exercise of discretion by the trial Court in refusing the injunction sought cannot be said to be incorrect or capricious, but on the contrary, appears to be well founded.

Indeed, the object of an interlocutory order was so explained by the Honourable Supreme Court in the case reported as Islamic Republic of Pakistan through Secretary, Establishment Division, Islamabad and others v. Muhammad Zaman Khan and others 1997 SCMR 1508, as follows:

“As regards the merits of the case, it may be pointed out that it is a well -settled proposition of law that the object of passing of an interlocutory order or status quo is to maintain the situation obtaining on the date when the party concerned approaches the Court and not to create a new situation. Another well settled principle of legal jurisprudence is that generally a Court cannot grant an interlocutory relief of the nature which will amount to allowing the main case without trial/hearing of the same.”

Furthermore, it also has to be borne in mind that the decision to grant or refuse an interlocutory injunction is a discretionary exercise, and interference is not warranted solely because the appellate/revisonal court would have exercised the discretion differently, with it having been observed by a learned Divisional Bench of this Court in the case reported as Roomi Enterprises (Pvt.) Ltd. v. Stafford Miller Ltd. and others 2005 CLD 1805 that:

“The Court at this stage acts on well-settled principle of administration on this form of interlocutory remedy which is both temporary and discretionary. However, once such discretion has been exercised by the trial Court the Appellate Court normally will not interfere with the exercise of discretion of Court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily or capriciously or perversely or where the Court has ignored certain principles regulating grant or refusal of interlocutory injunction. The Appellate Court is not required to reassess the material and seek to reach a conclusion different from one reached by the Court below solely on the ground that if it had considered the material at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial Court reasonably and in a judicial manner, same should not be interfered in exercise of appellate jurisdiction.”

Under such circumstances, the Petition is found to be devoid of merit and accordingly stands dismissed *in limine*.

Chief Justice

Judge