

IN THE HIGH COURT OF SINDH AT KARACHI

SUIT NO.854 of 2015

Plaintiff : M/s. Axact (Pvt) Ltd,
through Mr. Anwar Mansoor Khan, advocate.

Defendants : Federal Investigation Agency & others.

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Date of hearing : 26.05.2015
Date of Order : 28.05.2015

ORDER

SALAHUDDIN PANWAR-J:- Through instant application, plaintiff seeks restraining order against the defendants No. 1 to 4 (Federal Investigation Agency) from harassing the plaintiff, its directors, officers, employees & staff members and hindering the normal functioning and running of the Plaintiff's business. Further, it is contended that after enquiry, should be conducted strictly in accordance with law, the FIA must be submitted their reports in the court and not to take any coercive action without permission of the Court. Through Instant application plaintiff further seeks direction to defendant No.5/ Pakistan Electronic Media Regulatory Authority (PEMRA) to ensure that media trial and hate campaign against the plaintiff company is stopped.

2. Precisely, relevant facts are that plaintiff (M/s. Axact (Pvt) Ltd. is a leading I.T. Company registered with Securities and Exchange Commission of Pakistan, having 10 diverse Business Units, providing more than 23 world-class products in the market. As well Axact's online Education Management System is World's Leader outside North America; it provides a comprehensive

education management system that benefits diverse bodies of students and caters to all types of educational institutions; it is a 360 degree solution for students and faculty around the globe having nexus with other renowned education groups in the USA and is major player in the online education industry of USA by 2018. It is also contended that plaintiff has served millions of customers worldwide and is the largest exporter of IT products and services from Pakistan according to the State Bank's verified export figures; this IT company is the largest company of Pakistan in terms of total employees and quality of employment, size of the office infrastructure; that after having acquired the appropriate licenses and registration, **BOL** Network made its launch announcement with a full-page print advertisement in DAWN Newspaper on 9th June, 2013. Since, the advertisement also served the purpose of targeting prospective candidates to apply for the various positions available in these television channels, a comprehensive Career page was designed and employed on the official website of BOL Network www.bolnetwork.com. In only one week's time when BOL has made its launch announcement, it received more than 10,000 job applications which grew to 200,000 till date; plaintiff has also spent huge money for the publicity of BOL, that Network has been carrying out massive online campaigns on its official social media fan page including huge portion of online portal advertising; due to unprecedented success in the media industry, some elements of the same industry launched malicious campaign just to sabotage the noble mission of the plaintiff; that on 17.5.2015 a false, frivolous, fictitious and defamatory news article was published on "www.nytimes.com" with the title "**Fake Diplomas, Real Cash: Pakistani Company Axact Reaps Million.**" The said false, fabricated and libelous reports/news items was not only contrary to facts but also *prima facie*,

mala fide and reflecting biased attitude against the plaintiff; the entire defaming material is riddled with unadulterated malice and is based on motives; that article was reported by Mr. Declan Walsh who was working in Pakistan with media groups and was declared "*Persona non grata*" ; that the media trial of the story influenced everyone in Pakistan and the level of influence of the media coverage forced the Interior Minister to take action against the Plaintiff. The Interior Minister was blinded by the media coverage and directed in illegal and hasty manner to the Federal Investigation agency to initiate investigation against the plaintiff. Although the directions of Ministry of Interior were uncalled and unnecessary as the same were made on the basis of an unsubstantiated newspaper article. However, it was utter shock and dismay to the plaintiff that the defendants has taken the inquiry order to illegal and unjustifiable levels and has started harassment and have caused complete shutdown of the plaintiff's business. The plaintiff is suffering the loss of millions of rupees due to the harassment and shut down by the defendants; that the defendants No.1 to 4 raided the Islamabad Office of the plaintiff on 19.05.2015 in complete violations of the laws and raided in a manner which terrorized the employees of the plaintiff. The agency officials illegally detained and taken into custody several employees of the plaintiff and subjected them to physical torture and harassment. The agency officials also sealed off the office of the Plaintiff illegally and unlawfully and inspite of plaintiff's assistance in the inquiry shut down the whole business of the plaintiff thus causing loss of millions of rupees on every day basis. The illegal actions of the defendant agency and the traumatizing manner of raid caused mental trauma and agony to the employees of the plaintiff; that the manner in which the inquiry is being conducted by the FIA is illegal, unlawful, in complete contravention to the

principles of natural justice, and against the fundamental rights of the applicant as protected by the Constitution of the Pakistan. Therefore it would be more appropriate and in the interest of justice to direct the defendants No. 1 to 4 not to harass the officers, employees, directors and other staff members of the plaintiff and interference in the normal functioning and running of the business of the plaintiff in any manner. Furthermore after completion of enquiry which should be conducted strictly within law, the FIA must submit their report in the Court and not to take any coercive action without permission of the Court; that the cause of action has accrued to the plaintiff on 19th May 2015 when the Ministry of Interior issued directions to conduct inquiry against the plaintiff and again when the defendant Agency raised the Islamabad and Karachi offices of the plaintiff and when the employees of the plaintiff were harassed and stopped from working in the Office and when the normal business of the plaintiff was shut down and finally when the PEMRA failed to stop the media trial and hate campaign against the plaintiff. The cause of action is continuous and the plaintiff is suffering the effects of the illegal actions and omissions of the defendants on day to day basis.

3. In view of above back ground the plaintiff has prayed as under:

- a. Declare that the manner in which the inquiry is being conducted by the FIA is illegal, unlawful, arbitrary, in complete contravention to the principles of natural justice, and against the fundamental rights of the Plaintiff as protected by the Constitution of the Pakistan.
- b. Restrain the Defendant Nos.1 to 4 from harassing, the Plaintiff, its directors, officers, employees & staff members and hindering the normal functioning and running of the Plaintiff's business;
- c. Declare that the Defendant No.5 failed to fulfill its statutory obligation for not stopping the illegal and unlawful media trial of the Plaintiff Company;

- d. Direct the Defendant No.5 to ensure that media trial and hate campaign against the Plaintiff Company is stopped and no verdicts are passed on media against the Plaintiff;
- e. Grant cost of the suit;
- f. Grant any other relief which this Hon'ble court may deem fit and proper in the circumstances.

4. After institution of this suit notices were issued on 25.05.2015 and on that date, due to paucity of time, matter was adjourned for today but none is appearing on behalf of defendants.

5. Learned counsel for the Plaintiff while reiterating the pleadings of plaintiff referred subsection (5) of section 5 and section 8 of the FIA Act, 1974, and has emphasized that FIA has not sought permission from the Court for removing the chattels; under the garb of inquiry they have taken control of the building, not allowing the plaintiff to run their business when patently the plaintiff is running business in nine other fields not related to I.T.; alleged article is fake and biased on ulterior motives and same is managed by rivals of the plaintiff and media groups, therefore, plaintiff is entitled for permanent injunction.

6. Heard and perused the record.

7. Though, the plaintiff set-up his pleading while taking number of pleas but has confined the relief(s) which *prima facie* appear to be in a nature that through instant *lis* the plaintiff has been seeking declaration and perpetual injunction with respect of an inquiry/investigation, being carried out by the Federal Investigation Agency into matter of fraud, *undeniably* not its own but under the order of the '*Ministry of Interior*'. This gives rise to a legal proposition i.e :

Whether through a civil suit a law enforcing agency can be stopped from inquiring into / investigating into an allegation of 'Offence'?

Since the proposition touches the maintainability of the suit and is a pure question of 'law' hence needs to be attended first. Needless to add here that maintainability of the suit has direct nexus with every interlocutory application, including one falling within meaning and scope of Order 39 of the Code, and order, passed thereon.

8. Let me make it quite clear that an inquiry/investigation is the absolute prerogative of the agency concerned and this (inquiry / investigation) *in no way* makes a person 'guilty' rather the object of an inquiry/investigation is always meant/aimed either to remove the clouds of doubts by declaring person 'innocent' or to send him to prove his innocence before competent Court of law. In either ways the man, being inquired into/investigated, continues the status of 'innocence' and mere addition or use of word 'accused' does not *legally* change the legally established position i.e 'an accused shall be presumed innocent unless found guilty by court of law'.

9. It is also a matter of record that the plaintiff himself has admitted in his pleading that:

'... on 17.5.2015 a false, frivolous, fictitious and defamatory news article was published on line on "www.nytimes.com" with the title "Fake Diplomas, Real Cash: Pakistani Company Axact Reaps Million."

'...the media trial of the story influenced everyone in Pakistan and the level of influence of the media coverage forced the Interior Minister to take action against the Plaintiff. The Interior Minister was blinded by the media coverage and directed in illegal and hasty manner to the Federal Investigation agency to initiate investigation against the plaintiff.

From above pleaded facts, it is *even* the case of the plaintiff himself that there was/is an allegation of 'fraud' against the plaintiff and there is an order from

Ministry of Interior to inquire into such '**allegation**'. It is not the case of the plaintiff that the '*Ministry of Interior*' has got any personal annoyance against the plaintiff but the inquiry has *prima facie* been ordered with reference to some '**specific allegations**'. Thus, these *prima facie* make it quite clear that inquiry is being conducted into some allegation of '**fraud**' under the order of competent authority. Let me add here that it is not the case of the plaintiff that FIA is not competent to inquire into/ investigate the alleged offence but manner thereof has been claimed to be not in accordance with law. The competence of the respondent nos.1 to 4 (FIA) to inquire into / investigate the alleged '**Offence**' is even evident from Section 5(1) of the FIA Act, which, being material and relevant, is reproduced hereunder:-

5. Powers of the members of the Agency: (1) Subject to any order which the Federal Government may make in this behalf, the members of the Agency shall, for the purpose of an inquiry or investigation under this Act, have throughout Pakistan such powers, including powers relating to search, arrest of persons and seizure of property, and such duties, privileges and liabilities as the officers of a Provincial Police have in relation to the investigation of offences under the Code or any other law for the time being in force.
(underlining is for emphasis)

A law abiding citizen is always supposed, believed and even expected to extend full cooperation with an '**agency**' which is inquiring into/investigating into an allegation because an inquiry/investigation is not against the '**person**' but is in respect of '**particular allegations**', constituting an '**offence**', found at the end of the day, to be committed by an '**accused**'. A call from a legal and competent '**agency**' should always be honoured particularly when the man, complaining such call, claiming to be '**innocent**' because, as already held, an inquiry/investigation is to remove clouds of doubt of commission of a cognizable offence or to send the '**accused**' to be proved guilty or otherwise by

a competent court of law . **However**, even if, for a moment it is believed that same are '**false**', as claimed by the plaintiff, yet this plea alone is not sufficient to stop the '**competent agency**' from its rights to inquire into the same by filing a Civil Suit which can only sustain wherein '**the right to property or to an offence is contested**' (Section 9 of the CPC). A legally initiated inquiry/investigation cannot, *by any stretch of imagination*, or even by placing words in an architectural order, be brought within meaning of '**Civil Rights**' else this shall result in collapsing the '**Criminal administration of justice**' which *undeniably* starts from an '**inquiry / investigation**'. An '**agency**' cannot be legally directed or instructed even by the Constitutional Court to conduct the inquiry/investigation into a particular manner as it amounts to interference (PLD 2003 Kar. 209). An '**agency**' to summon/notice or to visit a place of incident is permissible by the '**Code of Criminal Procedure**' hence the same be not termed as '**harassment**' else this plea shall be available to every person, facing an inquiry/investigation hence, if entertained in a civil suit, shall make all provisions, relating to an '**inquiry/investigation**' redundant. If there be an illegality or irregularity on part of the '**inquiry officer/investigator**' can well be complained before proper authority or even a change of '**inquiry officer/investigator**' is permissible in law thus this plea alone is not sufficient to get a legally initiated inquiry/investigation stopped through a '**Civil Suit**' particularly when the purpose whereof (civil suit) is not more than a declaration of a right to property or an office and not to interfere with the public duties of any department of the Government. In the case of **KHURRAM NASEEMUDDIN V. FEDERATION OF PAKISTAN** (PLD 2014 Karachi 264) it is held that:

'6.The plaintiff himself has referred to section 5 of the FIA Act, 1975 and yet he contended that the suit is maintainable against the FIA to stop an investigation. The plaintiff has a remedy against such action of the FIA by knocking the doors of the Court functioning under Criminal Procedure Code to challenge the legality of action taken or intended to be taken against the plaintiff under the FIR Act, 1975. The perusal of the FIA Act, clearly indicates that in term of section 2 of the FIA Act is applicable to all the citizens of Pakistan and in terms of section 2(b) of the Act the course of action to be adopted by an aggrieved party is under the Code of Criminal Procedure since in terms of Section 2(d), the officials of FIA including the defendant No.2 are performing their duties as officials of Provincial Police in relation to inquiry and investigation of an offence. Therefore, the plaintiff instead of filing civil suit has to invoke the jurisdiction of Court established and functioning under Chapter II of Cr.P.C., 1898 in accordance with Section 6 of the Code to challenge the action taken by FIR of intended to be taken pursuant to the notice impugned in this suit. **The remedy is quashment, if made out, and not simple declaration and decree prohibiting the Public Functionaries from performing their duties within the four corners of law'**.

(Underlining has been supplied for prominence)

10. In view of above discussion, I am clear in view that answer to the above proposition would be nothing but a big 'NO'.

11. As regard the relief of perpetual injunction against the defendant no.5 it would suffice to say that the provision of Section 26 of the PEMRA, 2002 provides a mechanism for an aggrieved person to file a complaint against any licensed media and will give its opinion on such complaint(s). The plaintiff *although* has alleged that 'PEMRA' failed in its duties but has not claimed to have availed the available legal remedy against such broadcasting. The plaintiff *prima facie* has not resorted to such available legal course rather has come forward to seek a mandatory direction and declaration about programs, being broadcasted, relating to plaintiff. It is the absolute domain of the 'authority' to ensure the broadcasting is within the Code or Section 20(c) of the Ordinance. A Civil Court can competently examine the act (order) of an authority but cannot

legally assume the jurisdiction of that **'authority'** as it shall amount interfering into functions of a legally constituted **'authority'**. Thus, such reliefs, even, cannot be *prima facie* entertained through lis by claiming or alleging broadcasting to be **'defamatory'**. Since the reliefs sought, *prima facie* are not sustainable within domain and jurisdiction of the Civil Court, which is controlled and governed by Section 9 of the Civil Procedure Code.

12. It is pertinent to mention that no relief of interlocutory nature can be granted in an incompetent suit rather an incompetent plain is required to be rejected at its inception. Since from above discussion it is *no more* disputed that instant suit is incompetent one hence jurisdiction, vested in this Court by Order 7 r 11 CPC is exercised and plaint of the plaintiff is hereby rejected, as such. Needless to add that all the interlocutory applications stand dismissed on rejection of the plaint.

13. While parting, it is needless to add here that the law does provide legal remedies to claim damages against any **'defamation'** under the Defamation Ordinance 2002, which the plaintiff can competently file against every single **'defamation'**, if established.

Sd/-28.5.2015
J U D G E