

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

Suit No.873 of 2016

Date	Order with signature of Judge
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For hearing of CMA No.8325/2016

30th May, 2016.

Mr. Rasheed Ashraf, advocate for plaintiff.
 Mr. Danish Qazi, A.A.G.
 Operation Manager Farukh, Sonri Bank Ltd.

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Through instant suit plaintiff has prayed as under: -

"a. Declare that the action of the defendant No.4 for demanding illegal gratification for allowing the plaintiff installments of the amount of stock wheat is malafide and illegal.

b. Declare that threatened action of the defendant No.4 that in case of non meeting his illegal demand he after filling his desired heavy amount more than the plaintiff's liability in the blank undated cheques would submit the same to the bank/respondent No.5 for encashment and in case of dishonor of the same to initiate criminal proceedings against the plaintiff is illegal and malafide.

c. Declare that taking undated blank cheques from the plaintiff by the defendants are unlawful, malafide and not sustainable in law.

d. Grant permanent injunction against the defendants No.1 to 4 restraining the defendants, their agents representatives, officers, employees and/or any person authorized through or under them from filing the undated blank cheques of the plaintiff with the amount of their choice and further submit it to the bank for encashment when the plaintiff is ready to pay the amount to stock wheat in installments.

e. Direct the defendants No.1 to 4 to recover the amount of wheat stock in installments from the plaintiff as the plaintiff himself is ready and willing to pay the same in installments being unable to pay all the amount in lump-sum in the interest of justice and equity.

f. Any other relief which this Hon'ble Court deems fit in the circumstances of the case".

2. Precisely relevant facts are that plaintiff is running business of flour mills; it is mandatory to offer mill as PRC hence on offer of plaintiff, the defendant no.3 vide his letter dated 12.02.2016 recommended storage of wheat in the mill as PRC; in consequence thereof 15000 wheat bags were allowed to be stored.

3. Learned counsel for plaintiff at the very outset contends that such retaining of the 15,000 wheat bags was on oral understanding with defendants No.2,3 & 4 and no single penny was paid in that respect. However, he has furnished security before the Nazir of this Court in pursuance of order dated 12.04.2016.

4. In contra learned counsel for defendants No.1 to 4 contends that there was no oral understanding but such permission was granted and allowing him storage on PRC basis which he claimed to be a practice continuing since years together because of lack of accommodation with the government of Sindh whereby the government wheat is kept / stored in private flour mills by declaring them as 'PRC' after obtaining undertakings from private mill owners. He further contends that since plaintiff's godowns was rented out and they stopped their business, therefore, instant suit is not maintainable and they are not entitled for interim relief. As well he contends that wheat bags were not utilized by the mills but same were sold out in open market.

5. Heard the learned counsel for the respective parties and perused the record.

6. Admittedly plaintiff is seeking mandatory injunction and certain declaration for allowing the payment of wheat used / sold by the plaintiff which (*wheat bags*) was stored in his godown / PRC.

7. The storage of wheat bags in the godown of the plaintiff *no where* give a license to the plaintiff to use / sell the same without proper approval / allocation of wheat bags nor it had reduced the liability of the authority (*Foods Department*) to have control over such storage. It is a matter of record that the plaintiff has failed to bring a single document to substantiate any valid permission to utilize/sale of the 15000 wheat bags hence in absence thereof the plaintiff *legally* cannot claim an exception to a wrong because the law is clear that '**what one cannot get directly he cannot get the same indirectly**'. The plaintiff has also failed to submit proof that he has paid any single penny in that regard. A mere offer to pay the amount for *illegally & unauthorizely* removed / sold stored government wheat bags shall not lessen the liabilities or consequences

for such *illegal* removal / sale thereof. If such request is allowed it shall amount to giving a license for such illegal and unauthorized removal and sale of government wheat bags (*property*) which, I have no hesitation to say, cannot be allowed. Further, admittedly plaintiff was not competent to retain more than 3000 wheat bags as per policy hence 15000 wheat bags were not a legal storage. At this juncture it would be conducive to refer the letter dated 12.02.2016 which is that: -

“SUBJECT: DECLARATION OF FLOUR MILLS GODOWNS OF M/S. ABDULLAH MODERN PLANT (LEASE M/S MAN-O-SALWA FOODS) AS PRC (FREE OF RENT) FOR STORING GOVERNMENT WHEAT STOCKS.”

Please refer to your letter No.RDF/MC/PRC/2016/158, dated 10.02.2016, on the subject noted above and to state that considering your recommendations, the Director Food, Sindh has been pleased to declare the Flour Mills Godowns of M/s Abdullah Modern Plant, Nazimabad, Karachi (Leasee M/s Man-o-Salwa Food) as PRC (free of rent) for storing (15000) Fifteen thousand bags, subject to fulfillment of all codal, procedural and financial formalities, and policy guidelines communicated under this Department’s letter No.SO(W)-26(0)f. Mill PRC-26(0)/2014, dated 28.04.2014.

2. *The wheat stocks should be stored at the above mill PRC subject to solemn guarantees from the parties as proposed/discussed with you and the District Food Controller Central shall personally monitor the storage and obtained Post-dated cheques and other guarantees as required under the Rules/Policy/Laws”.*

The above letter shall speak for *itself* that District Food Controller *Central* was to personally ‘**monitor**’ the storage and was to take the post-dated cheques couple with other guarantees. Since, the plaintiff does not deny the legality / validity of said letter *rather* claims declaration of his mill as ‘**PRC**’ under said letter hence he *legally* cannot seek an exception to his *own* deliberate and intentional acts, including issuing post dated cheques particularly when he (*plaintiff*) admittedly used / sold the wheat bags without any permission. Further, the relief (s), sought through instant suit, *prima facie* appear to be not sustainable in eye of law. None shall take a breath in answering that ‘ **a demand of gratification or illegal money shall always be illegal**’ which needs no declaration from a court of law, hence prayer clauses (a) & (b) are not sustainable. Further, the prayer clauses (c) & (d), being subordinate to main prayers, shall fail *too*.

The plaintiff has sought no relief regarding declaration of his *own* rights / status hence suit is not maintainable within meaning of Section 42 of Specific Relief Act. Not only this, but relief (c) and (d) *prima facie* appear to be not in consonance with Section 56(d),(f),(h) and (j) of Specific Relief Act. Thus, I shall conclude that the suit of the plaintiff is *prima facie* not sustainable hence demands its rejection within object of Order VII rule 11 C.P.C, which exercise is not subject to an application from a party to *lis*. Accordingly, the suit of the plaintiff is hereby rejected.

8. While parting, the facts of instant matter insist that government officials (*authority*) shall not stand absolved of its obligations / duties to control, manage and monitor the stored government wheat even at PRC nor by taking an *undertaking* or post-dated cheques it (*authority*) shall give a license to mill owner or any other person to *openly* remove and sell the government stored wheat bags thereby opening a room of litigation, criminal or civil whichever it may be, at the cost of government interest / property. The *government* is competent to frame policies but it does not give a license to act arbitrarily or where object of *framing* such a policy fails i.e **'affecting the interest of public at large'** which shall include loss to government property / exchequer. Reference may be made to case of *Dilber Khan* (PLD 2013 SC 167). Further, in the case of *Pir Imran Sajid & others* (2015 SCMR 1257) it has been held that:

'12. It is now well laid down that the object of good governance cannot be achieved by exercising discretionary powers unreasonably or arbitrarily and without application of mind but objective can be achieved by following the rules of justness, fairness, and openness in consonance with the command of the Constitution enshrined in different Articles including Articles 4 and 25. The obligation to act fairly on the part of the administrative authority has been evolved to ensure the rule of law and to prevent failure of the justice.'

A *practice* should not be allowed to continue merely for its continuity since years together because it must always be the object (*legality*) of a practice for continuity thereof and not its **'past continuity'**. The ground, taken by learned counsel for defendant that it is because of lack of accommodation, cannot be an excuse. It must be a **'policy'** and not a **'practice'** when it is a matter of government property, involving the

public interest, which in '**wheat storage**' is there. Accordingly, the Chief Secretary is directed to frame a '*policy*' for hiring / engaging '**PRC**' preferably in / at independent godowns because the term '**hire**' does not fulfill its meaning when payment for temporary use is not involved, as is evident from definition of word '**hire**', per Black's Law Dictionary i.e:

'To engage the labor or services of another for wages or other **payment**. 2. To procure the temporary use of property, usu. **at a set price**.'

It (*policy*) may include godowns of private mills but policy should make it clear that private mills shall have no control or excess to such stored articles. Such policy should be framed within *two months*, with compliance report.

9. Since, the *undisputed* claim of the plaintiff to have sold out government wheat bags *prima facie* speaks for the maleficence/misficence of defendants in such illegal and unauthorized removal and sale of government wheat bags. Accordingly matter is referred to the Chairman of Anti-Corruption for conducting thorough probe and fixation of responsibility on the delinquent persons of committing this illegality.

10. Under these peculiar circumstances in order to save the interest of government, cheques deposited with Nazir shall remain and Nazir shall direct the bank for seizure and verification of that amount.

Instant suit is disposed of in view of above terms.

Office shall transmit copy of this order to learned A.G. Sindh, Chief Secretary Sindh, and Chairman Anti-Corruption, for compliance.

JUDGE