

ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 2111 of 2014.

DATE

ORDER WITH SIGNATURE OF JUDGE

1. For order as to maintainability of the Suit (Vide Court's Orders dated 12.11.2014 and 24.02.2016.
 2. For hearing of CMA No.14075/2014 (U/O 39 Rule 1 & 2 C.P.C).
 3. For hearing of CMA No.14076/2014 (U/O 18 rule 18 C.P.C)
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02.03.2016.

Mr. Saadat Yar Khan, Advocate for the Plaintiff.

Ms. Lubna Ejaz, Advocate for Defendant No.1.

Mr. Muhammad Umar Lakhani, Advocate for Defendant No.2.

1,2 & 3. On 12.11.2014, the Counsel for the Plaintiff was put to notice as to maintainability of instant Suit and the following order was passed:-

“Umer Lakhani undertakes to file his Vakalatnama on behalf of defendant No.2. Ms. Firdoos Farride files her Vakalatnama on behalf of defendant No.8, which is taken on record. Repeat notice on un-served defendants.

The plaintiff has based his claim on the ground that the chemicals which are used in the factory are hazardous. Such chemicals which are being used apparently are part and parcel of rubber industry and it cannot be ruled out that despite having been acquired the factory for running as rubber factory/shoe factory they would exclude the components which are required for manufacturing such product of the rubbers including the silicon, crape soles which are in fact used for manufacturing shoe-sole and hence in such a situation learned counsel is put on notice to satisfy as to the maintainability in particular with reference to cause of action. Learned counsel for the plaintiff to this has pointed out that there are certain violations of the approved building plan and hence on account of such violation Suit is maintainable. Be that as it may, learned counsel for the plaintiff to assist on the next date of hearing.

To come up in the second week of December. Let notice be repeated to un-served defendants for the next date of hearing.”

Pursuant to the aforesaid order, the Counsel for the Plaintiff as well as defendant No.2 have been heard. Learned Counsel for the plaintiff submits that the cause of action has accrued to the plaintiff as detailed in para-20 of the plaint, when it came to the knowledge of the plaintiff that defendant No.2 is engaged in the business, which is hazardous in nature through Suit No.1592 of 2012, which according to the Plaintiff is not in accordance with the Indenture of Lease granted in favour of defendant No.2 by defendant No.1. Learned Counsel has

further submitted that in addition to the above, plaintiff has also prayed for grant of compensation to the tune of Rs.2,00,000,000/- and therefore, the Suit of the plaintiff is maintainable. He further submits that such compensation has been demanded by the plaintiff as the defendant No.2 had obtained an ad-interim order on 05.12.2012 in Suit No.1592 of 2012, whereby, the plaintiff was restrained from using the boiler installed at the factory, whereas, such interim order was vacated on 11.04.2014 and the appeal filed against such dismissal order was also dismissed on 15.09.2014. In the circumstances Counsel has prayed that instant Suit is maintainable and the declaration sought by the plaintiff can be granted by the Court.

On the other hand, Counsel for defendant No.2 submits that insofar as the grant of lease to defendant No.2 is concerned, the same cannot be challenged by the plaintiff in view of the judgment in the case of **Naseer Ahmed Versus Hafiz Muhammad Ahmed and 17 others** reported as **1984 CLC 340**, whereas, even otherwise, the plaintiff is engaged in the business, which is in conformity with the lease granted by the defendant No.2 read with Letter dated 03.03.2015 available at Page-57 of the written statement. He further submits that instant Suit is not for damages and only for compensation, whereas, the plaintiff in Para-21 of the plaint has already stated that they reserve the right to claim damages in a separate Suit for the alleged losses caused to them by defendant No.2, hence insofar as instant Suit is concerned, there is no cause of action to the plaintiff, whereas, no declaration as prayed can be granted in the instant Suit.

I have heard both the Learned Counsel and perused the record. Insofar as the objection in respect of Indenture of Lease granted in favour of Defendant No.2 is concerned, perusal of the same reflects that defendant No.2 has been leased out the plot for use and enjoyment as an industrial unit for manufacturing "Rubber Goods, Brake Oil, Plastic & Footwear", whereafter, through Letter dated 03.03.2015 the defendant No.1 has permitted the plaintiff to engage in the manufacturing of Allied Foam/Polyurethane Products in addition to the sanction already granted through the lease. Moreover, even if the plaintiff has been permitted to carry out its manufacturing only in respect of "Rubber Goods, Brake Oil, Plastic & Footwear", the same does not reflect that the use of chemical in such manufacturing is prohibited, whereas, whether such chemicals are hazardous in nature or not is to be regulated independently under the relevant law. In the

circumstances, this contention of the Counsel for the plaintiff has no merits and is hereby repelled.

Insofar as the claim of compensation is concerned, it would be advantageous to refer to Para 21 of the plaint which reads as follows:-

“That the Plaintiff reserves the right to claim additional calculated and Suitable damages amounting to Rs.60,000,000,000/- (Sixty Crore only) in separate Suit for the losses caused to the Plaintiff and [sic] by the Defendant No.2.”

It is an admitted position that this Suit was filed by the plaintiff after dismissal of the injunction application on 11.04.2014 and so also High Court Appeal on 15.09.2014, whereas, the plaintiff has chosen itself to file a separate Suit for claiming damages as stated in Para 21 above, therefore, no compensation can be granted in the instant Suit when the plaintiff by itself wants to claim damages separately.

Therefore, it appears that insofar as alleged violation of the lease issued in favor of Defendant No.2 is concerned, there is no cause of action available to the plaintiff, whereas, the plaintiff has already stated in the plaint that for damages they will be filing a separate Suit for such purposes. In view of hereinabove facts and circumstances of the case, it appears that no relief can be granted to the plaintiff in the instant Suit as no cause of action has accrued to the plaintiff viz-à-viz the prayer sought in the instant Suit. Accordingly in terms of Order 7 Rule 11 CPC, the Suit is barred as no cause of action has accrued to the Plaintiff to have filed instant Suit, and therefore the plaint is hereby rejected.

J U D G E

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