

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
HCA NO. 327 /2015

Date	Order with signature of Judge
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- 1) For orders on CMA No. 5809/2015.
- 2) For orders on CMA No. 5810/2015.
- 3) For hearing of main case.
- 4) For orders on CMA No. 5811/2015.

18.11.2015.

Mr. Moulvi Iqbal Haider Advocate for the Appellant.

Through instant appeal the appellant has impugned order dated 10.11.2015, whereby, a learned Single Judge of this Court has been pleased to reject the plaint in Suit No.1560 of 2015 on the ground that the appellant had earlier sought more or less same relief, through a writ petition which was dismissed by this Court on merits; hence, subsequent Suit was barred in law.

Counsel for the appellant submits that the learned Single Judge has failed to appreciate that the prayer sought in the instant matter was materially different than the prayer in the petition bearing No.D-1637 of 2012; therefore, the plaint could not have been rejected summarily. He further submits that the Suit was filed after withdrawal of a subsequent petition bearing No. D-3935 of 2015 as some factual controversies were involved in the matter, and such permission was granted by the Court, therefore, the subsequent Suit was permissible being appropriate remedy.

We have heard the Counsel at some length and have perused the record which reflects that the petitioner had earlier filed C.P. No. D-1637 of 2012 which was dismissed by this Court vide order dated 28.8.2013 wherein it was observed as under:-

“From the record it appears that the petitioner license was cancelled on account of various violations as reflected from the show cause notices, as many as five, for violating programme mix and violation of the PEMRA Code of Conduct and no response was given by the petitioner and after recommendations of the Council of Complaint, the authority declined restoration of the license. From the record it also appear that the petitioner also collected refund of the license fee as far back as 18.06.2008 and no exception was taken for the refund of the license fee. The petitioner could have challenged such action under Section 30-A of the PEMRA Ordinance, 2002. The petitioner treated it a fait accompli and past and closed transaction. Now petitioner cannot turn around to urge that earlier license is subsisting. In fact, it is for this reason that the petitioner applied afresh for the license on 20.12.2009, which was considered favourably. As noteabove the license fee has not been deposited despite repeated reminders including reminder impugned through instant petition. Last reminder was issued on 3.6.2011. Instead paying the amount the petitioner chose to file instantpetition on 2.5.2012. We see no merits in the petition. The license, which has since been cancelled, the petitioner has not taken any exception as the action of the authority was taken as far back as 2009. No right can be claimed when the petitioner has failed to comply with the terms and conditions of PEMRA Ordinance, 2002.”

Thereafter the petitioner once again approached this Court by filing petition bearing No. D-3935 of 2015 and apparently in continuation of the same cause of action, sought directions from this Court to allow the appellant to run its transmission / air link after deposit of the necessary license fee, pursuant to letters dated 26.5.2010 and 1.7.2011. Such petition was withdrawn on 25.8.2015 by making a statement that since there are factual controversies, which are required to be resolved through recording of evidence, therefore, the appellant may be allowed to approach the Civil Court of appropriate jurisdiction after withdrawing the petition. The Court had dismissed the petition as withdrawn, with the observations that the appellant may seek remedy as requested, if permissible under the law. Such order was obtained without informing the Court that a Suit had already been filed on 22.8.2015, nonetheless, the plaint in the said Suit has been rejected by the learned Single Judge through the impugned order by observing that the appellant had earlier sought the same relief through C.P.No. D-1637 of 2012 and therefore, no fresh Suit on the same cause of action is maintainable.

At the very outset we had confronted the Counsel for appellant that as to how the subsequent Suit is maintainable in respect of the same cause of action, even if the relief(s) is differently worded, as they appear to be more or less similar in nature, the Counsel could not controvert such factual position. Counsel was also confronted as to how the Suit was maintainable in view of explanation V to Section 11 as well as Order 2 Rule 2 CPC, the Counsel again could not satisfactorily respond. It appears that the entire case of the appellant is based upon some letters of respondents issued in 2010 and 2011, which were very much available when CP No. 1637 of 2012 was filed and dismissed by this Court on 28.8.2013, and if any relief which was not sought is barred under Order 2 Rule 2 CPC, whereas, if the same had been sought and no finding is recorded, then the same is deemed to be rejected / dismissed by the Court in terms of Section 11 CPC.

In the circumstances, we are of the view that the Suit filed by the appellant was hit by the aforesaid provision of law and the learned Single Judge while passing the impugned order has correctly rejected the plaint as being barred under the law and such order appears to be unexceptionable.

Accordingly, instant appeal being misconceived is hereby dismissed in limine along with listed applications.

JUDGE

JUDGE