

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 1431 of 2011

Date	Order with signature of Judge
------	-------------------------------

For orders as to the maintainability of the suit
(as per Court order dated 04.12.2014)

13.04.2015

Mr. Sameer Ghazanfar for the plaintiffs.
Mr. Agha Faisal for defendant No.2
Mr. Kashif Hanif for defendant No.3
.X.X.X.

Plaintiff has filed this suit for declaration that the bid submitted by the defendant No.3 through tender notice bearing No. DAE/Stores/941/1769/11 is illegal, void and in violation of the Tender Document and Sindh Public Procurement Rules, 2010 and in consequences whereof sought damages.

Learned Counsel for the plaintiff concedes that insofar as the issue relating to the bid is concerned, however he submitted that insofar as the claim of damages is concerned, it is maintainable against defendant No.3. Learned Counsel submits that the Rule 31 of the Sindh Public procurement Rules, 2010 provides remedy insofar as the grievance that relates to the bid process, however the quantum of damages is to be ascertain independently and this Court has jurisdiction.

On the other hand learned Counsel for defendant No.2 Mr. Agha Faisal submits that without prejudice the plaintiff is neither an agent nor he has participated in the bid in question and the document he is relying is in respect of previous bidding process and insofar as the participation in present process is concerned, no document has been placed. Learned Counsel submits that even no relationship of principal and agent is established as none of the documents have been filed and only a letter of intent that too filed by the defendant No.2 is available

on record and that does not create any right and interest insofar as the relief that has been claimed by the plaintiff. Learned Counsel submits that the suit is not maintainable in view of Sections 201 and 202 of the Contract Act.

Mr. Kashif Hanif learned Counsel appearing for the defendant No.3 has also pointed out that the dispute primarily was between the plaintiff and other defendants and even the damages are not claimed against the defendant No.3. He submits that after four years the contention of the learned Counsel for the plaintiff that it is only a typing error insofar as the claim of damages is concerned, it cannot be considered, even otherwise as of today the claim of damages is prima facie appears to be time barred if at all such is allowed to be maintained.

I have heard the learned Counsels and have perused the record. Insofar as the issue in relation to the bidding process is concerned since goods have already been supplied, the money has also been paid, if at all the plaintiff has any complaint or dispute in relation to the process, mechanism or procedure that has been adopted by the defendant is a past and closed transaction. The plaintiff could have sought remedy in terms of Rule 31 of the Sindh Public procurement Rules, 2010 which provides redressal committee for the settlement of disputes. Insofar as the claim of damages is concerned prima facie such are being claimed as against defendant No.1 and the cause of action could only arise in case the dispute in terms of Rule 31 of the Sindh Public procurement Rules, 2010 is resolved against the defendants. It seems to be premature cause of action that sought to be exercised against the defendants hence in view of the provision of the Sindh Public Procurement Rules, 2010 the suit is not maintainable and is accordingly dismissed along with all pending applications.

Judge