

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
SUIT No. 2123 / 2016

DATE

ORDER WITH SIGNATURE OF JUDGE

For hearing of CMA No. 13961/2016.

05.11.2018.

Mr. Habib Tahir Advocate for Plaintiff.
 Mr. Umar Zad Gul Kakar DAG.
 Mr. Kafeel Ahmed Abbasi, Advocate for Defendant No. 4.
 Mr. Sohail Muzaffar Advocate for Defendant (PQA).
 Ms. Masooda Siraj, Advocate for Defendant No. 6.
 Mr. Ameer Buksh Metlo Advocate for Defendant
 (Commissioner Inland Revenue Zone III, LTU, Karachi).
 Mr. Altamash Arab Advocate for Defendant.

This matter is coming up since 24.9.2018 for satisfying the office notice / objection regarding maintainability of this Suit and deposit of 50% of the disputed amount pursuant to judgment of the Hon'ble Supreme Court reported as ***Searle Solutions (Pvt) Limited and other v Federation of Pakistan & Others (2018 SCMR 1444)***, when learned Counsel for the plaintiff had submitted that the controversy has since been decided in favor of the Plaintiff and therefore, no such deposit is to be made and Suit may be withdrawn by the Plaintiff after instructions. However, he was confronted that since consignments imported by the plaintiff have been released pursuant to orders of this Court, therefore, in case of simplicitor withdrawal, the Bank Guarantee would have to be released in favor of the department. And to this he was directed to come prepared on the next date. Thereafter on 08.10.2018 he again sought time and following order was passed:-

“Pursuant to Order dated 24.09.2018, learned Counsel for the Plaintiff submits that though a Bank Guarantee of Rs.50 Million was furnished before the Nazir of this Court. However, it is only to the extent of Rs.12,45,744/- that the consignments have been cleared pursuant to Orders of this Court. He is directed to place on record the necessary Goods Declaration of such consignments and shall supply advance copy to the Counsel for the concerned Department, whereafter, appropriate orders would be passed.

To come up on 05.11.2018 at 11:00 a.m.”

Today again the learned Counsel has, firstly, argued that on the last date of hearing directions were given to the department and not to

the Plaintiff, and secondly, while confronted with the above order, he submits that compliance has not been made and more time be given. Such conduct on the part of the Plaintiff is not at appreciable. Matter is coming up for a very simple issue and Court's precious time is being wasted for no good and justifiable reason. The Court while passing the interim order, and reposing trust in the conduct of the plaintiff had ordered that a bank guarantee be furnished to the extent of Rs.50.0 Million; however, if the amount of income tax involved is more than this, then appropriate orders would be passed. This matter is pending since 2016, after furnishing the bank guarantee of Rs.50.0 Million and during these 2 years the plaintiff has not bothered to come up before the Court and seek replacement of the same with a lesser amount. Now when the order has been passed by the Hon'ble Supreme Court for making deposit as above, adjournments are being sought for no good reason. The plaintiff in this situation ought to have approached the department and obtain necessary order or clarification to that effect and approach the Court accordingly for reduction and or replacement of the Bank Guarantee. But instead despite several chances, the matter is being dragged.

It is noted with concern that in like matter(s), no proper assistance is being provided by the litigants as well as Counsel appearing on their behalf (barring a few exceptions), and matters are being dragged for compliance of the orders of the Hon'ble Supreme Court, thereby, wasting the precious time of this Court. Instead of moving ahead with adjudication on merits, issue like the one in hand consume the entire time of the Court. This is really unfortunate.

Since in this matter, despite chances, the order passed on last two dates has not been complied with, whereas, Counsel for Department while confronted has also submitted that none has approached for any reconciliation, therefore, left with no other option, Nazir is directed to encash the Bank Guarantee lying with him to the extent of 50% **and retain the amount with him. He shall not pay the same to the department without further orders of the Court.** Once the exercise is completed he shall furnish his report accordingly.

To come up on **19.11.2018 at 11.00 AM.**

J U D G E

ARSHAD/