

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

CP No.D-1809 of 2023

Date	Order with signature of Judge
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1. For orders on CMA No.8914/2023.
2. For orders on CMA No.8915/2023.
3. For orders on CMA No.8916/2023.
4. For hearing of main case.

11.04.2023

Sardar Faisal Zafar, advocate for the petitioner.

1. Granted. 2. Granted, subject to all just exceptions. 3 & 4. Briefly stated, the petitioner was the highest bidder in a customs auction and consequently deposited the earnest money; while being required to deposit the remainder within the prescribed time. *Admittedly*, the petitioner neither deposited the requisite amount nor made an application for extension¹ within the stipulated time. Per order dated 03.01.2023 (“Impugned Order”), the earnest money was forfeited in pursuance of Rule 69 Chapter V of the Customs Rules 2001².

The petitioner seeks for the Impugned Order to be set aside and for the earnest money to be refunded and the crux of arguments articulated before us was that while the petitioner did possess the requisite funds the same could not be deposited, or an extension sought, within the prescribed time.

It is settled law that the ambit of a writ petition is not that of a forum of appeal, nor does it automatically become such a forum in instances where no appeal is provided³, and is restricted *inter alia* to appreciate whether any manifest illegality is apparent from the order impugned. It is trite law⁴ that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law. The Impugned Order is well reasoned and no infirmity in respect thereof could be identified before us by the learned counsel.

¹ 68. Amount of bid to be paid in office.- The balance of the amount of bid shall be paid by the successful bidder in cash or through bank draft in the National Bank/Treasury as prescribed by the Collector, within a period of seven days excluding holidays, of the final acceptance of the bid; Provided that an officer not below the rank of Additional Collector may extend the period by not more than seven days, on case to case basis if he considers it to be fit and appropriate; Provided further that Collector of Customs may extend the period already extended by the Additional Collector, up to fifteen days on case to case basis if he considers it to be fit and appropriate.

² 69. Earnest money to be forfeited.- If the balance of the amount of the bid is not paid within the period or extended period specified in rule 68, the earnest money shall be forfeited in favour of the Federal Government, and the goods may be sold by auction or otherwise.

³ Per *Ijaz ul Ahsan J* in *Gul Taiz Khan Marwat vs. Registrar Peshawar High Court* reported as *PLD 2021 Supreme Court 391*.

⁴ Per *Faqir Muhammad Khokhar J.* in *Naheed Nusrat Hashmi vs. Secretary Education (Elementary) Punjab* reported as *PLD 2006 Supreme Court 1124*; *Naseer Ahmed Siddiqui vs. Aftab Alam* reported as *PLD 2013 Supreme Court 323*.

Even otherwise Article 199 of the Constitution contemplates the discretionary⁵ writ jurisdiction of this Court and in the present matter no case has been set forth before us to merit invocation of such jurisdiction. In view hereof, this petition, and listed application, are hereby dismissed in *limine*.

JUDGE

JUDGE

⁵ Per *Ijaz Ul Ahsan J.* in *Syed Iqbal Hussain Shah Gillani vs. PBC & Others* reported as 2021 SCMR 425; *Muhammad Fiaz Khan vs. Ajmer Khan & Another* reported as 2010 SCMR 105.