

IN THE HIGH COURT OF SINDH AT KARACHI

Suit 47 of 2015 : Mian Pervez Akhtar vs.
The Federation of Pakistan & Others

For the Plaintiff : Mr. Mushtaque Hussain Qazi, Advocate

For the Defendants/s : Syed Ahsan Ali Shah, Advocate
Mr. Muhammad Aqeel Qureshi, Advocate

Ms. Rabia Khalid
(Assistant Attorney General)

Date/s of hearing : 08.08.2024

Date of announcement : 08.08.2024

ORDER

Agha Faisal, J. This suit was filed in 2015, dismissed for non-prosecution once and since restored, essentially assails a show case notice issued per section 122 of the ITO 2001. *Ad interim* orders, virtually suspending the statutory tax collection mechanism in this instance, were obtained on 27.02.2015 and apparently subsist till date. Notwithstanding the issue of maintainability of a civil suit on such count, *admittedly* the aforesaid notice has already culminated in an appealable order; rendered post institution hereof and certainly not under challenge herein.

2. Admittedly, the impugned notice provided a forum and opportunity for adjudication of any grievance of the plaintiff. Any order passed in pursuance thereof was also appealable. Default by the plaintiff in seeking recourse before the statutory hierarchy could not be demonstrated to denude the statutory forum of its jurisdiction; or confer the same upon this court. Even otherwise, the plaintiff's learned counsel remained unable to demonstrate as to how this Court could assume jurisdiction in this matter in view of the Supreme Court edict in *Commissioner Inland Revenue v. Jahangir Khan Tareen* reported as 2022 SCMR 92, as approved by the Supreme Court subsequently in Judgment dated 15.09.2022 rendered in *DCIR vs. Digicom Trading (CA 2019 of 2016)*. It hardly merits reiteration that the edict of the Supreme Court is binding law for this Court.

3. Be that as it may, the impugned notice has already culminated in an order. Notwithstanding the fact that such orders are appealable per the statutory hierarchy and not in civil suits, no amendment was ever sought in the pleadings herein to include the said order. Learned counsel has articulated that the plaintiff is aggrieved by the said order, however, has not assailed the same. By necessary implication the order remains in the field and the present suit could not be employed as the appellate forum in regard thereof. Irrespective of merits of the case, the primary question to be addressed by this court is with respect to jurisdiction as the order is *admittedly* appealable; for which an entire statutory hierarchy is provided and abjuring the said recourse unilaterally by plaintiff cannot be deemed to be confer any jurisdiction upon this court.

4. In view of the foregoing, the plaint is hereby rejected per Order VII rule 11(d) CPC.

Judge