

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

C. P. No. D-7260 of 2022

[Show Time Cable & Datacom (Pvt.) Ltd. Vs. Federation of Pakistan & others]

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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Present:
Mr. Justice Muhammad Shafi Siddiqui C.J.
Mr. Justice Jawad Akbar Sarwana

Priority

1. For hearing of Misc. No.30751/2022 (Stay).
2. For hearing of main case.

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12.08.2024

Mr. Noor Muhammad Dayo, Advocate for the petitioner.
Mr. Kashif Hanif, Advocate for PEMRA.
Mr. Khaleeq Ahmed, D.A.G.

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Muhammad Shafi Siddiqui, J.- The claims such as surcharge, in-house fee for the license and 5% of the gross revenue earned were challenged by the petitioner in Misc. Appeal No.01/2017 which was decided on 28.04.2021. Against it a petition for leave to appeal was filed before the hon'ble Supreme Court that is C.P. No. 3385/2021 which was disposed of on 01.11.2022. One of the components of the claim i.e. surcharge was subjudice before the Hon'ble Supreme Court arising out of some other *lis* decided and reported as 2014 CLC 197. The amount claimed in this regard by PEMRA and adjudicated by this Court via above judgment in Misc. Appeal No.01/2017, was asked to be deposited and that deposit was made subject to the outcome of the petition pending before Hon'ble Supreme Court against the reported judgment *ibid*. In the earlier petition, the petitioner has not challenged the vires of rules on the basis of which the claim was made where such belated attempt is made now. We have enquired from the learned counsel if petitioner could agitate the claims and grievances arising out of

same cause in piecemeal, especially in view of Order II Rule 2 CPC. The counsel read the provisions of Order II Rule 2 CPC before us and is unable to substantiate as to why, despite his deliberate omission in the earlier petition to challenge the vires of rule, Order II Rule 2 CPC would not come into play. He remained perplexed. We are of the view that such deliberate omission to challenge the vires of rule, Order II Rule 2 CPC will not enable the petitioner to have a second bite of the cherry by invoking the jurisdiction of this Court again, as being offended by law identified above which provision would restrict such action on the basis of an earlier cause accrued when the claim was challenged. This opportunity to challenge the vires was available when the earlier petition was filed. Moreover, petitioner surrendered when only “surcharge component” was subjected to the outcome of pending CPLA identified above. It is still claimed to be pending by Mr. Kashif. With this understanding of law, we are of the view that this subsequent challenge cannot be made as being barred under Order II Rule 2 CPC. The petition, being misconceived, is dismissed alongwith pending application with cost of Rs.25,000/- to be deposited in the High Court Clinic in ten days.

CHIEF JUSTICE

JUDGE

Asif