

ORDER SHEET

THE HIGH COURT OF SINDH KARACHI

High Court Appeal No. 414 of 2023

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DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

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Hearing/Priority:

1. For orders on office objection a/w reply.
2. For hearing of main case.
3. For hearing of CMA No.5318/2023 (Stay).

**16.12.2024**

Mr. Shaukat Ali Choudhry, Advocate for the Appellant.  
Mr. Muhammad Khalid, Advocate for the Respondent.

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**Jawad Akbar Sarwana, J.:** This appeal arises out of an order dated 17.10.2023 passed by the learned Single Judge in Execution Application No.29/2020 directing the Appellant/Judgment Debtor/Karachi International Container Terminal Limited (“KICTL”) to deposit with the Nazir of the Court certain sums of money shown as follows:

“Rs.458,443 x 3 =	Rs.1,375,329/-
Amount paid and present	
<u>With Nazir of this Court</u>	<u>Rs.426,870/-</u>
Balance	Rs.948,459/-”

2. KICTL has contended that the balance of Rs.948,459/- mentioned in the impugned order (above) is not in line with the decretal amount set-out and payable by KICTL as per the Judgment dated 04.01.2016. The operative part of the Judgment, which consists of two sentences, states as follows:<sup>1</sup>

First Sentence

“The Plaintiff has admitted that he has received Rs.458,443/- which includes 30 days salary in lieu of the stipulated notice and other emoluments and deductions.”

Second Sentence

“The Plaintiff shall be paid the salary of remaining days (90) and other emoluments as per his [Plaintiff’s] entitlement.”

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<sup>1</sup> Available on page 103 of the Appeal.

3. KICTL Counsel contended that the aforementioned sum of Rs.458,443/- comprised of three components, namely:

- (a) 30 days salary in lieu of stipulated notice
- (b) Provident Fund
- (c) Gratuity Fund

4. Counsel further contended that after the receipt of the above sum of Rs.458,443/-, which included salary (a) and all the emoluments, namely (b) provident fund and (c) gratuity fund, everything payable has been paid to the Respondent/Decree-Holder, which included “other emoluments” mentioned in the second sentence of the operative part of the Judgment dated 04.01.2016. Only the 90 days' salary was payable by KICTL to the Decree Holder, which equals a sum of Rs.426,870 (Rs.142,290/- x 3 months = 426,870/-). KICTL’s Counsel submitted that this sum of Rs.426,870/- had been subsequently deposited with the Nazir, and nothing was/is payable thereafter to the Respondent/Decree-Holder.

5. Counsel for KICTL did not oppose the contentions of KICTL’s Counsel except that he contended that the reference to the “other emoluments” in the Judgment dated 04.01.2016 included the matter of the company car and KICTL had not closed this matter.

6. Heard counsel and perused the record available in the appeal. At the outset, appellant’s contentions supported by the documentary evidence available in the file included acknowledgement receipts signed by the Respondent/Plaintiff, indicating receipt of payment of (a) salary for (30) days in lieu of stipulated notice, (b) provident fund, and (c) gratuity fund, which total Rs.518,614/- as follows:

(a)	30 days salary in lieu of stipulated notice	Rs.142,290/- <sup>2</sup>
(b)	Provident Fund	Rs.239,253/- <sup>3</sup>
(c)	Gratuity Fund	<u>Rs.137,071/-<sup>4</sup></u>
		<b>Rs.518,614</b>

<sup>2</sup> Available on page 195 of the HCA file

<sup>3</sup> Available on page 33, 35 and 185 of the HCA file

<sup>4</sup> Available on pages 39, 41 and 187 of the HCA file

7. We note that the sum recorded in the Judgment dated 04.01.2016, as admitted by the Respondent/Plaintiff, is Rs.458,443/- leaving a difference of Rs.60,171 between Rs.518,614 and Rs.458,443.

8. As discussed above, it is apparent that the sum of Rs.458,443 did not comprise the salary amount alone but also included “other emoluments and deductions” and that the term “other emoluments” appears in both the First and Second Sentence of the operative part of the Judgment. Based on documentary evidence available in the Appeal, it is unclear whether these “and other emoluments as per his entitlement” in the second sentence of the Judgment's operative part have been paid or unpaid by KICTL. Indeed, these are not under challenge in the impugned Order dated 17.10.2023. Equally, we are not sure if the reference to “and other emoluments” in the second sentence is some reference to either (i) an additional unpaid “other emolument”, or (ii) is the sum of Rs.60,171 merely a “deduction” from Rs.518,614, or, (iii) is “other emoluments as per his entitlement” a reference to an amount that is entirely something else. Accordingly, we remand the matter to the Executing Court to ascertain whether (i), (ii), and (iii) are payable or not, and if they are payable, then what quantum and if KICTL has paid them.

9. Notwithstanding the aforementioned observations, we find that the calculation mentioned by the learned Single Judge in the impugned Order is incorrect. The salary received by the Respondent/Decree-Holder was Rs.142,290/- and therefore, 90 days salary, i.e. three months' salary, totals Rs.426,870/- (Rs.142,290/- x 3 months = 426,870/-) and not Rs.1,375,329/-. An amount of Rs.426,870/- has already been deposited by KICTL with the Nazir of this Court, and as discussed herein above, the components of what is the quantum of 8(i), (ii), and (iii) and if payable, has it been paid by KICTL is yet to be decided by the Executing Court.

10. With regard to the Respondent/Plaintiff's plea that the reference to “other emoluments” in the second sentence of the operative part of the Judgment dated 04.01.2016 is to the company car, this has no mention in the impugned Order dated 17.10.2023. KICTL has filed this appeal impugning the

Order dated 17.10.2023, not the Judgment dated 04.01.2016. The matter of the company car is not subject matter of the Appeal. Further, the Decree-Holder/Respondent has not impugned the Judgment dated 04.01.2016. The Decree-Holder/Respondent cannot agitate/raise claims assertion in an appeal filed by the Appellant/KICTL. Without prejudice to the above, we have perused the pleadings available in the appeal file, read the judgment dated 04.01.2016 and do not find any articulation concerning the car. The judgment dated 04.01.2016 is silent on this point. In the circumstances, we are not inclined to make any determination outside the subject matter of this lis which has attained finality following the Judgment dated 04.01.2016.

11. The above Appeal is allowed in the above terms with no order as costs.

Judge

Chief Justice