

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Miscellaneous Appeal No 67 of 2010

Ghulam Muhammad Malkani
Versus
The Appellate Bench & others

Date	Order with signature of Judge
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1. For orders on CMA 1406/10
2. For orders on CMA 1407/10
3. For hearing of main case.

Dated: 20.09.2016

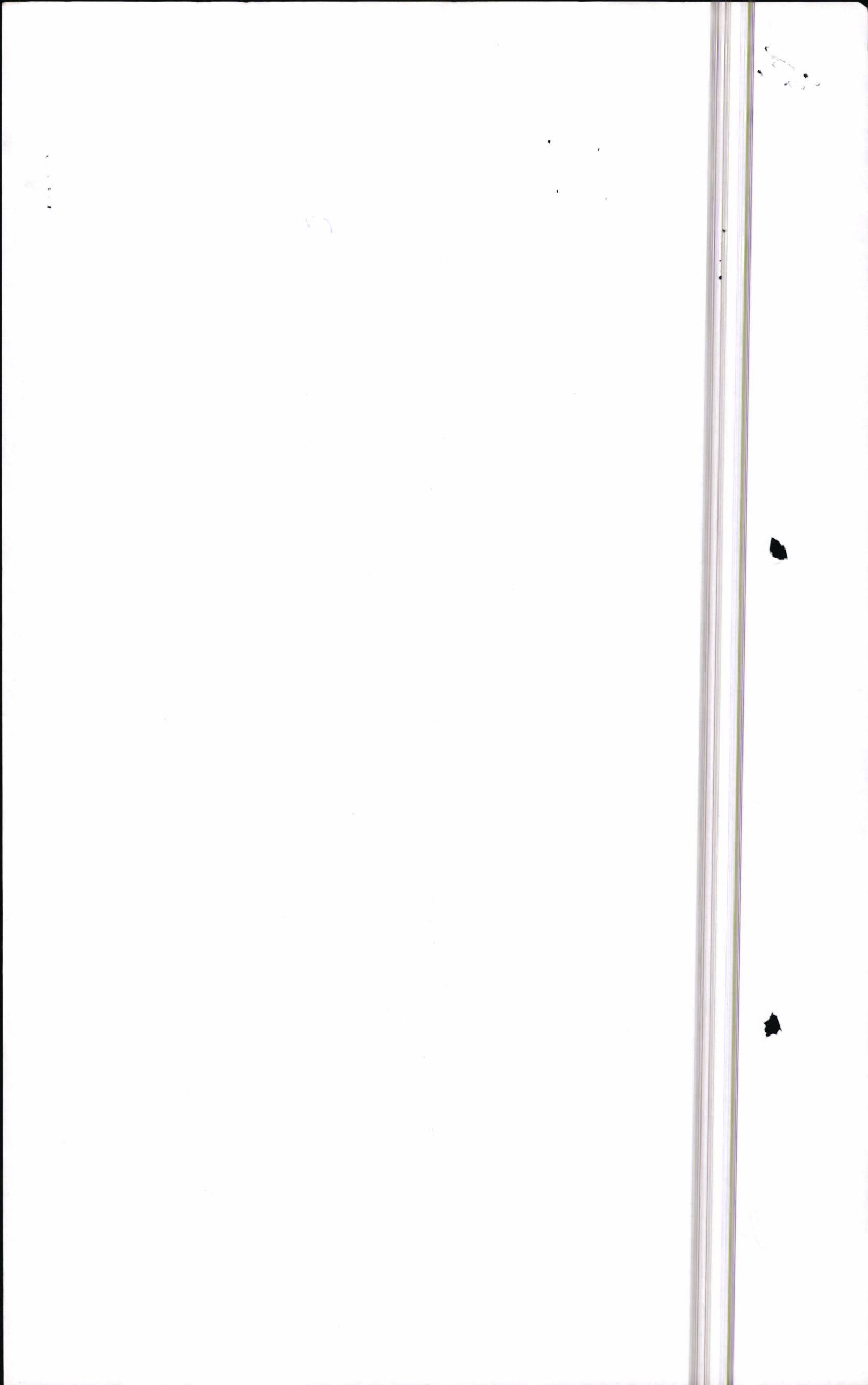
Appellant Ghulam Muhammad Malkani present in person.
Mr. Khurram Rasheed for respondents.

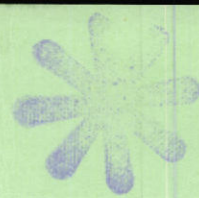
In this appeal it is claimed that SECP has incorrectly and unlawfully imposed a penalty of the amount which is claimed to have been gained by the appellant.

The appellant is present in person and at the very outset relies upon the judgment of Hon'ble Supreme Court passed in the case of Securities & Exchange Commissioner of Pakistan v. First Capital Securities Corporation Limited reported in 2011 CLD 907. It is claimed that in terms of the judgment of the Hon'ble Supreme Court such amount, if at all gained by any director, should go to the company. Appellant however disputes the amount claimed to have been gained and submits that the formula in determining and calculating the amount has not been applied properly.

Mr. Khurram Rasheed, learned counsel appearing of respondents/ SECP, contends that insofar as the dictum laid down by the Hon'ble Supreme Court in relation to the amount that it is to be deposited with the company there is no cavil and this amount is liable to be deposited







in the account of the company. However he asserts that the SECP has lawfully calculated the amount by applying the provisions of Section 224 of Companies Ordinance 1984 read with Rule 16 of Companies (General Provisions & Forms) Rules, 1985.

To this the appellant appearing in person submits that he was condemned unheard as at the time when such penalty or amount gained was calculated he was not called and/or associated.

In view of the above this appeal is disposed of along with pending applications as under:-

- i) That the amount claimed to have been gained by the appellant shall be deposited with the company account within ten days;
- ii) Insofar as the dispute as to the calculation of subject impugned amount is concerned, that shall be resolved by the Board of Directors of the company while associating the representative of the SECP who is well conversant with such issue of calculation;
- iii) That while calculating such amount alleged to have been gained, the appellant may also be heard;
- iv) The provisions such as Section 224 of Companies Ordinance 1984 read with Rule 16 of Companies (General Provisions & Forms) Rules, 1985 or any other provisions/law applicable shall be applied and the question of the actual calculation be decided accordingly.
- v) That the impugned orders shall not influence the proceedings to be initiated in pursuance of this order.
- vi) The issue, as stated above, shall be decided expeditiously and preferably within 90 days.

Appeal stands disposed of in the above terms along with pending applications.

Judge

