

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
C.P No.D-1129 of 2024

| Date | Order with signature of Judge |
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| 1. | For orders on CMA No.947/2025 |
| 2. | For orders on office objections |
| 3. | For orders on CMA No.4512/2024 |
| 4. | For orders on CMA No.4513/2024 |
| 5. | For hearing of main case |

12.02.2025

M/s. Abid S. Zuberi and Hassan N. Qamar, advocates for the
Petitioners

1. As per office note, matter is already fixed on 04.03.2025; however, Counsel pleads urgency by stating that matter may be anti-dated and to be fixed for hearing today. Urgency granted.

2. To be complied with within a week.

3. Granted subject to all just exceptions.

4&5. Learned Counsel for the Petitioners states that this petition primarily challenges the impugned orders dated 23.05.2024 and 25.06.2024, available at pages-95 & 41 respectively. By way of background, learned Counsel states that private Respondents were terminated by the Petitioner's Company when the latter ended an agreement with the respective sub-contractor on 22.02.1992 and against such termination, these respondents filed a grievance Petition bearing No.36/1992 before Sindh Labour Court No.VII, Sukkur, which petition was allowed by the decision dated 24.04.1996. Petitioner company, being aggrieved, challenged the said order by filing an appeal with the Sindh Labour Appellate Tribunal as well as filed Constitution Petitions bearing C.P Nos.D-739 of 1993 and 754 of 1996, which were also dismissed. Against the said dismissal, an appeal was preferred before the Hon'ble Supreme Court through Civil Appeal No. 83 & 84 of 2006, which appeals were also dismissed vide order dated 16.05.2013 and in compliance of judgment of Hon'ble

Supreme Court, the private Respondents were reinstated, notwithstanding the Hon'ble Supreme Court having not provided any back benefits to the private Respondents, they filed a grievance Petition before NIRC Karachi, seeking arrears of wages and back benefits, and on which petition, the Petitioner moved an application raising preliminary objections, which was to be heard prior to the case on merits. Resultantly, the same was heard by a learned Single Bench NIRC, who passed order on 22.09.2016, dismissing the preliminary objections (without properly addressing the issue of maintainability as claimed by learned Counsel for the Petitioner). Against which order, an appeal was preferred before Full Bench of NIRC, which appeal was also dismissed and against such dismissal, the petitioner No.1 preferred C.P No.D-225 of 2017 before this Court; however in the meanwhile, learned Single Member of NIRC chose to decide the grievance Petition through order dated 23.11.2020 with the following operating part:-

"13. As regards the determination of amount is concerned, I have reached to the conclusion that original record of the payment made to other employees of same category will support to determine the amount but said record is lying with the company but in spite time of six years after filing the applications they have not provided the record. The claim of the petitioners in main leading petition is also on the high level, as such, without further delay in the matters and in order to avoid procedure technicalities I order that the Respondents company should pay an amount of Rs.2800000/- (Rupees Twenty Eight lacs only) to the each petitioner. The above amount shall be paid within sixty days. However, if further delay in the payment is made in connection with further proceedings and in case the instant order is maintained by the final forum the Respondents will also pay 10% per month as interest to the petitioners on the above amount." [underling in ours]

Being aggrieved and dissatisfied with the above order, Petitioner Company preferred an appeal before Full Bench of NIRC, which appeal was also dismissed vide order dated

12.01.2021. The said order of Full Bench NIRC Sukkur was challenged before this Court at Principal Seat at Karachi through C.P Nos.D-521-606 of 2021, wherein interim relief was directed to the petitioner that no coercive action be taken against the Petitioner Company subject to deposit bank guarantee before learned Nazir of the Court. In compliance thereof, petitioner furnished required bank guarantee amounting to Rs.24,08,00,000/- (Rupees twenty four crore eight lacs only) with the Nazir, which constitution petition was finally decided by order dated 15.03.2021 upon the mutual agreement of both the side to the effect that until C.P No.D-225/2017 is decided, the Bank guarantee would not be encashed. Learned Counsel further adds that ultimately C.P No.D-225/2017 was dismissed through order dated 19.11.2021 paving way for the private Respondents to receive the beneficial amounts from the Nazir of this Court by encashment of Bank Guarantee; however, per learned counsel, the private Respondents were not forthcoming to receive their respective claims deposited with Nazir of the Court, and finally all those sums were allegedly disbursed amongst private claimants as apparently an appeal filed by the Petitioner No.1 with the Hon'ble Supreme Court against the findings given in C.P No.D-225/2017 was not pressed as the Petitioner Company was contemplating to have Constitution Petition No.D-521 to D-606 of 2021 filed before this Court at Principal Seat restored; however, later on such request of restoration of the petitions was declined which as stated, led to the encashment of Bank guarantee. Upon having pocketed the claims, learned Counsel adds that the private Respondents moved a contempt application before the Senior Member of NIRC seeking payment of 10% monthly interest over and above the principal amount of Rs.24,08,00,000/- by raising a hefty claim of Rs.60,20,00,000/- in terms of interest. Such claim was vehemently challenged by the Petitioner Company before

learned Single Member of the NIRC alleging no case of contempt was made out as there was no delay on the part of the Petitioner as in the intervening period, the petitioner was pursuing his legal remedies in accordance with law before the various legal forums available to it. Notwithstanding such objections, learned Single Member of NIRC passed first impugned order dated 23.05.2024 directing the petitioner to pay the private Respondents monthly interest of 10% over and above the principal sums of Rs.240,800,000/- and to file compliance report within 60 days. Against the aforementioned order, learned Counsel for the Petitioner states that the Petitioner Company preferred an appeal, which appeal was also dismissed by 2nd impugned order dated 25.06.2024, directing the Petitioner to make payment of the interest amount.

Learned Counsel for the Petitioners contends that first of all Interest Act, 1839 restricts imposition of interest rate by the Court through Section 1, to not exceed the current rate of interest i.e. KIBOR, so that the Courts could not impose unreasonable interest rates as imposed in the present case. Per learned Counsel, it is cornerstone of all legal proceedings that the time lapsed in pursuing legal remedies through competent forums in a prompt and efficient manner, does not amount to delays as constitution provides all the matters to be treated in accordance with law and that providing all the parties equal and fair opportunity to reach to the competent forums. This per learned Counsel is the principle enshrined in the Constitution as "fair trial". Counsel states that the order dated 23.11.2020, passed by Single Member of NIRC Sukkur was illegal *inter alia* to the extent that the Petitioner Company was directed to pay interest for the intervening period in which the said Petitioner was pursuing its legal remedies.

Learned Counsel through instant petition as well listed application, has sought suspension of allegedly illegal orders

dated 23.05.2024 and 25.06.2024, passed by learned Single Member NIRC as well Full Bench of NIRC and further agitated that now the contempt proceedings have ensued against the Petitioner Company and its various offices, which are not maintainable and an interim order may be passed against such misuse of process of law.

Contentions raised above require consideration. Issue notice to Respondents as well as AAG for **04.03.2025**, when the matter is already fixed. In the meanwhile, operation of impugned orders dated 23.05.2024 and 25.06.2024 to remain suspended and, any and all proceedings ensued in furtherance of those orders to remain suspended till next date of hearing too.

JUDGE

JUDGE

Faisal Mumtaz/PS