

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Suit No.1395 of 2001

Order with signature of Judge

For hearing of CMA No.6058 of 2011.

06.12.2019

Syed Haider Imam Rizvi, advocate for the plaintiff.
Mr. Abdul Razak, advocate for defendant.

This is a Suit for specific performance, permanent injunction and in the alternative, for damages. Through this application, the plaintiff seeks a restraining order, against the original defendants No.1 & 2 from committing any violation of the Master Plan / Zonal Plan and not to allow setting up of a Container Freight Station [CFS] over than the area, earmarked in the Master Plan, with a further prayer to restrain defendant No.1 from extending temporary concession for an 'ON DOCK CFS' to defendant No.2.

2. Learned counsel for the plaintiff submits that this Suit seeks specific performance, against defendant No.1 to ban / prohibit all business activities pertaining to 'ON DOCK CFS' facilities at Port Qasim Authority [PQA] and to ensure successful and free running of the CFS Village at Port Qasim Authority, Karachi. According to him, in terms of Section 10 of the Port Qasim Authority Act, 1973, there cannot be any change in the Master Plan of the area and, therefore, the defendant No.1 is required to act accordingly. Per learned Counsel pursuant to grant of temporary permission to Defendant No.2, the Plaintiff is losing its business opportunities resulting in losses.

3. On the other hand, learned counsel for defendant No.1 submits that the plaintiff has not joined the necessary party to whom permission for 'OFF DOCK' terminal has been granted and, therefore, no case is made out.

4. I have heard both the learned counsel and perused the record. It appears that instant Suit was filed in the year 2001 and the listed application has been filed on 19.05.2011. On such date an order to maintain

status quo was passed. It further appears that vide order dated 02.05.2014, the application filed by the then defendant No.2 has been allowed, whereby, their name has been deleted from the array of the defendants and such order has attained finality and has not been challenged any further. Learned counsel for the plaintiff was also confronted as to, of which agreement or contract, the plaintiff seeks specific performance and in response learned counsel was not able to refer to any such document and instead responded that the same will be placed on record subsequently. Such line of argument does not seem to be appropriate, whereas, this application is pending since 2011 and apparently after deletion of defendant No.2, it has served its purpose, whereas, when the contents of the plaint are examined, it appears that the cause of action for filing of this Suit was primarily the temporary permission granted to the then defendant No.2 to run 'On Dock CFS' terminal. It would be advantageous to refer to the relevant paragraphs of the plaint, which are reproduced as under;

"14. That the Defendant No.2 namely QICT commenced the operation of the Terminal in year 1997 and at that time no "Off Dock" CFS was developed in the Port Qasim vicinity or in the land earmarked for CFS village whereby the Defendant No.1 allowed a temporary "On Dock" CFS facility to the defendant No.2, which is evident by the exchange of correspondence between Defendant No.1 and 2 which are annexed herewith marked as Annexure K-1 and K-2 respectively.

17. That the "Off Dock CFS" of the Plaintiff was fully ready and operational on September 5, 2000 despite that the Defendant No.1 has temporarily allowed four months extension to Defendant No.2 to use the temporary "On Dock CFS" facility vide their letter reference No.PQA/DGM(PSP),14/99 dated August 21, 2000. They did not consider the huge investments and hectic efforts of the Plaintiff for establishing "Off Dock" CFS within the earmarked area of CFS Village thus the Defendant No.1 deliberately, intentionally and with connivance and collusion of Defendant No.2 has caused loss of Rs.1,50,000/- [Rupees One Lacs Fifty Thousand Only] approximately per day to the Plaintiff from the date of operation of Plaintiff CFS. The loss of such nature is still being suffered.

19. That the Defendant No.1 deliberately, intentionally and with malafide extended the time upto January 31, 2001 to the Defendant No.2 for closing down their temporary "On Dock CFS" with the sole purpose of giving them time to initiate legal proceedings against each other, so that the Defendant No.2 would be benefited from the pending proceedings as they would gain additional time to carry on their Temporary "On Dock" CFS at Terminal thus causing irreparable loss and injuries to the Plaintiff."

5. A perusal of the aforesaid paragraphs of the plaint reflects that primarily the cause of action was against the then defendant No.2 and after its deletion, apparently the Suit has served its purpose. Even otherwise, the prayer sought in the Suit, is in relation firstly, for specific performance, however, there is no mention of any agreement or contract between the

plaintiff and defendant No.1 of which the performance is being sought; secondly, the other prayer is in respect of permission granted to defendant No.2, which has now become *infructuous*, in view of the above facts. If the Plaintiff is seeking any specific performance of the entire Master Plan, without any binding agreement with the Plaintiff to that effect, I am afraid, apparently the same cannot be granted even after trial, and definitely not at the injunction stage. Moreover, perusal of s.10 *ibid* also does not support the case of the Plaintiff in any manner.

6. In view of hereinabove facts and circumstances, of this case, it appears that the application does not have any merits and is rather *misconceived* and after passing of order dated 05.05.2014, whereby, the defendant No.2 has been deleted, the Plaintiff ought to have withdrawn the same on its own without asking this Court to adjudicate it on merits, as it is sheer wastage of the precious time of the Court due to prevailing pendency of large number of cases. It is also needless to observe that after passing of order dated 05.05.2014, if the Plaintiff had any intentions to continue with the prayer made in this application, at-least amendment in the plaint ought to have been sought by impleading the necessary parties to whom any further permission for establishing 'Off Dock' terminal, if any, has been granted; as apparently, the plaint in the present status does not leave any further grievance of the Plaintiff insofar as any pending applications are concerned. This conduct on the part of the Plaintiff warrants imposition of cost as well; hence, by means of a short order passed in the earlier part of the day, this application was dismissed with cost of Rs.10,000/- [Rupees Ten Thousand Only] to be deposited in the account of Sindh High Court Clinic, and these are the reasons thereof.

JUDGE