

IN THE HIGH COURT OF SINDH, KARACHI

High Court Appeal No.318 of 2022

PRESENT:

MR. JUSTICE AQEEL AHMED ABBASI
JUSTICE MRS. KAUSAR SULTANA HUSSAIN

Fresh Case

1. For orders on office objection a/w. reply at 'A'.
2. For hearing of main case
3. For orders on CMA No.3088/2022.

28.09.2022:

Dr. Shahab Imam, advocate for the appellant along with
Syed Asif Ali, advocate.
Mr. Haider Waheed, advocate for the respondent No. 1.

O R D E R

Through instant High Court Appeal the appellant has impugned an ad-interim order dated 31.08.2022 passed by the learned Single Judge in Suit No.1276 of 2022 filed by the respondent No.1, who according to learned counsel for the appellant even did not qualify or meet the criteria set-up for grant of tracking license, sought a declaration to the effect that the short listing of the companies for the purpose of granting license vide letter dated 08.04.2021 is illegal and contrary to the Tracking and Monitoring of Cargo Rules, 2012 and, therefore, may be declared as illegal, whereas, the learned Single Judge without hearing the appellant, through impugned ex-parte order, has been pleased to suspend the operation of such letter, and consequently the license awarded to the appellant has become ineffective as the appellant is not in a position to carry on his lawful business activity. According to learned counsel for the appellant, ultimate relief as claimed in the suit has been granted to the respondent No.1 on the first date of hearing through impugned order without hearing

the parties, whereas, no reasons have been recorded and mere reliance has been placed on another order dated 31.08.2022 passed in different Suit bearing No.1275 of 2022.

2. Learned counsel for the appellant was confronted to satisfy the Court as to maintainability of instant High Court Appeal, which appears to have been filed against an ad-interim order, whereas, the appellant has the opportunity to file reply/objections to the injunction application or to file application under Order XXXIX Rule 4 CPC to seek recalling/modification of the impugned order. In response to such query of the Court, learned counsel for the appellant submits that since the impugned order does not contain any reason and is also perverse and illegal, whereas, three (03) ingredients required to be taken into consideration while granting ad-interim relief i.e. prima-facie case, balance of convenience and irreparable loss and injury to a party, have not been taken into consideration, as according to learned counsel for the appellant, respondent No.1 has no locus standi to file the suit and seek such declaration nor has any cause of action to approach the Court after 1-1/2 years for seeking suspension of the letter dated 08.04.2021, wherein, respondent has not sought any relief except a declaration regarding legality or otherwise of the aforesaid letter, therefore, the very Suit is misconceived and not maintainable. According to learned counsel, if the impugned order is set aside and matter is remanded to the learned Single Judge to pass order on injunction application afresh after hearing the parties, no prejudice or injury will be caused to respondent No.1, whereas, the appellant will suffer irreparable loss and injury if the impugned order remains in the field.

3. Conversely, Mr. Haider Waheed, Advocate present in Court pursuant to Notice under Order 43 Rule 3 CPC, waives notice of instant High Court Appeal files vakalatnama and

parawise comments/objections to appeal along with annexures on behalf of respondent No.1, copy of the same has been supplied to the learned counsel for the appellant. Learned counsel for the respondent No.1 submits that since instant appeal has been filed against an ad-interim order therefore, the same is not maintainable, whereas, the appellant can raise all such factual and legal grounds before the learned Single Judge for seeking recalling/modification of the ad-interim order. It has been further contended by the learned counsel for the respondent No.1 that he can satisfy the Court as to maintainability of Suit and the relief sought therein, which according to learned counsel, is strictly in accordance with law.

4. Heard the learned counsel for the parties, perused the impugned ad-interim order dated 31.08.2022 passed by the learned Single Judge in the aforesaid Suit, which prima-facie reflects that without examining the entire facts of the subject Suit and while placing reliance on an ad-interim order passed in another Suit i.e. No.1722 of 2018, the operation of letter dated 08.04.2021 has been suspended, which prima-facie amounts to granting if not the ultimate than substantial relief to the disadvantage and injury of the other party without providing opportunity of being heard, more particularly when no reasons whatsoever appears to have been assigned while passing the impugned order, whereby, operation of impugned letter dated 08.04.2021 has been suspended after a period of more than 1½ years from the date of its issuance.

5. In view of hereinabove facts and circumstances of the case, we would dispose of instant High Court Appeal with the direction to the appellant to file reply/objections to injunction application with advance copy to the learned counsel for respondent and may be at liberty to file appropriate application for

seeking recalling/modification of the impugned order, whereafter, learned Single Judge may pass order a fresh on injunction application i.e. CMA No.12637/2022 or on the application, if filed by the appellant to this effect, after hearing the learned counsel for the parties in accordance with law, preferably, within a period of two weeks from the date of hearing the parties. In the meanwhile, operation of the impugned order dated 31.08.2022 shall remain suspended.

6. Instant High Court Appeal stands disposed of in the above terms alongwith listed application(s).