CITATION AWAITED

JUDGMENT SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

F.A.O No.64 of 2025

M/s Indus Motor Company Limited
Vs.
Federation of Pakistan through Ministry of Industries and Production, etc.

&

W.P No.132 of 2025

Atif Mahmood Sheikh
Vs.
Federation of Pakistan through Secretary, Ministry of Industries and Production, etc.

Date of hearing	:	17.06.2025
(FAO No.64/2025)		
Appellant by	:	M/s. Akbar Khan, Ahmed Junaid & Barrister Salman Jadoon, Advocates.
Respondents by	:	Ms. Shaista Tabussam, AAG a/w Engineer Altaf Hussain, Assistant Manager, EDB.
Respondent No.4 by	:	Mr. Saeed Ahmed Joyia, Advocate.
(W.P No.132/2025)		
Petitioner by	:	Mr. Saeed Ahmed Joyia, Advocate
Respondent No.4 by	:	M/s. Akbar Khan, Ahmed Junaid & Barrister Salman Jadoon, Advocates.
Respondents by	:	Ms. Shaista Tabussam, AAG a/w Engineer Altaf Hussain, Assistant Manager, EDB.

MUHAMMAD ASIF, J.- This judgment shall dispose of the afore-titled Civil Appeal No. 64 of 2025 filed under Section 104 read with Order XLIII Rule 1(r) of the Code of Civil Procedure, 1908 ("**CPC**"), and the Writ Petition No. 132 of 2025, as both arise between the same parties and involve the same subject-matter.

DRAFT

2. The Civil Appeal numbered as FAO No. 64 of 2025 is preferred by the appellant being aggrieved of the order dated 08th April 2025 ("**impugned order**") passed by the learned Senior Civil Judge-I, West Islamabad ("**the trial court**"), whereby the application under Order XXXIX Rules 1 & 2 CPC filed by the appellant was dismissed, while the suit was adjourned sine die.

3. The Writ Petition No. 132 of 2025 is preferred by the petitioner (respondent No.4 in the Civil Appeal), seeking implementation of order dated 26th November 2024, passed by the respondent No.1.

4. The epigrammatic facts, as set forth in the appeal, are that the appellant, Indus Motor Company Limited, instituted the present suit seeking *Declaration, Mandatory and Permanent Injunction* in respect of order dated 26.11.2024, passed by respondent/Defendant No. 02, whereby the appellant was directed to deliver the subject vehicle to Defendant No. 04 along with compensation. Initially, respondent No. 4 had purchased a Toyota Fortuner from the appellant against a pay order of Rs. 93,02,000/-. Since respondent No.4 had approached the appellant through JS Bank, therefore pursuant to the said pay order, PBO bearing Serial No. 5606183 dated 28th September 2021 was generated in favour of JS Bank, with tentative delivery fixed for May 2022. Subsequently, due to revision in the price of the vehicle, reminders dated 10th August 2022 and 10th March 2023 were issued to respondent No. 4 for payment of the revised amount. Upon his failure to make payment, defendant/respondent No. 6 was informed, through respondent No. 5, that the booking order was cancelled. A refund cheque amounting to Rs. 95,02,000/- was prepared, in addition to a cheque for markup in accordance with applicable rates, amounting to Rs. 1,952,235/-. However, respondent No. 4 did not collect the said cheques, and instead began blackmailing the appellant. Respondent No. 4 then filed a complaint before the Federal Wafaqi Mohtasib on 27th June 2022, which was referred to the Chairman, Engineering Development Board, Board of Management, with an advice to place the matter before the Committee for decision through a reasoned order. In

the meantime, respondent No. 4 filed a writ petition before the Hon'ble Lahore High Court, Bahawalpur Bench. The appellant, in response to notice issued by respondent No. 3, furnished a detailed reply. Meanwhile, respondent No. 4, despite pendency of earlier litigation, filed another application before respondent No. 2, followed by another Writ Petition No. 1376 of 2023 before the Islamabad High Court, which was disposed of vide order dated 15th June 2023. Thereafter, respondent No. 4 instituted a case before the Consumer Court, Bahawalpur, on 24th June 2023. Against this, the appellant filed Writ Petition No. 3518/2023 before this Court. However, as respondent No. 4 opted to withdraw his application from the Consumer Court, the appellant's writ petition was also dismissed. Subsequently, respondent No. 2, while disposing of respondent No. 4's application, passed the order dated 26th November 2024, directing the appellant to deliver the vehicle as booked by respondent No. 4, along with compensation at *KIBOR+ 3*. Being aggrieved, the appellant instituted the suit before the trial court along with an application under Order XXXIX Rules 1 & 2 CPC.

5. The suit along with the injunction application was contested by respondent No. 4, who asserted that, in light of order dated 16th January 2025 passed by this Court in Writ Petition No. 132/2025, no ad-interim injunction could be granted, as this Court had already vacated the ad-interim injunction, vide order dated 15th January 2025, and the matter had been fixed for further hearing. After hearing both sides, the learned trial court passed the impugned order, the operative part whereof reads as under,

> *"The disputed order dated 26.11.2024 has been announced in compliance of the order of Hon'ble Islamabad High Court, Islamabad in Writ Petition No.1376/2023. The beneficiary of the said order, the defendant No.4 had also submitted a further writ petition No. 132/2025 for the implementation of said order against the plaintiff. This means that the Hon'ble Islamabad High Court, Islamabad had taken the cognizance though subsequent to the instant suit. The*

> *proceedings of the instant suit in presence of Writ Petition before the Hon'ble Islamabad High Court, Islamabad on the same subject matter is not maintainable. It is, therefore, the proceedings in the instant petition are hereby stopped. The file is sine die adjourned. It's restoration is subjected to the final order in the Writ Petition No.132/2025. The interim stay order dated 15.01.2025 is hereby recalled."*

Feeling aggrieved the appellant has preferred the instant appeal.

6. The Writ Petition was filed by the petitioner (Atif Mahmood Sheikh), seeking implementation of order dated 26th November 2024, with the stance that a speaking order was passed by the respondent No.1 directing the respondent No.4 to deliver the vehicle to the petitioner through respondent No.5 and also pay the KIBOR+3% compensation to the petitioner for delayed delivery.

7. Learned counsel for the appellant in Civil Appeal contended that the trial court erred in dismissing the injunction application without applying the settled principles of prima facie case, balance of convenience, and irreparable loss. It is submitted that pendency of writ proceedings does not bar jurisdiction of the civil court, which has plenary powers to adjudicate civil rights unless expressly excluded; that the order dated 26.11.2024 is without jurisdiction, and unless injunctive relief is granted, the appellant will suffer irreparable loss. The sine die adjournment amounts to denial of remedy, while the High Court itself had earlier permitted the parties to avail appropriate remedies. He prayed that the impugned order be set aside and the application under Order XXXIX Rules 1 & 2 CPC be decided on merits.

8. Conversely, learned counsel for respondent No.4 and for petitioner in Writ Petition, supported the impugned order, submitting that the appellant has already litigated the matter before multiple forums and failed. The civil suit is a mala fide attempt to delay implementation of the lawful order dated 26.11.2024. It was further argued that this Court had already vacated ad-interim injunction on 15.01.2025 in Writ Petition No.132/2025, hence no parallel injunction

could be granted by the trial court. Injunction being an equitable relief cannot be extended to a party that has failed to honor its contractual obligations. The appeal, therefore, deserves dismissal. In support of the Writ Petition, it was contended that a speaking order has been passed, but the same has not yet been implemented and unnecessary delay tactics are adopted by the respondent company since the expected day of delivery and for the last almost four years the petitioner has been forced to wander from pillar to post; that the manner adopted by the respondent company violates the fundamental right of the petitioner and has caused mental agony to the petitioner; he finally urged for issuance of an appropriate order in this behalf.

9. I have carefully considered the arguments advanced by the learned counsel for the parties and examined the material available on record.

10. The impugned order reflects that the learned trial court dismissed the application under Order XXXIX Rules 1 & 2 CPC and adjourned the suit sine die, only because Writ Petition No.132/2025 filed by respondent No.4 for implementation of the order dated 26.11.2024 passed by respondent No.2. was pending before this Court, however, it is an undisputed fact that in the said writ petition no restraining order was passed by this Court against the proceedings of the civil suit. The order of this Court passed in Writ Petition No. 132/2025, reads as under,

> *"Through the instant writ petition, the petitioner, Atif Mehmood Sheikh, seeks a direction to the Ministry of Industries and Production as well as the Engineering Development Board under the said Ministry to implement its own order dated 26.11.2024.*
>
> *Learned counsel for the petitioner drew the attention of the Court to the petitioner's application dated 17.12.2024 and submitted that despite the reasoned order having been passed by the Ministry of Industries and Production, the same has not been implemented and therefore, the order has been rendered bereft of any substance.*

> *Issue pre-admission notice to respondents No.1 to 3. Respondent No.1 and 2 shall submit a report explaining as to why the order dated 26.11.2024 has not been implemented."*

The trial court, instead of independently applying its judicial mind to the injunction application, considered the mere pendency of writ proceedings as sufficient ground to adjourn the suit sine die. Such reasoning is clearly erroneous because pendency of proceedings before another forum, without a specific restraining order, does not bar the trial court from exercising its jurisdiction vested under law.

11. It is by now a well-settled principle that jurisdiction of civil courts under Section 9 CPC is plenary in nature and extends to all suits of civil nature except those expressly or impliedly barred. Unless there is a clear statutory exclusion, civil courts cannot relinquish their jurisdiction. In the present case, the appellant filed a civil suit challenging the validity of the order dated 26.11.2024 passed by respondent No.2, which it claims was without jurisdiction. Conversely, the writ petition before this Court was filed by respondent No.4 merely to seek *implementation* of the same order. Thus, the scope and nature of the two proceedings were distinct, the civil suit questioned the legality of the order, while the writ petition sought its enforcement. The trial court, therefore, erred in presuming that pendency of the writ petition ousted its jurisdiction.

12. It is a fundamental principle of law that no person can be left remediless. When an administrative order affects civil rights and is alleged to be passed without jurisdiction, the remedy of filing a civil suit cannot be denied. By adjourning the suit sine die indefinitely, the learned trial court practically deprived the appellant of its right to seek judicial redress. Such an approach amounts to a denial of justice, contrary to Articles 4 and 10-A of the Constitution of the Islamic Republic of Pakistan, 1973, which guarantee the right to be treated in accordance with law and the right to fair trial and due process.

13. Furthermore, it is a well-accepted principle that while deciding an application under Order XXXIX Rules 1 & 2 CPC, the court is bound to

assess whether the applicant has established: (i) a prima facie case, (ii) balance of convenience in its favour, and (iii) the likelihood of suffering irreparable loss in the absence of interim protection. The impugned order, however, does not reflect any application of these tests. Instead, the trial court declined interim relief solely on the ground of pendency of a writ petition. Such an approach renders the impugned order a non-speaking one and is in clear disregard of the law laid down by the Honorable Supreme Court in series of judgments.

14. The consequences of sine die adjournment are also noteworthy. If the suit is indefinitely adjourned and the order dated 26.11.2024 is implemented in the meantime, the very purpose of instituting the suit will be defeated. Implementation of the impugned order would cause irreversible consequences, as once the subject vehicle is delivered along with compensation, the appellant would suffer irreparable loss which cannot be adequately compensated by damages. The trial court failed to appreciate that the object of interim relief is to maintain status quo so that the *lis* between the parties remains meaningful and the final adjudication does not become redundant.

15. The Hon'ble Supreme Court in the case of *Ardeshir Cowasjee v. Karachi Building Control Authority* (**1999 SCMR 2883**) has emphasized that courts must not allow proceedings to be frustrated in such a manner that the ultimate decision becomes illusory. Similarly, in the case of *Abdul Karim v. Messrs Florida Builders (Pvt.) Ltd.* (**PLD 2012 SC 247**), it was reiterated that pendency of proceedings before one forum does not automatically bar another competent forum from exercising its lawful jurisdiction. The trial court's approach, therefore, was contrary to settled law and cannot be sustained.

16. In view of the above, it is manifest that the impugned order is not a decision on merits of the injunction application, but a refusal to exercise jurisdiction, based only on pendency of writ proceedings. Such relinquishment of onus not only renders the order legally unsustainable, but also violates the appellant's right to have its grievance adjudicated.

17. Now turning to the Writ Petition No. 132 of 2025 filed by the petitioner, Atif Mehmood Sheikh, who has sought implementation of

order dated 26.11.2024 passed by respondent No.1. It is an admitted position that the said order has already been called in question by the respondent company through a civil suit before the competent civil court, wherein an application under Order XXXIX Rules 1 & 2 CPC has also been filed for interim relief. Once the original order stands challenged before the civil court of plenary jurisdiction, it would neither be appropriate nor proper for this Court to simultaneously exercise its constitutional jurisdiction for implementation of the same order. Entertaining this writ petition in parallel would not only lead to conflicting findings, but also amount to bypassing the jurisdiction of the civil court which is already seized of the matter. The petitioner, therefore, has an efficacious remedy to approach the learned trial court and seek his rights by way of opposition to the application for injunction and thereafter proceed in accordance with law. In this view of the matter, the writ petition is misconceived.

18. For the foregoing reasons, the instant F.A.O No.64 of 2025 is **allowed**. The impugned order dated 08.04.2025, passed by the learned Senior Civil Judge-I, West Islamabad, is **set aside**. The matter is **remanded** to the trial court with the direction to decide the appellant's application under Order XXXIX Rules 1 & 2 CPC strictly on merits, keeping in view the settled principles of prima facie case, balance of convenience and irreparable loss, and without being influenced by pendency of Writ Petition No.132/2025. It is expected that the injunction application be decided preferably within a period of thirty (30) days from the date of receipt of this order.

19. It is further directed that until such time the injunction application is decided afresh, both parties shall maintain *status quo* with regard to delivery of the subject vehicle, so that the suit proceedings are

not rendered infructuous and the appellant is not exposed to irreparable harm.

20. The Writ Petition No.132 of 2025, is **dismissed** with the reason mentioned in Para-14 ibid. No order as to costs.

(MUHAMMAD ASIF)
JUDGE

Announced in open Court on _____August, 2025.

JUDGE

APPROVED FOR REPORTING

/MALIK KAKAR/