

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

J.Ms No.17, 18, 20, 21, 41, 42 of 2011, 05, 06, 15 and 16 of 2013

Date	Order with signature of Judge
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18th July, 2016.

Mr. Raja Sikandar Khan Yasir, Advocate for applicants.
Mr. Muhammad Tariq, Advocate for applicants in
J.Ms No.20 and 21 of 2011.
Mr. Akhtar Hussain a/w Mr. Pir Darwesh and
Mr. Masood Ghani, Advocates for respondents.

Mahmood A. Khan; Judge: The matter was heard on 24.05.2016 and was reserved for orders.

1. These are proceedings under Section 12 (2) of CPC whereby the applicants have challenged the consent decrees as were passed in suits bearing No.888/2005 and 1086/2005 dated 25.02.2008 and 29.01.2009.
2. It is claimed by the applicants that the said decrees have been obtained by fraud/misrepresentation and that after obtaining the said decrees by collusion the decree-holders by use of force, have not only dispossessed the applicants on gun point from the premises of Horizon Plaza by putting them in the instant fear of death but also accumulated sewerage water in the parking space/basement contaminating the underground water tank with sewerage water but also disrupting electricity and sui gas connections, disconnected water supply by removing motors/pumps and raised unauthorized construction of walls.
3. The main respondent in the matter has opposed the proceedings, inter alia, on the ground of maintainability.
4. Learned counsels for the applicants was put to notice as to the maintainability of these proceedings other than their possession not to be disturbed without due course of law by order dated 03.05.2016 and thereafter for the convenience of the learned counsel for the applicants specific question was put up as to “how a consent decree may legally have a binding effect on the applicants who were not a party to the same to which the learned counsel made a reply that because the same is in respect of their property”. Learned counsel for the respondents sought time and has filed a statement at bar in writing wherein it is stated that:

“The decrees dated 25.02.2008 and 29.01.2009 are compromise decrees which have the binding effect only on the parties to the suit and not otherwise, the said compromise decrees are for transfer of shares of the company (M/S Plaza International (Pvt.) Ltd. for consideration with its assets and liabilities. The properties of Plot No.18/2 (CL-7) “Best Western Hotel Plaza International” and Plot No.18/2/1 (CL-7) “Horizon Plaza” remained in the name of the said limited Company, only the shares and management is transferred under the Compromise Decrees and in accordance with Companies Ordinance, 1984”.

It is further stated in the said statement that:

“Without prejudice to the rights of the parties, it is submitted that after submission of Nazir report dated 08.11.2013 the Respondent Limited Company has filed several Civil Suits and applications U/S 12 (2) CPC in the Court of IV-Senior Civil Judge (South), Karachi against the parties claiming any right or interest which are pending adjudication (List attached thereto 14 & 49). Similarly present applicants have also right to seek appropriate remedies under the Law.”

5. It is contended by the learned counsel for the applicants that the compromise decrees prejudice and affect the rights of the applicants and as such the same need to be set aside. It is further contended by the learned counsel that the applicants have been forcibly dispossessed and as such they can file application under Section 12 (2) CPC and he relies upon the following authorities:

1994 SCMR 78
 PLD 2010 Karachi 366
 PLD 2003 Karachi 314
 2003 CLC 1481 Karachi
 1993 SCMR 710
 1990 MLD 2100
 2003 CLC 607 Karachi
 1999 SCMR 1555
 1993 SCMR 2096
 2002 YLR 1440 Lahore
 2002 MLD 19
 2002 SCMR 1838
 2002 MLD 322
 2003 SCMR 767
 2002 SCMR 1554
 2002 YLR 3343
 2002 CLC 166
 1997 CLC 1500
 2002 CLC 166

and on

PLD 2002 SC 500
 2009 CLD 1383
 2002 CLC 166

2009 SCMR 40
1988 CLC 2456
2006 CLC 1018
PLD 2015 Karachi 457

6. Learned counsel for the applicants in J.Ms No.20 and 21/2011 contends that his non-inclusion in list of persons in possession prepared by the Nazir of this Court and has adopted the arguments as made by the learned counsel for the applicants in J.M. No.17/2011 and the associated proceedings.

7. Having heard the learned counsel for the parties and perused the record, especially the consent decrees obtained in the matter, it is my humble understanding that the application under Section 12 (2) CPC is not maintainable as the compromise decrees cannot be relied upon by the respondents in their defence nor can the same be interrupted in the present case to be of any prejudice to the applicants as they were not party to the said proceedings nor they claim any opposition to the subject matter of the compromise decrees while claiming possession in their own right or rights associated thereby in the property of the firm and not the disturbance to the corporate structure agreed therein, the corporate body though owner being distinct to its assets. A sub-lease etc. is a percentage in the right to land on the given conditions and not the ownership in the corporate body itself.

8. It is the claim of the applicants that they were in possession by way of title documents or under valid authority by allotment or otherwise (without prejudice to the rights of the parties being only their claim as no further indulgence is required for the question of maintainability of an application under Section 12 (2) CPC by this Court) and have come up with these applications perhaps under the impression that without getting the said decrees set aside, they cannot seek protection of their legal rights. Unfortunately, the contention is misconceived in the present circumstances as the violations of their alleged rights, if any, is said to have been caused by force and not by any due course of law i.e. there being no further/execution proceedings present and their dispossession was without any Court order. Mere setting aside of the consent decree even if possibly in the given circumstances under which the dispossession is alleged would not entitle them to restoration of possession as a consequence of the said setting aside being an

intra-judicial action never directed by a Court of law under the decrees. Had the possession been under a Court order, perhaps even then the matter would have been considered differently.

9. As far as the consent decrees are concerned, the decree-holder can only claim what the judgment-debtor had legally available to them and even otherwise after the statement in writing having been filed on behalf of the respondents, they cannot seek protection of the consent decree in respect of any rights of the applicants as and whatsoever may be available to them.

10. In the matter it is being attempted to be considered that the subject property/ies may or may not have already been exposed by authorized or unauthorized persons on behalf of or claiming to be on behalf of the corporate body but these rights are distinct and separate and not dependent upon setting aside of the consent decree as a consent decree is legally speaking only an agreement acquired by the consent of the parties under the sanctity of a Court of law to which the legality is only *prima facie* observed and is not a result of inquiry into the facts. The same cannot protect violation to any interests of a third party especially if the same already stand given away, the same as such and consequently cannot be re-created by a consent decree as only available rights can be exercised.

11. These J.M. proceedings for the reason afore given being not maintainable only stand dismissed alongwith the pending applications with no orders as to cost in the present circumstances.

12. The applicants of these proceedings are, however, free to exercise their legal rights (whatsoever they may be) before the relevant forums, if so desired/instructed. It is, however, hoped in a positive manner that any condonation of limitation sought shall be considered by the relevant Court with leniency in accordance with law. It is, however, made clear that no observation has been made in this order as to the merits of the matter nor is liable to be so considered.

JUDGE

Asif