

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.2022 of 2015

Khawer Hanif----- Plaintiff

Versus

Imran Hanif & others----- Defendants

For hearing of CMA Nos:-

1. 6827/16 (U/S 151 CPC.)
2. 1124/16 (U/S 152 CPC.)
3. 1127/16 (U/S 34 of Arb. Act)
4. 15208/15 (U/O 39 Rule 1 & 2 CPC.)
5. 15209/15 (U/O 40 Rule 1 CPC)
6. 16744/15 (U/O 39 Rule 1 & 2 CPC.)
7. 18119/15 (U/S 151 CPC.)
8. 3178/16 (U/O 39 Rule 1 & 2 CPC.)
9. 4493/16 (U/O 39 Rule 1 & 2 CPC.)
10. 4990/15 (U/O 39 Rule 1 & 2 CPC.)
11. 10246/16 (U/S 151 CPC.)
12. 11993/16 (U/S 151 CPC.)

Dates of hearing: 22.11.2016 & 13.12.2016

Date of Order: 06.02.2017

**Plaintiff: Through Mr. Saadat Yar Khan,
Advocate.**

**Defendants No.1 to 3: Through Mr. Khadim Hussain Thahim,
Advocate.**

Defendants No.5: Through Mr. Naved Ali, Advocate.

Defendant No.6: Through Mr. Ajmal Awan, Advocate.

**DHA: Through Mr. Ejaz Mubarak Khattak,
Advocate.**

ORDER

Muhammad Junaid Ghaffar, J. This is a Suit for Declaration, Rendition of Accounts, Mandatory Injunction and Recovery of Misappropriated Funds in respect of a Partnership concern namely

“M/s. Japan Packages”. The Suit is primarily against Defendants No.1,2 & 3, who alongwith the Plaintiff are partners of 25% share each in the Partnership concern. All the listed applications have been filed on behalf of the plaintiff under various provisions of CPC including under Order 39 Rule 1 & 2, Section 151 and Section 152, and Order 40 Rule 1 CPC. The prayers are more or less similar in nature and the plaintiff’s main concern appears to be to have a Receiver appointed to manage the affairs of the partnership concern. At the joint request all these applications have been heard and are being decided together through this order.

2. Briefly, the facts, as stated appears to be that M/s. Japan Packages is a registered Firm vide Registration No.99/0756 dated 13.09.1999 and is engaged in the business of manufacturing P.P. woven bags, polyethylene bags and other packing materials. The Plaintiff is admittedly a Partner to the extent of 25% share, whereas, Defendants No.1,2 & 3 are partners also of 25% share. It is the grievance of the Plaintiff that he has been ousted from the partnership business by these three defendants, who are running the business to his exclusion and are enjoying benefits of the Partnership concern, hence all these applications, which includes appointment of Receiver, freezing of bank accounts, giving maintenance in respect of plaintiff’s office and various other benefits arising out of and in the partnership business.

3. Learned Counsel for the plaintiff has contended that Section 9 of the Partnership Act is being violated, whereas, the factory and the machinery is worth more than 100 Million and the defendants No.1,2 & 3 are siphoning of the funds of the partnership business

and have acquired various properties for which the plaintiff also seeks restraining orders for creating any third party interest. Learned Counsel has further contended that plaintiff is neither being allowed entry in the Office and Factory nor he can sign the cheques nor is entitled for any other benefits arising of the partnership concern, and therefore a Receiver be appointed and further audit of the accounts be conducted from independent Auditors pending final decision of this Suit. In support of his contention he has relied upon the cases reported as **2001 CLC 365** (*Abdul Hakeem and another v. Abdul Raheem Arif*), **PLD 2011 Karachi 151** (*Asadullah Mirbahar and another v. Mrs. Ayesha Muzahir through Attorney and 9 others*), **PLD 2013 Sindh 555** (*Media Max (Pvt) Ltd. through Chief Executive and another*), **2014 YLR 1199** (*Autotechnik (Pvt) Ltd. v. Syed Abuzar Bokhari and others*), **2015 YLR 1489** (*Faizullah Khan and others v. Mst. Mirzago Begum and others*), **2015 YLR 550** (*Naseeb-ul-Haq v. Raes Aftab Ali Lashari*), **NLR 1986 AC 130** (*Uzin Export Import Enterprises for Foreign Trade v. M. Iftikhar & Company Limited*).

4. On the other hand, learned Counsel for the defendants has contended that these are mere allegations of the plaintiff, whereas, pursuant to certain orders of this Court at least at three occasions, the defendants had placed the accounts and audit reports before the Nazir of this Court for inspection on which no rejoinder or objection has been raised. Learned Counsel has further contended that defendants are furnishing the accounts of the Firm on regular basis, whereas, the Plaintiff's share pursuant to Order of this Court is also being deposited with the Nazir of this Court, which the plaintiff is withdrawing regularly. Per learned Counsel after this

arrangement and withdrawal of his share, the plaintiff's application for appointment of Receiver has served its purpose and in fact has become infructuous. Learned Counsel has further submitted that the Partnership Business is running in profit and therefore the plaintiff is being paid his share, whereas, it is a settled rule in corporate management that decisions are taken by the majority partners / shareholders, and therefore all the allegations leveled by the plaintiff are false. Learned Counsel has contended that all these applications be dismissed and the plaintiff be directed to lead his evidence in support of his allegations.

5. I have heard both the learned Counsel and perused the record. After perusal of all these listed applications, it appears that the plaintiffs primary concern is to get the Receiver appointed in respect of the Partnership business and in addition to appointment of Receiver, the plaintiff also seeks certain orders in respect of the accounts of the partnership business and so also the properties, which are individually in the name of defendants but according to the plaintiff they have been purchased from the funds of the partnership business. On perusal of various orders passed by this Court it reflects that a series of orders have been passed, whereby, the defendants have been directed to furnish accounts on regular basis and the profit and loss details, which as per record are being regularly furnished by the defendants. It further appears from the record that the share of the plaintiff's profit is being regularly deposited by the defendants before the Nazir of this Court, which the plaintiff is withdrawing without raising any such objections. This in fact reveals that as of today the Partnership Business is running in profits and the plaintiff is being paid his 25% share. It

is a settled proposition of law that in such circumstances, wherein, the Company or a business is running in profits, the Courts must restrain themselves from appointing Receivers and or order liquidation of the Companies. The Courts are required to go to the farthest so as to save the running business, which is in profits, as appointment of Receiver is not in the interest of all the parties and is always exercised as a last resort in such business disputes. As per record, the defendants are furnishing the details of the accounts as well as profit and loss statement and are also depositing the plaintiff's share in profit with the Nazir of this Court, which is being withdrawn by the plaintiff; therefore, I do not see any reason to appoint a Receiver in this matter. Moreover, all the allegations so highlighted by the plaintiff through these applications require recording of evidence and therefore, on the basis of mere allegations, which are not corroborated with any prima-facie evidence, the same cannot be granted at this stage of the proceedings.

6. It is settled by now that appointment of a Receiver in a running business is always regarded to be a very harsh action, which ordinarily is to be avoided. Though it is to safeguard the interests of all, but again the facts of the case are always to be looked into. Here plaintiff is a minority shareholder (25%) as against defendants No.1 to 3 (75% in aggregate), whereas, the business is a profit making concern presently. Further there is also an offer of the defendants through statement on record, whereby, they have offered either to sell their share or to buy the plaintiffs share at market value, which offer appears not to be acceptable to

the plaintiff. In the circumstances the prayer for appointing a Receiver does not seem to be valid or justifiable in this case.

7. However, at the same time as prayed in the alternative by the plaintiff, it would not cause any inconvenience to any of the parties, and for the sake of justice, equity and fairness to appoint a Chartered Accountants firm to conduct an independent audit of the Accounts, Balance Sheets and Profit & Loss statements of the partnership concern for the period starting from 1.01.2015 to 31.12.2016. This shall not prejudice the case of any of the parties and will only be a tool for the Court to properly adjudicate the main issue in hand. In the circumstances *M/s Haroon Zakaria & Company*, Chartered Accountants, having office at Mezzanine Floor, Progressive Plaza, Beaumont Road, Karachi (+92-21-35674741-4) are appointed to carry out this exercise. The Nazir is directed to convey this order of the Court, whereas, the defendants are directed to furnish up to date details of the Accounts, Profit & Loss statements, Balance Sheets etc, to the Nazir who shall send the same to the above firm. The firm shall quote their fee after receiving the documents and the amount of work required to be performed to the Nazir and thereafter it shall be approved by the Court. The Nazir shall associate the parties in this exercise, whereas, all the parties to the Suit are directed to extend their fullest co-operation to the Nazir, and to the firm, as and when requested by them. Nazir's fee for this exercise is fixed at Rs. 30,000/- which shall be paid by and from the account of the partnership concern by defendants.

6. In view of hereinabove facts and circumstances of the case, all these applications are disposed of with the above directions and by further directing the defendants to continue with the

arrangement presently going on pursuant to earlier orders of the Court, whereby, they have been directed to pay the plaintiff's share through Nazir of this Court.

7. All applications stand disposed of in the above terms.

Dated: 06.02.2017

JUDGE

Ayaz