

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
SUIT No. 2590 / 2017

DATE	ORDER WITH SIGNATURE OF JUDGE
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- 1) For orders on CMA No. 2177/2018.
- 2) For hearing of CMA No. 17379/2017.
- 3) For hearing of CMA No. 606/2018.
- 4) For orders on Nazir report dated 14.04.2018.

18.04.2018.

Ms. Nahl Chamdia Advocate for Plaintiff.
 Mr. Saim Hashmi Advocate for Defendant No. 5.
 Mr. Shadab Tayyab Alleged Contemnor present in Court.
 Inspector Abdul Latif SHO Clifton.

Counsel for Defendant No.5 reiterates his earlier stance of 26.3.2018 that they are not working in the Suit premises and have no concern; therefore, their name may be deleted. Accordingly, in terms of Order 1 Rule 10(2) CPC, Defendant No.5 is deleted from the array of Defendants. Counsel for the Plaintiff shall file amended title accordingly.

Pursuant to orders dated 26.03.2018 Nazir has furnished his report which reflects that the property in question is being used for commercial purposes whereas, according to the report of Assistant Director SBCA as per their record, it is a residential property. On 20.12.2017 an order was passed whereby, Defendants No. 4 & 5 were restrained from using the property in question for commercial purposes. Defendant No.4 appears to be the owner of the property, whereas, though as above, Defendant No.5 has shown no concern and has been deleted as requested, however, Nazir's report reflects that commercial activity is being carried on by a company, which appears to be a Group Company of erstwhile Defendant No.5, and to avoid obedience to the Courts orders, whereby, owner / occupier have been restrained from using the property for commercial purposes, such stance has been set up. This is not only contumacious but so also to defeat the very spirit of Court's orders. It is not that the present occupier is not in knowledge of these proceedings as inspection has been carried out in presence of

various persons including Mr. Haider Raza, Mr. Raheel Warsi, Mr. Adeel and so also the legal officer Ms. Najma Hussain, along with officials as noted in the inspection Report. None has come forward to become a party or to contest the orders of the Court. In the circumstances it is for this Court to see that its order is not violated any further and is required to pass appropriate orders as deemed fit. Court is not impeded from exercising extreme powers as well in the given facts. If this is not done, the illegal activity would continue in sheer violation of Courts orders, whereas, contempt proceedings have also been initiated, and the alleged contemnors have even avoided execution ofailable warrants with the assistance of the legal officer as above. Therefore, it would be in the fitness of things in the given facts that attachment orders are passed and the Court is fully competent to pass any such orders. Reliance may be placed on the case of *Bakhtawar etc. V. Amin Etc. (1980 SCMR 89)*, wherein the Hon'ble Supreme Court has held as under:-

“6. Coming to the merits of the present petition the learned counsel argued that the learned District Judge under the law had no jurisdiction to direct the plaintiffs/ petitioners to reconstruct or restore the khal which, we may observe, according to the concurrent factual findings of the two Courts below had been demolished by them by taking undue advantage of the order of "status quo" issued by the learned District Judge. It was argued that in such cases the only remedy of the respondents was to file a separate suit for that purpose or to sue for damages. The contention has no merit. **It is well settled that when by contravening an injunction order the party against whom the order is passed has done something for its own advantage to disadvantage of the other party, it is open to the Court under its inherent jurisdiction to bring back the party to a position where it originally stood, as if the order had not been contravened. The exercise of this inherent power is based on the principle that no party can be allowed to take advantage of his own wrong in spite of the order to the contrary passed by the court... ..**

In view of the fact that Nazir's report has confirmed that the property is being used for commercial purposes, whereas, the occupier despite having knowledge about Court orders has chosen to remain absent to avoid obedience of the orders, Nazir is directed to attach the property in question. However, as an indulgence and in the interest of justice, since certain equipment is also available in the premises, he shall give 3 days'

notice to the occupier to remove it and vacate the premises, failing which he shall attaché the property as it is. He is fully authorized to seek assistance of any nature from the law enforcement agencies including any Government department(s) so concerned who shall provide such assistance without fail.

As to contempt application Bailiff report reflects that notice could not be served upon alleged Contemnors Mr. Babar Javed, Chief Creative Officer, Geo A & B Productions and Mr. Shaikh Muhammad Inam both having office at F-1, Block No. 4 Clifton KDA Scheme No. 5, Karachi as the legal officer available on the given address namely Mst. Najma Hussain has given evasive replies. Same response was given by the said legal officer to the bailiff of the Court as recorded in order dated 12.03.2018, but restrain was shown. Since she is of a female gender, again Court has shown grace; otherwise warrants in her name ought to have been issued. However, she is warned to be careful in future and shall not create hindrance in Court work by assisting contemnors in avoiding notices / warrants, failing which appropriate coercive measures may be initiated. In the circumstances, let fresh bailable warrants be issued against the two alleged contemnors as above for the next date.

To come up on 09.05.2018. Interim order passed earlier to continue till the next date.

J U D G E

ARSHAD/