

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Suit No.1284 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGE
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Plaintiff: M/s. Gulistan-e-Zareen Co-operative Housing Society Ltd. Through Mr. S. Tauqiar Hassan, Advocate.

Defendants: Through Mr. Ovais Ali Shah, Advocate.
9 & 10

For hearing of CMA No.1196/2017.

Date of hearing: 13.04.2018

Date of Order: 13.04.2018

ORDER

Muhammad Junaid Ghaffar J. This is an Application under Order VII Rule 11 CPC, filed on behalf of Defendants No.9 & 10 for rejection of Plaint.

2. Learned Counsel for the said Defendants submits that instant Suit is incompetently filed as on the very date when the Suit was filed, the Society stood superseded by appointment of Administrator through Notification dated 05.08.2014. According to the learned Counsel this Suit is in respect of some property, which is owned by Defendants No. 9 & 10, whereas, pursuant to Section 6(4) of The Sindh Co-operative Housing Authority Ordinance, 1982 once an Administrator is appointed the Society ceases to have any effect, and therefore, the plaint must be rejected. Learned Counsel has referred to written statement of the official defendants and submits that after the first Notification dated 05.08.2014, another Administrator was appointed through Notification dated 17.02.2015, who was controlling the affairs of the Society when on 10.03.2016, the management

of the Society was restored to the Plaintiff, however, immediately on 11.03.2016, the operation of the Order dated 10.03.2016 was suspended by the then Political Assistant to Chief Minister Sindh for Cooperative Department on 11.03.2016, which continued till 01.01.2018 when finally the Administrator was removed, hence during the said period from 2014 till 2018, the management was with the Administrator and present Suit could not have been filed.

3. On the other hand, learned Counsel for the Plaintiff submits that in view of the written statement of official defendants and annexures filed by them, listed application merits no consideration and is liable to be dismissed.

4. I have heard both the learned Counsel and perused the record. At the very outset, I may observe that insofar as the appointment of an Administrator in terms of the 1982 Ordinance is concerned, it is not that such Notification cannot be challenged by any of the aggrieved party, as contended. This is subject to challenge, but there may be a case to argue that it could not be challenged independently by the Society itself as it ceases to exist pursuant to Section 6(4) *ibid*, however, there appears to be no bar if such challenge is by its members or for that matter jointly with the Society and or its superseded management. In this case in fact appointment of the Administrator itself is not under challenge nor the Defendants No. 9 & 10 are members of the Society and the dispute is only in respect of some property, therefore, the competency of this Suit is to be decided on the facts so available on record. In fact these defendants are

seeking shelter under the provisions of the Ordinance, 1982, to seek rejection of plaint. It is an admitted position that on 10.03.2016, the appointment of the Administrator under Section 7 of the Ordinance, 1982 was recalled and the management was restored to the superseded management of the Society in terms of Section 14 of the Ordinance 1982 with certain directions. However, immediately on 11.03.2016 such order was suspended by the Political Assistant to Chief Minister Sindh for Cooperative Department; but the same was impugned by the Plaintiff Society in C.P.D-1493/2016 and through Order dated 15.03.2016, the Respondents were restrained from taking action against the Plaintiff's Society without due process of law. Therefore, in all fairness it cannot be conclusively held by this Court at this stage of the proceedings that the Plaintiff Society was not in existence when this Suit was filed. The order dated 11.03.2016, whereby, the restoration of the Society was suspended, is still under challenge in the above petition and has not yet been finally decided and there may be a situation that the learned Division Bench finally decides the case in favour of the Petitioner / Plaintiff Society, therefore, when this Suit was filed it is to be presumed that management of the Society was in existence, and therefore, Suit was competently filed.

5. In view of such position, the application (CMA No.1196/2017) was dismissed by means of a short order today in the earlier part of the day and these are the reasons thereof.

Judge