

IN THE HIGH COURT OF SINDH AT KARACHI

SUIT NO. 230 / 2015

Plaintiff: Andaleeb Cooperative Housing Society Ltd.
Through Mr. Muhammad Irfan Advocate.

Defendants: Registrar Cooperative Societies & others
No. 1 to 5. Through Mr. Suneel Talreja AAG a/w Ms.
Rakhshinda Waheed State Counsel.
Muhammad Younus Memon, Administrator.

Defendants: Amir Ali & others through Mr. Muhammad
No. 6 to 13. Haseeb Jamali Advocate.

- 1) For hearing of CMA No. 200/2017.
- 2) For hearing of CMA No. 10356/2016.
- 3) For hearing of CMA No. 10357/2016.
- 4) For hearing of CMA No. 9531/2016.
- 5) For hearing of CMA No. 9532/2016.

Date of hearing: 12.04.2018.

Date of order: 12.04.2018.

ORDER

Muhammad Junaid Ghaffar, J. This is an application (CMA No.10356/2016) at Serial No.2 under Order 7 Rule 11 CPC whereby, private Defendants seek rejection of plaint.

2. Learned Counsel for the Defendants submits that instant Suit is incompetent inasmuch as the same has been filed by the Secretary of the Society on a date when the Management of the Society stood superseded vide Notification dated 19.10.2015 whereas, even otherwise, the Secretary was neither competent to act on behalf of the Society nor he has annexed any authority or resolution of the erstwhile Managing Committee of the Society to file instant Suit. He further submits that after list of documents filed with the plaint there is one letter of authority which is dated 09.02.2015 and the Suit was filed prior to this

date on 04.02.2015, hence; according to the learned Counsel no reliance can be placed on such letter of authority. He further submits that even otherwise, the letter of authority is silent as to when and in which meeting the Managing Committee of the Society authorized the Secretary to file instant Suit. Per learned Counsel the Plaintiff while filing instant Suit and obtaining restraining orders concealed material facts from the Court and since then the affairs of the Society are not being properly run due to this litigation and even election conducted pursuant to directions of a Division Bench in a Constitutional Petition, the controversy has not yet resolved, due to restraining orders in this Suit, preventing announcement of results. According to the learned Counsel in terms of Section 6, 7 & 14 of the Sindh Cooperative Housing Societies Ordinance, 1982, once an Administrator is appointed, the Management becomes functus officio, hence, cannot pursue any litigation and it is only the Administrator who can act on behalf of the Society and none else. Learned Counsel has referred to Byelaws No. 52 & 53 of the Society and submits that the Secretary even otherwise, cannot function without the mandate of the Managing Committee and admittedly such mandate is lacking in this matter. Learned Counsel submits that after this objection was raised certain applications were filed under Order 1 Rule 10 CPC by some members and in connivance with and collusion of Plaintiff, the same was allowed through order dated 16.11.2016 on which date the present Defendant's application was also allowed. He submits that a review was filed against such order as the Applicants were joined as Defendants and since they were in connivance with the Plaintiff they sought review for joining them as Plaintiff. He submits that though the order was reviewed and they were joined as Plaintiffs, but such review was subject to exception that the

objections raised by the present Defendants would remain in field; hence, according to the learned Counsel even if the Applicants are there as Plaintiffs, the competency of this Suit still remains questionable. He further submits that term of the Committee is one year, with an extension of one more year, whereas, for the last many years the affairs of the Society are not being run through an elected Committee due to stay operating in this matter. In support he has relied upon **PLD 1971 SC 550 (Mamdot (presented by 6 heirs) V. Ghulam Nabi Corporation Ltd.)**, **PLD 1966 SC 684 (Messrs Muhammad Siddiq Muhammad Umar and another V. The Australasia Bank Ltd.)**, **1996 SCMR 193 Islah High School, Chiniot V. Jawad Hussain**, **2005 CLD 1208 (Messrs Razo (Pvt.) Limited V. Director Karachi City Region Employees Old Age Benefit Institution and others)**, **AIR 1933 Madrass 103 (T. Balaji Rao Naidu Garu) and PLD 1966 (WP) Lahore 335 (Ch. Muhammad Ali V. Government of West Pakistan and others)**.

3. On the other hand, learned Counsel for the Plaintiff while confronted, conceded that instant Suit was filed by some other Counsel and he is not in a position to satisfy the Court as to this objection regarding competency and authority to file Suit. He further conceded that no proper authority was filed by the Plaintiff at the time of filing of Suit; however, according to the learned Counsel there are certain subsequent events which must be taken care of by the Court including the Notification dated 28.10.2016 whereby, the appointment of the Administrator was withdrawn. He submits that for the present purposes his affidavit in rejoinder to CMA No. 200/2017 along with be also considered for deciding this application.

4. The Administrator / Defendant argued in person and submits that the Plaintiff has destroyed and removed the entire record of the Society and since 2015 after obtaining restraining orders, he is creating hindrances in the smooth running of the affairs of the Society and therefore, Suit be dismissed.

5. I have heard all the learned Counsel and perused the record. Insofar as present application is concerned, the same has been filed under Order 7 Rule 11 CPC for rejection of plaint. Though subsequently, various applications have been filed to which counter affidavits are also on record and in fact the Plaintiff's Counsel made an attempt to rely upon documents filed by him through his affidavit in rejoinder to CMA No. 200/2017; but I may observe that this Court while deciding an Order 7 Rule 11 application, is only required to go through the contents of the plaint and in exceptional cases the written statement, if it has any relevance. The Plaintiff's Counsel frankly conceded that he has no reply to the objections taken on behalf of the Defendants as to the maintainability of Suit and therefore, reference to any documents of subsequent dates which have been placed on record or are being placed today through affidavit in rejoinder to some other CMA cannot be considered. It is an admitted position that when this Suit was filed on 04.02.2015 the Plaintiff Society was already superseded through Notification dated 19.1.2015 issued by the Sindh Cooperative Housing Society exercising powers conferred under Section 7 of Ordinance, 1982 by appointing an Administrator and through another Notification of the same date issued in exercise of powers conferred under Section 6(2)(a) of the Ordinance, 1982, directed the Administrator to take over charge and control of the affairs of the Society, therefore, when instant Suit was filed the Society or for that

matter its Managing Committee ceased to exist. Therefore all matters pertaining to the interest of the Society could have been raised and challenged by the Administrator. But insofar as the contention of the learned Counsel for defendants to the effect that after appointment of Administrator it is only he who can act on behalf of the Society is concerned, I may observe that if there is a challenge to his very appointment, then naturally he won't act on behalf of the Society in doing so. Does this mean that then no one can challenge an appointment of the Administrator?. That's not a correct perception. After all none can be deprived of impugning an action of the Government department, if a case is otherwise made out by a party. In that case, therefore, in my view, the appointment of an Administrator can be challenged, but it can be done by the aggrieved members, (either one or collectively), and even by the erstwhile members of the immediate Managing Committee, who have been superseded; but in their individual capacity, and not by and on behalf of the Society itself. Therefore, the contention of the learned Counsel for the defendants is correct but to this extent only.

6. However, this is not the case here, and admittedly the Suit has been filed by a person who claims to be Secretary of the Society, whereas, even there is no authorization of the Managing Committee to file any such Suit. The purported authority letter on record is of a date subsequent to filing of the Suit and how the same is on record is a mystery, whereas, there is no serious resistance on behalf of the plaintiff itself in this regard. Subsequently, an attempt was made to cure such defect when certain members came up before the Court under Order 1 Rule 10 CPC with a request to join them as Plaintiffs. However, despite consent of the Plaintiff they were initially joined as

Defendants vide order dated 16.11.2016. Subsequently, a review application was filed and the same was allowed vide order dated 24.4.2017; however, it was without prejudice to the legal objection vis. maintainability of the Suit so raised on behalf of the Defendants. It is also of utmost importance to note that in this matter, the private members of the Society are one against each other. There are some who support the Ex-Secretary of the plaintiff, and others who are against him and upon their complaint an Administrator was appointed. It is in this context that the present objection of maintainability is to be taken care of. In any other situation, perhaps even the defect, if any, could have been cured, if other ordinary members were already there at the time of institution, or if they had been joined as plaintiff, overruling such objection of maintainability. And so also if they all had been on one side and against the Administrator's appointment. But this is not the case here. Moreover, the order of review, whereby, the objection was kept alive, this Court is bound to decide the same on the basis of record available, whereas, there appears to be no satisfactory response from the Plaintiff's side as to the competency of the person who had filed instant Suit and its maintainability.

7. Lastly, it may be observed, that though listed application has been filed for rejection of plaint under Order 7 Rule 11 CPC, being barred in law, and learned Counsel for defendants had relied upon the provisions of the Ordinance, 1982, including but not limited to sections 6, 7, & 14, *ibid*, however, in my view and for the discussion as above, the precise objection so raised is in fact regarding the maintainability and competency of instant Suit which even otherwise, ought to have been raised by the office at the very first instance and thereafter, by the Court. And even if no such objection had been raised earlier, the Court

is always competent to take note of such objections. In the order dated 24.04.2017 when the Defendants were joined as Plaintiffs by reviewing the order dated 16.11.2016; the Court had specifically observed that it is without prejudice to the legal objection vis. maintainability of instant Suit, if any, raised by and on behalf of the Defendants.

8. To sum up it has come on record that instant Suit has been filed by a person claiming to be the Secretary of the Society, which stood superseded on the date when instant Suit was filed, therefore, he was not competent to act on behalf of the Society, and could have only come before the Court as an individual, which is not the case, whereas, even otherwise, on that date when he filed the Suit, he had no authority on behalf of his own Managing Committee, therefore, even otherwise he could not have acted as the Secretary of the Society. Moreover, the attempt to join other members of the Society (siding with him) as plaintiffs was conditional, and subject to objection of maintainability which was accepted, and not challenged any further, has attained finality, and to which the Plaintiff's Counsel was duly confronted; and on 12.04.2018, by means of a short order instant Suit was dismissed as being not maintainable along with all pending applications. These are the reasons thereof.

J U D G E

ARSHAD/