

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
H.C.A. No.194 of 2017

Date Order with signature of Judge

Hearing (Priority) Case

- 1.For orders on office objection
- 2.For hearing of CMA No.3833/2017
- 3.For hearing of main case
- 4.For hearing of CMA No.1147/2017

18.05.2018

Syed Ehsan Raza, Advocate for the Appellant.
Mr.Ovais Jamal, Advocate for the Respondent.

The appellant has impugned the order dated 6.3.2017 passed by learned Single Judge in Suit No.1403/2016 in which it was held that the plaintiff/appellant may have dispute of account as there is no written sale agreement, however, there is no denial of this subsequent payment of Rs.4.8. Million. The relevant portion of the order is reproduced as under:-

“Prima facie she has not approached the Court with clean hands and as such not entitled for any discretionary relief in terms of order XXXIX rule 1 and 2 CPC. Plaintiff prima facie may have a dispute of account as there is no written sale agreement, however there is no denial of this subsequent payment of Rs.4.8 Million. There is no account filed by plaintiff as to how the payment for conversion was settled and approved of building construction. Plaintiff has not claimed to have paid any amount towards conversion and other approvals. All these facts show that the approach of plaintiff is tainted with malafide. Plaintiff thus has not shown prima facie case. The balance of inconvenience is also not in favour of the plaintiff and no irreparable loss shall be caused to the plaintiff in case the injunction as prayed for in this application is reused. The application is as such dismissed.”

2. Admittedly, the suit is pending in the trial court. The counsel for the appellant argued that some of the defendants have not filed their written statements, which is in fact become the cause of delay. Learned counsel for the appellant argued that the suit has been filed for restraining the respondents not to raise any construction as well as not to create any third party interest, but the respondent No.1 is raising construction. He further argued that while dismissing the injunction application the learned Single Judge did not take into consideration all the relevant facts and documents available on record.

3. On the contrary, learned counsel for the respondent Nos.1 and 2 argued that if the prayer for cancellation of sale deed is allowed at any later stage by the learned trial court the entire matter will be resolved but this can only be done after leading evidence by the parties, however, he clearly stated that that till decision of the pending Civil Suit No.1403/2016 the respondent Nos.1 and 2 shall not create any third party interest. On this statement the learned counsel for the appellant is satisfied and agreed for the disposal of this appeal. By consent this appeal is disposed of in the following terms:-

(1) The respondent Nos.1 and 2 shall not create any third party interest during pendency of the Suit No.1403/2016 and any violation will expose them to face contempt proceedings.

(2) The Additional Registrar (O.S) will examine the file of Suit No.1403/2016 to ascertain whether written statements have been filed by all the defendants and if any of the defendants despite

service and availing reasonable time is failed to file written statement or commits default he will pass necessary orders in accordance with relevant provisions available in C.P.C for debarring or declaring exparte.

(3) On filing written statements by all the parties or in case declaring any of them debarred or exparte the matter will be fixed in court for settlement of issues for the remainder. On settlement of issues counsel for the appellant and the respondent Nos.1 and 2 may file application for appointment of Commissioner to record evidence for an early disposal of the suit.

The appeal is disposed of along with pending application in the above terms.

Judge

Judge

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