

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
HCA No.241 of 2017

Date	Order with signature(s) of Judge(s)
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1. For hearing of main case.
 2. For hearing of CMA No.1546/2017 (Stay)
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24.05.2018

Mr. Qadir H. Sayeed, advocate for appellant
Mr. Shaukat Ali Shehroze, advocate for respondent No.1
None present for respondent 2, 4 and 5
Mr. Asim Mansoor Khan, D.A.G.
Mr. Rehman Aziz Mali, advocate for respondents 6 and 7

Appellant has challenged the interlocutory order dated 10.03.2017 passed on CMAs Nos.9050 and 9471 of 2014, filed in Suit No.1118/2014. In paragraph 3 of the impugned order, learned single Judge has observed as under:-

“3. Since defendant undertakes that he will not raise the structure and only finishing work is to be done; that subject matter property is dwelling house and for years he and his family are out of house. Accordingly in terms of the order of the apex Court defendants are allowed to complete their construction including finishing, however, with rider that he will not raise structure further as according to him at present construction is basement and ground plus one, as well he will be entitled to occupy the house. Accordingly interim order passed earlier modified.”

After passing this order as an interim arrangement, the matter was adjourned for hearing of the pending application.

Learned counsel for the appellant has raised various pleas in the appeal that the learned single Judge erroneously modified/vacated the stay order by considering a leave granting order of the Honourable Supreme Court which, according to the appellant’s counsel, has no nexus with the facts and circumstances of the present case. He further argued that impugned order was passed without providing ample opportunity of hearing to the appellant’s counsel. He further argued that the learned single Judge failed to appreciate that the amalgamation or sub-division of the plot in the scheme of the Sindh Building Control Authority should have been

taken place under an open and objective policy establishing proper criteria and mere issuance of public notice in the newspaper cannot conceivably be regarded as having been carried out in accordance with law. The subdivision and subsequent construction of the subject plot have adverse impacts on the Appellant's property and undermines her easement rights.

Learned counsel for respondents 6 and 7 submits that finishing work has been completed and respondents 6 and 7 are using the property for their residential purpose. He further submits that no construction activity is going on. However, he further submits that this is an interim order which has been challenged and the injunction application is pending in the suit.

We are cognizant of the fact that on 10.03.2017, as an interim arrangement, the impugned order was passed and for deciding the application on merits, the matter was adjourned. After arguing the matter at some length, both the learned counsel agreed that some directions may be issued to the learned trial court to decide the pending injunction application within a period of one month after summer vacations with this clarification that injunction application will be decided with an independent mind without taking into consideration the interim arrangement made in the impugned order. This joint statement seems to be rational. We are also of the view that while deciding the injunction application on merits, this interim order will not come in the way.

This High Court Appeal is disposed of accordingly.

JUDGE

JUDGE

Gulsher/PS