

## ORDER SHEET

## IN THE HIGH COURT OF SINDH, KARACHI

Suit No.979 of 2002

Date	Order with signature of Judge.
For hearing of CMA No.4722/17 (U/O 23 Rule 3 CPC)	

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22.12.2017

Mr. Masroor Ahmed Alvi, Advocate for Plaintiff.  
 Mr. Pervaiz Ahmed Memon, Advocate for Defendant No.2.  
 Mr. Muzaffar Leghari, Addl. A.G.  
 Mr. Ghulam Abbas, Advocate for Board of Revenue.  
 Mr. Javed Ahmed Secretary Market Committee, Mr. Irfan Ahmed  
 Legal Superintendent, Market Committee and Asif Ahmed, Vice  
 Chairman Market Committee are present.

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This is an Application under Order 23 Rule 3 CPC duly signed by the Plaintiff as well as the Defendant's Counsel and Defendant No.2 with a requests to decree the instant Suit in terms of the Settlement Deed annexed therewith.

Learned Counsel for the Plaintiff submits that the Defendant No.2 entered into a Deed of Settlement with the Plaintiff in respect of Suit Property and on the very same date, he signed the listed application, which was though filed subsequently but since the Deed of Settlement is duly signed, the application be allowed as prayed. To an objection raised by the learned Counsel for Defendant No.2 he submits that admittedly at the relevant time when this Deed of Settlement was signed, the then Defendant No.2 was working as Administrator of the Market Committee. He further submits that pursuant to Section 14 of the Agricultural Produce Markets Act 1939, the Market Committee is a Body Corporate and take its decisions independently and the same cannot be questioned by any successor in interest as well as through circulars as contended on behalf of the Defendants. He has relied

upon an Order passed by me on 16.11.2016 in Suit No.750/2001, wherein, an Application under Order 23 Rule 3 CPC was allowed in the same manner.

On the other hand, learned Counsel for Defendant No.2 submits that firstly he did not signed the listed application, whereas, when this application was filed, the person signing it was not an Administrator, whereas, the plot in question is reserved for car parking, and therefore it could not allotted to anyone. He submits that an inquiry is being proceeded with against the said Administrator before the Anti-Corruption Department. He further submits that no settlement could be reached by the Administrator without approval of the Secretary Agricultural as the Administrator is not independently authorized in law to do so. In support he has relied upon **2017 MLD 1363** (*Mrs. Kausar Rashid through Attorney v. Karachi Building Control Authority and 8 others*) and **2015 CLD 1309** (*Fawwad Butt v. Messrs Mary (Pvt.) Ltd. and 5 others*).

I have heard both the learned Counsel and perused the record. It appears that this application was filed in Court on 06.03.2017 and admittedly the same has been signed by the Plaintiff and his Counsel as well as the then Administrator/Defendant No.2 but Counsel for Defendant No.2 has not signed the same. Alongwith this application a Deed of Settlement is annexed, which appears to have been signed on 03.03.2015. On the last date of hearing Counsel for Defendant No.2 was directed to place on record a Statement specifying the period in which the then Administrator was working in the Market Committee officially. The said statement reflects that the then

Defendant No.2 was working as Administrator of the Market Committee from 04.12.2014 to 05.03.2015. This means that when the Deed of Settlement was signed he was working as Administrator officially. However, when this application was filed before the Court he was no more the Administrator, whereas, even no supporting affidavit of this application is on record. It further appears that the Deed of Settlement was signed just two days before his removal as Administrator, whereas, the Deed of Settlement is not notarized or attested in any manner. It further appears that the payment as contended on behalf of the Plaintiff pursuant to the Settlement was deposited on 23.02.2015 that is much prior to the Deed of Settlement. Though at this stage it would not be appropriate to give any finding on the Deed of Settlement as apparently when it was signed the person signing it was a validly appointed Administrator of the Committee. However, insofar as the compromise application under Order 23 Rule 3 CPC is concerned, the same cannot be termed to have been signed on behalf of Defendant No.2 as competent and valid for the reasons that when this was presented in the Court, he was no more the Administrator. Though an attempt has been made by the learned Counsel for the Plaintiff that this application was signed on the very same date when the Deed of Settlement was signed and in support he has also referred to the date mentioned on the application, which initially was March, 2015 and subsequently overwritten on the date of presentation as 06.03.2017. However, I am not impressed by this submission for the reason that if it was kept with the Plaintiff and was not used, whereas when it was presented in Court, the person who had signed it on behalf of Defendant No.2, was no more authorized. The Plaintiff may have a

case against the said Defendant No.2 in respect of the Deed of Settlement as to its validity and any further orders, but under no circumstances, this can be taken as a ground for granting a compromise application subsequently. Insofar as reliance on Order in Suit No.750/2001 is concerned I may observe that in that case the Deed of Settlement as well as the application was immediately filed before the Court when that person was still working as an Administrator, which is not the case here, and therefore, the ratio of the said order is no more applicable in this case because of different facts. In the circumstances, this application cannot be granted and is hereby dismissed.

J U D G E

Ayaz P.S.