

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Suit No.1644 of 2013

Date	Order with signature of Judge
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For orders on CMA No.14259/2017

Present: **Mr. Justice Nazar Akbar**

Plaintiff	:	Sheikh Muhammad Javaid Through Mr. Wiqas Ahmed Khan, Advocate.
Defendant No.1	:	Sartaj Saqlain
Defendant No.2	:	Mst. Rukhsana Usman (Late) through LRs.
Defendant No.3	:	M/s Arif Enterprises (Pvt.) Ltd.,
Defendant No.4	:	Honorary Secretary, PECHS, Karachi
Defendant No.5	:	Security Exchange Commission of Pakistan
Defendant No.6	:	The Sub-Registrar, Jamshed Town-I, Karachi (Nemo for all defendants).
Date of hearing	:	15.12.2017
Judgment/Reasons:	:	17.02.2018

JUDGMENT

NAZAR AKBAR, J. This suit was dismissed on **9.8.2017** when the plaintiff and his counsel were absent without intimation. The plaintiff and his counsel before the date of dismissal of suit by order under review have remained absent on **22.12.2016**, **7.2.2017**, **29.3.2017**. However, immediately on Friday **11.8.2017** the instant review application was filed and though this bench was available the Review Application was not placed in Court for hearing for the next two months and 10 days. It was listed for orders for the first time after change of roster on **18.10.2017** with an urgent application. It was ordered to be placed before this bench, since the order of dismissal of suit has been passed by this bench. Be that as it may, learned counsel for the plaintiff has advanced arguments at length both on review application as well as on main suit for decision on

merit since the main suit was listed for final arguments when it was dismissed by the order under review.

2. The only contention raised for review of the orders dated 9.8.2017 is that the suit was dismissed on the ground that M/S Arif Enterprises Limited was not made party in the suit though M/s. Arif Enterprises Limited, the company itself, has been arrayed as defendant No.3. Though this was not the sole ground for dismissal of suit, however, it was oversight and the review application irrespective of its merit was allowed since the learned counsel for the plaintiff has agreed to argue the main suit for decision on merit as it was dismissed on a day when it was fixed for final arguments.

3. The record shows that when this suit was filed on **23.12.2013**, the company itself was not impleaded as defendant. The plaintiff on **7.9.2015** engaged Mr. Wiqas Ahmed, advocate when the suit was listed for Ex-parte orders against defendants No.1 to 5. Learned counsel while filing power knew that M/s Arif Enterprises (Pvt.) Ltd., was not impleaded and, therefore, he has also filed amended title impleading the company as defendant No.3. Court order dated **7.9.2015** is reproduced below:-

For Ex-parte order against defendants No.1 to 5.

07.09.2015

*Mr. Wiqas Ahmed, Khan, advocate files vakalatnama on behalf of the plaintiff and states that he has filed an amended title of memo of plaint, **as essentially the agreement, the performance of which is sought through the present suit, is between the plaintiff and defendant No.3, M/s Arif Enterprises (Pvt.) Ltd.** The amended title of the plaint is taken on record. Let notice be issued to the newly added defendants through all modes of service excluding publication.*

Adjourned to 30.09.2015 as per roster.

It is clear from the above order that M/S Arif Enterprises (Pvt) Limited was impleaded as defendant No.3 on **7.9.2015**. According to **Order 1 Rule 10 Sub-Rule 4 and 5 CPC**, the suit against defendant No.3 shall be deemed to have been instituted from the date the company was impleaded as defendant. The provision of **Order 1 Rule 10 Sub-Rule 4 and 5 CPC** and **Section 22** of the **Limitation Act, 1908** are reproduced below:-

CPC:-

Order 1. Parties to the suits

Rule 10. (1).
 (2)
 (3)

(4) **Where defendant added, plaint, to be amended.** Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.

(5) Subject to the provisions of the Limitation Act, 1908 (IX of 1908), Section 22, **the proceedings against any person added as defendant shall be deemed to have begun only on the service of the summons.**

Limitation Act, 1908

Section 22. Effect of substituting or adding new plaintiff or defendant. (1) Where, after the institution of a suit, a new plaintiff or defendant is substituted or added, **the suit shall, as regards him, be deemed to have been instituted when he was made a party.**

However, Mr. Wiqas Ahmed, advocate for the plaintiff even after realizing and impleading the company as defendant No.3 did not file an application under **Order XXIX Rule 2 CPC** for service on the

company. Irrespective of service on newly added defendant, the plaintiff himself has stated in the plaint that cause of action has accrued on **26.8.2011** and as it is apparent from above facts the suit against defendant No.3, the private limited company, has been instituted on **7.9.2015**. Therefore, it was hopelessly time barred against defendant No.3.

4. Despite above legal position that the suit against the party with whom the performance of agreement is sought was barred by time, I have heard learned counsel for the plaintiff at length. Learned counsel for the plaintiff, in reply to the question that how the suit for Specific Performance of a contract dated **13.7.2006** even on **23.12.2013** was within limitation, has attempted to explain that the plaintiff has sent a legal notice dated **26.8.2011** (Ex: PW-1/12) and a representative of defendant No.3 has sent reply on **13.10.2011**. He has also referred to an earlier undated legal notice (Ex-PW-1/9). I have examined these documents to appreciate whether the suit irrespective of above findings against the main defendant No.3/the company was within limitation or not. The perusal of eight pages notice Ex: PW-1/9 and record shows that the said undated notice from M/S Valiani Law Associates was not replied by any of the defendants to whom the said undated notice was sent. However, the learned counsel for the plaintiff for determination of date of notice has relied/referred to receipts of Skynet Courier Service and TCS dated **26.3.2008** and **31.3.2008** respectively (Ex: PW-1/10 and PW-1/11). Though in the undated notice (Ex.PW-1/9) it is not mentioned that the said notice was sent through courier service, I am agreeable to accept the contention of the learned counsel that the date on courier service receipts be treated as date of legal notice. It has categorically been mentioned in the last line of the said notice by the

learned counsel that he has “**definite instructions to institute legal proceedings at the sole risk and cost of defendants**”. Since no reply was received by the plaintiff, therefore, the limitation for filing of the suit started from the date of courier service receipt (**31.3.2008**) and it has expired on **30.3.2011**. However, the plaintiff instead of filing the instant suit within limitation of three years from **31.3.2008** to enforce the agreement dated **13.7.2006**, again on **26.11.2011**, after expiry of limitation from the earlier notice, sent another notice (Ex: PW-1/12) to the Chief Executive of defendant No.3. But the plaintiff has not produced receipt of courier with Ex: PW-1/12 in evidence and to cover limitation it has very innocently been claimed that one Syed Nihal Qazi Akhtar on behalf of defendant company has replied the said notice through a letter dated **13.10.2011**. The perusal of plaintiff's notice (Ex:PW-1/12) and its so-called reply shows that neither of the two were sent through courier service by post or by hand. Nor it has been explained in the plaint. The plaintiff has not filed even envelope in which the so-called reply, if at all, was received at the address of the plaintiff. Therefore, these dubious letters are not proof of any acknowledgement from defendant No.3. The limitation for filing a suit for Specific Performance of a contract under **Article 113** of Limitation Act, 1908 is three years from the date fixed for its performance or if no such date is fixed, when the plaintiff has notice that the performance is refused. In the case in hand when the plaintiff did not receive any reply to the legal notice sent by his counsel through courier service on **31.3.2008**, the limitation has expired on **30.3.2011**. It cannot be revived by forging yet another legal notice dated **26.8.2011** after expiry of limitation and declaring that a reply has been received on **13.10.2011** without any cogent proof of delivery of notice and receipt of its reply. The

plaintiff has not proved the exchange of last legal notice and its reply from defendant No.3. In view of the evidence discussed, though the other defendants were not owners of the suit property and, therefore, suit to compel them to execute sale of immovable property in favour of the plaintiff was not maintainable, the suit was also barred by time against them as well.

5. Not only the plaintiff's suit is hopelessly barred by limitation from the facts presented in the plaint, even on merit the plaintiff has no case. It is obvious that the plaintiff in order to succeed in Court of Law for Specific Performance of a contract has first to prove execution of an agreement of sale with lawful owner of immovable property. The perusal of agreement to sell (Ex:PW-1/1) dated **13.7.2006** surprises the judicial mind. It is not executed by the company or any duly authorized person by the company in accordance with law. It is settled principle of law that even Managing Director of a company has to act on the basis of authorization by the Board of Directors of the Company or on the basis of Articles of Association. Even plaint/suit on behalf of a company cannot be filed by the Director of a Company for the benefit of the company without proper authorization. In this context following observations of this Court in the case of Bashir Dawood vs. Haji Suleman Goawala & Sons Ltd. and others reported as **2010 CLC 191** is worthy of reference:-

*Now the authority of the Managing Director to do any specific act such as to enter into a contract to purchase a property on behalf of the company or file suit to enforce a contract has to stem either from the decisions of the Board of Directors or from the Articles of Association itself. Where the Articles of Association do not specifically authorize the Managing Director to purchase or sell properties on behalf of the company, then in order for the Managing Director to exercise any power or do anything on behalf of the plaintiff, he has to have authorization from the plaintiff's Board of Directors. **Articles of Association authorize the Managing Director only to run the business of the plaintiff-Company. They do not authorize him to***

invest plaintiff's capital in the purchase of the real estate or for arguments sake sell the properties of the company. If a Managing Director is given free hand to take such major decisions without any authorization from the Board or under the Articles of Association he can play havoc with company's assets and capital.

On perusal of sale agreement (Ex: PW-1/1) I was unable to find even remote reference to any meeting of the company to propose sale of its property. Even sale consideration was not paid to the company. The plaintiff was fully aware of the above legal position that the immovable property owned by a private limited company cannot be sold by its Director as the authority of the Director of a company is limited and controlled by Articles of Association. He knew that a registered company is perpetual and by holding office of a Director of a company, the incumbent does not become the absolute owner of the company or its properties. The property of a company can lawfully be sold by authorized director irrespective of agreement forged by the plaintiff since the suit property continues to be the property of the company in the record of defendant No.5-the Security Exchange Commission of Pakistan (SECP)- as required to be shown in annual financial statements of the company to be filed with SECP under the Companies Law. But for this reason the plaintiff felt the need of impleading the SECP as one of the defendant and prayed for restraining orders against the SECP to deal with the company. The relevant prayer clause (vi) is reproduced below:-

(vi) ***To restrain the defendant No.5 (Security Exchange Commission of Pakistan) not to entertain any transfer of share of Company i.e. M/s. Arif Enterprises (Pvt) Ltd., and also directed him not to entertain any application for change of the Directorship of the said Company, during the pendency of the suit.***

Why the plaintiff is worried about shareholding of the company or change of directors of the company?

6. Beside the above legal position, the documents produced by the plaintiff in evidence on scrutiny appears to be forged and fabricated. The basic document i.e the agreement to sell (Ex: PW-1/1) was blank in which the blanks have been filled on some other date with pen as each material recital of the agreement is in hand writing. Even the address of Arif Enterprises and NIC numbers of Mst. Sartaj and Mst. Rukhsana and NIC of the plaintiff and his address were not in the knowledge of the parties at the relevant time when the document was prepared and, therefore, everything is filled in by hand subsequently. In fact everything filled by hand in a typed document is required to be acknowledged by initials of the parties in the margin in front of handwriting. But there is no such acknowledgement. There are additions and alterations on page-2 regarding shop numbers on the right margin of page No.2 without being initialed by anyone. There is reference to the payments of token money which was allegedly paid on an earlier date through cheque drawn on Standard Chartered Bank, Hyderabad Branch and even this information has been inserted in the banks in unnumbered clauses on page-2. The cheques were admittedly not in favour of the company-defendant No.3, the owner of the suit property allegedly sold through the said agreement. But even payments made earlier have been filled in hand writing as if even it was not known at the time of execution of agreement on a particular date. However, no receipts of alleged payment of token money dated 10.7.2006 and second part payment dated 8.7.2006 has been produced. The plaintiff has not placed on record any bank statement to show that the payment of sale consideration through cheques was transferred in account of M/s. Arif Enterprises Private Limited a registered company under the Companies Ordinance, 1984.

7. The plaintiff has also attempted to claim some more payment to Mst. Rukhsana Usman, defendant No.2 as director towards sale consideration. It is alleged through a back dated photocopy of a receipt issued on **31.05.2006** that an amount of Rs.10,00,000/- was paid to her through two cheques dated **02.6.2006** and **3.6.2006**. The plaintiff in para-9 of his affidavit-in-exparte proof has claimed that these payments to Mst. Rukhsana were also towards payment of sale consideration. But these payments through cheques shown in **annexure O/4** are not reflected in the agreement which was subsequently executed on **13.7.2006**. It does not appeal to senses. Why was it not mentioned in the agreement that token money in respect of sale of the suit property was paid through the said inadmissible receipt (Annexure O/4)? Like agreement itself even this receipt was also a blank typed receipt in which blanks have been filled by hand. Similarly **Ex:PW-1/4** is again a typed receipt filled in by hand and the description of the property in this receipt is **“building from top to bottom”**. It is dated **27.11.2006** and again it is receipt of payment through cheques. Then there are three more interesting receipts of payments. These are Ex:PW-1/5, PW-1/7 and PW-1/8. Ex:PW-1/5 is undated receipts. More interesting thing to be noticed in Ex:PW-1/5 is that it says that this receipt is issued by all the legal heirs of Mst. Rukhsana Usman but it does not bear even forged signatures of any of the legal heirs of Mst. Rukhsana Usman or any authorized person on behalf of her legal representative. Receipt Ex:PW-1/8 is also said to have been issued by defendant No.1. This receipt is also acknowledgement of payment through cheque and like all other documents it was also a blank receipt and details have been filled in the blanks. This receipt is not witnessed by anyone. The blanks of “witness” have not been filled.

8. Then the plaintiff has also produced a so-called possession letter (Ex:PW-1/6) dated **12.6.2007**. The only implication of Ex:PW-1/6 is that if possession of the suit property is with the plaintiff under the said acknowledgement, it is illegal. The plaintiff's counsel claimed that the possession has been handed over through Ex:PW-1/6 by Mrs. Sartaj Saqlain and all the legal heirs of Mst. Rukhsana Usman but it does not bear signatures of any of the legal heirs of Mst. Rukhsana Usman or any authorized person of her legal representative. Even otherwise, legal heirs of a Director of company cannot step into the shoes of a director on his/her death to deal with the assets of a private limited company. Therefore, the claim of plaintiff that legal heirs of one of the deceased director have handed over possession is absurd. If at all, the plaintiff is in possession of even part of suit property, it appears that the plaintiff has entered into the suit property fraudulently or on finding it as an abandoned property and subsequently forged the documents. The fraud is floating on the record of the Court file. The plaintiff has filed the present suit on **23.12.2013** for Declaration, Specific Performance, **Possession** and Permanent Injunction and his first prayer to the Hon'ble Court is:-

- (i) *To direct the defendants No.1 to 3 and the legal heirs of the defendant No.2 to **deliver peaceful and vacant possession of the suit property i.e Ground + two from top to bottom measuring 1000 sq. yds. Consisted upon 14 shops on ground floor, offices at 1st floor, entire second floor and roof as described in detailed as per Sale Agreement, dated 13th July, 2006 in respect of Plot No.M-158, Tariq Road, Building known as PMC Centre, Block-2, PECHS, Karachi.***

The above quoted prayer is admission of the plaintiff that on **23.12.2013** he was not in possession of the suit property and he claimed that he was put in possession of the suit property through

Ex:P/W-1/6 dated **12.6.2007** and that too by legal heirs of deceased director. The so-called possession of plaintiff through Ex:P-1/6 by all means is illegal and the said letter has been a forged and fabricated by the plaintiff to lend some legitimacy to illegal possession, if at all, he is in possession. In view of the fact that the suit property admittedly belongs to a private limited company and, if at all, the plaintiff is in possession of it on the basis of Ex: P-1/6, it is the worst example of misappropriation or mismanagement of the asset of a limited company.

9. The perusal of all the relevant documents produced in evidence indicate that the plaintiff seems to have forged and fabricated these documents. Each and every receipt is showing payments through cheques but the plaintiff has not filed his bank statement or any certificate from his own bank that the said cheques had been encashed or transferred to the payee's account of the recipients. In fact none of the documents produced in evidence has discharged the burden on the plaintiff to prove execution of sale agreement and even part payment of sale consideration to the company. The plaintiff even in exparte proceeding is required to discharge his burden of proof by adhering to the provisions of **Article 17 and 79** of the Qanun-e-Shahadat Order, 1984.

17. **Competence and number of witnesses.** (1) the competence of a person to testify, and the number of witnesses required in any case shall be determined in accordance with the injunctions of Islam as laid down in the Holy Quran and Sunnah.
2. Unless otherwise provided in any law relating to the enforcement of *Hudood* or any other special law,
 - (a) In matter pertaining to financial or future obligations, if reduced to writing, the instrument shall be attested by two men, or one man and two women, so that one may

remind the other, if necessary, and evidence shall be led accordingly;

- (b) in all other matter, the Court may accept, or act on, the testimony of one man or one woman or such other evidence as the circumstances of the case may warrant.

79. ***Proof of execution of document required by law to be attested.*** If a document is required by law to be attested, it shall not be used as evidence until two attesting witnesses at least have been called for the purpose of proving its execution, if there be two attesting witnesses alive and subject to the process of the Court and capable of giving evidence.

10. The plaintiff has not produced any of the marginal witnesses of the agreement of sale (Ex:PW-1/1) and payment receipts. A photocopy of receipt (Annexure O/4) was inadmissible Receipts, Ex: P/5 and Ex: P-1/7 do not bear even signature of two witnesses. Receipt Ex: P-1/8 does not show even one witness to the payment through this receipt. To a direct question from the Court, learned counsel for the plaintiff candidly conceded that not a single cheque was issued in favour of M/s Arif Enterprises (Pvt.) Limited, the registered owner of the suit property duly incorporated under the Companies Ordinance, 1984. Therefore, irrespective of the fact whether the cheques were really encashed or not, admittedly the owner of the suit property M/S Arif Enterprises Pvt. Limited, a juristic person having a bank account is not the recipient of single penny towards sale consideration of even token money against the sale of its property. It goes without saying that business of a registered company is to be transacted through Bank account held by the company and any transaction by or between the third party with any person who is even director of a company cannot be treated as transaction binding on the registered company itself. Therefore, in the suit in hand for Specific Performance of a contract of sale of

immoveable property owned by a private limited company, the plaintiff has failed to establish even the contract with the lawful owner of the suit property. The plaintiff has admittedly not entered into sale agreement with the owners of the suit property nor paid a single penny towards sale consideration to the owners and wants an exparte decree of specific performance of contract of sale against the said owners. The suit must fail even on merit on this sole ground.

11. The above discussion of facts and analysis of documents on the touchstone of Qanun-e-Shahadat Order, 1984 leads to inescapable conclusion that the plaintiff has made an attempt to misuse the process of the Court on the basis of documents which on the face are forged and fabricated to unlawfully obtain ownership of the suit property of a private limited company under the cover of the orders of Court. The plaintiff has filed afore mentioned documents on oath through his affidavit-in-exparte proof which appears to be the worst example of perjury as well. In my humble view, once the Court comes to the conclusion that an obvious attempt has been made to use the process of Court to usurp/misappropriate immovable property by someone then it becomes the duty of the Court to protect such immovable property. The suit property is an immovable property of a private limited company and the company seems to have either abandoned its business on account of death of its directors or otherwise the company is not in a position to keep the business and the suit property intact, such abandoned property of a limited company should be dealt with in accordance with Companies Law. The Security and Exchange Commission of Pakistan (the **SECP**) is defendant No.5 and has filed its written statement on **23.8.2016**. The **SECP** on receiving copy of plaint with annexures should have appreciated by just looking at the agreement of sale that there was

something wrong in the affairs of the company. I do not think that the affairs of defendant No.3 namely M/S Arif Enterprises (Pvt.) Ltd. were conducted in fair manners. The facts of the case discussed in detail clearly indicate that the business of M/S Arif Enterprises (Pvt.) Ltd. were suspended several years ago or for whatever reason its affairs were being conducted in an unlawful or fraudulent manner. (**Section 290** of the Companies Ordinance, 1984). In fact by now to prevent mismanagement of the Company the SECP should have initiated proceedings against defendant No.3 for liquidation in terms of **Section 309** of the **Companies Ordinance, 1984** (now **Section 304** of **Companies Act, 2017**). In the given facts and circumstances, the suit property can only be protected or disposed of by winding up of the company for the benefits of the affectees of the company, if any, who cannot come forward unless the liquidation proceedings are initiated on account of the fact that its affairs are being conducted in unlawful or fraudulent manner and/or for the benefit of legal heirs of the deceased owner/directors of the company. The **SECP** despite direct evidence seems to have failed to take mandatory steps against the duly incorporated company for violating several provisions of Companies Ordinance, 1984.

12. Keeping in view the facts of the case in hand and from my own experience during the last four years, there is every likelihood that the suit property, if left unattended by Court, may well be subjected to another fraudulent proceedings on the basis of another set of forged documents. I believe a group of miscreants is in the habit of first locating the ownerless or abandoned properties and then they try to manage its title through Court orders to legalize transfer of such immovable property in their favour either through an **exparte decree** or **collusive compromise decree** against the recorded

owners of the abandoned properties. One way of achieving this ulterior motive is to file frivolous suits on the basis of forged documents and manage the service of notices/summons to make out a case of *ex parte* decree and/or file collusive suit on the basis of defective and forged power of attorneys and get the collusive defendant served with notices of Court and then obtain compromise decree in just few months. To quote one example I may refer to one of my own comprehensive judgment dated **12.01.2015** given in **suit No.1021/2014** for Specific Performance of a Contract dated **11.12.2012** (Muhammad Ali Zubair vs. Sabira Khatoon and another) reported as **2017 YLR 138**, I had dismissed a compromise application in the said suit in respect of a property bearing **Bungalow No.43/1/A, 9th Street, Phase-V, Defence Housing Authority, Karachi measuring 450 sq. yards**. While dismissing the suit, I had ordered as follows:-

*20. In view of the above facts and legal position of the Plaintiff and Defendant No.1 both the compromise application and the suit are dismissed with **cost of Rs.100,000/-** to be jointly and severally borne by the Plaintiff and Defendant No.1. The cost is to be paid within 15 days in the office of the Nazir of this Court and in case of their failure to deposit cost of the suit as stipulated, the Nazir of this Court should take any step for recovery of the cost including attachment of movable and immovable properties of the Plaintiff and Defendant No.1. Once the cost is recovered, Rs.25000/- shall be appropriated toward Nazir's fee for the exercise of recovery of cost and Rs.25000/- each may be given to the High Court Clinic, High Court Employees' Benevolent Funds and to the Library of Sindh High Court.*

*21. Copy of this order may be send to the MIT-II alongwith R&P of rent case No.92/2013 and FRA No.02/2014 and he is directed to examine the same in terms of **section 195 Cr.P.C** or any other relevant provisions of Cr.P.C and, if any, case is *prima facie* made out he should initiate or cause to initiate criminal proceeding against the Plaintiff and Defendant No.1 in accordance with law.*

13. After seven months in **July 2015** another set of similar miscreants on the basis of power of attorney filed a collusive **suit No.1191/2015** for Declaration, Possession and Injunction in respect of the same property bearing **Bungalow No.43/1/A, 9th Street, Phase-V, DHA, Karachi** and obtained a collusive compromise decree on **6.11.2015** about the ownership of the said property. Now the subsequent decree is subjudice before this Court in J.M No.75/2015.

14. In view of both the quality and legality of the documents on which the plaintiff has relied for an exparte decree and the above discussion to meet the ends of justice and prevent abuse of the process of Court, it is hereby ordered as follows:-

- (i) Defendant No.5, the **Security and Exchange Commission of Pakistan** is directed to hold a comprehensive inquiry into the affairs of the company under any of the enabling provisions of Companies Law to maintain good corporate governance and initiate winding up of M/S Arif Enterprises (Pvt.) Limited in accordance with the provision of **Section 309** of the Companies Ordinance, 1984 (Section 304 of the Companies Act, 2017) within 30 days from receipt of this order.
- (ii) In the meanwhile, pending the action by **SECP** against M/S Arif Enterprises (Pvt.) Ltd in terms of Companies Law, the Nazir of this Court is directed to immediately inspect the suit property i.e **Building (Ground plus two floors), measuring 1000 sq. yds. consisting of 14 shops on ground floor, offices at 1st Floor and entire second floor, situated at Plot No.M-158, Tariq Road, PMC Centre, Block-2, P.E.C.H.S, Karachi** and in case the plaintiff himself or any

one on his behalf is in possession of the suit property or any portion thereof, after two weeks' notice to the occupant, take over the possession of the entire suit property till the final orders in respect of M/S Arif Enterprises (defendant No.3) under the jurisdiction of Companies Law. In case of resistance, the Nazir, without reference to the Court, may obtain police aid to execute the order of the Court.

(iii) **MIT-II** of this Court is directed to examine the affidavit-in-exparte proof filed by the plaintiff Shaikh Muhammad Javed son of Muhammad Yousuf on **8.2.2016** which he has reaffirmed on **18.11.2016** in his examination-in-chief and produced in evidence in Court on oath and file a complaint against the Plaintiff in terms of **Section 195[(1)(c)]** of **Cr.P.C** or any other relevant provisions of Law and, if any, case is prima facie made out, but not later than 30 days.

(iv) The MIT-II, defendant No.5 and the Nazir of this Court are directed to submit report of compliance of above order to this Court for perusal in Chamber.

15. The suit of the plaintiff was dismissed by short order dated **15.12.2017** and the above facts and circumstances are the reasons for the same.

JUDGE

Karachi,
Dated: 17.02.2018

A. Gul/PA*