

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Suit No. 318 of 2015

Order with signature of Judge(s)

- For hearing of CMA No.2678/2018

10.09.2018

Mr. Zulfiqar Ali Shaikh, Advocate for the Plaintiff
Mr. Nadeem Qutub, Advocate for Defendant No.1
Mr. Ghulam Abbas, Advocate for BOR
Ms. Nazia, State Counsel

Through the instant application very maintainability of the suit has been challenged. Learned counsel for the Applicant/Defendant No.1 stated that the suit infact is barred under sections 54 as well as 70-A of the Cooperative Societies Act, 1925 as the dispute between the parties has rightly been adjudicated by an Arbitrator, who passed an order dated 10.06.2016, against which, an appeal was preferred by the Society (Plaintiff), which was dismissed as being time barred. However, learned counsel for the Plaintiff submitted that they have filed constitutional petition thereon, however no stay was ever granted.

Learned counsel relies upon PLD 1981 Lahore 153, 1988 CLC 59, PLD 1980 Lahore 539, 1993 CLC 2523, PLD 1979 Lahore 917, 1994 CLC 36, 2004 UC 796, 1974 SCMR 226, 2002 MLD 209 and PLD 1995 Karachi 399 in support of these arguments.

Besides that, as to the very merit, the Court has been informed that the Plaintiff has paid all the dues upto the year 1997 and the communication allegedly made to the Defendant No.1, Defendant No.1 never reached it. This Court's order dated 15.09.2015 took cognizance of these circumstances and dismissed the application of the Plaintiff with cost of Rs.5,000/-.

When posed with a question as to the grounds of the very institution of the instant suit, the Court has been informed by the learned counsel for the Plaintiff that apparently Plaintiff was aggrieved of certain defamatory communication made by Defendant No.1 (of which admittedly under Section 13 of the Defamation Ordinance, 2002 jurisdiction lies with the District Court).

It clearly appears that the Plaintiff Society is misusing its powers against Defendant No.1, who has been disentitled from her property despite having paid all the dues and her allotment was attempted to be cancelled without giving opportunity of hearing, as well as, not only that the Plaintiff has attempted to allot that plot to a stranger, who is not even made a party in the instant suit and who has neither moved any Order I Rule 10 application, but the Plaintiff is bent upon to pursue the case on behalf of that stranger. Societies have to operate within four corners of Co-operative Societies laws aimed not to have any personal interest in the properties. The objective behind the law is to serve people at large and not to usurp lands.

In the circumstances at hand, this Order VII Rule 11 application, which has successfully nailed down the very maintainability of the instant Suit under Sections 54 and 70-A of the Cooperative Societies Act, 1925, and where the assertion that suit was filed against defamation for which this Court has no jurisdiction is also a fact, the instant application is accordingly allowed, resultantly the plaint is rejected, however with warning to the Plaintiff to act strictly in accordance with law and not to harass the Defendant No.1 and not to surpass the jurisdiction entrusted to it under Co-operative Societies Act, 1925.

JUDGE