

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 1037 of 2018

**Al-Hoqani Securities & Investment
Corporation (Pvt.) Ltd. ----- Plaintiff**

Versus

**First Capital Securities
Corporation Ltd. & others ----- Defendants**

For hearing of CMA No. 7786/2018.

Date of hearing: 12.09.2018.

Date of order: 12.09.2018.

**Plaintiff: through Mr. Arshad Tayebaly along with Mr.
Ahad Advocates.**

**Defendants
No. No. 1, 2, 3 & 5: through Mr. Tassawar Ali Hashmi Advocate.**

**Defendant
No. 6: through Ms. Rabia Advocate.**

**Defendant
No. 7: through Ms. Rakhshinda Waheed State
Counsel.**

**Defendant
No. 8: through Mr. Mehmood Yousufi along with Ms.
Rehmatun Nisa Advocates.**

ORDER

Muhammad Junaid Ghaffar, J. This is a Suit for Declaration, Recovery and Injunction and through listed application the Plaintiff seeks a restraining order against the Defendants from selling the "Suit property" i.e. F-49 Block 8, KDA Scheme No. 5, Clifton, Karachi without adjusting the liability of the Plaintiff amounting to Rs. 76,304,380/- along with accrued mark up at the rate of 10% from 2012 till its realization.

2. Briefly the facts as stated are that Defendant No.4 who is currently the Managing Director of Defendant No. 2 owed certain money to the Plaintiff and as on 17.1.2007 an amount of Rs. 54,163,720/- was outstanding and to fulfill its liability various cheques were issued but upon presentation they were dishonored. Thereafter, Defendant No.4 vide Memorandum of Understanding and an undertaking acknowledged his liability and issued a cheque of Rs. 56,591,130/- dated 1.4.2007 and as a security also provided a General Power of Attorney in favour of the Plaintiff in respect of the Suit property. In addition he also executed Personal Guarantee and a Promissory Note in respect of the said liability in favour of the Plaintiff. It is further stated that due to a number of management issues in the Plaintiff Company and in the light of close ties with "Taseer Group" i.e. Defendants No.1, 2, 3 and 5 services of Defendant No.1 were engaged to manage the affairs of Plaintiff Company and according to the Plaintiff the said decision was based on trust and its relations with the Taseer Group. Thereafter, on 26.10.2007 a Tripartite Agreement was executed in respect of the liabilities of Defendant No.4 between Plaintiff, the Defendant No. 2 and Defendant No. 4. The modalities were settled in respect of the sale of the property in question and payments to be made; however, the property could not be sold as agreed and subsequently, due to a mutual arrangement the property was transferred from Defendant No.2 to Defendant No.3, an associated Company. It is further stated that on 15.3.2012 to settle the outstanding liability of the Plaintiff another undertaking dated 15.3.2012 was given by Defendant No.1 on behalf of Defendant No.2 being its holding company acknowledging that an amount of Rs. 76,304,380/- is owed by Defendant No.2 pursuant to the Tripartite Agreement to pay the liabilities of Defendant No.4. Now the case of the Plaintiff in nutshell is that the property in question is being sold to Defendant No. 6 as reflected from the Public Notice dated 3.5.2018 without consent of the Plaintiff and or settling the liability of the Plaintiff hence, instant Suit.

3. Learned Counsel for the Plaintiff has contended that the terms of the Tripartite Agreement are clear and unambiguous and so also admitted to the extent that an amount of Rs. 60,396,991/- was payable to the Plaintiff by the Defendant No.4, whereas, the Defendant No.4 also owed an amount of Rs. 34,500,000/- to Modaraba Al-Mali and as per the Agreement the property was to be transferred firstly in favour of Defendant

No.2 who was required to pay off the amount owed to Modaraba Al-Mali, and upon redemption of the Suit property, Defendant No.2 was to sell the property in consultation with Defendant No.4 within 180 days at a market price not less than Rs. 95,000,000/- (Ninety Five Million) and from the sale proceeds, Defendant No.2 was to adjust the amount paid to Modaraba Al-Mali and thereafter, an amount of Rs. 60,000,000/- was to be paid to the Plaintiff and the remaining to Defendant No.4. Per learned Counsel, this Agreement is not denied, whereas, the Defendants are now selling off the property without making any promise to settle the claim and liability of the Plaintiff which is against the Agreement. He has further contended that insofar as the transfer of property from Defendant No.2 to Defendant No.3 is concerned, the Sale Deed dated 23.12.2008 was with the understanding that the same is being done within the Group and therefore, the Plaintiff never objected to any such transfer. According to him the stance of the Defendants that property stands sold and transferred in 2008 to Defendant No.3 and fetched only Rs.21.00 million, therefore, the Plaintiff has no case is not based upon proper appreciation of the facts as it was not actually a sale of property, but only a transfer to an independent Company of the Taseer Group i.e. Defendant No.3 to manage properties and therefore, the Defendants cannot resile from the Tripartite Agreement in question. Per learned Counsel in 2012 admittedly an undertaking was given duly acknowledged and signed by Defendant No. 5 who is the majority owner of the Taseer Group, including Defendant No.2 & 3, and therefore, it is to be read as a part and parcel of the Agreement in question. Learned Counsel has also referred to the shareholding of the Plaintiff Company in various Companies of the Defendants and has contended that all along it was a relationship of mutual trust and understanding inasmuch as the Plaintiff Company holds 12.45% shares in Defendants No.2 and 24.22% shares in Defendant No.3 respectively. According to the learned Counsel, this is a case of piercing the veil of Corporate Governance and Companies, whereas, the claim of the Plaintiff is fully protected under Section 100 of the Transfer of Property Act, 1882. He has further contended that all three ingredients for granting injunctive relief are present in this case as the Agreement and facts have not been denied, whereas, the Plaintiff is only seeking relief to the extent of its money with mark up and if the Defendants deposits the said amount in Court; they may be permitted to sell the property in question. In support he has relied

upon ***Dewan Development (Pvt.) Ltd and 2 others V. Messrs. Mybank Ltd. through Regional General Manager, Karachi (2011 MLD 1368)***.

4. On the other hand, learned Counsel for Defendants No. 1, 2, 3 & 5 has contended that though the Tripartite Agreement is not denied; however, it is not a case of creation of any charge on the property in question as the requisite preconditions of Section 58 of the Transfer of Properties Act are not fulfilled as there is no instrument of mortgaged nor this is a case for specific performance. According to the learned Counsel, the property as per the Agreement was to be sold by Defendant No. 4 within certain time and since it could not be sold, it was transferred in favour of Defendant No.2 who has already disposed of the property in 2008 by selling it to Defendant No.3, hence, no case is made out. He has contended that it is a matter between Plaintiff and Defendant No. 4 for which they are at liberty to proceed with its claim but they have no case against Defendants No.1, 2, 3 & 5. Per learned Counsel instant Suit is hopelessly time barred and an effort has been made to make it within time by giving an impression as if the property in question was mortgaged. Learned Counsel has also referred to Section 10 and 59 of the Transfer of Property Act and has contended that in view of these provisions Section 100 of the Act *ibid* has no applicability, and therefore, the injunction application be dismissed. Finally, per learned Counsel, since the Agreement or MOU was not properly stamped, the same cannot be considered as a valid or legal document before a Court of law, hence no reliance could be placed on it. In support he has relied upon ***The Karachi Catholic Co-operative Housing Society Ltd. V. Mirza Jawad Baig (N L R 1994 AC 290)***, ***Pandit Shiva Rao and another V. D.A. Shanmughasundaraswami, Official Liquidator and others (A I R 1940 Madras 140)***, ***Khoo Sain Ban V. Tan Guat Tean and others (A I R 1929 PC 141)***, ***I.D.B.P. V. Aoki (Pvt.) Ltd. and another (2008 C L D 158)*** and ***Industrial Development Bank of Pakistan V. Messrs Hub Steel Mills (Pvt.) Limited and 3 others (2008 C L D 315)***.

5. I have heard both the learned Counsel and perused the record. Insofar as the facts are concerned, they have been briefly stated hereinabove, whereas, Tripartite Agreement in question dated 26.10.2007 has not been denied and the salient features which are relevant for the present purposes reads as under:-

- II-(1) Mr. Azhar Ahmed Batla is seized and possessed of and otherwise well, fully and sufficiently entitled to ALL THAT PIECE AND PARCEL OF LEASEHOLD RESIDENTIAL PLOT OF LAND bearing No. F-49, admeasuring 2000 square yards or thereabouts together with Double Storied House constructed thereon situated in Block 8 KDA Scheme No. 5, Clifton, Karachi with Fixtures, Fittings, Amenities, Services and Connections existing thereon (hereinafter referred to as the SAID PROPERTY) acquired by Mr. Azhar Ahmed Batla as per CONVEYANCE DEED dated 27th February 2007 executed by (1) MRS. ZAHINA GUL, (2) MISS MARIUM GUL, (3) MISS MULGHAR GUL AND (4) MR. MUHAMMAD HASSAN wife, daughters and son of Gul Hassan r/o, 37-A/II South Circular Avenue, Phase-II, DHA, Karachi which Conveyance Deed was registered at No. 487 in Block No. 1 by the Sub Registrar-II Clifton Town, Karachi on 17th March 2007 and copied under MF Roll No. U-23395/4166 by Photo Registrar, Karachi in 28th March 2008.
- 3) AND WHEREAS Mr. Azhar Ahmed Batla mortgaged the above Said Property with M/s. Modaraba Al-Mali, a Non-Banking Financial Institution as per Mortgage Deed dated 29th March 2007, registered at No. 576 in Book No. I by the Sub-Registrar II, Clifton Town Karachi on 29th March 2007 and copied under M.T Roll No. U-26931/4149 by the Photo Registrar, Karachi on 9th April, 2007. The outstanding amount of mortgage at the end of November 2007 will be approximately 34,500,000.
- 4) AND WHEREAS Mr. Azhar Ahmed Batla entered into a Memorandum of Understanding and understanding with AHSICL on 26th March 2007, wherein he committed to sell the said property so as to repay and adjust the outstanding amount that he owed to AHSICL.
- 5) AND WHEREAS Mr. Azhar Ahmed Batla does hereby assure and declare that apart from the above two liabilities (Item (II)(3) and (II)(4) with AHSICL and FCEL the said property is free from all Charges, Mortgages, Liens, Disputes, Litigations, Previous Commitments, Violation, Surety, Guarantee, Acquisition, Requisition, Burdens, Benami Ownership, Defect to Title, Trust, Wakf, Gift, Inheritance, Tenant, Taxes, Dues, Attachment, Decree etc. and hence free from all encumbrance of any nature whatsoever and there is no EMBARGO AND / OR RESTRICTION on the sale / transfer of the above said property due to any reason and / or action of whatsoever nature and that Mr. Azhar Ahmed Batla has full, absolute and legal right and legal capacity to enter onto this agreement and Mr. Azhar Ahmed Batla is wholly and solely responsible to get the above said property conveyed and transferred in favour of the FCEL with clear / legal / valid / marketable title free from all encumbrance of any nature whatsoever and with peaceful and vacant and physical possession.
- III) AND WHEREAS at the end of November 2007, Mr. Azhar Ahmed Batla will be owing Rs. 60,367,991.00 to AHSCIL against trading / finance accounts of Mr. Ibrahim Shamsi S/o Aftab Ahmed Shamsi, Mr. Omar Malik s/o Fazal Elahi Malik, Mrs. Erum Azhar w/o Azhar Ahmed Batla and Mrs. Najma Noor w/o Shaikh Noor Ahmed Batla with AHSCIL.
- IV) Now therefore this Tripartite Agreement witnesseth as under;
- 1) That Mr. Azhar Ahmed Batla thus seized and possessed of and otherwise well, fully and sufficiently entitled to the Said Property with PEACEFUL, VACANT AND PHYSICAL POSSESSION of the SAID PROPERTY and clean & Marketable Title free from of all encumbrance of any nature

whatsoever except as detailed earlier in context of FCEL and AHSICL, has agreed to sell, convey, assign and transfer the Said Property to the FCEL and FCEL has agreed to purchase and acquire the said Property for a consideration of amount outstanding against mortgage of said property with Modarba Al Mali free from all encumbrance of any nature whatsoever with peaceful, Vacant and Physical possession of the Said Property AND unencumbered, valid and marketable title in respect of the said Property.

- 2) That FCEL will acquire the said property by paying the amount of mortgage outstanding on said property to Modarba Al Mali.
- 3) That after the registration of the conveyance deed / transfer of the said property in the name of FCEL, Mr. Azhar Ahmed Batla undertakes to sell the said property at the best market price, and Mr. Azhar Ahmed Batla also assures and undertakes that this market price will be not less than Rs. 95,000,000.00 (Rupees Ninety Five Million) or above.
- 4) That after the completion of transfer of property to FCEL, the said property will be sold by FCEL consultation of Mr. Azhar Ahmed Batla at best available market price, but not less than Rs. 95,000,000.00 (Rupees Ninety Five Millions).
- V) That the proceed of sale / transfer of said property shall be distributed in following order:

1) Priority Number 1: First Capital Equities Limited:

1(a) from the sale proceeds FCEL will first adjust all amounts paid by FCEL to Modarba Al Mali, all taxes due and charges paid in purchase of the said property and any other expense incurred thereon, FCEL may also adjust from the sale proceeds service charges, apart from any financial cost occurred on the facilitation of the transaction, with mutual consent of AHSICL.

1(b) If, between the period of purchase by FCEL and its subsequent sale, any expenditure is occurred by FCEL in facing litigation in any court of law or any government department, litigation, or in accommodating any individual(s) or parties having any claim against the said property, this expenditure will also be adjusted against the sale proceed of the Said Property.

2) Priority Number 2: Al Hoqani Securities and Investment Corporation (Pvt) Limited.

Upon settlement of priority number 1, the remaining balance of the sale proceed of the said property will be adjusted against the outstanding amount owed by Mr. Azhar Ahmed Batla to AHSICL, this standing amount will be approximately Rs. 60,000,000.00 as on 30th November, 2007.

3) Priority Number 3: Mr. Azhar Ahmed Batla:

After the settlement of priority number 1 and 2 the remaining amount shall be disbursed to Mr. Azhar Ahmed Batla.

VI) FAILURE TO SELL / TRANSFER SAID PROPERTY IN 120 DAYS.

- 1) That it Mr. Azhar Ahmed Batla fails to sell / transfer the said property within 180 days from the date of purchase by FCEL, FCEL

shall be free to sell or transfer the said property to any party or to transfer in their own company name or mortgage, construct, renovate and use the said property as per convenience and requirement of FCEL.

- 2) **That if Mr. Azhar Ahmed Batla fails to sell / transfer the said property within 180 days from the date of purchase by FCEL, then FCEL shall not be bound to pay any claim, compensation, subsidy, expense or any other charges of any nature whatsoever to Mr. Azhar Ahmed Batla. Moreover any individual(s) or party initiating any claim against said property will be the risk and exclusive responsibility of Mr. Azhar Ahmed Batla and the liability of any such claim or suit or compensation will not be devolved on FCEL or AHSICL.”**

6. Perusal of the aforesaid provisions of the admitted documents in nutshell reflect that Defendant No.4 admitted his liability that he owes certain amount to the Plaintiff Company as well as Modaraba Al-Mali and as per the Agreement dated 26.10.2007 the Defendant No.2 will pay off Modaraba Al-Mali and thereafter, will clear the property in question and after transfer of the same in favor of Defendant No.2, Defendant No.4 undertook to sell the said property on the best market price which would not be less than Rs. 95,000,000/-. It was agreed upon between the parties that the property in question would not be sold at a price less than Rs.95.00 million. The parties further agreed regarding priorities from the sale proceeds and it was to the extent that first the Defendant No.2 will settle its amount for making payment to Modaraba Al-Mali from whom the redemption was sought on behalf of Defendant No.4. Thereafter, upon settlement of the first priority, the remaining balance of the sale proceeds was to be utilized for adjustment of outstanding amount owed by Defendant No.4 to the Plaintiff i.e. approximately Rs.60.00 million as on 30.11.2007 and thereafter, the amount if any, left out was to be paid and disbursed to Defendant No.4. The parties further agreed that if Defendant No.4 fails to sell or transfer the said property within 180 days from the date of purchase by Defendant No.2; then Defendant No.2 shall not be bound to pay any claim, compensation, subsidy expense or any other charge of any nature whatsoever to Defendant No. 4 and more over any individual(s) or party initiating any claim against the said property will be at the risk and exclusive responsibility of Defendant No.4 and the liability of any such claim or suit or compensation will not devolve on Defendant No. 2 or the Plaintiff. The learned Counsel for the Defendants in this case made an attempt to rely on the aforesaid clause i.e. VI(2) and to take shelter

that since property could not be sold by Defendant No.4 within time as agreed; therefore, there is no claim of the Plaintiff as against Defendant No.2. However, in my view this argument is baseless inasmuch as it applies only to 3rd parties or outside parties and not the parties to the agreement. This is evident from a careful reading of the last 4 lines of Para No VI(2), i.e. *“Moreover any individual(s) or party initiating any claim against said property will be the risk and exclusive responsibility of Mr. Azhar Ahmed Batla [Defendant No.4] and the liability of any such claim or suit or compensation will not be devolved on FCEL [defendant No.2] or AHSICL [Plaintiff].”* He also made an attempt to argue that admittedly the property stood transferred in the name of Defendant No.3 on 23.12.2008 therefore, not only the claim is time barred; but since it was sold at a much lesser price than agreed; therefore, no amount of the Plaintiff can be settled as of now. However, I am not in agreement with such contention on two grounds; firstly, it has not been explained as to how the property (even if sold in reality by Defendant No.2 to Defendant No.3) was done so, at a lesser price than agreed. Nothing has been placed on record that how the modalities were worked out between the Plaintiff and the contesting Defendants to this effect. Whether plaintiff consented to such sale at this price of Rs.21.00 Million, or was it agreed being merely a transfer to an associate Company. After all the agreement in question has not been denied and therefore, at the present stage the contesting Defendants cannot take shelter on this transfer of property which according to the Plaintiff was a case of mutual understanding and would not amount to a sale as agreed upon in the agreement. Secondly, the contesting Defendants have also failed to place on record that as to whether in actual the property was sold by Defendant No.2 to Defendant No. 3 on such a price. Nothing has been placed on record to this effect nor has a case been made out to justify selling of this property on such a lesser price though the parties agreed not to sell it at a price less than Rs.95.00 million. It is not conceivable that within such a short span of time the price which was agreed as a bare minimum of Rs.95.00 million in November, 2007 to Rs.21.00 million in December 2008, therefore, for the present purposes and at this injunctive stage I find that the argument of the Plaintiff is credible to the extent that this transfer from Defendant No.2 to Defendant No.3 was a result of mutual understanding and to manage the property through a separate entity and was not an actual sale. It is also a matter of record and is supported by the fact that Plaintiff owns and has

shareholding in Defendant No.2 & 3; hence, this understanding and management of the issue cannot be ruled out. There is another aspect of the matter and that is, admittedly when the Tripartite Agreement was made an amount of Rs.34.50 million was paid by Defendant No.2 to Modaraba Al Mali on behalf for Defendant No.4 and this amount was to be recovered from the sale of the property in question. Now if the contention so advanced on behalf of the contesting Defendants is accepted, then it appears that selling of the property by Defendant No.2 to Defendant No.3, has resulted in loss. This is also not conceivable; as firstly, no enterprise enters into a business transaction to make such heavy loss within such short period; and secondly, as reflected hereinabove no substantial material has been placed on record to justify the actual amount as reflected in the Conveyance Deed. Whether this value was only an official value fixed by the Government for collecting stamp duty on the basis of Valuation Table, or in actual the transaction took place on such lesser value. This aspect of the matter would though be finally dealt with at the trial stage, but one thing is for sure that at this stage of the proceedings it tilts the case in favor of the plaintiff heavily as against the contesting Defendants, therefore, has to be considered as a valid and substantial claim at the injunctive stage.

7. As to the ground(s) urged by the learned Counsel for Defendants that the Suit is time barred, therefore, the same may be dismissed, it would suffice to observe that the claim as set up and as it appears from the pleadings also falls under Section 100 of the Transfer of Property Act, and therefore Article 132 of the Limitation Act would apply which provides a limitation of 12 years; hence, for the present purposes, this cannot be a valid ground to refuse the relief prayed for. Moreover, the plaintiffs further case is that till such time the property in question was not sold to an outsider, and remains within the Group Company, i.e. Defendant No.3 (in which plaintiff also has shareholding to the extent of 24.22%), no cause of action accrued, therefore, the Suit is otherwise within time, from the date of publication of newspaper advertisement. Reliance in this regard may be placed on the case of ***Muslim Commercial Bank Limited v Muhammad Mithal*** (2004 CLD 237). As to placing reliance on certain judgments of the Indian Jurisdiction is concerned, with utmost respect they are on materially different propositions altogether; hence of no avail. The ground that the Agreement in question has not been properly stamped; hence,

cannot be acted upon, again at this stage of the proceedings, this argument cannot be entertained, as it is a matter of evidence, notwithstanding the fact that any deficiency in Stamp Duty can always be cured, if so directed. For the present purposes, this is not a ground to Non-Suit the plaintiff, in the peculiar facts and circumstances of this case.

8. The Hon'ble Supreme Court in the case of ***Habibur Rehman v Mst. Wahdania*** (PLD 1984 SC 424), had the occasion to deal with a case, wherein, the facts giving rise to the appeal were that the suit property measuring was initially mortgaged by the ancestor of Mst. Wahdania to Khanzada, the father of the appellants for a sum of Rs.396 for a period of 12 years. A mutation to this effect was sanctioned on 4-7-1942. Thereafter, the equity of redemption was sold by Mst. Wahdania subsequently to respondent No. 4, who filed a petition on 25-2-1960 under section 10 of the West Pakistan Redemption and Restitution of Mortgage Lands Act against the appellant alleging that he was owner of the suit property. It was his case that the land was under mortgage since 4-7-1942, which still subsisted, and as such the land was liable to be restituted to him without payment of the mortgage amount. This petition was resisted by the appellants on the ground that they had already acquired the proprietary rights in the land, as according to them, Mst. Wahdania had executed a deed of sale sometimes in 1941 transferring the equity of redemption in their favour and further submitted that since they were in possession of the mortgage land they did not bother to ask for getting the restitution of the suit land recorded in their name. It was contended that even otherwise they were in adverse possession of the suit land for over 12 years and as such, the respondent No. 4 had no right to ask for the restitution of the suit land to him. Though the Hon'ble Supreme Court dismissed the Appeal on this ground by holding that since no registered instrument was executed in their favor, i.e. a Sale Deed, therefore, no claim can be entertained. However, at the same time their charge on such property was accepted in terms of Section 100 of the Transfer of Property Act, as the amount which was paid was a lien or charge on the property. It is to be appreciated that in that case, this was observed notwithstanding the fact that there was no such instrument in writing to that effect for creating a charge; however, a claim of money on the property was accepted as a charge. The Hon'ble Supreme Court observed as under;

However, we consider that the appellants can legitimately claim to have a charge on the property for the amount paid by them as purchase money for the property, namely Rs. 704. In this connection, we would like to point out that the position of a purchaser, who has been let into possession by his vendor under an unregistered document pursuant to an oral agreement to sell under the mistaken belief that the transaction is complete, whereas, in fact it is incomplete, for want of registration of the instrument purporting to effect the transfer, must be regarded to be a purchaser under a contract for sale which has yet to be completed. Consequently, the purchaser cannot, in these circumstances, claim any title as owner in the property, whether as a legal or as an equitable owner but he would, **however, have a charge on the property for the amount paid by him towards the purchase of the property in question.**

Here in this case, the claim of the plaintiff is based on an admitted document, therefore, at the injunctive stage, the same merits consideration and cannot be out rightly rejected. It is settled law that a charge has a wider connotation as against a mortgage. It would cover within its ambit a mortgage also. Section 100 of the Transfer of Property Act deals with charges on an immovable property which can be created either by an act of parties or by operation of law. It provides that where immovable property of one person is made security for the payment of money to another, and the transaction does not amount to a mortgage, a charge is created on the property and all the provisions in the Transfer of Property Act which apply to a simple mortgage shall, so far as may be, apply to such charge. A mortgage, on the other hand, is defined under section 58 of the Transfer of Property Act as a transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced as set out therein. A charge is a wider term as it includes also a mortgage, in that, every mortgage is a charge, but every charge is not a mortgage¹.

9. In view of hereinabove facts and circumstances of this case, I am of the view that Plaintiff has made out a prima facie case for injunction, whereas, the balance of convenience also lies in its favour and if the injunctive relief is denied irreparable loss would be caused to the Plaintiff. It is also a matter of record that Plaintiff has already offered that its claim in money terms may be secured and thereafter, the property be sold however, such concession was not conceded to on behalf of the contesting Defendants.

¹ **Dattreya Shanker Mote v. Anand Chintaman Datar (1974) 2 SCC 799**

10. Accordingly, in view of the above facts by means of a short order dated 12.09.2018 the injunction application was allowed in the following terms and above are the reasons thereof.

“For reasons to be recorded later on, listed application (CMA No. 7796/2018) is allowed by confirming the ad-interim orders passed on 14.05.2018, restraining the defendants from creating any further interest in the property bearing House / plot No. F-49, Block No.8, KDA Scheme No.5, Clifton, Karachi, whereas, office shall intimate Defendant No.7 / Registrar, accordingly.

However, if Defendant No.3 deposits an amount of Rs.100 million (One Hundred Million Only), with the Nazir of this Court, this order would stand recalled. Once the amount is deposited, it shall be invested by the Nazir, and upon such deposit, Nazir shall issue NOC to Defendant No.7, accordingly.”

J U D G E

ARSHAD/