

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.734 of 2013

DATE	ORDER WITH SIGNATURE OF JUDGE
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Plaintiff: IM Technologies Pakistan (Pvt) Ltd.
Through Mr. Danish Nayyar, Advocate.

Defendant: Karachi Development Company Limited
Through Mr. Faisal Siddiqui, Advocate.

For hearing of CMA No.6972/2013

Date of Hearing: 23.05.2018

Date of Order: 23.05.2018

ORDER

Muhammad Junaid Ghaffar J. This is a Suit for Declaration and Permanent Injunction and the Plaintiff seeks the following relief(s):-

- (a) Declare that pending the conclusion of arbitration proceedings in Singapore, and in the event that the arbitral award is in favour of the Plaintiff, pending disposal of the enforcement proceedings in Pakistan in respect thereof the Defendant is not entitled to dispose of the Said Property or to create any encumbrance thereon;
- (b) Pending the conclusion of the arbitration proceedings in Singapore, and in the event that the arbitral award is in favour of the Plaintiff, pending disposal of the enforcement proceedings in Pakistan in respect thereof permanently restrain the Defendant from disposing of the Said Property or creating any encumbrance thereon.

2. Through listed application, it has been prayed to restrain the Defendants from disposing of, or otherwise encumbering, the plot bearing No.ST-2 & 3/15-A located in Block-14, Scheme 24, Gulshan-e-Iqbal, Karachi, admeasuring 17259.99 Sq. Yds. Learned Counsel for the Plaintiff submits that an agreement was entered into with Defendant on 14.02.2008 for construction of a high-rise Information Technology (I.T.) Complex. He further submits that a

dispute arose and the agreement was cancelled by the Plaintiff on 28.12.2009 invoking various clauses of the Agreement and matter was referred for arbitration at Singapore. According to the learned Counsel the Defendant challenged the conduct of arbitration proceedings at Singapore through J.M No.12/2013, which was decided against the Defendant and now presently after filing of this Suit an Award has been passed. Per learned Counsel this Suit was filed though in anticipation, as otherwise the Defendant has no other assets for satisfaction of the arbitration award, which now stands passed in favour of the Plaintiff. Hence, per learned Counsel, ad-interim injunction already granted may be confirmed.

3. Conversely, learned Counsel for Defendant has referred to Para-10 of the Plaint and submits that Suit was filed at a very premature stage on the basis of apprehensions, whereas, at the relevant time no award was passed. Per learned Counsel though now the Award has been passed, but that is subject to challenge in various proceedings and once they have culminated and if the Plaintiff is successful, execution would take its own course. Whereas, instant Suit is in fact seeking execution much prior to passing of a final Award. According to the learned Counsel, the application merits no consideration and is liable to be dismissed.

4. I have heard both the learned Counsel and perused the record. At the very outset, I had confronted the learned Counsel for the Plaintiff as to how this Declaratory Suit is maintainable under Specific Relief Act, in view of the given facts and was further confronted to refer to any provision of law in Pakistan; or for that matter internationally, which could otherwise entitle the Plaintiff to seek such a relief as is being sought in this Suit and to this the

learned Counsel for the Plaintiff had no answer. Admittedly, instant Suit is apprehensive in nature, as it is the case of the Plaintiff that if an Arbitration Award is finally passed in favour of the Plaintiff, the Defendant, who has no other asset than the one being so stated in the application, would render the award as meaningless. I am afraid this is not a proper course to be adopted. In fact when this Suit was filed there was no award in field and ad-interim injunctive relief has been obtained. Though the award has now been made, but it is subject to various challenges and is to be enforced in accordance with Recognition & Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011. That situation has not yet arrived, whereas, the matter could only be taken up by the executing Court, once the award is finally come in favour of the Plaintiff. In fact the relief which is being sought through this Suit is of attachment before Judgment, however, such relief could only be granted by a Civil Court, if a case is made out as provided Under Order 38 Rule 5 CPC through an application but again the same must be in relation to a Suit, which is otherwise pending and maintainable. Apparently, this entire Suit is an application under Order 38 Rule 5 CPC without there being any other declaratory relief. This in my view cannot be granted. Accordingly, the listed application was dismissed by means of a short order in the earlier part of the day and these are the reasons thereof.

Judge