

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Suit No.2437 of 2018

| Date | Order with Signature of Judge(s) |
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1. For hearing of CMA No.4753/2019.
2. For hearing of CMA No.1814/2019.
3. For hearing of CMA No.18680/2018.

28.02.2020

Khawaja Shams ul Islam, advocate for the plaintiffs.
Mr. M. Jaffer Raza, advocate and Ms. Rabia Khan, advocate
for the plaintiff No.3.
Syed Haider Imam Rizvi, advocate for the defendant No1.
Mr. Abdullah, advocate for the defendant No.7/KDA.

This order seeks to determine the three listed applications. In so far as CMA 18680/2018 is concerned, the learned counsel for the plaintiffs submits that this application seeks maintenance of status quo order in respect of the suit property, per the period of time at which the suit was instituted. Ad interim orders in regard hereof were passed on 28.12.2018 and the same continue to subsist.

Learned counsel for the plaintiffs demonstrates title to the property and submits that entire particulars in respect thereof have already been recorded vide order dated 28.12.2018, hence repetition thereof is eschewed. Learned counsel demonstrates that Nazir report dated 08.04.2019 substantiates the averments of the plaintiffs. Learned counsel also draws attention to CMA 10811/2019 filed by the defendant No.1, where per learned counsel, the defendant No.1 had taken divergent and contradictory stance with respect to his alleged claims with regard to the suit property, however, the application was withdrawn by the said defendant as demonstrated by the order dated 23.10.2019. In conclusion, it is submitted that it is just and proper for this the interim application be granted so as to preserve the *corpus* of the *lis* pending adjudication of the Suit.

Mr. Haider Imam Rizvi, advocate representing the defendant No.1 controverts the arguments advanced by the learned counsel for the plaintiffs. Per learned counsel, the suit property is the property of the defendant No.1. and that the certification given by the KDA, with regard to the existence of the suit property in the manner pleaded by the plaintiffs, is erroneous. Learned counsel states that the defendant No.1 shall initiate the proper proceedings before the court to assert his rights.

This court has heard the arguments of the respective learned counsel and has perused the documentation to which its attention was solicited. The question before the court in this interim application is preservation of status quo so that *corpus* of the *lis* is safeguarded, pending adjudication of this Suit.

The Supreme Court has illumined in the *Muhammad Zaman case*¹ that the object of interlocutory orders was to maintain the situation

¹ Per *Ajmal Mian CJ.* in *Islamic Republic of Pakistan vs. Muhammad Zaman Khan & Others* reported as 1997 SCMR 1508.

subsisting on the date when the party concerned had approached the court and to prevent the creation of a new situation. In *Rahat Khan*² it was observed that in a suit with respect to land if any encumbrance or interest was permitted to be created during the tenancy of the suit then the same may be prejudicial to any determination arrived at upon the conclusion of the said suit. Division Benches of this court have consistently maintained, in the *Mondelez International case*³, *Rani case*⁴ and the *Chishti case*⁵, that an interim order, as envisaged in Order XXXIX CPC, is intended to be a preventive or protective remedy for the purposes of preserving the status quo or preserving the corpus of the litigation pending the final determination thereof. The aforesaid law was recently reiterated by a Division Bench of this court in the case of *Hameed A. Haroon vs. Hussain A. Haroon & Others* (HCA 235 and 239 of 2009).

The plaintiffs, *prima facie*, title is demonstrably recorded vide order dated 28.12.2018. The written statement of the defendant No.1, available at page 289 of the court file, demonstrates that no counter claim has been filed therein. It is thus apparent that the issue before this court, in so far the main suit, is concerned is the ascertainment of the rights, in suit plot, as claimed by the plaintiffs and in so far as the interim application is concerned the question remains entirely as to whether the status, as was before the court on 28.12.2018, is to be preserved or otherwise. No case has been made out before this court for denial of the interim protection sought. Learned counsel for the plaintiffs has filed a contempt application whereby it has been averred that the plaintiffs' possession was usurped by the defendant No.1, post issuance of the order dated 28.12.2018. This question and the appropriate orders in such regard shall be passed whilst considering the appropriate contempt application.

In view hereof, it is the considered opinion of this court that grant of the present application, in terms herein, is in the interest of justice as it shall seek to preserve the status quo pleaded. Therefore, CMA 18680 of 2018 is hereby disposed of in terms of the order dated 28.12.2018, in consonance with the directives of the honorable Supreme Court illumined in the *Muhammad Zaman case*⁶.

In so far as CMA 4753/2019 is concerned, it is noted that no reference to any order is contained in the memorandum of application, in respect whereof, any infringement could take place. Learned counsel for the defendant No.1 was put on notice to satisfy this application as to how any order of this court was violated by the alleged contemnors. Learned counsel requests for time to seek further instructions in such regard.

In so far as CMA 1814/2019 is concerned, the alleged contemnors are directed to be present in person in court on the next date of hearing.

At the request of the learned counsel for the defendant no. 1, adjourned to 18.03.2020.

JUDGE

Khuhro/PA

² Per Nadeem Azhar Siddiqui J. in *Rahat Khan vs. Captain (r) Tahir Naveed & Others* reported as 2009 CLC 433.

³ *Ismail Industries Limited vs. Mondelez International & Others* reported as 2019 MLD 1029.

⁴ *Shahnawaz Jalil vs. Rani & Company & Others* reported as 2019 CLD 1338.

⁵ *Suriya Iqbal Chishti & Another vs. Rubina Majidullah & Others* reported as 2019 CLC 211.

⁶ Per Ajmal Mian CJ. in *Islamic Republic of Pakistan vs. Muhammad Zaman Khan & Others* reported as 1997 SCMR 1508.