

bearing civil suit No.132/2010 against Respondents No.2 to 4 in respect of the suit property.

3. The applicant herself was not party to the said suit and she filed application under **Order 1 Rule 10 CPC** for impleading her as defendant in the said suit on the claim that she is real owner of the plot under illegal possession of Respondent No.2 (Mst. Zreena), is necessary party. Her application was allowed and she was impleaded as defendant No.4 in the said suit filed by Respondent No.1. However, after being impleaded, she did not sought any declaration of ownership through counter claim in the said suit nor she paid any Court Fee to obtain any relief whatsoever in her favour in final judgment. The Plaintiff/ Respondent No.1 in the suit has prayed for the relief as under:-

It is therefore, prayed that this Hon'ble court may be pleased to:

- (a) cancel instrument/lease Annexure-B by holding that the same has been obtained fraudulently and by concealment of material facts and in collusion with the officials of the then KMC/CDGK and defendant No.3 to be ordered to cancel the relevant Register and further holding that the lease in question has no legal effect whatsoever and the same may be declared void ab initio document.*
- (b) Any other relief/reliefs which this Hon'ble Court may deem fit and proper.*
- (c) Grant the cost of this suit.*

The trial Court after framing issues, recorded evidence of Respondent No.1/Plaintiff and Respondent No.2/Defendant. The applicant was impleaded as Defendant No.4 at her own request but she neither filed written statement nor appeared in the witness box. The trial Court after recording evidence of Plaintiff/Respondent No.1 and evidence of

Defendant No.1/Respondent No.2 dismissed suit on merit by Judgment dated **18.11.2017**.

4. It is pertinent to note that Plaintiff/Respondent No.1 has not filed appeal against the dismissal of suit filed by them. But the applicant/defendant No.4 has filed Civil Appeal No.04/2018 against the said judgment, whereby suit was dismissed, and she has prayed as follows:-

“It is therefore prayed that this Hon'ble Court may be pleased to admit the above Appeal. Call R & P and after going through the record of suit No.132/2010 and hearing of the parties, allow the Appeal by setting aside impugned Judgment dated 18.11.2017 & Decree dated 29.11.2017, in the interest of justice.

Along with the appeal she has also filed an application under **Order XXXIX Rule 1 and 2 CPC** praying therein that *“the Respondents, their representatives or any other person acting on their behalf may be restrained to harass the applicant and eject her forcibly from the suit property without due process of law”*. The appellate Court dismissed the said application by order dated **06.02.2019**. The applicant against the said order has filed instant Revision Application.

5. The perusal of order sheets show that on the first date of hearing of this Revision Application on **29.3.2019** my brother Nadeem Akhtar, J has been pleased to order as follows:-

*“----- Counsel for the applicant is put on notice to satisfy the Court on the next date regarding **maintainability of the appeal as well as this revision application as the applicant has not filed a separate Suit in respect of the subject property.**”*

Then on **29.4.2019** when the case was again fixed before my brother Nadeem Akhtar, J, none appeared and he has observed in the order as follows:-

“-----Despite the observation made on the said date, no one is present on behalf of the applicant to assist the Court. If none appears on the next date tis Revision Application shall be dismissed. Let an intimation notice for the next date be issued to the applicant and his counsel for 13.05.2019”.

Then on **13.5.2019** when the case was again fixed before my brother Nadeem Akhtar, J, the counsel for the applicant sought further time to assist the Court on the question of maintainability but he never addressed the Court on the question of maintainability.

6. Then on **16.5.2019 Mr. Ghulam Mohiuddin, Advocate** superseded power of earlier counsel representing the applicant and during vacations on **10.7.2019** he filed an urgent application only to withdraw already pending **CMA No.1914/2019** for interim order with permission to file fresh application in the office. Then again during vacations on **18.7.2019** pending objection of the Court on maintainability since **29.3.2019** he filed **CMA No.3699/2019** in which he took frivolous and out of pleading ground of raising construction by Respondent No.2 on the suit property and prayed both for **suspension of the impugned order dated 06.2.2019 and to restrain Respondent No.2 from raising illegal construction on the suit property** and obtained the following order:-.

“Learned counsel for the appellant submits that the respondents are raising illegal construction on the premises, as the said property was allotted to his late father. Learned counsel further submits that at least respondents restrain to raising construction on the same plot. Meanwhile, the parties are directed to maintain the status quo order till next date of hearing.”

It is pertinent to note that the nature of the suit was such that before the trial Court neither the plaintiff/Respondent No.1 has prayed for any interim order nor even the applicant after having been impleaded as defendant No.4 at the trial stage has sought any restraining order against Respondent No.2. The reason for not seeking any restraining order was that the suit filed by Respondent No.1/Plaintiff was for “cancellation of instrument/lease-B” dated **30.10.2002** of the suit property” in favour of Respondent No.2. However, after dismissal of suit in civil appeal before lower appellate Court for the first time Defendant No.4/applicant sought an exparte restraining order against Defendant No.1/ Respondent No.2.

7. In the above background of the case, by all means the above quoted order dated **06.2.2019** by this Court was passed on a misstatement of the counsel as the issue of raising construction was neither in the trial Court in **Suit No.132/2010** nor before the appellate Court in **Appeal No.04/2018** and it was not even in the instant Revision Application. The frivolous and false claim of illegal construction was not even supported by attaching any photographs of construction at the site of suit property. This is how learned counsel **Mr. Ghulam Mohiuddin** by deliberately misguiding/misrepresenting facts got an exparte interim order from the High Court against Respondent No.2 in a case which was not even maintainable before the lower appellate Court and lower appellate Court has refused to pass restraining orders against Respondent No.2 to the effect of not to “*harass the applicant and eject her forcibly from the suit property*” pending the frivolous civil appeal. Had there been any construction activity on the suit property, the applicant should have served notice of restraining order dated **18.7.2019** on

Respondent No.2 and/or filed a contempt application for non-compliance of restraining orders. The record shows that even after exparte order Respondent No.2 has never been served with notices of application as well as the Revision. It is the worst example of dishonest advocacy.

8. Be that as it may, on **06.3.2020** I have heard learned counsel for the applicant at length and directed him to file written arguments within three days in compliance of the order dated **29.3.2019** by my brother **Nadeem Akhtar, J** on the question of *“maintainability of appeal (before lower appellate Court) as well as this Revision Application as the applicant has not filed a separate suit in respect of the subject property”*.

9. I have perused the record as well as written arguments filed by the learned counsel for the applicant.

10. The suit before the trial Court was filed by Respondent No.1 which was dismissed and by stretch of any imagination the defendants are not supposed to have any grievance against the dismissal of suit unless they show that they had raised a counter claim in their written statement against the plaintiff which has also been dismissed or not decided by the trial Court. But this is not the case of the applicant that in her written statement she has raised any counter claim which has not been accepted by the trial Court while dismissing the suit of Respondent No.1 nor there is any adverse observation against the applicant in any of the issues decided by the trial Court. In these circumstances, the applicant was put on notice to satisfy the Court that how an appeal by defendant No.4 against the dismissal of suit on merit was maintainable before the lower

appellate Court. Learned counsel has agreed to address the Court on the question of maintainability of civil appeal before the lower appellate Court and in his endeavor to answer this simple question, he has relied on following four case-laws:-

- i. *H.M Yahya & Co., Karachi vs. Wazir Ali Industries Ltd., Karachi and another (PLD 1969 SC 65);*
- ii. *Syed Musarat Hussain Zaidi and another vs. Syed Salim Jawaid Zaidi and another (PLD 1983 Karachi 548);*
- iii. *Habibullah vs. Zakir Ali and another (PLD 2000 Karachi 238);*
- iv. *Mst. Arfa Arif vs. Mst. Kulsoom Naqvi (PLD 2000 Karachi 31).*

11. Mr. Ghulam Mohiuddin, Advocate for the applicant in the given facts of the case in hand has misconstrued/misunderstood the law laid down by superior Court in the above citations. On careful reading of each of the four cases, I noticed that in **PLD 1969 SC 65** the question for consideration before the Hon'ble Supreme Court was that whether *a stranger to a suit or proceedings can file an appeal if he is adversely affected* by an order in that suit or proceedings. Likewise in **PLD 1983 Karachi 548**, it is observed by High Court that *if a person who was not party to suit or proceedings could prefer an appeal if he was affected by the judgment*. In **PLD 2000 Karachi 238** again it was observed by this Court that the aggrieved person does not mean only a party to the proceedings *but any person aggrieved by the order claiming that the order/complaint against is prejudicial to him affects his interest adversely*. **PLD 2000 Karachi 31** is totally out of context. In view of the above citations, the burden was on the shoulder of the applicant to show that the applicant/defendant No.4 before the trial Court falls within the definition of an **aggrieved party** on the dismissal of suit in which she was one of the defendants.

12. This is admitted position that Respondent No.1 has filed suit only against Respondent No.2 and the applicant has joined the proceedings as defendant No.4 when her own application under **Order 1 Rule 10 CPC** was granted by the trial Court. If at all, she wanted the suit to be decreed, then she should have either filed may be identical but a separate suit or she should have paid Court Fee to become co-plaintiff with Respondent No.1 provided she had any claim in the suit property to be adjudicated by the Court in the same suit in her favour. Strangely enough, the record shows that applicant after having been impleaded as defendant No.4 had not filed any written statement. She herself or through attorney has not even appeared in the witness box as witness though her counsel has cross-examined the witnesses of Respondent No.2. The suit of the plaintiff/Respondent No.1 was dismissed on merit. When appeal is not preferred by Plaintiff whose suit has been dismissed, the said suit cannot be decreed against the main contesting defendant on the appeal by one of the defendants who has not filed even written statement in the trial Court. Learned counsel for the applicant has failed to disclose anything against the applicant herself to be aggrieved by the judgment of dismissal of suit to fall within the definition of an aggrieved person as a consequence of the said judgment.

13. Before parting with the judgment, I am constrained to take note of the conduct of the applicant and her counsel. The record shows that civil appeal No.04/2018 before the lower appellate Court was instituted on **04.01.2018** and since then to **06.02.2019** the date of impugned order of dismissal of an application against Respondent No.2, the service of appeal had not been affected upon Respondent

No.2. An effort to get an ex parte order against Respondent No.2 was frustrated. And before this Court her counsel by maneuvering in the most unscrupulous manner has obtained ex parte orders of “status-quo” on **18.7.2019** against Respondent No.2 without first satisfying the Court on maintainability of instant Revision and even appeal before the lower appellate Court. A character sketch of the counsel is clearly visible in the orders sheets reproduced in para-5, 6 and 7 above. The contents of these paragraphs of the judgment contain enough incriminating material to send the counsel to the Disciplinary Committee of the Sindh Bar Council, but I would prefer to restrain myself from sending his case to Bar Council with a warning that if he will not correct himself and if he is again found indulging in clear case of misguiding and making misstatement in Court to obtain ex parte order, he will not be spared.

14. In view of the above discussed facts and law, the question raised by this Court on **29.3.2019** is answered in negative. Consequently, this Revision against the impugned order passed in Civil Appeal No.04/2018 as well as the frivolous Appeal No.04/2018 before the III-Additional District and Sessions Judge, South Karachi are dismissed with cost of **Rs.50,000/-**. The IIIrd Additional District & Sessions Judge, South Karachi on receiving the instant judgment while treating the appeal as dismissed should initiate proceedings for recovery of the cost imposed on the applicant before consigning file of appeal to record. The cost should be recovered from the applicant under the Land Revenue Laws and the learned Additional Sessions Judge should ensure recovery of cost within **30 days** and once recovered deposit the same in the account of Clinic for Lawyers in the

District Court premises. He should report compliance of order to this Court for perusal in Chamber through the MIT-II.

JUDGE

Karachi, Dated:18.05.2020

Ayaz Gul