

ORDER SHEET
HIGH COURT OF SINDH, KARACHI

HCA No. 213 of 2020

Date	Order with signature of Judge
-------------	--------------------------------------

Present

Mr. Justice Muhammad Ali Mazhar.
Mr. Justice Arshad Hussain Khan.

Kathiawar Cooperative Housing Society Limited.....Appellant

Versus

Makkah Masjid (Regd) Trust & others.....Respondents

Date of hearing 20.11.2020

Mr. Abid S. Zuberi advocate for the appellant.

Khawaja Shams ul Islam advocate for the respondent No. 1 to 4

Mr. Hakim Ali Shaikh, AAG.

Muhammad Ali Mazhar, J: Khawaja Shams ul Islam advocate has filed vakalatnama for respondent No. 1 to 4. Basically, this appeal has been preferred against an ex parte ad interim order dated 04.11.2020 passed by learned Single Judge in Suit No. 1670 of 2020 on injunction application. The concluding paragraph of ad interim ex parte order is reproduced as under:-

“Till the next date of hearing, Defendant No.1 or any representative(s) of Defendant No.2 will not create any nuisance in the Mosque including giving lecturers, without the permission of Imam of above Mosque and Defendants No.5 and 6 shall ensure that no law and order situation is created. Defendant No.3 is directed to submit a Report about the submission of renovation plan of the Mosque and its stage.”

2. The appellant filed this appeal on the premise that some material facts were not disclosed by the plaintiffs to the

learned trial court and he further argued that no Trust is in existence. He also referred to some previous orders of the different courts. When this appeal was taken up by us on 16.11.2020, learned counsel for the appellant argued that under the garb of interlocutory order, the respondent No.1 to 4 intend to start construction activity in the mosque and to avoid multiplicity of proceedings, he requested for some restraining order. The notice was issued to the respondents and till next date we directed the respondent No.1 and its Trustees not to start construction activity in the mosque while remaining interim order was intact.

3. Khawaja Shams ul Islam learned counsel for the respondent No. 1 to 4 submits that appellant society is not in existence as they failed to conduct elections for last more than ten years. He further argued that a plot was reserved for mosque but some flats sites have been constructed by the appellant society without lawful authority.

4. The controversy before us at this stage is only with regard to ad interim ex parte order which neither has been confirmed nor hearing of the application has been conducted after hearing the parties, therefore, proper course is to leave the matter to the learned Single Judge who may decide the injunction application to an early date keeping in mind the urgency in the matter. The respondent No.1 to 4 in their suit for declaration, injunction, direction and accounts filed against the appellant have already prayed for various reliefs with regard to the status of the Trust in question with further

claim that they are entitled to start additional construction in the mosque. They have also sought the directions to hold election of the appellant's cooperative society and render the accounts. The suit and all interlocutory applications pending at original side are to be decided by the learned Single Judge after providing ample opportunity of hearing to the parties and we do not feel that present appeal is an appropriate remedy to challenge the ex-parte ad interim order which has not attained finality, however, by consent of the learned counsel for the appellant and respondent No. 1 to 4 this appeal is disposed of along with pending application with the directions to learned Single Judge to decide the injunction application bearing CMA No. 1189/2020 filed by the plaintiffs in Suit No. 1670/2020 under order XXXIX Rules 1 & 2 CPC preferably within a period of ten (10) days. As agreed by the counsel for the parties, the office shall fix the suit on 25.11.2020 at 11:00 a.m. according to roster and both learned counsel shall ensure their presence and shall not claim any adjournment. At this juncture, Khawaja Shams ul Islam advocate undertakes that till decision of the injunction application by the learned Single Judge no construction shall be raised by the respondent No. 1 to 4 or the persons claiming through or under them in the mosque. It is clarified that this undertaking will not prejudice the outcome of the injunction application before the learned Single Judge.

JUDGE

JUDGE