IN THE HIGH COURT OF SINDH, AT KARACHI

Present:
Irfan Saadat Khan and
Yousuf Ali Sayeed, JJ

HCA No. 49 of 2018

Appellants	:	Syed Hamid Mir and Muhammad Jamil.
Respondents	:	(1) Board of Revenue, (2) Anwar Majeedullah, (3) Khawaja Salman Younus, (4) Ismail Otho, (5) Muhammad Ali Shah, (6) Assistant Commissioner, Malir, (7) Mukhtiarkar, Malir, (8) S.S.P, Anti Encroachment Force, (9) SHO, Murad Memon Goth Police Station, (10) Government of Sindh.
Date of hearing	:	03.11.2020, 11.11.2020 and 17.11.2020

Khawaja Shams-Ul-Islam, Advocate, for the Appellants.
Muhammad Akram Qureshi, Advocate, for the Respondent No.2
Miran Muhammad Shah, AAG, for the official Respondents.

JUDGMENT

YOUSUF ALI SAYEED, J. – The Appeal impugns the short Order dated 21.02.2018 made in Suit Number 849 of 2017 (the "**Suit**") pending before this Court on the Original Side, whereby a learned single Judge was pleased to dismiss two miscellaneous applications, bearing CMA Nos. 5347/2017 and 5345/2017 (collectively the "**Subject Applications**") filed by the Appellants/Plaintiffs for the reasons that then followed on 24.02.2018 (the "**Impugned Order**").

2. Briefly stated, in terms of the Suit, the Appellants advanced a claim in respect of two adjacent parcels of land, said to measure 16 Acres and 12 Acres respectively, situated in Naclass No. 249, Deh Kharkharo, Tapo Konkar, Gadap Town, Karachi (hereinafter referred to as the "**16 Acres**" and "**12 Acres**" respectively, and collectively as the "**28 Acres**"), with it being averred that the same had been allotted to or otherwise acquired by the Appellant/Plaintiff No.1 and then transferred to the Plaintiff No.2, who is said to have then developed and put the 28 Acres to use as a poultry farm, of which a part had then been illegally occupied by the Respondents/Defendants Nos. 2 to 4.

3. By way of final relief, the Appellants sought certain declarations as to their title, along with prayers (d) and (f), both of which were directed towards the 16 Acres, with the former seeking that the defendants be directed to immediately restore the Plaintiffs' possession thereof together with poultry farm sheds, 8000 chickens, their feeds and other valuable goods, and the latter incongruously seeking the grant of a permanent injunction restraining the Defendants from taking any coercive action against the Plaintiffs or interfering with their lawful possession.

4. The Subject Applications were preferred within that framework, with CMA Nos. 5345/2017 and 5347/2017 being filed under Order 39, Rules 1 & 2 CPC and Order 39, Rule 9 CPC respectively, and interim relief thereby being elicited *inter alia* in the following terms:

CMA No.5345 of 2017

"It is most respectfully prayed on behalf of Plaintiffs that, for the reasons disclosed in the accompanying affidavit, this Hon'ble Court may be pleased to restrain the Defendants, specially Defendants No.2 to 9, their employees, subordinates, agents, representatives, attorneys, successors or anyone claiming on their behalf, from taking any coercive action, including but not limited to interfering into the lawful possession of the Plaintiff No.2, as well as not to dispossess him on any pretext of his 16 acres land out of Naclass No.249, available in the record of rights maintained by the official Defendants in Form VII bearing No.1837/1838 dated 23.6.1992, situated in Deh Kharkharo, Tapo Konkar, Gadap Town, Karachi, till final disposal of the suit."

CMA No.5347 of 2017

"It is most respectfully prayed on behalf of Plaintiffs that, for the reasons disclosed in the accompanying affidavit, this Hon'ble Court may be pleased to put the Plaintiff No.2 in possession of the suit land i.e. 16 acres land out of Naclass No.249, situated in Deh Kharkharo, Tapo Konkar, Gadap Town, Karachi, which was snatched from him by the private Defendants in connivance with the official Defendants on 26.3.2017."

5. On the basis of their contention as to dispossession from the 16 Acres and of the same having been trespassed and damaged, the Plaintiffs had also filed an Application under Order XXVI, Rule 6 CPC, bearing CMA No. 5346 of 2017, seeking that the Nazir be appointed to conduct an inspection so as to assess the damage and take readings of the electricity meters. That Application was allowed on 31.03.2017, with the Nazir being directed to conduct an inspection within three days, without notice to the defendants. Towards compliance of that Order, the Report dated 07.04.2017 initially submitted, reflected the presence of a contingent of armed personnel of the Anti-Encroachment Police under deployment by the Deputy Commissioner Malir.

6. The Respondent/Defendant No.2 entered appearance through counsel on 14.04.2017 and filed his objections to the Nazir's Report during the course of proceedings in Court on 20.04.2017, with it being submitted that the 16 Acres could not have inspected without the same being identified, whereas the Nazir had not taken any step to ascertain the correct location. After hearing the rival contentions advanced on that score, an Order was made in exercise of Order 26, Rule 9 CPC, with the Nazir being directed to conduct a local investigation with regard to location of the 28 Acres with the assistance of the Superintendent Settlement/Survey Department, Karachi, the Mukhtiarkar concerned and other concerned officials of Board of Revenue, after issuing notices to the parties.

7. An inspection was then carried out by the Nazir with the assistance of personnel from the Survey and Revenue departments, and the Nazir's subsequent Report dated 09.05.2017 reflected *inter alia* that it had been reported by the Tapedar that "as per Suratehal for land Naclass 249 of Mukhtiarkar East Karachi dated 18.11.1990, the land of Plaintiff fall away from present position. So also, stated by Mukhtiarkar, Taluka Murad Memon, District Malir, Karachi (Flagged 'A')". The flagged letter, as addressed to the Nazir by the Mukhtiarkar, reads as follows:

> "Subject: **SITE VISITATION OF N.C NO.249 DEH KHARKHARO IN SUIT NO.849/2017.**
>
> The Supervising Tapedar Kharkharo has reported that he visited the site alongwith the representative of the Nazir of High Court of Sindh in Naclass No.249 Deh Kharkharo in the above subject suit, on 02.05.2017 at 2.00 p.m. He has further reported that as per sketch provided by the plaintiff the disputed land measuring 16-00 acres from NC NO.249 Deh Kharkharo falls southern side of K.D.A. Pipe line and overlapped on the land of Azeem Adil Shaikh. (Copy of report enclosed).
>
> Facts are submitted accordingly."

8. Furthermore, the Nazir's Report also reflected that on 08.05.2017 a report had also been received from the Office of the City Surveyor, Survey Superintendent Office, Karachi Division, Karachi in which was stated that the *"Land which was holding by Mr. Muhammad Jamil in Naclass 249 of 16 Acre is far away from survey No.64 and 65. The land of Plaintiff is situated on the turn of KDA water line and KDA water line is far away from survey No.64 and 65 in Naclass 249. The land of plaintiff".* [sic]

9. Through the counter-affidavit that was subsequently submitted in the matter, the Respondent No.2 took the stance that whereas the 28 Acres were claimed by the Appellants as being within Naclass 249, his lands admeasuring 32-27 acres were situated in Survey Nos. 64, 65 and 66, which, as per the Plaintiffs own admission were adjacent parcels of land, hence were distinct and separate. It was stated that the Respondent No.2 was therefore in possession of his own independent property and had nothing to do with the 28 Acres, and whilst the he had no intention of either dispossessing the Plaintiffs or preventing them from accessing the 28 Acres, at the same time, there was case made out against him for restoration of possession, as sought. In particular, reference was made to the Nazir's Report dated 09.05.2017, with reliance being placed on the input received by the Nazir from official quarters, viz. – the Mukhtiarkar and City Surveyor.

10. Through his written statement, the Respondent No.7 (i.e. the Mukhtiarkar Malir) also submitted that the Appellants had illegally possessed lands situated in Survey Nos. 64 and 65. It was also submitted that a 30-year lease for poultry farming even otherwise did not admit to transfer, as had allegedly been undertaken as between the Appellants.

11. The Subject Applications came to be dismissed vide the Impugned Order, with the learned single Judge essentially observing that it was not possible to give any conclusive finding at that stage as to the exact location of the 28 Acres as the Report of the Nazir was inconclusive in light of the statements of the Mukhtiarkar and City Surveyor, and the location had also not been pointed out with exactitude on the basis of the ownership documents annexed with the plaint or from any Sketch or map drawn by those officials. Furthermore, it was observed that contrary prayers had been advanced vide the Subject Applications and the grant of a mandatory injunction would, under the circumstances, also be tantamount to granting final relief at the interlocutory stage. The relevant passage, encapsulating the reasoning of the learned Single Judge, reads as follows:

> "10. Perusal of the aforesaid report as well as the Reports of Mukhtiarkar and the City Surveyor reflect that for the present purposes, it is not possible for this Court to give any conclusive finding as to the contention raised on behalf of Plaintiff No.2 as he has not been able to point out the exact location of his land on the basis of his ownership documents annexed with the plaint. It is categorically stated by the concerned officials that the land of the Plaintiffs falls far away from the present position i.e. the position being claimed by the Plaintiffs as all along the land has been pointed out by the Plaintiff No.2 to the Nazir of this Court. The officials have stated that the land of the plaintiffs is far away from Survey Nos.64 & 65 being claimed by the Defendants No.2 to 4 and in fact according to them, the land of the Plaintiff is situated on turn of KDA water line, whereas, said KDA Water Line is far away from Survey Nos.64 & 65 in Na-Class No.249. Time and again, I have confronted the Counsel for the Plaintiff to point out the exact location of the Plaintiffs' land on the basis of their documents or any Sketch or map drawn by the officials concerned; however, none could be referred to. Sketch available at Page 61 does not specify or mentions the land of the Plaintiffs specifically, whereas, the Sketch at Page-85 is an unsigned Sketch but nonetheless the same also does not clearly identifies the Plaintiff's land. Insofar as the Sketch at page-109 is concerned, again the same is not signed by any official but even the plaintiffs' land is not shown as claimed; rather it appears to be at a distant place from Survey Nos.64 & 65 being

claimed by Defendants No.2 to 4. It may be appreciated that this is only the injunction stage and the Plaintiff is duty bound to make out his prima-facie on the basis of his documents. Not only this, inspection has been carried out along with the concerned officials and none has supported the Plaintiffs' case. It may also be pertinent to observe that much stress has been laid on the Nazir's report dated 7.4.2017 by the learned Counsel for the Plaintiffs that it has come on record that police officials as well as Deputy Commissioner have cordoned off the area and have virtually taken over his land. However, the Court cannot rely upon the Nazirs report exclusively (which in the present case otherwise does not fully support the plaintiff's claim). It is by now settled law, that the report of a Commissioner appointed by the Court is always persuasive in nature, and is only a tool for the Court to arrive at a just and fair decision but under no circumstances it is binding on the Court. It is not necessarily to be acted upon by the Court mandatorily. The Court has to and must examine the report as a Commissioner's report is not a substitute of evidence, and can only be an aid in evidence, whereas, this is not a case where the matter is being decided on the basis of any evidence which could corroborate with the pleadings and documents on record. We may, however, observe that inspection of location by a Court may be necessary and helpful in deciding a case, but surely it should not be substituted as an evidence, which otherwise is required to be produced by a party. Thus, Order XXVI, Rule 12(2), C.P.C makes it discretionary for the Court to accept or reject a Commissioners report if it is to the dissatisfaction of the Court. Admittedly, the Plaintiff is not in possession of 16 Acres land in question, of which, he seeks possession at the injunctive stage. He further seeks a restraining order in respect of the same land. Through CMA No.5345/2017, the Plaintiff has prayed for a restraining order from being dispossessed from 16 Acres of land as above and at the same time through CMA No.5347/2017 the Plaintiff has prayed that he be put into possession of the same land. In fact both these applications have contrary prayers and only one at the most could be granted. Admittedly, he is out of possession as per his own averments and in view of the facts and circumstances of this case, at this stage of the proceedings, he has failed to make out any case for putting him back into possession, which even otherwise is a final relief and cannot be granted at the injunctive stage. It is very strange, rather does not appeal to a prudent mind that while purchasing the land in question the Plaintiff No.2 could not obtain a proper and duly certified and or authenticated sketch of his land so as to enable him to correctly identify it as and when needed.

> Insofar as the argument of both learned Counsel regarding claim of ownership of land on the basis of Form-VII and its validity is concerned, I may observe that perhaps for the present purposes this question is not relevant to be dealt with, lest it may prejudice the case of any of the parties. The question right now is only to the extent of exact location of the Plaintiffs land and for that no deeper appreciation is needed. The case law relied upon by the learned Counsel for the Plaintiffs is of no help at this stage of the proceedings when he has failed to make out a prima-facie case seeking the injunctive and other relief(s)."

12. Proceeding with his submissions, learned counsel for the Appellants principally directed his efforts in seeking to demonstrate their entitlement in respect of the 28 Acres, and pointed to various documents ostensibly issued by the Revenue Authorities, including surathehal sketches said to reflect the location thereof. It was submitted that it stood admitted from the pleadings of the Respondent No.2 that the Appellants were the owners of the 28 Acres, whereas the Muhtiarkar had further confirmed that they had been forcibly removed from the land now in possession of the Respondent No.2 with the connivance and active assistance of the official Respondents. As to the Nazir's Report dated 09.05.2017, he submitted that the representatives of the Survey Department and Mukhtiarkar had been won over and submitted partisan findings meant to undermine the Appellant's case. He submitted that the person with whose land the 16 Acres was said to overlap, namely Azeem Adil Shaikh, was a noted political figure who would have forcefully taken up the matter had an overlap existed, but his not having come forward in the matter signified that the allegation as to an overlap with his land was incorrect.

13. He argued that as the Respondent No.2 was not denying the Appellant's title, their possession ought to be restored and the Respondent No.2 ought to withdraw the security presence so as allow their entry. It was argued that the Appellants had established a prima face case of title and prior possession of the 28 Acres before the learned Single Judge, with the balance of convenience having been in their favour and it being evident that irreparable loss would ensue if the elicited relief were not granted to restore and preserve possession.

14. Conversely, learned counsel for the Respondent No.2 submitted that the Impugned Order had been correctly made, as the Subject Applications were contradictory and the Appellants claim against the Respondent No.2 was vexatious and misconceived. He submitted that the dispute underpinning the Suit was essentially that of location of the 28 Acres, which did not form part of the parcel of land in possession of the Respondent No.2, and that the Appellants claim as to the land in the possession of the Respondent No.2 encompassing or forming a part of the 28 Acres was a misconception on their part. As such, he sought dismissal of the Appeal.

15. The learned AAG also supported the Impugned Order, whilst referring to the conflicting prayers at the hear of the Subject Applications and also contended that the Appellant's exposition of their title was under a cloud, as according to him a 30-year lease for poultry farming was no transferable.

16. Having heard and considered the arguments advanced at the bar, we have not been persuaded through reference to any material on record to find any infirmity in the view of the learned Single Judge that the evident controversy as to location of the 28 Acres was a matter that could not be properly resolved at that stage on the basis of the material available before him. Indeed, the view of the learned Single Judge in that regard appears to be well founded. Furthermore, it also merits consideration that on our query as to the conflict between the Subject Applications, learned counsel for the Appellants was unable to offer any explanation other than seeking to put it down as a drafting error.

17. Needless to say, such an explanation is hardly plausible. Indeed, no attempt was made during the proceedings in the Suit leading up to the eventual hearing on the Subject Applications to amend the same so as to address and rectify the so-called inadvertent error, nor has the same even been explained in any degree or measure in the Memo of Appeal, which is completely silent in that regard.

18. That being so, it is apparent from the prayers advanced through the Plaint as well as CMA No. 5345/2017 that the Appellants were already out of possession as on the date of institution of the Suit, hence their main prayer for mandatory injunction coupled with CMA No. 5347/2017 seeking interlocutory relief in like terms. As such, it is apparent that the former application sought to preserve a nonexistent state of affairs, thus could not be granted, while the restoration of possession sought through the latter application could also not be granted in view of the uncertainty as to location and the principle that an injunction is meant to preserve the *status quo* prevailing at

the time rather than create a new situation, whereas the grant of the mandatory injunction sought through that application would have virtually amounted to granting the final relief. The assessment of the learned Single Judge on both scores cannot be faulted let alone said to be unreasonable, as by the Respondent No.2 not denying the Appellant's claim to title of the 28 Acres it does not follow *a priori* that he should be required at the interlocutory stage to cede possession of part of the land in his possession, prior to the location of the 28 Acres being finally determined and it even being adjudged whether the land in possession of the Respondent No.2 is distinct therefrom.

19. It also has to be borne in mind that the Impugned Order is of an interlocutory nature, where the decision to grant or refuse an interlocutory injunction is a discretionary exercise, and an appellate court must not interfere solely because it would have exercised the discretion differently. As such, the scope of our inquiry in the exercise of our appellate jurisdiction is not to second guess the exercise of judicial discretion by the learned Single Judge, but to merely satisfy ourselves that such exercise was judicious, in terms of being reasonable.

20. On that very subject, a learned Divisional Bench of this Court observed in the case reported as Roomi Enterprises (Pvt.) Ltd. v. Stafford Miller Ltd. and others 2005 CLD 1805 that:

> 'The Court at this stage acts on well-settled principle of administration on this form of interlocutory remedy which is both temporary and discretionary. However, once such discretion has been exercised by the trial Court the Appellate Court normally will not interfere with the exercise of discretion of Court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily or capriciously or perversely or where

> the Court has ignored certain principles regulating grant or refusal of interlocutory injunction. The Appellate Court is not required to reassess the material and seek to reach a conclusion different from one reached by the Court below solely on the ground that if it had considered the material at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial Court reasonably and in a judicial manner, same should not be interfered in exercise of appellate jurisdiction."

21. The function of an appellate court in such a case was also considered by Lord Diplock in *Hadmor Productions Ltd. v. Hamilton* [1983] 1 A.C. 191, with it being observed that:

> "An interlocutory injunction is a discretionary relief and the discretion whether or not to grant it is vested in the High Court judge by whom the application for it is heard. Upon an appeal from the judge's grant or refusal of an interlocutory injunction the function of an appellate court, whether it be the Court of Appeal or your Lordship's House, is not to exercise an independent discretion of its own. It must defer to the judge's exercise of his discretion and must not interfere with it merely upon the ground that the members of the appellate court would have exercised the discretion differently. The function of the appellate court is initially one of review only. It may set aside the judge's exercise of his discretion on the ground that it was based upon a misunderstanding of the law or of the evidence before him or upon an inference that particular facts existed or did not exist, which, although it was one that might legitimately have been drawn upon the evidence that was before the judge, can be demonstrated to be wrong by further evidence that has become available by the time of the appeal; or upon the ground that there has been a change of circumstances after the judge made his order that would have justified his acceding to an application to vary it. Since reasons given by judges for granting or refusing interlocutory injunctions may sometimes be sketchy, there may also be occasional cases where even though no erroneous assumption of law or fact can be identified the judge's decision to grant or refuse the injunction is so aberrant that it must be set aside upon the ground that no reasonable judge regardful of his duty to act judicially could have reached it. It is only if and after the appellate court has reached the conclusion that the judge's exercise of his discretion must be set aside for one or other of these reasons, that it becomes entitled to exercise an original discretion of its own."

22. The object of an interlocutory order was explained by the Honourable Supreme Court in the case reported as Islamic Republic of Pakistan through Secretary, Establishment Division, Islamabad and others v. Muhammad Zaman Khan and others 1997 SCMR 1508, as follows:

> "As regards the merits of the case, it may be pointed out that it is a well -settled proposition of law that the object of passing of an interlocutory order or status quo is to maintain the situation obtaining on the date when the party concerned approaches the Court and not to create a new situation. Another well settled principle of legal jurisprudence is that generally a Court cannot grant an interlocutory relief of the nature which will amount to allowing the main case without trial/hearing of the same."

23. Furthermore, in the case of Mohd Mehtab Khan & Ors v. Khushnuma Ibrahim Khan & Ors (2013) 9 SCC 221, the Supreme Court of India examined the scope of an interlocutory injunction of a mandatory nature, for possession, as well as the scope for interference by an appellate Court in the exercise of discretion by the trial Court to grant or withhold such an injunction, with it being observed that:

> "There is yet another dimension to the issues arising in the present appeal. The interim relief granted to the plaintiffs by the Appellate Bench of the High Court in the present case is a mandatory direction to handover possession to the plaintiffs. Grant of mandatory interim relief requires the highest degree of satisfaction of the Court; much higher than a case involving grant of prohibitory injunction. It is, indeed, a rare power, the governing principles whereof would hardly require a reiteration inasmuch as the same which had been evolved by this Court in Dorab Cawasji Warden vs. Coomi Sorab Warden and Others[2] has come to be firmly embedded in our jurisprudence. Paras 16 and 17 of the judgment in Dorab Cawasji Warden (supra), extracted below, may be usefully remembered in this regard:

"16. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:

(1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.

(2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.

(3) The balance of convenience is in favour of the one seeking such relief.

17. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion."

15. In a situation where the learned Trial Court on a consideration of the respective cases of the parties and the documents laid before it was of the view that the entitlement of the plaintiffs to an order of interim mandatory injunction was in serious doubt, the Appellate Court could not have interfered with the exercise of discretion by the learned Trial Judge unless such exercise was found to be palpably incorrect or untenable. The reasons that weighed with the learned Trial Judge, as already noticed, according to us, do not indicate that the view taken is not a possible view. The Appellate Court, therefore, should not have substituted its views in the matter merely on the ground that in its opinion the facts of the case call for a different conclusion. Such an exercise is not the correct parameter for exercise of jurisdiction while hearing an appeal against a discretionary order. While we must not be understood

to have said that the Appellate Court was wrong in its conclusions what is sought to be emphasized is that as long as the view of the Trial Court was a possible view the Appellate Court should not have interfered with the same following the virtually settled principles of law in this regard as laid down by this Court in Wander Ltd. v. Antox India (P) Ltd.[3] Para 14 of the aforesaid judgment which is extracted below would amply sum up the situation:

"14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in Printers (Mysore) Private Ltd. v. Pothan Joseph: (SCR 721) "... These principles are well established, but as has been observed by Viscount Simon in Charles Osenton & Co. v. Jhanaton '...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case'."

24. The power to grant a mandatory injunction was also dilated upon in the case reported as Mohammad Idris v. The Collector of Customs, Karachi and another PLD 1971 Karachi 736, where a learned Single Judge of this Court observed that:

> "Although the powers of the Court to pass a mandatory injunction in appropriate cases even at interlocutory stage cannot be doubted but as held in a case reported in AIR 1956 Cal. 428 such orders are rare and granted only to restore the *status quo* and not to create a new situation which may be irretrievable or to establish a new state of things different from those which existed at the time the relief was sought."

25. Considering the principles laid down in the aforementioned cases in light of the factors circumscribing the factual matrix presented before the learned Single Judge in the matter at hand, the exercise of discretion cannot be said to be incorrect or untenable and the reasons that prevailed, as aforementioned, do not indicate that the view taken was not sustainable. On the contrary, the Impugned Order reflects a well-reasoned approach that is in consonance with the principles laid down by the superior Courts relating to the issuance of temporary injunctions.

26. As such, no case for interference stands made out. Accordingly, the Appeal fails and is hereby dismissed, along with all pending miscellaneous applications.

JUDGE

JUDGE

Karachi
Dated _____