

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**H.C.A. No.240 of 2020**

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Date Order with signature of Judge

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Fresh Case

- 1.For order on office objection a/w reply as at "A".
- 2.For order on CMA No.2898/2020.
- 3.For hearing of main case.
- 4.For order on CMA No.2899/2020.

**17.02.2021**

Mr. Asad Iftikhar, Advocate for the Appellants.

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1. Office objection deferred for the time being.
  2. Exemption granted subject to all just exceptions.
- 3&4. The appellants have challenged the order dated 12.11.2020 passed in Suit No.339/2019. Precisely the appellants are aggrieved by para 2 of the order which is reproduced as under:

**"2]. Through this application filed under Order 39 Rule 1&2 CPC r/w Section 151 CPC [CMA No.18475 of 2018], the Plaintiffs are seeking direction against the Defendants to remove all the illegal encroachments and illegal construction from the Society. Under law, no final relief in the shape of interim relief can be granted. Hence, such application is not maintainable. Accordingly, the same is dismissed as not maintainable."**

The learned counsel for the appellants argued that an application was moved for the removal of illegal encroachments and illegal construction but the learned single Judge dismissed the application on the ground that no final relief in the shape of interim order can be granted. We have also gone through the application (CMA No.18475/2018) moved under Order 39 Rules 1 and 2 CPC which is in fact dismissed in paragraph 2 of the impugned order in which the plaintiffs prayed for directions against the defendants to remove all illegal encroachments and illegal construction from the society and further restrain unidentified persons/land encroachers/land grabbers from

encroaching the land of society. The learned counsel pointed out that in paragraph 3 of the impugned order, the application moved by the society has been addressed on which the notice has also been issued on their application moved under Order 1 Rule 10 CPC. He further stated that when the suit was filed the society was defunct and now it has become functional after their elections. It is clearly reflecting from the order that the society in order to espouse the cause of their members already applied for becoming party. Obviously if the application is allowed they would be in a better position to safeguard and protect the interest of their members and at the same time the appellants may move proper application for the interim relief for some preventive measures rather than asking for a relief which tantamount to decreeing the suit at premature stage. The learned counsel submits that they will file a fresh application for temporary injunction within the domain and parameters of Order 39 Rules 1 and 2 CPC. The appeal is disposed of accordingly alongwith listed application.

Judge

Judge

*Asif*