

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

Suit No. 263 of 2016

Maqbool Cooperative Housing Society Limited

Versus

Muhammad Jawad & others

| Date | Order with signature of Judge |
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For hearing of CMA No.4109/16

Date of Hearing: 09.05.2016

Plaintiff: Through Mr. Haroon Shah Advocate

Defendants No.1 & 2: Through Mr. Zia-ul-Haq Makhdoom,
Advocate

Defendant No.4: Through Mr. Ghulam Akbar Lashari,
Advocate

Muhammad Shafi Siddiqui, J.- This is a contempt application in relation to order dated 08.2.2106. Brief facts are that the plaintiffs being cooperative housing society has filed this suit seeking declaration that the power of attorney is forged, manipulated and that the defendants No.1 & 3 be restrained from raising construction as in violation of law and being encroachers and that the plot in question be handed over to the plaintiff.

2. This suit which was filed on 30.1.2016. On 08.2.216 an interim/injunctive order was passed whereby the defendants were restrained from raising any further construction. The defendants have also filed a Constitutional Petition wherein the interim relief was granted to the defendants in terms whereof the respondent No.4 therein was restrained from causing harassment if construction was being raised in accordance with the approved building plan. In these proceedings the injunctive order was passed on 08.2.2016 on the pretext that the approved building plan has been withdrawn by the SBCA vide letter

dated 03.12.2015. It is claimed by the learned Counsel for the plaintiff that the letter in terms whereof the approved building plan was withdrawn/withheld was not assailed in the petition and it was only in relation to harassment caused to them hence this order dated 08.2.2106 is independent of the order passed in C.P. No.D-7743/2015. It is claimed that despite service the defendants continued the construction and as such on 14.3.2016 Nazir/Deputy Nazir was appointed to inspect the site and to submit report. Nazir report as alleged was filed and in para-3 whereof the defendants were stated to have found raising construction on the subject plot. The report was submitted on 26.3.2016 whereafter on 28.3.2016 Nazir was directed to seal the property and the possession to be resumed until further orders. Nazir has submitted its report both in compliance of order dated 14.3.2016 and 28.3.2106. Counsel for the plaintiff submitted that though the order dated 08.2.2016 was impugned in HCA No.40/2016 however the order impugned therein was neither set aside or suspended.

3. On the other hand learned Counsel for the defendant submitted that the order dated 08.2.2106 was impugned in HCA No.40/2016 and on 26.2.2016 the Hon'ble Division Bench was pleased to continue the interim/injunctive order passed in C.P. No.D-7743/2015 which was also deemed to be passed in HCA No.40/2016. Mr. Zia-ul-Haq Makhdoom submitted that since the interim order passed in C.P. No.D-7743/2015 was ordered to be continued in HCA No.40/2016 hence the interim order passed in C.P referred above is to be read in this HCA No.40/2016 as well. The substance/crux of the order is reflected in the order dated 08.2.2016 which was passed on 15.12.2015 in terms whereof official respondent No.4 was restrained from causing harassment to the petitioners/defendants if construction is being raised in accordance with approved building plan, hence he submits that there is no contempt of the Court since the plaintiff was allowed to raised construction in accordance with the approved plan.

4. Similarly as to the merits of the application since the individual partner is sought to be impleaded as being necessary and property party I do not see any substantial defence in pursuance of such application that the individual partners are not entitled to be impleaded as being partners of an unregistered partnership firm. Prior to this suit private defendants have filed C.P. No.D-7743/2015 for declaration that the petitions/defendants are constructing the house upon the subject plot in accordance with the plan approved on 07.1.2015 and that it was obtained after fulfilment of all codal formalities and the construction work is being carried out in accordance with law and that the demand of respondent No.4 pertaining to production of mutation of the plot was complied with at the time of seeking approval. On this score the Hon'ble Division Bench was pleased to restrain the respondent No.4 from causing harassment to the petitioner if construction is being raised in accordance with the approved plan.

5. The crucial letter in relation to the withdrawal of the approved plan dated 03.12.2015 has not been agitated. It is nowhere claimed in the petition that vide letter dated 03.12.2015 the subject plan has already been withdrawn. Thus the subject letter of withdrawal was never available for consideration of the Hon'ble Division Bench while passing the order dated 15.12.2015 hence the order passed on 08.2.2016 in this suit is independent of the order passed by the Hon'ble Division Bench. On the strength of the withdrawal of the approved plan the defendant was restrained from raising any further construction which construction could not be deemed to have been allowed vide order dated 15.12.2015 and since the defendant continued with the construction contempt application was filed. After inspection it revealed that the defendants were continuing with the construction. The defendants have not denied raising construction at the time of inspection. Counsel submitted that the Hon'ble Division Bench in HCA as well as in Constitutional Petition

has continued the order passed in C.P. No.D-7743/2015 therefore, it does not constitute violation.

7. Prima facie it appears that the defendants have committed a contempt of the Court by violating the order dated 08.2.2015, let show cause notice be issued to the alleged contemnors.

Judge

6. Insofar as the petition is concerned the subject letter in terms whereof approved plan stood withdrawn was not available nor was it a subject matter. The continuation of the order in HCA No.40/16 was only account of the fact that the petition was connected with the HCA No.40/16 and only the interim order in C.P. No.D-7743/2015 was ordered to continue. Prima facie it appears that the continuation of the order is only in relation to Constitutional Petition referred above and an independent order in consideration of the withdrawal letter dated 03.12.2015 was passed in this suit.