

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD**

R.A. No. 303 OF 2021

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DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For hearing of M.A- 60 of 2022.
2. For hearing of M.A- 2749 of 2021
3. For hearing of main case.

17.01.2022

M/s. Arbab Ali Hakro and Abdul Ghafoor Hakro, Advocates for the applicant.

Mr. Aslam Pervaiz Khan Advocate for respondents No.1 and 2.

Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh alongwith ASI Kamran Memon A/SHO Anti-Encroachment Force, Hyderabad and Dr. Muhammad Fahad, Assistant Commissioner, Latifabad.

**ORDER**

**SALAHUDDIN PANHWAR, J.**-Pursuant to order dated 14.01.2022, Assistant Commissioner, Latifabad submits report, taken on record, and a copy whereof is provided to learned counsel for the applicant.

Through M.A-2749 of 2021 (listed for hearing at serial No.2), the applicant seeks ad-interim injunction restraining respondent No.1 not to issue any kind of threats to the applicant and also not to dispossess him from the suit property i.e. Commercial Plot No.B-15, Block-C, Unit No.2 Latifabad, Hyderabad, admeasuring 498-3 Aq. Yds. Or to sale/hand over the possession of above property to any third person, so also not change or alienate the said property, as well restrain the respondents No.4 and 6 not to change the record of rights of subject property in any manner through themselves or anyone else till final decision of the captioned revision application.

Succinctly, applicant filed Suit before the Court of learned Senior Civil Judge-IV Hyderabad bearing F.C. Suit No.532 of 2020 thereby seeking Declaration, Specific Performance of Contract, Compensation/Damages of Rs.310 Million, Perpetual and Permanent injunction against the respondents. Alongwith the plaint, the applicant also filed an application under Order

XXXIX Rule 1 & 2 C.P.C. r/w section 151 C.P.C, which after hearing the parties counsel was dismissed vide order dated 06.05.2021. This order was impugned before the learned appellate Court through Civil Appeal No.18 of 2021, which was dismissed and the impugned order was maintained vide order dated 16.09.2021. Thereafter, the applicant has assailed both the aforementioned orders through instant revision application.

It is argued by the learned counsel for applicant that the applicant filed first class suit against respondents stating therein that he has 90% share while the respondent Mst. Naghma has 10% share according to partnership deed; the subject property remained with respondent No.8 Jameel since 1995 as per other side contention and in 1999 said Jameel became defaulter but surprisingly in the year 2011 Rent Application was filed after lapse of ten years; prima facie case is made out in favour of the applicant; the litigation between respondents No.1 and 8 went up to the level of Honourable Supreme Court of Pakistan; the applicant paid sale amount to Jameel and he handed over possession to him; thereafter respondent No.8 Jameel entered into agreement with applicant; during this period one false suit was filed by respondent No.7 Mst. Habiba Farah Naz, plaint of which was rejected U/O VII Rule 11 C.P.C; the respondent No.1 also filed F.C Suit No.420 of 2021 when applicant filed suit; the respondent No.1 clearly entered into partnership with applicant; the applicant is registered builder and he will suffer with irreparable loss if the application is not granted; the applicant is in possession of subject property, hence balance of convenience also lies in his favour; the impugned order is against the pleadings and complete misinterpretation of law applicable to injunction application; the learned trial court failed to appreciate that at the time of execution of partnership deed and special power of attorney the presence of defendant No.1 at Pakistan stands established through documentary evidence i.e Passport & Visa and such copies were placed on record but such facts were missing from the impugned order; the learned trial court while dismissing injunction application focused on filing of counter suit by respondent No.1 in respect of suit property while the possession of suit property admittedly is with applicant, hence the points/issues yet to be adjudicated by recording evidence in both the suits and till said issues are finally decided the best recourse is to restrain the respondents from alienating suit property to any person.

On the other hand, the learned counsel for respondents No.1 and 2 argued that she is absolute and lawful owner of subject property and the

respondent No.2 was appointed as her lawful attorney to look after the said property; earlier the respondent No.1 rented out the suit property to Muhammad Jameel Awan (respondent No.8) in the year 1995 on monthly rent and he was making payment of rent to respondent No.1 through her attorney but the said tenant ceased payment of monthly rent after September, 1999; the respondent No.1 was compelled to file ejectment application bearing Rent Application No.11 of 2010 against respondent No.8; the respondent No.8 instead of vacating the property managed four false & forged agreements of sale and on the basis of it filed F.C Suit No.94 of 2010 for Specific Performance of contract; the learned 2nd Senior Civil Judge/Rent Controller Hyderabad after concluding trial allowed the Rent Application No.11 of 2010 filed by respondent No.1 against the respondent No.8 vide order dated 27.01.2011 while dismissed the Suit No.94 of 2010 filed by respondent No.8 vide judgment dated 27.01.2011 respectively, thereafter the respondent No.8 filed rent appeal bearing No.15 of 2011 against the order dated 27.01.2011 and First Appeal bearing No.76 of 2011 against the judgment & decree dated 27.01.2011 before Honourable District Judge Hyderabad, who after hearing the parties dismissed both appeals vide order dated 18.01.2018 as well as judgment dated 18.01.2018, respectively; the respondent No.8 also challenged the said order as well as the judgment both dated 18.01.2018 by way of filing C.P No.S-332 of 2018 and 2<sup>nd</sup> Civil Appeal No.S-10 of 2018, respectively, before this Court; in the meanwhile respondent No.1 filed execution application No.04 of 2018 in Rent Application No.11 of 2010 but despite several notices, respondent No.8 was not appearing however illegally and unlawfully by playing conspiracy handed over the possession of property to applicant, thereafter Muhammad Jameel Awan (respondent No.8) appeared in picture before this Court by filing urgency application in C.P No.S-332 of 2018 and 2<sup>nd</sup> Civil Appeal No.10 of 2018 on false and baseless grounds that a settlement has been effected between him and respondent No.1 outside the court, hence he does not press, resultantly both Constitution Petition and the 2<sup>nd</sup> appeal vide orders dated 23.10.2019 and 24.10.2019 respectively were dismissed as withdrawn by this Court; meanwhile applicant filed statement before learned trial court that he is attorney of Mst. Naghma Sultana to withdraw the execution application with fake power of attorney; applicant filed instant F.C. Suit No.532 of 2020 while respondent also filed F.C Suit No.420 of 2021 for cancellation of documents; the applicant wants to disturb the proceedings of execution application, therefore, the revision as well as instant application merit no consideration

and may be dismissed. The learned counsel in support of his contention filed copies of several documents.

Learned A.A.G Sindh during course of the arguments supported the contention of learned counsel for respondents No.1 and 2

Heard the learned counsel for the respective parties and perused the material brought on the record.

The record reveals that the applicant filed suit for Declaration, Specific Performance of Contract, Compensation, Damages, Perpetual & Permanent Injunction on the basis of Special Power of Attorney, partnership deed and registration of the firm certificate. Record further reveals that respondent No.1 also challenged said documents by way of filing F.C Suit No.420 of 2021 against the applicant for cancellation of documents which is also pending before the court of learned Senior Civil Judge-IV Hyderabad. The contention of the learned counsel for respondents No.1 and 2 is that respondent No.1 is the absolute and lawful owner of subject property, the said property was rented out to respondent No.8 and on failure to pay rent, the Rent Application was filed and record reveals that litigation between them went up to the Honourable Supreme Court of Pakistan.

Besides, prayer clause of the suit filed by the applicant reflects that only relief with regard to restraining order not to alienate the subject property is sought, whereas; in the present application it is prayed, *inter alia*, that he may not be dispossessed from the subject property. In view of settled principles of law the main relief which was not sought in the plaint that cannot be granted in interlocutory application.

To succeed for grant of injunction, one has to establish all three mandatory ingredients to be in his favour which are *prima facie case, balance of convenience and apprehension of irreparable loss or legal injury*. This is so because an order, passed under this order, is prohibitory in its nature whereby one is prevented from doing what he was, otherwise, doing under some title. It is *such nature of the order* therefore, it has been the requirement of law that all three ingredients should co-stand strongly and even if one of the ingredients is missing the application cannot legally sustain. I am strengthened in my view with the case of **PURI TERMINAL LTD. versus GOVERNMENT OF PAKISTAN through Secretary Ministry of Communications and Railways, Islamabad and 2 others**, reported as 2004 SCMR 1092, wherein it is held that:

*“21. No doubt an injunction is a form of equitable relief and is to be issued in aid of equity and justice, but not to add injustice. Form grant of such relief, it is mandatory to establish that in order to obtain an interim injunction, the applicant has not only to establish that he has a prima facie case, but he has also to show that the balance of convenience is on his side and that he would suffer irreparable injury / loss unless he is protected during the pendency of suit.”*

In the case of **MARGHUB SIDDIQUI versus HAMID AHMAD KHAN and 2 OTHERS** (1974 SCMR 519), it is held that:

*“An injunction is not to be granted only on the basis that a prima facie case exists but it is incumbent upon the Court to take into account the other questions.”*

Further, in the instant matter, the status of the applicant being purchaser of the property through an agreement. The respondent No.1 has leveled serious allegations in her suit that she never appointed applicant as her attorney nor executed any power of attorney in his favour and never authorized him to withdraw the execution application and moreover she has denied the partnership deed and she has filed the suit for cancellation of documents. I am quite conscious of the fact that the respondent No.8 has denied the execution of power of attorney and partnership deed and such litigation is pending before the trial Court. However, as per pleading (s) the property, in question, is in possession of the applicant and he has sought restraining order that threats may not be issued to him and he may not be dispossessed from the suit property, therefore, prima facie case appearing in favour of either parties. One does not become entitled for an order of injunction only by establishing '**prima facie case**', as already discussed.

Let's proceed further to see whether other two ingredients for grant of injunction are in favour of applicant or otherwise. Allegedly the applicant is in possession of the subject property being its purchaser on the basis of an agreement which is denied by the respondent No.8 and is litigating on such documents by filing a suit, therefore, balance of convenience appears to be in favour of respondent and not in favour of the applicant. The applicant has to establish his claim by leading evidence.

Further, multiple litigation is pending between both parties and ownership of subject property is sub-judice before executing Court where writ in respect of the possession of subject property in the rent proceedings filed by respondent No.1 has been issued and applicant is new in picture by filing

instant suit for specific performance hence fruit of earlier litigation cannot be snatched by any manner.

Thus, even third ingredient i.e **irreparable loss** is not in favour of the applicant. The injunction, at such stage, would result in giving an undue advantage to the applicant over the respondents which is not the object of exercise of discretion, vested in the Court (s) Under Order 39 Rule 1 & 2 CPC where a relief of such nature could be given through tentative assessment. Reference can be made to the case of **ATCO LAB. (PVT.) LIMITED vs. PFIZER LIMITED and others** reported as 2002 CLD 120 [Karachi], wherein it is held that:

*“It is well-settled principle of law that grant of injunction is a discretionary relief and the Courts while considering the question of grant of such relief have to see the co-existence of prima facie case, balance of convenience and irreparable loss and injury in favour of a party seeking such relief. While dilating upon the merits of a case on these parameters the Courts can also take into consideration the overall conduct of a party i.e.:*

*(a) Whether he has approached the Court with considerable delay and not acted vigilantly and promptly?*

*(b) Whether he has not approached the Court with clean hands?*

*(c) Whether grant of injunction will be against public interest/public policy?*

*(d) Whether grant of injunction will place a party in an undue advantage which will perpetuate injustice?*

*(e) Whether the loss/damages likely to be suffered by a party due to refusal of injunction will be calculable in terms of money?*

*(f) Whether party approaching the Court for injunction has suppressed material facts and acted in a mala fide manner?*

*If answer to any of these queries is in affirmative, the relief of injunction being discretionary in nature can be declined having regard to the facts of each case.”*

In this case, from the material available on record many of the above queries are answering in affirmative hence the relief of injunction being discretionary in nature cannot be granted to the applicant.

Moreover both suits filed by present applicant as well as respondent No.1 are pending before the court of law, hence the ingredients of application U/O 39 Rule 1 & 2 CPC are not attracted and injunction is discretionary relief and such discretion is to be exercised in accordance with reason and sound judicial principles and the court while dealing with application for grant of temporary injunction has to be looked and assessed all circumstances disclosed in suit. The controversy among the parties may be resolved by way

of recording evidence. At this stage the basic ingredients for grant of temporary injunction as envisaged under Order XXXIX Rule 1 & 2 CPC do not lie in favour of the applicant. Both the learned Courts below have rightly dismissed the application as well as the appeal and no illegality or irregularity has surfaced to interfere in the same. Resultantly, the instant revision application is dismissed alongwith listed applications.

JUDGE

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