

# IN THE HIGH COURT OF SINDH AT KARACHI

High Court Appeal No.402 of 2018

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Fahim Ahmed Siddiqui

Cresox (Pvt.) Limited .....Appellant

Vs.

Lucky Tex Pakistan (Pvt.) Limited.....Respondent

Dates of hearing : 21.10.2019, 18.11.2019, 09.12.2019  
& 23.12.2019.

Mr. Behzad Haider, advocate for the appellant.

Mr. Rashid Anwar, advocate for the respondent.

## ORDER

**IRFAN SAADAT KHAN, J.** This High Court Appeal has been filed impugning the order dated 22.10.2018 passed by the learned Single Judge in respect of the CMA No.2072/2018 in Suit No.290/2018.

2. Briefly stated the facts of the case are that, the appellant is a private limited company and on 25.09.2017 entered into a sale agreement through its Chief Executive Officer, namely, Mr. Tariq Shafi, for sale of the property bearing No.A-40, Manghopir Road, S.I.T.E Karachi (hereinafter referred to as the property) for a sale consideration of Rs.900,000,000/- (Rupees Nine Hundred Million only) with the respondent company. The respondent then paid an

amount of Rs.76,92,000/- in terms of the sale agreement. It was the contention of the respondent that after entering into the sale agreement by the appellant with the respondent, the appellant tried to sell out the property to a third party. Thereafter a Suit bearing No.290 of 2018 was filed along with a stay application bearing CMA No.2072/2018 by the present respondent. On the first date of hearing i.e. 12.02.2018 the learned Single Judge ordered issuance of notice to the defendant (the present appellant) and directed them not to create any third party interest in the property, which however was subject to furnishing bank guarantee in the sum of Rs.900,000,000/- to the satisfaction of the Nazir of this Court, within seven days. Notice thereafter was issued to the defendant (the present appellant). Thereafter the CMA No.2072/2018 was heard at length and the learned Single Judge was pleased to confirm the ad-interim stay granted on 12.2.2018 vide order dated 22.10.2018, which is now impugned in the present High Court Appeal.

3. Mr. Behzad Haider, advocate has appeared on behalf of the appellant and stated that the order of the learned Single Judge is not in accordance with law, as the learned Single Judge without considering the counter affidavit, filed in respect of the above mentioned CMA, has confirmed the ad-interim stay. He stated that the appellant has vehemently denied entering into a sale agreement with the respondent as the said agreement was signed by an unauthorized person, namely Mr. Tariq Shafi, who was not the authorized CEO of the company and was not empowered to act on

behalf of the company to enter into a sale agreement with the respondent, hence the said agreement is not in accordance with law and could not be considered as a valid agreement and acted upon. He stated that the said Mr. Tariq Shafi was neither authorized by the Board nor by the members of the appellant company to enter into a sale agreement, hence entering into the agreement by Mr. Tariq Shafi with the respondent company was on his own, which could not be considered to be an agreement between the company i.e. the appellant and the respondent. According to him, the learned Single Judge while passing the said order has also failed to consider the provisions of Section 183(3) of the Companies Act 2017 (hereafter referred to as an Act). He stated that the learned Single Judge has also incorrectly applied the “doctrine of Indoor management” in the instant case, which has no bearing whatsoever with the matter in hand. He further stated that the learned Single Judge while passing the said order has also not appreciated Section 56(f) read with section 21(b) and (c) of the Specific Relief Act, 1877. He further stated that the learned Single Judge has also wrongly interpreted the email dated 08.02.2018. He stated that in view of these facts, no prima facie case of irreparable damage and balance of convenience was made out, hence the learned Single Judge was not justified in confirming the ad-interim stay granted on 12.2.2018 vide impugned order dated 22.10.2018 as according to him all the three ingredients necessary for grant of stay are not attracted in the instant matter. In

support of his above contentions the learned counsel has placed reliance upon the following decisions.

1. Messrs Maxim Advertising Company (Pvt.) Limited Vs. Province of Sindh and 4 others (**2007 MLD 2019**)
2. Sayyid Yousaf Husain Shirazi Vs. Pakistan Defence Officers' Housing Authority and 2 others (**2010 MLD 1267**)
3. Muhammad Aslam Vs. Muhammad Khan (**1999 SCMR 2267**)
4. The Chief Executive and Directors, Mubarak Textile Mills Ltd Vs. Abid Hussain, Executive Director, Corporate Supervision Department, SECP. (**2018 CLD 111**)
5. Messrs Ali Asghar Textile Mills Limited (in the matter of show cause notice) (**2012 CLD 1065**)

He lastly prayed that the order of the learned Single Judge may be set aside.

4. Mr. Rashid Anwar advocate has appeared on behalf of the respondent and supported the order of the learned Single Judge and stated that from the various documents furnished by the present appellant to the SECP it is clear that Mr. Tariq Shafi was the CEO of the company at the given point of time i.e. 25.9.2017 and was fully authorized to enter into a sale agreement with the respondent company in respect of the subject property. He stated that Section 183(3) of the Act is not applicable in the present case rather it is the Section 183(6) of the Act, which is applicable in the present circumstances. He further stated that the provisions of Specific Relief Act, as pointed out by the learned counsel for the appellant, also has no bearing to the present case. He stated that at the time of signing the sale agreement Mr. Tariq Shafi was duly authorized by the

company to enter into the sale agreement and it is only after entering into the sale agreement with the company that the appellant company declared Mr. Tariq Shafi to be not its CEO, which action of the appellant is wholly unwarranted and an afterthought on the part of the company. He stated that if Mr. Tariq Shafi had fraudulently entered into the sale agreement with the respondent why no penal action was taken against him by the company. He stated that the learned Single Judge has discussed all these matters and thereafter has confirmed the ad-interim stay granted earlier. The learned counsel further stated that since the matter was highly disputed between the appellant and the respondent, which could only be resolved after framing of issues, recording of evidences and cross-examination of the witnesses, hence in these circumstances the learned Single Judge was fully justified in directing that no third party interest may be created in respect of the subject property. He stated that the matter is wide open before the learned Single Judge since the suit is pending and the averments of the appellant would be considered when the matter would be finally heard and decided. He further stated that when the suit was initially filed by the appellant the vakalatnama was duly signed by Mr. Tariq Shafi himself which subsequently was changed, which action also clearly proves that Mr. Tariq Shafi was an authorized officer and the CEO of the company. He stated that the doctrine of indoor management has rightly been applied and has been appreciated at length by the learned Single Judge in para 11 of the order. He stated that Mr. Tariq

Shafi was duly authorized person of the company, which is evident from the various documents furnished before the learned Single Judge. As per the learned counsel, the order passed by the learned Single Judge may be upheld since the same is in accordance with law, as per the situation prevailing in the matter. In support of his contentions the learned counsel has placed reliance on the following judgments:

1. The Pakistan Employees Co-Operative Housing Society Ltd. Karachi Vs. Mst. Anwar Sultana and others (**PLD 1969 Karachi 474**)
2. Messrs Canal breeze Cooperative Housing Society Limited Vs. Agricultural and Transport Development Corporation (Pvt.) Limited (**2000 SCMR 506**)

5. We have heard both the learned counsel at considerable length, have perused the record and the decisions relied upon by them.

6. From the perusal of the record, it is evident that the dispute between the parties in the suit primarily is on the ground that whether Mr. Tariq Shafi, who was the CEO of the company at the time of signing of the agreement dated 25.2.2017, was under the legal domain to enter into the sale agreement of the property for a sum of Rs.900 Million with the respondent or not. From the affidavit-in-evidence furnished by the present appellant, it is evident that the appellant has challenged the authority of Mr. Tariq Shafi to enter into the agreement claiming the same to be void. We have noted that the learned Single Judge while issuing notice to the respondent has

categorically noted the averments of the counsel for the plaintiff (respondent) and thereafter issued notice to the present appellant however with the condition to furnish the bank guarantee equivalent to Rs.900 Million. It is noted that the matter is highly contentious between the parties, as according to the learned counsel for the appellant, Mr. Shafi has no authority to enter into an agreement without fulfilling the legal requirements; whereas according to the respondent Mr. Tariq Shafi at the time of signing the agreement was fully authorized, being the CEO of the company, not only to enter into the agreement but also to sign the same. It is in this backdrop that the learned Single Judge in order to avoid any future multiplicity of the litigations, which could be created in case of third party interest, directed the present appellant not to create any third party interest in the subject property.

7. We are fully conscious of the fact that if the appellant would be allowed to enter into the sale agreement with any third party, when a sale agreement was entered into between Mr. Tariq Shafi and the respondent is being disputed by the appellant themselves, the same would create a chaotic situation augmenting the multiplicity in the litigation as in such a situation the third party would also be jumping into the present litigation between the appellant and the respondent which, in our view, has to be restrained. In the counter affidavit furnished by the appellant in respect of CMA No.2072/18, it was duly admitted that some meetings took place between the plaintiff, defendant and the bank

and a draft agreement was exchanged between the plaintiff and the defendant company which admission clearly denotes that up-till the time of these meetings, Mr. Tariq Shafi has acted as the CEO of the company without there being any objection from the company/appellant, but subsequently the stance of the appellant changed. Here a question would arise that whether the Board's Resolution or consent of the members with regard to earlier meetings between the plaintiff, defendant and bank were obtained? In our view, answer to this question would be in an emphatic No, as it is clearly established that the issue of no Board's resolution and no consent of the members was taken by the appellant company when the matter was agitated by the respondent.

8. It is further noted that the main question in the suit is whether Mr. Shafi was authorized by the company to enter into any sale agreement on behalf of the company or not, which in our view could only be resolved after framing of issues, recording of evidence and the cross-examination of the parties. It is also a matter of record that the draft agreement and final agreement were exchanged between the parties. It may also be noted that the respondent has partially fulfilled the terms of the agreement and has already paid an amount of Rs.76,92,000/- by way of bridge financing to the appellant, which though they now claim to be ready to return the same to the respondent. It may also be noted that the appellant on the one hand states that it was a draft agreement but on the other hand states that Mr. Tariq Shafi on his own entered into a sale agreement.



Perusal of the record clearly depicts that agreement entered between the parties was a sale agreement and that some negotiations in respect of the subject property were made between the parties. Hence under taking some negotiations with a third party by the appellant would definitely bring a new bone of contention between the parties and the third party in case of its entering into purchase of the property, under dispute, would add multiplicity to the litigations.

9. We may also note that the appellant has duly admitted that an amount was paid by the respondent to the company under bridge financing to clear out certain liabilities of the company, which payment was duly accepted by them. Record clearly reveals that on the one hand the appellant has accepted the amount of Rs.76,92,000/- from the respondent whereas on the other hand a cheque was also taken from the third party as a token payment for the selling of the property, which definitely would cause grievous harm to the respondent. It is a settled proposition of law that while deciding application under Order XXXIX Rule 1&2 CPC, the Court is required to meet three basic ingredients:

- (i) *Prima facie/arguable case*
- (ii) *Balance of convenience and*
- (iii) *Apprehension of irreparable loss/injury.*

10. If the facts of the present case are examined, it may be noted that in view of the averments made in the suit that whether Mr. Tariq Shafi was authorized by the company to enter into the sale

agreement or not requires detailed deliberation. Hence prima facie an arguable case is made out by the respondent. As regards balance of convenience and irreparable loss is concerned, we again tend to agree with the order of the learned Single Judge that if the appellant is allowed to continue the sale procedure with the third party, since a token amount has already been accepted by them, the same would be quite detrimental to the respondent and that would definitely be a situation of balance of inconvenience, irreparable loss or injury to the respondent at this stage of the proceedings.

11. It is a settled proposition of law that injunctions are preventive remedy in pending matters in order to avoid a new situation and the court is fully authorized under the said provision to refrain a party from doing a particular act by looking at the situation of the matter. In our view, a court is fully competent to regulate its own conduct to prevent further damage as per the prevailing situation arising in the matter. The relief granted in an injunction application is always considered to be discretionary and equitable in nature. If the above parameters of the law are applied to the present case the learned Single Judge under the prevailing circumstances of the matter, was found to be fully justified in confirming the ad-interim stay granted earlier on 12.02.2018 vide impugned order dated 22.10.2018 as all the ingredients, in our view, as required for grant of injunction appears to be fully satisfied and applicable.

12. The other objections raised by the counsel for the appellant and respondent and the cases relied upon by them are neither

considered nor dilated upon by us as in our view the respondent has been successful in bringing home a case of prima facie grant of injunction and no interference in this regard is warranted. Since the matter is now fixed for settlement of issues, the parties are directed to appear before the learned Single Judge, so that the matter could be finally heard and disposed of. This High Court Appeal, therefore, stands dismissed along with the listed applications.

JUDGE

JUDGE