

ORDER SHEET
THE HIGH COURT OF SINDH AT KARACHI

Suit No.2452 of 2017

a/w

J. M. No.11 of 2021

J. M. No.12 of 2021

J. M. No.27 of 2021

Date: Order with signature(s) of the Judge(s)

1. For Hearing of CMA No.8834/2021.
2. For Hearing of CMA No.8835/2021.

14th December, 2021.

Mr. Abdullah Munshi advocate for the plaintiff in Suit No.2452/2017 and for respondent in J.M. No.11, 12 & 27 of 2021.

Mr. Saadat Yar Khan advocate for the applicant in J.M No.11, 12 & 27 of 2021.

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SALAHUDDIN PANHWAR, J: Heard J.M Nos. 11, 12 & 27 of 2021. In the subject J.Ms the applicants have challenged the order dated 30.04.2021 therefore, it is conducive to refer relevant para of the order which is reproduced as under:-

"7. By this application the plaintiff seeks review of the order dated 17.03.2021. Regarding Para-1 of said order, learned counsel for the plaintiff submits that under Order XXII Rule 4 CPC, it is for the legal heirs of the deceased defendant to give intimation of death or to move an application to be impleaded as party. He submits that though the plaintiff has no knowledge of the death of the defendants, the intimation of death given by the alleged contemnor is unsubstantiated. Be that as it may, the order dated 17.03.2021 did not compel the plaintiff to move an application to implead legal heirs of the defendants if the plaintiff doubts the intimation of death given by the alleged contemnor. Such order was passed on the assumption that the plaintiff too acknowledged that the defendants had

passed away. If the defendants have indeed passed away and no application is moved to implead their legal heirs, the law will take its own course. With that observation, learned counsel for the plaintiff is satisfied and does not press to review Para-1 of the order.

The second para of the order dated 17.03.2021 noted that the prayer for evicting the alleged contemnor No.3 from the subject petrol pump was being made without making him party. Learned counsel points to the previous order dated 16.02.2021 to show that **the alleged contemnor No.3 was in fact in possession of the petrol pump as employee/Manager of the defendants and not in his own right.** In this view of the matter, the second paragraph of the order dated 17.03.2021 is recalled. CMA no.7326/2021 disposed of accordingly.

5&6. None present for the alleged contemnor who has moved these applications. Dismissed for non-prosecution.

1,3 &4. The plaintiff association is lessor of the petrol pump site measuring 650 square yards, situated near APWS School, S.M Taufiq Road, Liaquatabad, Karachi which was licensed by the plaintiff to the defendant No.1 pursuant to a compromise agreement dated 25.05.2009. The suit is inter alia for possession of the petrol pump site on the ground that the licensee defaulted in payment. Per learned counsel, by now the license has also expired. By order dated 24.11.2017, the defendants were directed to maintain status quo. An inspection on 30.05.2019 revealed that the defendant No.2 [husband of defendant No.1] and Irfan Zahid [alleged contemnor] were running the petrol pump and collecting cash from sales. On 16.02.2021 **Irfan Zahid appeared before the court and informed that both the defendants have passed away and he as in possession of the petrol pump as Manager of the defendants.** He was directed to produce such authorization or one from legal heirs within 15 days, **failing which , he would be evicted.** That order has not been complied to-date by Irfan Zahid, the alleged contemnor, and both he and his counsel are called absent. Learned counsel for the plaintiff prays for orders on the receivership application.

It is apparent that the alleged contemnor, Irfan Zahid is the one who is presently running the subject petrol

*pump. He claims to do so as Manager of the defendants and admits that both of them are now deceased. **Therefore, any authority he had from the deceased has come to an end. He has not produced any authority from the legal heirs of the deceased defendants despite opportunity.** On the other hand, the documents annexed with the plaint prima facie show **the plaintiff to be lessor and licensor of the petrol pump.** From the compromise agreement between the plaintiff and the defendant No.1 dated 25.05.2009, it appears that the license of the defendant No.1 with regards to the subject petrol pump expired in 2019. Therefore, prima facie **neither the defendants nor any person claiming through them is entitled to retain the possession of the petrol pump.** Resultantly, the following order is passed to dispose of CMA No.16302/2017, CMA No.8610/2019 & CMA No.8611/2019:*

- (i) Irfan Zahid or any other person acting or claiming through the defendants is directed to vacate the petrol pump, Rana Gasoline Service Station, situated near APWA School, S.M. Taufiq Road, Liaquatabad, Karachi and deliver its possession to the Nazir of this court within 10 days, and the Nazir shall then seal the petrol pump and post security guards thereat at the expenses of the plaintiff until further orders.*
- (ii) In the event, the occupants of the petrol pump do not vacate the same as aforesaid, the Nazir shall evict them with police aid.*
- (iii) The Nazir shall communicate the aforesaid directions to the occupants of the aforesaid petrol pump and there-after proceed to ensure compliance'.*

2. At this juncture, for better understanding of the controversy between the parties it would be conducive to refer the compromise decree passed in Suit No. 543 of 1997 [old] 22 of 2004 [new] which is that:

“Plaint was presented on 19th January, 2991 Before Hon'ble High court of Sindh.

This suit was received from the Hon'ble Court of District Judge Central Karachi by way of transfer on

Plaintiff prays as under:

- (a) That the defendant should be ordered to hand over vacant and peaceful possession of the Petrol Pump 'RANA GASOLINE SERVICE STATION'.***
- (b) Mesne Profits @ Rs.50,000 per month [Fifty Thousand Rupees] be granted from 01.07.1996 till the vacant possession is given to the plaintiff.***
- (c) Cost of the suit.***
- (d) Any other relief which this Hon'ble court deem fit and proper in the circumstances of the case.***

This suit has come up for final disposal on this 25th May 2009 before Mr. Mustafa Safvi, 2nd Senior Civil Judge Karachi Central in the presence of the plaintiff and defendant counsels:

The plaintiff and defendant have filed compromise agreement arrived at KCDR and the same is hereto understand and agree to the following terms and conditions:

- 1. That the defendant admits that the plaintiff is the owner of the petrol pump site admeasuring 650 Sq. Yards situated near the plaintiff School, S. M. Taufiq Road, Liaquatabad, Karachi.***
- 2. That the defendant acknowledge that the plaintiff is the sole and exclusive dealer of Pakistan State Oil and conducting business under name and style of M/s. Rana Gasoline situated at the address mentioned above.***
- 3. That APWA admit that since 1967, defendant as agent had developed and managed the petrol pump site and generated goodwill.***
- 4. That the parties have agreed that this compromise would remain valid and in force for a minimum term of ten years***

from the date of passing of a compromise decree in Suit No.22/2004.

- 5. That the plaintiff had not collected the business profit share since July 1996 yet Safia Enterprises has agreed to pay the same w.e.f. July 1996 till date in lump sum at an agreed and settled amount of Rs.700,000.00 [rupees seven hundred thousand only] immediately on passing of the compromise decree in Suit No.22/04, through HBL PO No.0531127 dated 25th May, 2009.***
- 6. That subsequent to passing of compromise decree in Suit No.22/04, the defendant will pay a fix business share to the plaintiff @ of Rs.30,000.00 [rupees thirty thousand only] per month which will be increased by 10% after every three years.***
- 7. That the plaintiff being the dealer / owner, undertakes to pay all existing / future taxes / cess to levied by central / provincial government / CDGK / TMA / utility service providers and furnish paid bills to Safia Enterprises on or before the 25th day of every month.***
- 8. That the plaintiff will provide all necessary assistance / cooperation as may be required by the defendant for the improvement / smooth running of the oil, lubricants / vehicle fuel / gasoline / CNG business at petrol pump site.***
- 9. That the plaintiff will provide the certified copy of the registered lease agreement executed between the plaintiff and PSO so as to enable the second party to follow up the development work at the petrol pump site.***
- 10. It is hereby ordered that the suit of the plaintiff is decree in terms of the compromise agreement. Besides payment of the agreed lump sum arrears of Rs.7,00,000/- through P.O. The defendant is also directed to pay a fix monthly business share @ of Rs.30,000/- per month to the plaintiff which will be increased by 10% after every three years. The suit is decreed under Order XXIII Rule 3 CPC with no order as to cost'.***

3. The learned counsel for the applicant in J.Ms while arguing J.M. Nos.11 & 12 of 2021 contends that above referred order was passed in ex-

parte proceedings. Both defendants, joined by the plaintiff, were passed away and plaintiff failed to join the legal heirs and he was representing one of the legal heirs of defendant No.1. Though the applicant claims to be representing one of the legal heirs of the defendant No.1 thereby admitting death of the defendant No.1 yet he did not raise this objection at the time of passing compromise decree which he does not claim to be not in his knowledge and notice. It may safely be said that things are always required to be done at '**proper & relevant time**' and a failure towards such obligation always brings legal consequences in favour of rival party which is not limited but includes '**estoppel**'. Guidance is taken from the case, reported as PLD 2015 SC 212 wherein it is observed as:-

Where a person was aggrieved of a fact, he had a right, rather a duty to object thereto to safeguard his right, and if such a person did not object, he shall be held to have waived his right to object and subsequently shall be estopped from raising such objection at a later stage—person....Such waiver or estoppel may arise from mere silence or in action or even inconsistent conduct of a person.

Be that as it may, it is also matter of record that he has not deposited Rs.30,000/- with the Nazir of this court or with the company as claimed. Whereas, in J. M. No.27 of 2021 applicant is claiming as tenant of the area which is the part of the petrol pump [according to him], however, it is contended that he has no concern as that order was passed in his absence, this court has no jurisdiction, it must be passed in rent jurisdiction and the plaintiff has right to avail remedy under Sindh Rented Premises Ordinance 1979.

4. By order dated 30.04.2021 direction was issued to the Nazir to seal the subject property which, *too*, with aid of the police. Further, admittedly, ownership of the plaintiff is not disputed and it is also not disputed that applicants in J.M No.11 & 12 of 2021 have failed to abide Para-10 of the compromise decree on the plea that plaintiff failed to undertake all existing

future clauses. Here, it is worth adding that terms and conditions of the compromise bind either side (s) hence before pointing failure of other-side the party, raising objection, should show performance by it. That clause also reflects that applicant will deposit business share and not rental income which has not been complied with. Whereas in J.M No.27 of 2021 Abdus Sattar Khan is claiming possession of the goods, which is admittedly not reflected from referral of earlier order (s). Besides, the period decided by compromise was for ten years which has ended in 2019. When it has come on record that plaintiff is owner of the petrol pump, applicant being legal heir of defendant No.1 was required to deposit certain amount but he failed to do so as well in compromise agreement, executed between the parties, has ended in 2019, therefore; further possession of the applicants without any legal and lawful character, in any way, can be termed as legal in view of the compromise order, hence, order dated 30.04.2021 has served interest of justice, accordingly, same is maintained. J.M. No. 11, 12 & 27 of 2021 are dismissed. Nazir shall proceed with the spirit of that order without any further delay.

J U D G E

M.Zeeshan