

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Aqeel Ahmed Abbasi

Mr. Justice Abdul Mobeen Lakho

H.C.A. No.363 of 2023

Date

Order with signature of Judge

FRESH CASE:

1. For order on CMA No.4375/2023 (Urgent).
2. For order on office objection a/w repl as at 'A'.
3. For order on CMA No.4376/2023 (Exemption).
4. For hearing of main case.
5. For order on CMA No.4377/2023 (Stay).

Dated; 13th October 2023

Ms. Rabia Khan, Advocate for Appellant.

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1. Urgency granted.
2. Learned counsel for the petitioner undertakes to comply with office objection before the next date of hearing.
3. Exemption granted subject to all just exceptions.

4&5. Through instant High Court Appeal, the appellant has impugned two orders dated 27.04.2023 and 09.10.2023 respectively passed by the learned Single Judge of this Court in Suit No.583 of 2023 on C.M.A. No.6378/2023, whereby, according to leaned counsel for the appellant, through misrepresentation and concealment of facts by the respondent No.1 relating to continuity of operation of a school in the name of Toronto School of Academy, being operated at House No.10-D (Survey Sheet No.35-P/I) measuring 956 square yards situated at Talib-ul-Mola Street, Street No.19, Tipu Sultan Road, MAHS, Karachi an exparte ad-interim order dated 27.04.2023 was obtained, whereas, the learned Single Judge without examining the relevant provision of Regulation 19.2.2.3 of Karachi Building & Town

Planning Regulations, 2002 as well as Regulation 40 of Karachi Building & Town Planning Regulations, 1979, has been pleased to confirm the ad-interim order and the injunction application filed by the respondent No.1 has been allowed through impugned order dated 09.10.2023, however, without assigning detailed reasons, and the appellant has been restrained from operating school on the subject premises. According to learned counsel for the appellant, the appellant has given admission to more than about 200 students for the current academic sessions for O & A Level, therefore, has made huge investment in renovation of the subject premises to meet the required standards, therefore, seriously prejudiced by impugned order. Learned counsel for the appellant further submits that on the subject premises the school was operative since 1985, whereas, the appellant purchased the subject premises and the running school on 08.11.2022, however, the school was temporarily closed down for the renovation purposes, whereafter, the admissions were given to the students, however, the respondents through misrepresentation and concealment of facts obtained an ex parte ad-interim restraining order on 27.04.2023, which order has confirmed through impugned order dated 09.10.2023, however, without examining the material facts and the relevant provisions of Regulations applicable in the instant case. According to learned counsel for the appellant, it was the case of the appellant before the learned Single Judge that the provisions of Karachi Building & Town Planning Regulations, 2002, as such, are not attracted in the case of subject school, as permission to operate subject school was granted as per KB&TP Regulations, 1979, however, on account of temporary closure of the subject school for few months for the renovation purposes, respondents have obtained restraining order against the operation of the subject school, however, the learned Single Judge, without recording any finding as to the

applicability of the provisions of KB&TP Regulations, 1979 and Regulations 19.2.2.3 of KB&TP Regulations, 2002, has confirmed the ad-interim order while relying upon the undertaking, which was furnished by the appellant before the Society under duress, keeping in view the fact that the Society was not willing to mutate the property in the name of the appellant. According to learned counsel for the appellant, without prejudice to hereinabove factual and legal position, it is well-settled principle of law that if any undertaking obtained under duress, which otherwise is contrary to law, has no binding effect, therefore, reliance on such undertaking under the circumstances, is totally misplaced. In support of her contention, learned counsel for the appellant has placed reliance on the case of **PAKISTAN MUSLIM LEAGUE (N) AND OTHERS v. FEDERATION OF PAKISTAN AND OTHERS (PLD 2007 SC 642)**. In addition to hereinabove submissions, it has been further contended by the learned counsel that even the suit filed by the respondent is not maintainable, as the respondents have sought negative declaration, without disclosing any legal character or cause of grievance accrued to the respondent, whereas, the impugned order is not a speaking order, as all the relevant legal grounds argued by the appellant have not been dilated upon, nor any finding has been recorded to this effect. Per learned counsel, since the injunction application has been finally decided and the decision in the suit would consume considerable time, therefore, the appellant will suffer irreparable loss and injury on the one hand, whereas, the academic sessions of the students, who have already been admitted, will also be seriously affected. It has been prayed that impugned orders may be set aside.

After hearing the learned counsel for the appellant at some length and from perusal of the impugned order dated 09.10.2023

passed by the learned Single Judge, *prima facie*, it appears that the legal grounds relating to application of Regulation 40 of KB&TPR, 1979 as well as Regulation 19.2.2.3 of KB&TPR, 2002 appears to have not been examined in detail, nor any finding relating to the facts of the case appears to have been recorded in the impugned orders, therefore, keeping in view the anxiety expressed by the learned counsel for the appellant with regard to current academic session of the students, who according to appellant, have already been admitted, we will dispose of instant High Court Appeal by setting aside the impugned order dated 09.10.2023 and remand the matter to the learned Single Judge, who may decide the injunction application bearing CMA No.6378/2023 afresh, after hearing of both the parties through speaking order, preferably, within a period two (2) weeks from the date of receipt of this order.

Instant High Court Appeal stands disposed of in the above terms alongwith listed applications.

J U D G E

J U D G E

Farhan/PS
