

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

Suit 366 of 2021

Date: Order with signature of the Judge

26.09.2024

Messrs. Omer Memon and Aitezaz Manzoor Memon, advocates
Mr. Khawaja Shamsul Islam, advocate
Ms. Sofia Saeed Shah, advocate
Mr. Naeem Suleman, advocate
Mr. Munir Iqbal advocate for defendant No.6
Mr. Muhammad Daud Narejo, advocate for alleged contemnors
Muhammad Khalid and Samina Khalid.
Mr. Ammar Naseer, advocate
Mr. Ghulam Asghar Pathan, advocate
Mr. Ahmed Ali Ghumro, advocate
Mr. K.A. Vaswani, Assistant Advocate General
Dr. Farrukh Raza, PSP, SSP East Karachi
Mr. Abu Talha Umrao, DSP Bahadurabad
Mr. Abdul Rasool Bughio, SHO PS Bahadurabad
Inspector Zahid Hussain of PS Bahadurabad
Syed Arif Ahmed Zaidi, Director / Administrator SITE
Mr. Khursheed Dheraj, Director Finance SITE
Mr. Shanul Haq, Estate Engineer, SITE

This is a suit asserting rights in respect of immovable property, constituent whereof is *admittedly* being alienated notwithstanding restraints placed by this Court.

Statement filed on behalf of the plaintiff is taken on record. It is demonstrated that High Court Appeal 319 of 2024, was filed against order dated 29.08.2024, however, same has been dismissed. It is demonstrated from paragraph 6, 15, 17 and 18 that the defendants have admitted knowledge of interim orders operating in the suit; with respect to property that has been attempted to be alienated despite the orders of restraint.

Mr. Khawaja Shamsul Islam and Mr. Omer Memon demonstrate from the record that status quo with respect to the suit property was ordered on 18.02.2021 and the defendants were duly served. It is shown that the order of the court was amplified on 30.11.2021, in the presence of the learned counsel for the respective defendants / officials of SITE. It is seen that industrial Plot B-9/A, SITE Karachi ("Subject Property") is specifically mentioned in the said order. Notwithstanding the foregoing, it is *admitted* that the defendants are alienating the Subject Property.

Learned counsel for defendant Nos.1 and 2, admits that the property has been attempted to be alienated, during the pendency of the suit and stay orders, however, submits that the same has been done since the plaintiffs' claim with respect to the property holds no weightage.

Learned counsel for SITE is present and submits that SITE has already cancelled the transfer letter whereby the Subject Property was to be alienated and the same was done on 26.09.2023. Mr. Naeem Suleman advocate

represented the purported purchaser of the property and admits that the allotment has already been cancelled by the SITE, however, he has also challenged the same in court.

There is no cavil to the fact that the Subject Property is subject matter of this suit and that interim orders are operating restraining the alienation thereof. The attempt at alienating the property, notwithstanding orders of this court, is also admitted. SITE has represented that the attempt at alienating has been thwarted, however, for the time being. It appears to be a reasonable apprehension that unless protective orders are issued by this Court, the subject matter of the *lis* is at serious risk of alienation. Therefore, it is prayed that the subject property may be given in the sole care and custody of the Nazir, pending adjudication hereof.

The statutory¹ and the common law in such regard is well settled. *Saeed ur Rehman*² and *Asadullah Mirbahar*³ are two time honored Division Bench edicts of this Court in such regard and *Zamir Ahmed Khan*⁴ is a recent reiteration of the law.

In *Saeed ur Rehman*, a Division Bench upheld the appointment of a receiver, while observing as follows:

“...it will be advantageous to observe that a Receiver appointed under Order XL, Rule I, C.P.C. is ordinarily an impartial and indifferent person between the parties to a cause, appointed by the court to receive and preserve the property or fund in litigation pendente lite, when it does not seem reasonable to the court that either party should hold it or where a party is incompetent to do so as in the case of an infant. Thus, a receiver is an officer of the court through whom equity takes possession of the property, preserves it from waste and destruction, secures and collects the proceeds and ultimately disposes of them according to the rights and priorities of those entitled thereto, whether regular parties in the cause or only coming before the court in a reasonable time and in the due course of procedure to assert and establish their claims. The effect of the Appointment of a receiver is not to prejudice the case in any way. The only object and effect of it is to maintain things in their present condition during the pendency of the suit. The main object of the appointment of a receiver is to protect the estate from unnecessary and expensive litigation, to preserve it for the equal benefit of those equally interested in its distribution and to keep the property at all times within the control of the court by which the receiver has been appointed. Thus, the receiver's possession is not a possession by any personal right. It is the possession of the court and he is totally devoid of any interest in the property. He is in the position of a stake-holder, who has custody of the property for the benefit of the true owner, hence the possession of the receiver is on behalf and for the benefit of all the parties to the suit according to their rights in which he is appointed. Therefore, the

¹ 1. - (1) Where it appears to the Court to be just and convenient, the Court may by order - a) appoint a receiver of any property, whether before or after decree; b) remove any person from the possession or custody of the property; c) commit the same to the possession, custody or management of the receiver; and d) confer upon the receiver all such powers as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has or such of those powers as the Court thinks fit...

² Per *Rehmat Hussain Jaffer J* in *Saeed ur Rehman vs. Ehsanullah Khan Afridi* reported as *PLD 2007 Karachi 527*.

³ Per *Muhammad Ali Mazhar J* in *Asadullah Mirbahar vs. Ayesha Muzahir* reported as *PLD 2011 Karachi 151*.

⁴ Per *Adnan Iqbal Chaudhry J* in *Zamir Ahmed Khan vs. Muhammad Hassan Chiniyoon* reported as *2020 CLC 1189*.

property in the hands of receiver is in *custodia legis* for the person, who can make a title to it. No doubt through the appointment a change of possession takes place, but it has no effect upon the title of the property in any way and determines no right as between the parties, therefore, the possession of a receiver during the pendency of a suit should be regarded as possession for the party, who might ultimately turn out to be the true owner and entitled to possession as such. The effect of such possession by the receiver is to destroy the adverse possession.

It is pointed out that the issue of appointment of a receiver during pendency of suit and issue of injunctions, whether temporary or permanent, are a form of specific relief. Sir John Woodroffe in his Book "Law Relating to Receivers" observed that a relief by specific performance, injunction and receiver belongs to the same branch of the law. The appointment of a receiver operates as an injunction against the parties, their agents and persons claiming under them, restraining them from interfering with the possession of the receiver except by permission of the court and an order for an injunction is always more or less included in an order for a receiver, therefore, it is not necessary, if a receiver be appointed, to go on and grant an injunction in terms. He further observed that all the three forms of relief are dealt with by the Specific Relief Act. The relief granted by appointment of a receiver pendente lite bears in many respects a close analogy to that by temporary injunction, as such, both are essentially preventive in their nature being properly used only for the prevention of future injury, rather than for the redress of past grievances and both have one common object in so far as they seek to preserve the res or subject-matter of the litigation unimpaired, to be disposed of in accordance with the future decree or order of the Court.

The appointment as well as the removal of a receiver is also a matter which rests in the sound discretion of the Court. In exercising its discretion, the court should proceed with caution and be governed by a view of the whole circumstances of the case. It is pointed out that a receiver should not be appointed in supersession of a bona fide possessor of property in controversy unless there is some substantial ground for interference. Reference is invited to the case of *M. Aatur Rehman Alvi v. Inamur Rahman* 1974 SCMR 54. It will be noticed that in Order XL, Ruled, C.P.C. the words "just and convenient" have been used, which mean that the Court should appoint a receiver for the protection of property or the prevention of injury, according to legal principle and not that the court can make such appointment because it thinks convenient to do so. References are invited to the cases of *Habib v. Abtia* (23 CLJ 567) and *Bhupendra v. Monohar* (28 CWN 86). as regards appointment of receiver, a receiver can be appointed, if it is found that the estate is in danger, because no longer properly managed or that difficulties have arisen in connection with litigation about the properties comprised in the estate or that there is good ground to apprehend that the defendant may misapply trust funds. The main principles upon which such discretion should be exercised have been laid down in the case of *Owen v. Homan* (94 RR 516) and those principles have been held to be equally applicable in Pakistan as in England, as observed by the then justice Cornelius in a case of *Lala Roshan Lal v. Ch. Muhammad Afzal* PLD 1949 Lah. 60. In the *Owen's* case Lord Cranworth said:

"The receiver, if appointed in this case, must be appointed on the principle on which the Court of Chancery acts, of preserving property pending the litigation, which is to decide the right of the litigant parties. In such cases the Court must of necessity exercise a discretion as to

whether it will or will not interfere by this kind of interim protection of the property. Where, indeed, the property is as it were in medio, in the enjoyment of no one, the Court can hardly do wrong in taking possession. It is the common interest of all parties that the Court should prevent a scramble. Such is the case when a receiver of a property of a deceased person is appointed pending a litigation in the Ecclesiastical Court as to the right of probate or administration. (1) No one is in the actual lawful enjoyment of property so circumstanced, and no wrong can be done to anyone by taking it, and preserving it for the benefit of the successful litigant. But where the object of the plaintiff is to assert a right to property of which the defendant is in the enjoyment, the case is necessarily involved in further questions. The Court by taking possession at the instance of the plaintiff may be doing a wrong to the defendant; in some uses- an irreparable wrong. If the plaintiff should eventually fail in establishing his right against the defendant, the Court may by its interim interference have caused mischief to the defendant for which the subsequent restoration of the property may afford no adequate compensation. In all cases, therefore, where the Court interferes by appointing a receiver property in the possession of the defendant before the title of the defendant is established by decree, it exercises a discretion to be governed by all the circumstances of the case."

... Thus, apparently the alleged possession of the appellant is not a bona fide possession, therefore, his possession cannot be protected in the present circumstances of the case as appearing at this stage...

As regards the appellant letting out the property to his tenant, the written-statement is silent, as no such plea was raised in it. It also appears that at the time of inspection of the property by the Nazir he did not mention such fact to him. In these circumstances, the learned advocate for the respondent No.1 has argued that the said plea was set up after filing the written-statement in order to protect the illegal possession of the property..."

It is paramount to bear in mind that in *Saeed ur Rehman* the fact that the possession of the property could not be demonstrated to be bona fide and that played a pivotal role in substantiating the appointment of a receiver.

In *Asadullah Mirbahar⁵, Muhammad Ali Mazhar J* encapsulated the salient principles for appointment of a receiver. It was observed as follows:

"15. The guiding principles for the appointment of Receiver under Order 40, Rule 1, C.P.C. are laid down as under:

(i) Appointment of receiver rests entirely with the discretion of the court, which is to be exercised judiciously, keeping in view the attending circumstances, to do justice between the parties;

(ii) Appointment of receiver should be to safeguard the interest of both parties, and to save disputed property from mismanagement and mischief;

(iii) Plaintiff is bound to prove strong prima facie case in his favour to the effect that ultimately he will succeed in getting relief as prayed for;

(iv) What are circumstances which warrant immediate appointment of Receiver;

⁵ Per *Muhammad Ali Mazhar J* in *Asadullah Mirbahar vs. Ayesha Muzahir* reported as *PLD 2011 Karachi 151*.

(v) The purpose is not merely to dispossess someone but to prevent the property from waste. Material should be placed on record to show that the subject matter is in danger of waste and malversation;

(vi) Power to appoint Receiver should be sparingly used;

(vii) Possession of person bona fide in occupation of property should not be disturbed unless there are allegations of wastage or dissipation of property or apprehension of irreparable loss or injury.

16. A relief by specific performance, injunction and receiver belongs to the same branch of the law. The relief granted by appointment of a receiver pendente lite bears in many respects a close analogy to that by temporary injunction, as such, both are essentially preventive in their nature being properly used only for the prevention of future injury, rather than for the redress of past grievances and both have one common object insofar as they seek to preserve the res or subject matter of the litigation unimpaired, to be disposed of in accordance with the future decree or order of the Court...

18. The receiver appointed under Order 40 Rule 1, C.P.C. is ordinarily an impartial and indifferent person between the parties to a cause, appointed by the Court to receive and preserve the property in litigation, thus a receiver is an officer of the court through whom equity takes possession of the property, preserves it from waste and destruction, secures and collects the proceeds and ultimately disposes them of according to the rights and priorities of those entitled thereto...

19. The effect of appointment of receiver by the learned Single Judge was not to prejudice the case of any party but the only object was to maintain the situation intact during the pendency of the suit..."

Encapsulating the discussion, it is observed a fit case has been set forth before this Court to commit the Subject Property to safe custody of this Court.

On the anvil of the law, including as illumined vide *Saeed ur Rehman*⁶, *Asadullah Mirbahar*⁷ *Zamir Ahmed Khan*⁸, it appears just and convenient for a receiver be appointed in respect of Plot B-9/A, SITE Karachi; in the following terms:

- i. The Nazir of this Court is hereby appointed receiver of the Plot B-9/A, SITE Karachi, which shall remain in his exclusive possession and custody until further orders.
- ii. The Receiver shall cause the Suit Property to be vacated and in such regard may obtain the assistance of any law enforcement agency / regulatory body deemed expedient. The vacated Suit Property shall be sealed pending further orders of this Court.
- iii. The Receiver's remuneration shall be Rs. 100,000/- to be paid by the plaintiffs. The Receiver shall be entitled to recover any expenses incurred in discharge of duty from the plaintiffs.

⁶ Per *Rehmat Hussain Jaffer J* in *Saeed ur Rehman vs. Ehsanullah Khan Afridi* reported as *PLD 2007 Karachi 527*.

⁷ Per *Muhammad Ali Mazhar J* in *Asadullah Mirbahar vs. Ayesha Muzahir* reported as *PLD 2011 Karachi 151*.

⁸ Per *Adnan Iqbal Chaudhry J* in *Zamir Ahmed Khan vs. Muhammad Hassan Chiniyoon* reported as *2020 CLC 1189*.

The Receiver, appointed herein, shall remain at liberty to require further orders from this Court to undertake its task herein conferred and shall make a reference as and when considered expedient

In regard to issuance of notices to public functionaries, Dr. Farrukh Raza, PSP, SSP East Karachi and Inspector Zahid Hussain of PS Bahadurabad are present and tender unconditional apology. The same is accepted and they are directed to be careful in the future. Warrants are discharged. As a consequence CMA No.13436 of 2021, is dismissed as withdrawn.

Adjourned. Interim order passed earlier to continue till the next date of hearing.

Judge

Amjad