

*Order Sheet*  
**IN THE HIGH COURT OF SINDH, KARACHI**  
HCA No.157 of 2024  
[ Shafiq-ur-Rehman Siddiqui vs. Mst. Neelofer Khalid and others ]

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Date	Order with signature of Judge(s)
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**PRESENT:**

**Mr. Justice Zafar Ahmed Rajput**  
**Mr. Justice Arshad Hussain Khan**

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Appellant	Through Mr. Muhammad Saad Shafiq Siddiqui Advocate.
Respondent	Nemo
Date of Hearing: & Order	27.01.2025

**ARSHAD HUSSAIN KHAN, J:** Through instant High Court Appeal the appellant has challenged the order dated 22.02.2024, passed by learned Single Judge in Suit No.77/2020, whereby application under Section 94 CPC, filed by the appellant/plaintiff seeking directions against defendants 1 to 9 for payment of monthly charges against occupation of Plot No.B-26, 416 Sq.Yds, Block H, North Nazimabad, Karachi, was dismissed.

2. The appellant through instant HCA prays as follows :-

- I. An order perpetually suspending / setting aside order dated 22.02.2024, passed in Suit No.77/2020 [Shafiq ur Rehman Siddiqui v. Mst. Neelofer Khalid & others];
- II. An order directing Respondents No. 1 to 9 (including persons acting under them, through them and/ or on their behalf) to disburse all sums due, in terms of CMA 606/2020, from the date of its filing till disposal of suit No.77/2020 [Shafiq ur Rehman Siddiqui v Mst. Neelofer Khalid & Others]
- III. Pending grant of the above; an order temporarily suspending operation of the offending portion of Order dated 22.02.2024, passed in Suit No.77/2020 [Shafiq ur Rehman Siddiqui vs. Mst. Neelofer Khalid & Others ]
- IV. Pending grant of the prayers clause II. an order temporarily directing Respondents No.1 to 9 (including persons acting under them, through them, and/or on their behalf ) to deposit Rs.2,00,000/- [Rupees Two Hundred Thousand Only] per month, before the Nazir of this Court, as security for payment of (month) compensation charges against the illegal occupation of the subject property having ground plus one construction thereon.
- V. Grant all other relief(s) deemed permissible, just, and appropriate in the given facts and circumstances.
- VI. Grant costs of proceedings.

3. Briefly, the facts of the case are that the appellant instituted the suit, principally seeking possession of the subject matter property or, in case the SCP Appeal succeeds, partition thereof. A consequential relief sought is payment of a monetary charge against the contesting respondents for unlawfully and illegally holding over possession of the subject matter property. Along with the underlying suit, the appellant had filed CMA 606 of 2020, claiming past and future payments, at the rate of Rs.2,00,000/-, which was dismissed through the order impugned herein.

4. In this matter on the first date of hearing, i.e. 22.04.2024, learned counsel for the appellant was directed to satisfy the Court about the maintainability of petition. Today, i.e. 27.01.2025, at the very outset, he was asked to first satisfy this Court with regard to maintainability of the present appeal.

5. Learned counsel for the appellant while reiterating the contents of Memo of Appeal has argued that the impugned order defects from law as settled through judicial declarations and it also lacks reasoning and more particularly application of mind. He has argued that there has never been a dispute that the appellant is the owner of the remaining 50% of the holdings obtaining from the subject matter property. He has argued that a shareholder cannot employ use of a property beyond his / her entitlement / assignment, at least not without satisfying through monetary compensation, persons duly sanctioned, therefore, the impugned order is unjustified and must, as a consequence, be annulled.

6. We have heard learned counsel for the appellant and perused the record.

From perusal of the record, it appears that the impugned order was passed with the following observations:

*“2. The listed application stands disposed of with the subject thereof to be determined at the final stage.”*

7. From the record it appears that the appellant herein has filed the aforesaid suit for Declaration, Possession, Mandatory & Permanent Injunction along with CMA 606 of 2020, claiming past and future payments, at the rate of Rs.2,00,000/-, which was disposed of through the impugned order. It is an established position that the mesne profits are

damages or compensation recoverable from a person, who has been in wrongful possession of an immovable property. It is a settled principle of law that wrongful possession is the very essence of claim for mesne profit and for seeking mesne profit, a person must be owner of the captioned property or having right to its possession. In the instant appeal, the impugned order, which is sought to be set aside, relates to the entitlement of the appellant for mesne profit, it would suffice to say that the question of entitlement shall come into play only when the claimant first establishes that he was entitled to retain possession and he was wrongly kept out of the possession, which can only be decided in the suit proceedings after recording of evidence before the learned Judge.

8. Before us, learned counsel for the appellant has failed to give any plausible justification regarding maintainability of the instant appeal. We find no ground of Appeal is specific in nature and character, which requires to be adjudicated. There appears no illegality in the impugned order, which has been passed in consonance with the spirit of law and does not call for interference by us. Moreover, in our view, where case is of a simple nature and no question of law or fact is involved for determination, the court can dismiss an appeal in limine. Reliance can be placed on the case reported as *Shakeel Ahmed vs. Commandant 502 Central Workshop E.M.E. Rawalpindi and another* [1998 SCMR 1970]. Consequently, this High Court Appeal, being devoid of any substance was dismissed in limine, vide our short order 27.01.2025 and these are the reasons for the same.

JUDGE

JUDGE